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No agreement on WTO deal ahead of Bali conference

Trade diplomats in Geneva have failed to reach agreement on a package of trade reforms to be adopted by the WTO's Ministerial Conference in Bali on 3-6 December, due to continued differences over such issues as food security and trade facilitation. Will there be moves to cobble together a last-minute deal at Bali itself, and if so, will such a deal be inimical to the interests of developing countries?

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WTO food fight in Bali?

Will developing countries be allowed to promote food security schemes that buy food from small farmers and also help poor consumers? This is one of the issues at the WTO's Ministerial Conference that will take place in Bali.

by Martin Khor

What had been intended as a routine, non-negotiating meeting of trade ministers from around the world may instead turn out to be a week of tense battle when the World Trade Organization holds its ninth Ministerial Conference in Bali on 3-6 December.

Almost all the first six WTO Ministerials (starting in 1996 at Singapore) were tense affairs, with major developed countries usually attempting to arm-twist developing countries to agree to negotiate or set up new legally binding rules, and the developing countries (sometimes a few, sometimes many) resisting.

The risks of failure became too high as the world media would then proclaim a "collapse of WTO talks." This happened in 1999 (Seattle) and 2003 (Cancun). "Collapse" was also proclaimed for the so-called mini-Ministerials convened by the then WTO Director-General Pascal Lamy in Geneva in 2006 and 2008.

Perhaps to avoid the danger of media proclamations of more traumatic failures, the last two WTO Ministerial meetings, held in Geneva in 2009 and 2011, were set up as non-negotiating affairs. Ministers who came took part in roundtable discussions rather than negotiations with implications for rule-making. It was agreed (among key delegations meeting at ambassadorial level among themselves, without the Director-General) that all issues would be settled beforehand, and ministers would not be put through the stress of poring over difficult texts and issues, and facing the risk of failure.

This year, trade diplomats in Geneva tried hard but could not agree on a package (the so-called "Bali deliverables") of agreed texts on the three main issues: a new trade facilitation treaty, changes in agriculture rules relevant to food security, and benefits for least developed countries (LDCs).

In the run-up to Bali, the WTO Director-General Roberto Azevedo repeatedly stated in Geneva that Bali would not be a negotiating conference. He pointedly said it again on 26 November at a WTO General Council meeting and a press conference when the meeting ended.

However, in the last few days after the meeting, some members and officials have been pushing Azevedo to convene negotiating sessions in Bali to conclude a deal. If negotiations are conducted here, in whatever format, in an attempt to get final agreements, Bali will turn out to be a tense and unpredictable meeting after all.

Public food stocks

If negotiations take place, food security will be a major issue. The developing-country Group of 33 (G33) put forward in Geneva a proposal to clarify or change the present WTO rules that constrain the ability of developing countries' governments to purchase food from small farmers and stock it.

The proposal incidentally is a paragraph from the draft agriculture modalities text of 2008, a consensus text (in WTO terms, no member at the meetings had objected or said no) that the chair of the agriculture negotiations under the Doha Round had tabled. The US, the EU, Pakistan, Uruguay, Thailand, Paraguay and others now objecting were all part of the consensus when the text was tabled.

Government purchase (and stockholding) of rice, wheat and other foods is important in many developing countries. Such schemes assist poor farmers by giving them more certainty of sales at certain price levels. They also promote national food security.

However, the present WTO rules are a hindrance to such schemes, and these rules need to be changed, according to a report of the South Centre, "The WTO's Bali Ministerial and Food Security for Developing Countries" (available on www.southcentre.int), by several trade experts of developing countries (see *TWE* No. 557). The experts include Rubens Ricupero (former Secretary General of UNCTAD), S. Narayanan (former Ambassador of India to the WTO), Ali Mchumo (former

Managing Director of the Common Fund for Commodities and former Ambassador of Tanzania to the WTO), Li Enheng (Vice Chairman, China Society for WTO Studies), Nathan Irumba (former Ambassador of Uganda to the WTO), Deepak Nayyar (former Vice Chancellor of Delhi University and former Chief Economic Advisor to the Indian government), Prof. Carlos Correa (University of Buenos Aires), Yilmaz Akyuz (Chief Economist, South Centre and former UNCTAD Director) and Chakravarthi Raghavan (Editor Emeritus, *South-North Development Monitor*).

Public stockholding for food security purposes is included as one of the items under the Green Box of the WTO's Agriculture Agreement, but with certain conditions.

The Green Box lists the types of domestic agricultural subsidies that are considered to be minimally or non-trade-distorting. WTO members are allowed to use these measures, usually without limitations. But in the case of public stockholding, significant conditions have been attached, causing enormous problems to developing countries.

One condition is that food purchases by the government shall be made at current market prices and sales from public stockholding shall be made at prices not lower than current domestic market price.

But the WTO rules also say that if the price paid by the government is higher than the external reference price, the difference is considered a trade-distorting subsidy which is then placed in and counted as part of the Red Box. Developing countries' Red Box subsidies cannot exceed 10% of the production value of the entire product (not merely the government-acquired product).

The problem is that the reference price has been defined as the average international market price, not the current but of 1986-88. Food prices were much lower 25-30 years ago. For some items they are 200-300% higher today. It is thus illogical and most unfair to accuse a government that buys rice from its farmers at today's market price of unfairly subsidizing them on the ground that it should have bought it at the 1986-88 average price!

Consider this example. The farm price of a food item was 30 cents in 1987 and has risen to 100 cents today. If it is bought from farmers at 100 cents, logic would suggest that it should not be considered a trade-distorting subsidy at all. Yet the WTO's rules stipulate that in such a case there has been a subsidy of 70 cents. And this is to be counted towards the country's total allowed subsidies.

With such a calculation, it won't take much procurement from farmers for the country to reach the 10% subsidy limit. Anything above that is considered illegal, paving the way for the country to be subjected to dispute cases from other countries in the WTO. If these countries win, they can demand the rolling back of such "subsidy" and, until this happens, levy countervailing and/or take other retaliatory measures to hit the purportedly subsidizing member.

Among the affected countries is India, whose new Food Security Act obliges the government to spend over $20 billion to buy foodgrains especially rice and wheat from poor and marginal farmers, and to provide from such stocks 5 kilos of foodgrains per month to eligible poor households, which in India account for two-thirds of the population.

G33 proposal

The G33 has thus proposed a change in the WTO rules, that acquisition of foods by developing countries to support poor farmers should not be considered a trade-distorting subsidy.

According to the South Centre experts' report, the G33 proposal, if adopted, would enable developing countries to have such schemes to help their poor producers or families without the present restraints. "It would advance the cause of national food security, promotion of small farmers' livelihoods as well as fulfilling the Millennium Development Goals of reducing hunger and poverty," says the report.

In the last months' negotiations in Geneva at the WTO, this proposal was rejected, especially by developed countries like the United States which incidentally have subsidies of their own totalling hundreds of billions of dollars – much more than those of all the developing countries.

The current WTO rules are so riddled with double standards that these huge subsidies are allowed for developed countries (since they were there in the past) while the subsidies of developing countries are severely capped because these countries did not previously subsidize (or only a little) as they could not afford to do so.

During the talks in Geneva, a counter-proposal for a so-called "peace clause" was put forward and negotiated, and the text is now on the table. The centrepiece of this is that countries having public stockholding schemes would not face disputes against them. But this "peace clause" would only be temporary, expiring at the 11th Ministerial Conference in four years, unless it is renewed or a permanent solution is found (very uncertain as any decision would presumably require a consensus).

Moreover, the temporary "peace clause" would only apply to the WTO's Agriculture Agreement but not the Agreement on Subsidies and Countervailing Measures; thus, disputes can still be raised against a country. The countries using the "peace clause" may also have to show that the measures are not trade-distorting.

Meanwhile, during the four-year "peace clause" period, there would be negotiations for a permanent solution, but no guarantee that such a solution would be found or adopted.

Also, the draft "peace clause" text includes procedural elements. Those countries that have exceeded their allowed subsidy level, including due to the unfair calculation and definition of "subsidies", have to own up, show how much they have exceeded, give details of the purchase and stocks, and also show how the operation of the scheme is not trade-distorting.

The whole "peace clause" package is so limited in benefit and complicated to use that many analysts sympathetic to the plight of developing countries have concluded that it is problematic and of little if any use.

On the eve of the Bali conference, the Indian Cabinet decided that they would agree to a "peace clause", but only if it lasts till a permanent solution is adopted, and if the peace clause applies to both the WTO's agriculture and subsidies agreements.

If there are negotiations in Bali, and India puts this proposal forward, the major developed countries (perhaps supported by some developing countries too) are likely to oppose it.

The Bali Ministerial could then turn out to be a tense and messy affair, especially since the trade facilitation issue will also be negotiated.

Will these issues be negotiated as a

package, and the balance of benefits and costs for various parties among these issues considered? Will all ministers be allowed to take part in the talks, or only a select few, as in the past? Who selects the countries in the decision-making process, and what if non-selected countries insist on being in the room? Will the entire membership agree to a deal struck by a few at the last hour of the conference?

All these questions – which in the past have hovered over previous Ministerial Conferences as they took place and, after the Ministerials, haunted the WTO with questions of legitimacy of decisions taken – may well re-emerge.

The WTO Director-General and many countries had vowed in the week of 25 November that this kind of risky do-or-die, take-it-or-leave-it situation, prevalent in Ministerials of the past, would not be repeated. But with some members attempting on the eve of the Ministerial to build momentum for negotiations to take place in Bali after all, it remains to be seen what will happen in Bali. ❒

Martin Khor is Executive Director of the South Centre, an intergovernmental policy think-tank of developing countries, and former Director of the Third World Network.

Major effort on to railroad developing countries to surrender at Bali?

Despite the apparent lack of an agreed outcome for the Bali conference, *Chakravarthi Raghavan* wonders whether moves are afoot at the WTO to stitch together an eleventh-hour deal, one which would be harmful to developing-country interests.

GENEVA: As trade ministers from around the globe gather in Bali for the biennial Ministerial Conference of the WTO, the multilateral trading system is once again trying to prove the uncertainty principle of quantum theory in physics.

At the same time, the WTO is also trying to prove one constancy in its history (from the old provisional GATT of 1948 to the present WTO, a definite treaty-based organization and purportedly a rules-based system), namely, as in the Lewis Carroll tale, that words shall have the meaning attributed to them at any one time.

Just on 26 November, after a meeting of the WTO General Council, Director-General Roberto Azevedo told a press conference, "The process in Geneva is over ... if we had more weeks here we would not do it."

Earlier, the General Council had, as Azevedo had proposed, taken note of and forwarded to the ministers at Bali a package of 10 texts on trade facilitation, agriculture, cotton and development and LDC members, each with a square bracket on top and another at the end, indicating the texts are not agreed.

Azevedo himself in his recommendation told the Council that "they are not agreed texts", but that he would use the texts "simply to brief ministers on the state of play as of now – but not as agreed texts for adoption."

Hardly had the General Council meeting ended, with some key negotiators having already left Geneva to return to their capitals to brief their ministers before going on to Bali, than the WTO methods of shadow small consultations began.

Push for negotiations

Even at the General Council, Brazil, Chile, Hong Kong China and a few others wanted negotiations to be continued at Bali (contrary to the specific understanding among members that Bali would not have a negotiating agenda). The Council did not adopt that suggestion, as other members such as South Africa specifically said No. Brazil itself is known to have called a meeting of the G20 grouping of developing countries to push for ministerial negotiations at Bali and for key members (Argentina, India, South Africa) to agree to the package. However, Argentina reportedly remained adamant that without firm commitments and actions to phase out agricultural export subsidies (as had been proposed by the G20), it could not lift its objections. And some others at the meeting ruled out negotiations at Bali.

There was also another unannounced meeting, called by the facilitator of the negotiations on trade facilitation (TF). The representative of Nepal, the coordinator of the grouping of least developed countries (LDCs) who had been handling these issues all year long, had just left Geneva, having been promoted in his career by his home government. The new acting coordinator of the LDC group, the Solomon Islands, who had just taken over, was told that the LDCs could not have another day to assess their position but must come in that morning itself for a meeting with the facilitator of the TF talks and the US and EU (described as "stakeholders" in some reports) to remove square brackets and clean up and okay the second part of the draft TF text concerning treatment of LDCs. Very shortly thereafter a deal of sorts (without any clear commitments from stakeholders on financial support for LDCs acting to facilitate trade) was announced. And the African and ACP (African, Caribbean and Pacific) group coordinators (the ACP coordinator has an advisor who was formerly with the office of the US Trade Representative!) quickly came out with a statement to hail the breakthrough and ask everyone to ensure a successful Bali outcome.

Not surprisingly, the London pink paper the *Financial Times* (so called only for the colour of its newsprint, and very blue in orientation and a mouthpiece of sorts for the City financial interests) gleefully announced on 29 November that, deal or no deal, the dynamics in the WTO are changing, and traditional "North-South" divisions among members are being eroded. It added with equal glee that the government of (former British colony) India is isolated at the WTO, with only South Africa, Zimbabwe and ALBA countries Bolivia, Cuba and Venezuela backing it, and that India is no longer speaking for "poor countries".

Within India, as in many other developing countries, thanks to the irreversible progress of democratic processes and the Internet, alternative media and horizontal communication processes, the public have become more alert. Even businesses that once sang the tune of the US and the EU and their corporations, have become more aware. Just in the week of 25 November India Inc came out strongly in support of the government's food security moves and publicly asked the government to reject the dubious Azevedo "peace clause".

As one Indian official is reported to have commented, "the government is more concerned about domestic opinion", and can't be isolated from its public, and is not too worried by Western media painting India as the spoiler.

Uncertain prognosis

The outlook for Bali, cutting the propagandist output from all sides, is such that a soothsayer, particularly one of the Delphic oracle type, could be more successful in predicting the outcome.

As clearly as one can assess the changing dynamic at the moment of writing (29 November afternoon), the Geneva preparatory process apparently has failed, and on the face of it, Bali is not to be a negotiating Ministerial.

However, some of the contrary messages, and interventions at the General Council on 26 November, suggest that behind the scenes, there is a sustained effort at pushing the WTO processes back to the old discredited ways, a few stitching up some sort of outcome that, on current indications, will be to the disadvantage of developing countries (including the Ministerial host country and many countries from the South whose coordinators are vociferously calling for a package to be adopted in Bali).

Other than the successful adoption of a Bali package, some of the scenarios that the trade officials seem to envisage are a repetition of the post-Montreal mid-term review in Geneva; the post-Brussels Dunkel-promoted outcome, a text that he put forward as a package, with any individual part to be opened only after consensus for any change, but in fact parts relating to the US and the EU modified by them to suit their mutual interests in November-December 1993 and forced down on others; and the continuing post-Doha secretariat/Director-General attempts to distort the Doha Round mandate and convert it from a development round into a market access round, i.e., market access for US and EU corporations in the developing world (including, now, the Azevedo-pushed trade facilitation agreement) while developed countries shut more firmly their own markets to developing-country exports of goods and services.

Whatever path they take, it is time developing countries stand up for their own rights and not fall into the same traps as before. They should insist that any Geneva process after Bali that the Director-General wants to facilitate, should be one that sticks to the letter and spirit of the General Council decision of 2002 on how the Trade Negotiations Committee and its bodies, as well as the TNC chair and chairs (and the new term "facilitators") of negotiating bodies, should function in preparing reports or presenting texts.

It is also time for ministers of developing countries to regain the confidence of their own people, by standing up and making clear at Bali (and Geneva thereon) that it is not for developing countries to act and enable the US and the EU to gain confidence in the WTO system as an instrument to deliver for them, but for the US, the EU and secretariats of international organizations to act to regain the confidence in them of the developing world. *(SUNS7708)* ❐

Azevedo reports to General Council on Bali issues

Noting that "the finish line eluded us", WTO Director-General Roberto Azevedo had announced on 26 November that negotiations among trade diplomats had failed to produce agreed texts for adoption by the Bali Ministerial Conference.

by Kanaga Raja

GENEVA: Following weeks of intensive negotiations on a potential package of Bali "deliverables", the WTO Director-General on 26 November reported that the Bali Ministerial Conference would not have a set of finalized documents "that could allow the ministers to announce to the world a set of multilaterally agreed outcomes – the first since the WTO was created."

At a General Council meeting, Roberto Azevedo said that he would inform the ministers at Bali that "we have failed to find convergence. I will tell them that we came truly close to a successful outcome, but that, once more, the finish line eluded us."

He said that his recommendation, in light of the nature and shape of the documents before members, "is that I would recommend that the General Council takes note of the documents which I would simply use to brief ministers on the state of play as of now – but not as agreed texts for adoption."

Speaking to journalists outside the General Council meeting, Ambassador Faizel Ismail of South Africa was of the view that the Bali meeting was not a conducive environment for ministers to negotiate because it would be a politically charged environment with the whole glare of the public and "if we can't solve problems here [in Geneva], we're even more unlikely to solve problems in a ministerial setting such as Bali."

He further said that there was a complex set of issues that members were dealing with here. Some had to do with the impasse that had been continuing for so many years and these had to do with both objective and subjective factors.

According to a trade diplomat, members that spoke at the General Council meeting had differing views as to whether negotiations on a Bali package should continue among ministers at the Ministerial Conference.

At a media briefing after the General Council meeting, Azevedo said that members managed to make progress in a large number of very difficult areas and there were 10 texts that cover the three pillars of trade facilitation, development and agriculture.

He said that it was his assessment, given to members at the General Council, that "we have good news and we have bad news. The good news is that we came really close to fully agreed texts. As far as the Geneva process is concerned, we managed to get convergence in almost all areas."

The bad news, however, "is that over the last few days, we've stopped making the tough political calls, positions got more entrenched and flexibilities virtually disappeared. And this prevented us from getting to the finish line. We're close but not quite there."

According to the Director-General, what remained to be negotiated was not something that could be easily managed by the ministers in Bali. "Holding negotiations in the short time that we're going to have in Bali would be simply impracticable with over 100 ministers around the table."

Moreover, he added, many members had, even before the General Council meeting, expressed the view that they did not see Bali as a place for negotiations.

"Not for Ministerial negotiations in the traditional sense. And I agree with them. It would not be feasible. It would not be successful. We're not going to Bali with a set of finalized documents that could allow ministers to announce to the world that the WTO finally delivered. At this point in time, we cannot tell the world that. I will simply inform the ministers that we have failed to find convergence in Geneva. I would tell them that we came truly close to a successful outcome but once more the finish line eluded us," he said.

The reality was that "we have proved that we can't cross the final yard here in Geneva. The process here is over. We are in a new stage now. I will be consulting members. I would do everything I can do to facilitate the discussions of the members. But now it is up for them to find the solution that we all want. It is for the ministers to decide. They will be in Bali. If we are to get this deal over the line, we will need political engagement and political will. Ministers will have to decide what kind of future they want to see both for the issues which are on the table today and for the WTO."

NGOs for food security, against trade facilitation pact

by Kanaga Raja

GENEVA: In the wake of the failure of the negotiations at the WTO on a proposed Bali package of "deliverables", global civil society organizations grouped under the Our World Is Not For Sale (OWINFS) network called on WTO members, at the Bali Ministerial Conference, to abandon a binding agreement on trade facilitation and to focus instead on removing obstacles to food security.

In a statement, they said that the WTO has failed in its 18 years to deliver on its promises and commitments to development, and the failure to remove obstacles to food security even further erodes the credibility of the WTO.

"A deal on Trade Facilitation would have bound developing countries to the customs and port-of-entry policies and procedures that rich countries have implemented over many decades to their own advantage, imposing excessive regulatory, human resources, and technological burdens on developing countries."

At the same time, said the statement, developed countries have been unwilling to commit to providing resources for poor countries to modernize their facilities, meaning that they would have to prioritize computerizing their customs offices over their schools, and improving infrastructure at ports rather than at hospitals.

"The United States and its allies have tried to spin this deal as a 'win-win' for developing countries, but they [developing countries] saw through that farce and didn't give in to US bullying."

Unfair rules

The OWINFS civil society groups called on WTO members to continue negotiations towards addressing the historical imbalances and existing unfair and damaging rules in the WTO through the other aspects of the "Bali package": agriculture and some policy changes to benefit least developed countries (LDCs).

"Unbelievably, existing WTO rules allow developed countries to massively subsidize their agriculture (to the tens or hundreds of billions annually), while only 17 developing countries are allowed to subsidize over a minimal amount. As poor farmers make up a large percentage of the 'bottom billion', removing this limit to Food Security in the WTO is the most sensible way the international community can reduce hunger, poverty, and inequality."

In the last year, the groups noted, India has courageously led a coalition including dozens of other developing countries, demanding that WTO rules change to allow them to subsidize farmers producing food for domestic consumption, so that they can implement a national food security law and reach the Millennium Development Goal to reduce hunger.

Unfortunately, the US has stubbornly blocked the proposal, flatly refusing to negotiate on it during the year (while also refusing to agree to significantly reduce its own agribusiness subsidies).

Thus, the current debate focuses on a potential "peace clause" – meaning that countries agree not to file disputes against each other in the WTO on the rules in question.

Of course, said the civil society groups, the proposed peace clause would only make sense if it were to be in effect until a permanent change to the rules could be agreed upon.

However, Director-General Roberto Azevedo has proposed a so-called "compromise" that would only last for four years, with no requirement that a permanent solution be agreed. And it would require developing countries to "prove" that their domestic subsidies do not distort trade – while developed countries would still be allowed to spend billions on trade-distorting subsidies.

"Thus, press reports blaming India for 'blocking' such a 'compromise' show little grasp of the current WTO rules, or outright bias towards the United States," said the statement.

In addition, the global civil society groups called on members to approve a package of policy changes to allow LDCs to gain more from global trade.

"Now that talks on expanding the WTO [remit] have collapsed, members should take advantage of the time in Bali to discuss an urgent agenda of transforming existing rules to allow countries to pursue Food Security, as well as jobs, sustainable development, access to affordable healthcare and medicines, and global financial stability," said Deborah James, the OWINFS campaign facilitator.

"Proposals to achieve these, as well as other changes that should be made to the global trading system, form the Turnaround Agenda endorsed by nearly 250 civil society groups – including development advocates, trade unions, farmers groups, environmental and consumer organizations – from more than 100 developing and developed countries from across the globe," she added. *(SUNS7707)* ❐

In response to a question, Azevedo said that the process in Geneva was over. "If we had more weeks here in Geneva, we would not do it. If we are to find an outcome – if members want to find an outcome for Bali – it will have to have political will, and it will have to have a different way of engagement other than the traditional negotiations in Geneva. So, this has to go to a higher level. At the ambassador level – the technical level – this is as good as it gets. At this point in time, it requires political calls..."

"Close but not quite there"

In his report to the General Council, as Chair of the Trade Negotiations Committee (TNC), Azevedo noted that in recent weeks, members had completed over 150 hours of negotiations in rooms W, D and E meetings alone.

"I believe we achieved a lot and we did so hearing all voices and allowing for a process where everyone knew what was happening and where the trade-offs were accessible to all. More than that, each one of you had a chance to defend your national interests to the fullest extent."

He added: "As a result of your effort and engagement, we managed to conclude negotiations in a large number of difficult and sensitive areas."

Referring to the set of documents that was circulated to the members in the morning, the Director-General said that these 10 texts were negotiated as a package, and that members made compromises and showed flexibility with the understanding that their contributions would be reciprocated in other areas of the negotiations.

The 10 texts were on Agriculture General Services, Public Stockholding for Food Security Purposes, Export Competition and Tariff Rate Quota Administration under the agriculture pillar; the draft Trade Facilitation Agreement; and five documents under the development/LDC pillar: Monitoring Mechanism on Special and Differential Treatment, Duty-Free and Quota-Free Market Access for LDCs, Preferential Rules of Origin for LDCs, Cotton, and Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of LDCs.

"As you know, we have not finished our work in all negotiating areas and, therefore, none of these texts could be understood to be fully agreed. Each one of them has a square bracket at the beginning of the text and another at the end," said Azevedo. "These documents before you are simply a snapshot of where we are at this point in time. They consolidate the progress we made so far..."

"Since we will not have further open-ended meetings between now and Bali, the documents will not be revised," he said.

"I nonetheless encourage Members to continue seeking convergence wherever this is possible. Any further results will be taken to Bali and may be incorporated in the consolidated texts at the appropriate time."

He said that in his assessment, "after the hard effort we put into the negotiations, we have good news and bad news."

"The good news is that we came very close to fully agreed texts. As far as the Geneva process is concerned, we managed to get convergence in almost all areas. Except for the Trade Facilitation text, the other documents are entirely or mostly clean of square brackets. They are not agreed texts but they are 'stable'."

"Even Section II of the Trade Facilitation text – our largest iceberg until a couple of days ago – is now virtually 'clean'. We still need to conclude work on some of the provisions for LDCs, but otherwise we have a stable and finalized text," he said.

"I'm afraid the same cannot be said of Section I. We cleaned much of the text but some issues remain unresolved. I don't think the challenges in those issues are insurmountable. On the contrary, I believe the landing zones are discernible to us."

The bad news, however, said the Director-General, "is that over the last few days, we stopped making the tough political calls. And this prevented us from getting to the finish line. We are indeed close, but not quite there."

What remained to be negotiated was not something that could be easily managed by the ministers in Bali. "Although we can discern the landing zones in most – if not all – of the pending issues, the bracketed areas are too many and too technical in nature."

"Holding negotiations in the short time we'll have in Bali would be simply impractical with over 100 ministers around the table. I don't believe that small negotiating meetings behind locked doors would do the trick either. Anyway, they are not an option. Even at this critical juncture, I don't believe Members would be ready to abandon the transparent and inclusive nature of our negotiations."

Moreover, he said, many members expressly stated that Bali must not be a negotiating Ministerial Conference.

"I agree with them. It would not be feasible. It would not be successful. We are not going to Bali with a set of finalized documents that could allow the ministers to announce to the world a set of multilaterally agreed outcomes – the first since the WTO was created."

He added: "At this point in time we cannot tell the world that we've delivered. And I will inform the ministers that we have failed to find convergence. I will tell them that we came truly close to a successful outcome, but that, once more, the finish line eluded us. Failure in Bali will have grave consequences for the multilateral trading system."

Above all, said Azevedo, "we should not accept the inevitable simplistic assessments that will show up over the next few days about why we are at an impasse. This is not about developed versus developing countries. This not a North-South divide."

He added: "This is also not about lack of time. If we had a few more weeks, we would still not make it. Over the last few days I began to see signs of backtracking and inflexibility. Time would not remedy this situation.

"Again, this is not about a North-South divide. This is not about shortness of time. This is about specific, localized difficulties. All of them perfectly workable if the will is there. The landing zones are reachable.

"But we have proved we can't cross that final yard with normal negotiating practices. No, we are in a new stage now. The final few steps must be taken together by members. You will need to talk to each other over the next few days, to figure out a way forward."

Azevedo said, "If we are to get this deal over the line it will need political engagement – and political will. Ministers will need to decide what future they want to see – both for the issues on the table here today and for the WTO."

"We have reached the end of the process in Geneva. We have come as far as we can," said the Director-General.

Prolonged impasse

Meanwhile, in its statement at the General Council meeting, South Africa (represented by Ambassador Faizel

Ismail) said that it was disappointed that the Bali package had not been concluded.

"Fortunately, we have not been part of the narrative that a failure to conclude such a package will be fatal to the organization and the multilateral trading system. We were not part of the 'all or nothing' approach adopted by some."

The reasons for this were simple, it said, adding that the WTO had been and continued to be in crisis – due to the prolonged impasse in the Doha Round. The main reason for this, in its view, was the high and unrealistic demands of some members.

"The failure of the Bali package must also lie in its construction. In the wake of the prolonged impasse in the Doha Round, an LDC [least developed country]-plus approach to an early harvest favoured by the majority of members became substituted by a TF [trade facilitation]-plus approach. Whilst we agreed at several ministerial and TNC meetings to have balance between three pillars that made up the Bali package – Development and LDC issues; Agriculture issues; and Trade Facilitation – the final texts are clearly imbalanced."

According to South Africa, the LDC pillar remained weak, postponing the legitimate demands of the poorest countries into promises of delivery in the future; the agriculture pillar contained temporal solutions that expire in a few years and create an opt-out clause for the largest economy; and the monitoring mechanism meant to provide creative solutions for developing-country concerns may be more restrictive than the existing WTO Committee on Trade and Development.

On the other hand, it said, the proposed TF text had become expansive and extensive, containing many new obligations for developing countries and uncertainties on the delivery of assistance remaining in the text.

The South African representative said that the instructions from its trade minister Rob Davies were clear: "Don't bring these texts, especially the highly technically complex and heavily bracketed TF text, to Bali for ministers to negotiate."

South Africa said that its past experience clearly indicated that Ministerial meetings do not offer a conducive environment for negotiations: they are highly politicized forums, under the full glare of global attention. They are not the place where members show flexibilities but positions harden under the pressure of stakeholders and NGOs.

Sombre assessment

In its intervention (according to a text made available outside), India (represented by Ambassador Jayant Dasgupta) told the General Council that it shared the Director-General's sombre assessment of the situation and the implications of the failure to deliver a Bali package.

India fully agreed with the Director-General's view that none of the texts, quite apart from the incomplete TF final draft, had been fully agreed upon and that each of these texts had one square bracket at the beginning and one at the end.

As the Director-General had stated, many delegations had asked for adjustments to these texts and because of the shortage of time to engage with the rest of the members on these adjustments, these could not be discussed or incorporated in the draft texts. These adjustments to the draft texts would have to be taken up before they could be given final shape.

In this backdrop, India said, members had to take a pragmatic look at the various options before them. Most members agreed that Bali should not be a negotiating Ministerial. At the same time, members had to be pragmatic about what could be achieved in the few days remaining before Bali. Work still remained to be done and some divergences continued among members on important issues, and members must take a call on whether they would like to place the unresolved issues before ministers in Bali.

India had not given up hope and would be willing to join in efforts to harvest at least those outcomes at Bali which benefit the poorest countries, and would also be more than willing to join in any effort before Bali to close the gaps in the TF text.

Ambassador Dasgupta added: "An equal, if not more important issue which has been neglected in our work so far is that of the post-Bali agenda and work programme. The unfinished Doha Agenda must continue to be the main focus in the post-Bali phase and getting the ministers to exchange ideas on how to make this possible would be extremely valuable. India remains ready to engage constructively to ensure a successful [Bali Ministerial Conference]." *(SUNS7705)* ❐

On to Bali to buy a pig in a poke?

Developing countries should avoid repeating past mistakes and be on guard against accepting an inequitable outcome at the Bali Ministerial Conference, cautioned *Chakravarthi Raghavan* in this article written before the 26 November General Council meeting.

GENEVA: An ancient Indian saying (perhaps by a disillusioned courtier) goes: "The promises of a king are like words writ in water, disappearing in the next ripple of waves."

As developing-country delegates at the WTO – working against time and involved in some confusing negotiations, on call for "green rooms" (even without agendas being specified) and even more limited consultations – engage in attempts to produce a "Bali package of deliverables", they and their capitals should remind themselves of this saying, lest they commit the same mistakes as in the run-up to Marrakesh (November-December 1993, February-March 1994) and thereafter, and in some of the WTO Ministerial Conferences since then.

At Marrakesh, in an effort to conclude the Uruguay Round negotiations, the developing countries paid an advance price in the form of agreeing to undertake new obligations (e.g., on investment measures, intellectual property rights and services), believing in some dubiously worded pledges of advanced countries that they would implement over time their commitments on agriculture reform and on other trade agreements.

Even before Marrakesh, in February-March 1994, during the legal scrutiny stage of the Uruguay Round agreements (most of them negotiated separately, using variations of language on the same issues, without knowing how they would all be put together at the end into what became the WTO), they decided not to reopen any text (in any agreement) to ensure consistency of formulations across the agreements. This they did, lest they unravel the whole package (a Canadian argument at that stage). They bought into this argument by Canada that any doubts could be left to the WTO dispute settlement process (involving adoption of rulings by "negative consensus") to resolve and reconcile.

[Though the WTO treaty makes clear that any issue of interpretation is the sole prerogative of the Ministerial Conference (or the General Council, acting for the Ministerial Conference in the intervals between sessions of the Conference), the dispute settlement panels and the Appellate Body have, under the guise of "clarification" of rights and obligations, misused the "negative consensus" process to interpret the provisions of the WTO agreements, to rewrite the rights and obligations of members.]

At the Doha Ministerial Conference in 2001, developing countries agreed on a reform package, including negotiations for rules to set right the inequities of the system, and a range of negotiating issues to be negotiated and agreements reached, implemented as a single undertaking.

In both instances (Marrakesh and Doha), they bought a pig in a poke, and they are now on the cusp of experiencing this for a third time.

The possibility of concluding the Doha single undertaking, with benefits to themselves, was allowed to lapse, when in 2006, then WTO Director-General and Trade Negotiations Committee (TNC) Chair, Pascal Lamy, at an informal meeting of a small key group of countries he convened outside Geneva, ended the meeting and announced he had suspended indefinitely the Doha talks. He did so to save the US any embarrassment on cotton and other key agriculture issues on the eve of the country's November 2006 mid-term congressional elections.

The power to suspend or adjourn the talks is vested with the General Council (in between Ministerial Conferences), and not with the TNC, leave aside its chair. Nevertheless, Lamy did so and announced it to assembled newsmen waiting around the consultations. Only after the WTO media office was queried (by this writer) as to the authority on which this had been done, did Lamy call an informal TNC meeting in Geneva, announce it there, and get the TNC to endorse it.

No records of informal TNC meetings are kept, hence we don't know what view the delegations there took. The General Council, which keeps records, subsequently merely took note (meaning it did not approve or disapprove!). So much, then, for the "rules-based" system.

With the Republican Bush administration losing its majority in the US House of Representatives in November 2006, and soon thereafter its fast-track authority, Lamy's "window of opportunity" for concluding the Doha negotiations was closed.

In all the subsequent efforts at the WTO, and the impasse since then, thanks mainly to the backtracking on agriculture commitments by the US and the EU, the Doha negotiations have been run to the ground, hopelessly deadlocked, and needing a new look and new hand to its resuscitation and successful conclusion as a single undertaking. (The US and the EU since then have been trying to find a way to close the Doha Round, by blaming the developing world, and forget their commitments at Marrakesh and Doha, and move on instead to make further inroads into the national space of developing countries.)

Rewriting the narrative

In all this time, the developing countries have allowed the US and the EU, with considerable help from the WTO leadership and secretariat, to rewrite the narrative, to convert the Doha Round, its aims, objectives and agenda, into one for the developing countries to open up their markets to unreasonable neo-mercantilist demands of US and EU corporations.

With a new Director-General from a developing country, Roberto Azevedo from Brazil, and a Ministerial Conference in a key developing country, Indonesia – which is due to hold presidential and parliamentary elections early next year, and thus has a stake in having a successful Ministerial – developing countries face some dilemmas.

They have also allowed themselves, without public challenge, to be victims of a new narrative about the WTO, namely its inability to function as a forum for multilateral trade negotiations and this being the fault of the majority of the developing countries, in particular the major ones.

In this context, they are being asked to agree on a Bali package of deliverables:

- a definitive agreement on trade facilitation (TF) with some commitments and dispute settlement process to call them to account;
- some dubious concessions for the developing countries in return: a so-called "peace clause" on public stockholding for food security in developing countries; a "best possible endeavour" effort to limit and phase out agriculture subsidies (the language used is worse than the "best endeavour" commitments of Part IV – development issues – of GATT 1947 that remain till this date as paper promises); plus some efforts at an agreement on tariff rate quota issues in agriculture (tabled much before by Azevedo as Brazil's WTO envoy, as a deliverable for Bali), and some moves on LDC issues (with many qualifications and ifs and buts).

The TF draft as has evolved so far is so riddled with contradictory language for a definitive agreement that it is now envisaged that Bali will take a "political decision" on it, asking the General Council to clean up and complete the process, and adopt a protocol that countries would be asked ("demanded" may be a better term) to accept, under pain of otherwise being drummed out of the WTO.

Developing-country members are being told that the US and the EU have lost confidence in the WTO system and its remit as a negotiating forum, and that it is for the developing countries to act to win back US and EU confidence. This is a narrative that also appears to have been bought into by the WTO leadership or at least parts of it, and by some elites in developing countries too.

Perhaps the US and the EU should be asked to revisit the recent past and remind themselves of the similar stance of the leaders of the then German Democratic Republic (GDR) during the 1953 uprising (see https://en.wikipedia.org/wiki/Uprising_of_1953_in_East_Germany), and the sarcastic comments at that time by Bertolt Brecht, German poet, playwright, theatre director and Marxist (see https://en.wikipedia.org/wiki/Bertolt_Brecht), in one of his poems in the *Elegies*, "Die Losung" (The Solution).

A Norwegian communication before the TF Negotiating Group sets out its ideas and views on how work in completing a draft TF agreement (and the amendments the TF agreement wants to bring about in GATT 1994 and the WTO's agreements in Annex 1A) can be achieved without going through the amendment process. This, Norway suggests, should be done through a protocol to be drawn up by the General Council, which after Bali will clean up the TF agreement, agreed as a "political decision". And like Ulbricht in the GDR, such a protocol will ask WTO members to accept it (and win back the confidence of the US and the EU!) or enable them to act a la Brecht's suggestion to the GDR leaders of his day (see citation above)!

And in its communication, Norway says it is based on the model of the amendment to the WTO's TRIPS Agreement to give effect to the Doha Public Health Declaration, to provide for an effective final date for the TF agreement to be accepted and enter into force, and for "inviting" those members not doing so to withdraw from the WTO.

On the TRIPS public health amendment, a simple reference by Norway to the WTO website, http://www.wto.org/english/tratop_e/trips_e/amendment_e.htm, would have shown that the WTO gave a waiver from TRIPS obligations on this issue to members, and agreed on a TRIPS amendment in 2003, with a 1 December 2007 date set for acceptance and entry into force. Since then the WTO has repeatedly extended the date, combining it with a permanent waiver for members until they are able to accept it, and for entry into force when two-thirds of members have accepted and deposited it etc etc. That amendment has as of now gained acceptance from 48 WTO members, far below the two-thirds membership acceptance needed.

In 1953, Ulbricht and the Soviets found they had to erect a wall to keep people in, rather than adopt Brecht's sarcastic suggestion in the *Elegies* (for the GDR leaders to "dissolve the people, and elect another" that have the confidence of the leaders).

If the US, the EU and the WTO move forward now on the course suggested by Norway, they may find that, rather than inviting members not accepting a TF agreement to withdraw, they may have to erect a WTO wall to prevent developing countries from finding a way out with their own alternatives to the iniquitous and unjust rules of the WTO.

The US and Europe may have horrendous military power, but otherwise they are no longer in a position in the world to dictate and prevail, provided leaders of developing countries realize this.

The US and the EU (despite their threats of going down the bilateral and plurilateral routes) need the WTO multilateral system as much as, if not more than, other members of the international community. *(SUNS7702)* ❐

Experts caution against rush into a TF agreement

The trade facilitation accord being negotiated at the WTO is not only stacked against the interests of developing countries but would also load a heavy implementation burden upon them, according to a group of trade experts from the South.

by Kanaga Raja

GENEVA: A group of eminent trade experts from developing countries has advised developing countries to be very cautious and not be rushed into an agreement on trade facilitation (TF) by the Bali WTO Ministerial Conference, given the current internal imbalance in the proposed agreement as well as the serious implementation challenges it poses.

"While it may be beneficial for a country to improve its trade facilitation, this should be done in a manner that suits each country, rather than through international rules which require binding obligations subject to the dispute settlement mechanism and possible sanctions when the financial and technical assistance as well as capacity-building requirements for implementing new obligations are not adequately addressed."

This recommendation is in a report by the Geneva-based South Centre. The report, "WTO Negotiations on Trade Facilitation: Development Perspectives", has been drawn up from discussions at two expert group meetings organized by the Centre.

The eminent experts included Rubens Ricupero [former Secretary-General of the UN Conference on Trade and Development (UNCTAD)], S. Narayanan (former Ambassador of India to the WTO), Ali Mchumo (former Managing Director of the Common Fund for Commodities and former Ambassador of Tanzania to the WTO), Li Enheng (Vice Chairman, China Society for WTO Studies), Carlos Correa (Professor, University of Buenos Aires), Deepak Nayyar (Vice Chair, Board of South Centre, former Vice Chancellor of Delhi University and former Chief Economic Advisor to Government of India), Yilmaz Akyuz (Chief Economist, South Centre, former Director of UNCTAD's Globalization and Development Strategies Division) and Chakravarthi Raghavan (Editor Emeritus of the *South-North Development Monitor*).

Import facilitation

Noting that an agreement on trade facilitation has been proposed as an outcome from the Bali Ministerial, the South Centre report said that the trade facilitation negotiations have been focused on measures and policies intended for the simplification, harmonization and standardization of border procedures.

"They do not address the priorities for increasing and facilitating trade, particularly exports by developing countries, which would include enhancing infrastructure, building productive and trade capacity, marketing networks, and enhancing inter-regional trade. Nor do they include commitments to strengthen or effectively implement the special and differential treatment (SDT) provisions in the WTO system."

The negotiations process and content thus far indicate that such a trade facilitation agreement would lead mainly to facilitation of imports by the countries that upgrade their facilities under the proposed agreement. Expansion of exports from countries requires a different type of facilitation, one involving improved supply capacity and access to developed countries' markets.

Some developing countries, especially those with weaker export capability, have thus expressed concerns that the new obligations, especially if they are legally binding, would result in higher imports without corresponding higher exports, which could have an adverse effect on their trade balance, and which would therefore require other measures or decisions (to be taken in the Bali Ministerial) outside of the trade facilitation issue to improve export opportunities in order to be a counter-balance to this effect.

According to the report, another major concern voiced by the developing countries is that the proposed agreement is to be legally binding and subject to the WTO's dispute settlement system. This makes it even more important that the special and differential treatment provisions for developing countries should be clear, strong and adequate.

The negotiations have been on two components of the TF agreement: Section I on the obligations, and Section II on SDT, technical and financial assistance and capacity building for developing countries.

Most developing countries, more so the poorer ones, have priorities in public spending, especially healthcare, education and poverty eradication. Improving trade facilitation has to compete with these other priorities and may not rank as high on the national agenda. If funds have to be diverted to meet the new trade facilitation obligations, it should not be at the expense of the other development priorities.

"Therefore, it is important that, if an agreement on trade facilitation were adopted, sufficient financing is provided to developing countries to meet their obligations, so as not to be at the expense of social development," the report stressed.

The negotiation mandate established in the "Modalities for Negotiations on Trade Facilitation" of the 2004 July Package, the report noted, was confined to "clarifying and improving" relevant aspects of trade facilitation articles under the General Agreement on Tariffs and Trade (GATT) 1994 (i.e., Articles V, VIII and X), with a view to further expediting the movement, release and clearance of goods, including goods in transit.

Thus, the negotiations are not meant to limit or eliminate the rights and obligations of members under the three GATT articles or to impinge on national policy and regulatory space. Yet, several of the proposed provisions are in fact amending, not just clarifying, the GATT Articles V, VIII and X.

This goes beyond the negotiation mandate and would require an amendment of the GATT in accordance with the procedures provided for by the Agreement Establishing the WTO, said the report.

It further emphasized that the negotiation mandate sets an intrinsic link between Section I and Section II of the draft text, whereby it conditions implementation by developing countries and LDCs on the acquisition of financial and technical capacity, based on the delivery of assistance by developed-country members of the WTO.

Imbalanced outcome

The report went on to highlight the main issues of concern for a large number of developing countries on the trade facilitation issue. It said that many developing countries have legitimate concerns that they would have increased net imports, adversely affecting their trade balance. While the trade facilitation agreement is presented as an initiative that reduces trade costs and boosts trade, benefits have been mainly calculated at the aggregate level.

Improvements in clearance of goods at the border will increase the inflow of goods. This increase in imports may benefit users of the imported goods, and increase the export opportunities of those countries that have the export capacity.

However, the report noted, poorer countries that do not have adequate production and export capability may not be able to take advantage of the opportunities afforded by trade facilitation (in their export markets).

"There is concern that countries that are net importers may experience an increase in their imports, without a corresponding increase in their exports, thus resulting in a worsening of their trade balance."

Many of the articles under negotiation (such as the articles on "authorized operators" and "expedited shipments") are biased towards bigger traders that can present a financial guarantee or proof of control over the security of their supply chains. There is also the possibility that lower import costs could adversely affect those producing for the local markets.

"The draft rules being negotiated, mainly drawn up by major developed countries, do not allow for a balanced outcome of a potential trade facilitation agreement," the report asserted.

New rules under Section I are mandatory with very limited flexibilities that could allow for members' discretion in implementation. The special and differential treatment under Section II has been progressively diluted during the course of the negotiations. Furthermore, while the obligations in Section I are legally binding, including for developing countries, developed countries are not accepting binding rules on their obligation to provide technical and financial assistance and capacity building to developing countries.

The trade facilitation agreement would be a binding agreement and subject to WTO dispute settlement. The negotiating text is based on mandatory language in most provisions, which includes limited and uncertain flexibilities in some parts.

Accordingly, said the report, if a member fails to fully implement the agreement it might be subject to a dispute case under the WTO Dispute Settlement Understanding and to trade sanctions for non-compliance.

The cost of non-compliance could thus be significant; and to avoid potential trade sanctions, countries may have to invest in infrastructure and incur substantial costs to comply with binding commitments. It is worth noting that several WTO members have already been challenged under WTO dispute settlement based on the grounds established by Articles V, VIII and X of GATT 1994.

"Many of the proposed rules under negotiations are over-prescriptive and could intrude on national policy and undermine the regulatory capacities and space of WTO Member States. The negotiating text in several areas contains undefined and vague legal terminology as well as 'necessity tests', beyond what the present GATT articles require."

According to the report, these could establish multiple grounds for challenging a broad range of WTO members' laws, rules, regulations and measures not only in matters that pertain to customs, but also on more broadly trade-related matters and on regulations "on or in connection with" import, export and transit of goods (for example, in the proposed Article 1 on "publication and availability of information" and Article 6 on "disciplines on fees and charges").

It further pointed out that several provisions would have significant influence on national legislative processes. For example, some of the articles proposed under the agreement refer to an undefined open-ended category of "interested parties" which have to be included among those which a country has to consult prior to introducing new laws or measures (Article 2 on "prior publication and consultation").

The reference to the category "interested parties" is not in the present GATT 1994. It could include an expanded list of entities that have a direct or indirect relation to the trade transactions covered by the agreement, and do not necessarily have to be located in the territory of the member implementing the measure.

"This may lead to lobbying and pressures by various interest groups from outside the Member, which could have an undue influence on national regulatory and legislative processes."

None of the relevant GATT 1994 articles seem to require any consultation with any party, inside the member or outside, prior to promulgation of laws or administrative regulations. There are only requirements on prior publication before enforcement (of rules and regulations) in certain cases. The proposed article would thus introduce a totally new obligation which is intrusive with regard to a member's regulations.

Significant burdens

Several of the provisions under negotiation could hold significant administrative and institutional burdens on LDCs and other developing countries, the report said, adding that customs and customs-related institutional mechanisms in these countries are not as advanced compared to developed countries.

"It is worth noting that most of the proposals based on which negotiations are undertaken were presented by developed countries, reflecting the nature and form of practice that they already undertake at the national level. Thus, developing countries are asked to converge to the practice and standards of developed countries. While some developing countries may have the capacity to upgrade their capacity accordingly, many others will have difficulties in aligning the facilities of all their customs agencies and in all regions of the country."

The experts' report stressed that meeting the obligations is likely to involve significant costs for developing countries. The costs include human resource expenses, equipment and information technology systems, as well as other significant infrastructure expenditures.

These costs would not be limited to a one-time investment and most of them are of a recurring nature, and would thus be a burden especially on low-income countries. For example, Turkey's efforts to modernize its customs information technology required $28 million. In Morocco, the costs of information and communication technologies (ICT) were estimated at $10 million, while in Chile the total investment cost of implementing an automated customs system amounted to $5 million in the early 1990s.

In Jamaica, the introduction of the computerized customs management system cost about $5.5 million, while Tunisia needed $16.21 million to computerize and simplify procedures. Furthermore, a 2003 OECD report highlighted that in Bolivia, a five-year project for customs modernization cost $38 million, of which about $25 million was spent for institutional improvements and $9 million for computerized systems.

For Chinese Taipei, express clearance alone necessitated establishing 20 new processing lines each equipped with an X-ray scanning machine. There are a total of 117 officers at the express division, working day and night shifts so as to provide a continuous day- and night-long service.

"The infrastructure and automated systems mentioned above are only part of the investments required to allow implementing the practices stipulated under a potential trade facilitation agreement," said the report. A World Bank report noted that the cost of implementing ICT at customs is only part of the life-cycle cost of these systems and that too often these maintenance and upgrading costs are underestimated and not adequately included in the life-cycle costs.

"Accordingly, meeting these costs will necessitate an allocation in the national budgets and could divert limited resources from public services, such as health care, food security and education, to customs administration," the South Centre report added.

"This is the reason developing countries are insisting that the additional costs of meeting the new obligations are provided to them, as was the understanding when the trade facilitation negotiation mandate was established. However, there is not yet a binding or adequate commitment for the provision of new and additional funds."

Most trade facilitation provisions under negotiation are entirely new or go far beyond what the World Customs Organization (WCO) Revised Kyoto Convention (RKC) requires. The arguments that the proposed trade facilitation agreement would largely be a copy of the RKC, or that it would simply reaffirm what most member states already agreed to in the RKC, do not hold, as it would contain obligations that go beyond the Convention.

Moreover, said the report, any obligation undertaken under a new agreement on trade facilitation could be enforced through the Dispute Settlement Body of the WTO and through cross-sectoral retaliation among countries, unlike the Kyoto Convention.

"To be balanced, a trade facilitation agreement requires strong and effective rules under Section II on SDT for developing countries, particularly the LDCs. These countries need clear and mandatory rules to operationalize the intrinsic link between their obligation to implement and their acquisition of capacity."

Procedural rules under Section II should not be burdensome on these countries in a way that dilutes their rights as provided for under Annex D. They should be able to designate themselves the provisions under Section II, and to determine when they have acquired the capacity.

Moreover, the agreement should include mandatory rules on obligations by developed-country members to provide long-term and specific financial and technical assistance and capacity-building to developing and least developed country members in accordance with their specific needs for implementing their obligations. A trade facilitation fund should be established to ensure resources for the long term.

Finally, said the report, in order for a trade facilitation agreement to be made legally effective and become part of the WTO body of law, it should be adopted through an amendment to the multilateral trade agreements in Annex 1A of the Agreement Establishing the WTO. An agreement along the lines being proposed would alter the rights and obligations of members under GATT 1994. An amendment of this has to be undertaken in accordance with Article X of the Agreement Establishing the WTO.

Accordingly, a potential trade facilitation agreement will take effect only after two-thirds of the WTO membership have ratified it. Moreover, it will only be effective for members that accepted it. The members that accept the agreement will also accept applying the "most-favoured nation" (MFN) rules to their commitments, thus extending accepted preferential treatment to WTO members having difficulties in accepting the agreement.

Need for flexibility

In some overall conclusions, the report said that while it may be beneficial for a country to improve its trade facilitation, this should be done in a manner that suits each country, rather than through international rules which require binding obligations subject to the dispute settlement mechanism and possible sanctions when the financial and technical assistance as well as capacity-building requirements for implementing new obligations are not adequately addressed.

Thus, it added, one possibility is that the agreement could provide that substantive provisions in the present Section I of the draft text are not legally binding on developing countries, just as the provision of financial resources and technical assistance is non-binding on developed countries. Instead, developing countries can endeavour to meet the obligations on an aspirational basis, and can apply for financial resources for programmes to upgrade their trade facilitation capacities.

In case commitments under a multilateral trade facilitation agreement are undertaken, these should be approached in a way that would provide developing members and LDCs with policy space and flexibility to adopt and implement commitments commensurate with their capacity to do so, and subject to the provision of technical and financial assistance and capacity building.

"Developing Members and LDCs could then, at their discretion, progressively move into higher levels or standards of implementation, when capacity exists to do so, taking into account their development context."

According to the report, achieving the above necessitates a balanced agreement with effective and binding rules on SDT that fully operationalize Annex D (2004). Moreover, least developed countries should be exempted from undertaking binding commitments as long as they remain LDCs. This would be consistent with the understanding in other components of the Doha work programme, where the draft modalities for agriculture and non-agricultural market access stipulate that LDCs are not required to reduce their bound tariffs.

The South Centre report said: "On the basis of the current content of the negotiating text and given the current internal imbalance in the proposed agreement, developing countries are advised to be very cautious about rushing into a trade facilitation agreement by the ministerial conference in Bali, given the implementation challenges it carries. Furthermore, this decision should be considered in light of what developing countries and LDCs are able to obtain in other areas of interest to them."

The report also noted that a large part of the Doha work programme (the Doha Development Agenda) that would benefit developing countries and help to set right the imbalances of the Marrakesh treaty remains to be completed.

"Developing countries and LDCs are advised to ensure that the entry into force of a trade facilitation agreement, if finally adopted, is linked to the conclusion of the Doha mandate with its development dimension fulfilled and based on the single undertaking."

As noted, some of the proposed obligations under a trade facilitation agreement would change current GATT 1994 provisions. Therefore, a formal process of amendment under Article X of the Agreement Establishing the WTO would be required. In case an agreement is accepted on a "provisional basis", in the context of paragraph 47 of the Doha mandate, then WTO members are advised to define what they mean by "provisional". The enforceability of the new agreement should be conditional upon the conclusion of the Doha Round as a single undertaking and the approval of the new agreement in accordance with the WTO rules.

Hence, the Dispute Settlement Understanding should not apply to the agreement when implemented on a "provisional" basis. Within the period of provisional application, members should be able to voluntarily choose to apply all or parts of the agreement. This may help avoid a scenario in which the developed countries would already have attained a definitive agreement on trade facilitation and then have no more interest in negotiating or completing other issues in the single undertaking of the Doha Round.

The report said that if a balanced text is not attained by the Ministerial Conference in Bali, negotiations on trade facilitation can continue post-Bali with a view towards attaining an agreement that is internally balanced, as well as within a balanced overall Doha outcome.

"Political arguments about the damage that could be made to the WTO as a global rule-making institution in case of failure to get an agreement on this subject should not be given precedence over the genuine interests of developing countries. Indeed, the greatest failure of the WTO will be to make decisions that do not 'ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development'," it concluded. *(SUNS7699)* ❐

A peace clause without peace in food security

The "peace clause" mechanism proposed in the WTO to address the food security issue is a non-solution to the constraints developing countries face in implementing public food stockholding programmes.

by Aileen Kwa

GENEVA: A draft text of the "peace clause" agreed to at the WTO by a select group of countries on 16 November ad referendum – subject to approval by capitals – seems likely to assure no peace to developing countries on food security, and more specifically to the ability of developing-country governments to procure food from their producers for public stockholding and distribution to the poor.

This "peace clause" agreed ad referendum unfortunately bears no resemblance as a solution to the change in WTO rules the G33 (group of 46 developing countries in the WTO concerned about food security and rural livelihoods) had asked for. They wanted government expenditure on public stockholding programmes for food security purposes to be categorized under the WTO's "Green Box" which contains no conditionalities on subsidy limits.

Instead, a "peace clause" as an interim solution has been offered for four years – and it merely asks countries to "refrain" from taking others to the WTO's Dispute Settlement Body.

The terms of this "peace clause" are extremely weak and will not actually protect countries from being challenged in the Dispute Settlement Body. It has the following problematic features:

- The "peace clause" will not adequately shield developing-country governments engaged in public stockholding programmes from being brought to the Dispute Settlement Body. This is because it does not include within its scope the Agreement on Subsidies and Countervailing Measures (SCM). Developing countries engaging in public stockholding programmes and purchasing staples from their producers can still be taken to the Dispute Settlement Body under the WTO's SCM Agreement.

The SCM Agreement says that income or price supports provided by WTO member governments should not cause adverse effects (Article 1.2 and Article 5). Adverse effects include "serious prejudice to the interests of another Member" (Article 5c).

The SCM Agreement enumerates several circumstances where serious prejudice may arise. One of these is that "the effect of the subsidy is to displace or impede the imports of a like product of another Member into the market of the subsidizing Member". That is, if an exporting country deems that it should have been able to export (or export more) to a developing country with such programmes but cannot do so due to these programmes, it can challenge the developing country at the Dispute Settlement Body.

According to a former WTO ambassador, in this situation, the burden of proof that there is no serious prejudice will be upon the developing country being challenged. It would be very difficult to discharge this burden. This means that effectively, the "peace clause", as noted by this former ambassador, will in fact "bring no peace" since countries can still easily be challenged.

To make matters worse, and further weakening the "peace clause", paragraph 3 of the draft says that any developing-country member having such public stockholding programmes "shall ensure that stocks procured under such programmes do not distort trade".

This is a very broad caveat and further opens developing countries to challenge under the WTO's Dispute Settlement Understanding (DSU). This paragraph should be deleted, or at the least, the language should be changed to something like "such programmes are presumed to have no or at most minimal trade-distorting effects".

This is language taken from Annex 2 of the WTO Agreement on Agriculture. Annex 2, otherwise known as the Green Box, is a category of agriculture subsidies that is allowed by the WTO rules. Since these subsidies are supposed to have "no or at most minimal trade-distorting effects", no ceiling limits have been placed on countries in their provision of such subsidies.

The permanent solution sought by the G33 is that government stockholding programmes should simply be categorized under the Green Box, just as developed countries' direct payments, decoupled income supports, structural adjustment programmes for producers, and resources, and various other support measures and schemes are in the Green Box without conditions.

It may be noted that the US's last notification of 2010 to the WTO showed that it provided $130 billion of agricultural domestic supports. It has classified 90% of this under the Green Box. The EU's last notification of 2009 showed total domestic supports of 79 billion euros, of which 80% is in the Green Box.

- Furthermore, even though members of the G33 had tried to insist that the "peace clause" should be in place until a permanent solution along the lines of what the G33 had originally proposed is found, the draft "peace clause" is valid for four years. There is no provision that the termination of the "peace clause" will only take effect when the permanent solution is in place.

New language that emerged on the last day of negotiations is as follows (paragraph 10): "This Decision will remain in force until the 11th Ministerial Conference, at which time we will decide on next steps in view of the General Council's further report on the operation of this Decision and of the Work Programme..."

What will the G33 and other developing countries have in their pockets to trade off after four years in order to obtain their permanent solution?

The price being asked to be paid at Bali for this "peace clause" is very high.

For a very weak clause that only lasts for four years, developing countries have been asked in return to agree to a trade facilitation agreement. This agreement will be very expensive to implement for lower-income countries. In addition, it will increase imports for net-importing countries.

This could end up as a challenge for local industries, increase countries' trade deficits, and lead to countries diverting scarce resources from more deserving budget priorities at the national level towards putting in place very onerous and unnecessarily elaborate customs procedures geared towards clearing the goods of exporters quickly.

Once this price has been "paid" in Bali, what else will developing countries have to give after four years for a more robust solution?

Long-term view

If countries are taking a long-term view, it will be important for them to insist that the trade facilitation agreement enter into force only at the conclusion of the Doha Round single undertaking.

This is completely in keeping with paragraph 47 of the Doha Declaration, which says that "the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking. However, agreements reached at an early stage may be implemented on a provisional or a definitive basis. Early agreements shall be taken into account in assessing the overall balance of the negotiations."

The entry into force of the trade facilitation agreement must also be in keeping with Article X of the Agreement Establishing the WTO. Article X outlines the rules in the WTO regarding amendments to the WTO agreements.

In the meantime, as a concession (for which they should get "payment" in the form of equivalent concessions by the demandeurs of a trade facilitation agreement), developing countries may consider provisional application of the trade facilitation agreement if they choose to do so (as also provided for in paragraph 47 cited above).

However, it must be made clear that provisional application will mean that the WTO's DSU will not be applicable to the trade facilitation agreement, and, certainly too, that countries are free to terminate their provisional application upon notification to other members (as provided in Article 25.2 of the Vienna Convention).

It is worth questioning whether a "peace clause" that does not shield countries from being challenged is worth having. The "peace clause", given its weaknesses, is a four-year non-solution to the food security issue and the problematic rules in the WTO's Agreement on Agriculture in the area of government stockholding programmes. The LDC issues addressed so far – rules of origin and the services waiver – are all non-binding in nature.

In exchange, big exporting developed countries want to extract an onerous trade facilitation agreement that is likely to increase many developing countries' imports. Is this in fact a step in the right direction to revive the multilateral trading system? *(SUNS7699)*❐

Aileen Kwa is the Coordinator of the Trade for Development Programme at the Geneva-based South Centre.

G33 ministers stress importance of food security

Calls in support of a permanent solution to the food stocks issue and against an ineffectual interim peace clause have variously been made by developing-country ministers, a UN human rights expert and civil society groups, as this and the following articles report.

by Kanaga Raja

BALI: The ministers and representatives of the G33, meeting on the occasion of the ninth WTO Ministerial Conference in Bali, reiterated the importance of food security, livelihood security and rural development in developing countries, including small, vulnerable economies (SVEs) and least developed countries, as enshrined in the Doha and Hong Kong mandates.

In a Ministerial Communique issued here on 2 December, the G33 emphasized the importance of delivering on the ongoing reform in agriculture and the completion of the Doha Development Agenda (DDA) including the elimination of global production and trade distortions that hinder productivity and competitiveness of hundreds of millions of poor farmers in the developing world.

In the face of increased volatility of food production and prices on the global market since the food and financial crises in 2008, the G33 communique underlined the importance of public stockholding for food security purposes in the developing countries' food security, livelihood security and rural development strategy.

The ministers also urged members to remain cognizant of the subsistence nature of agriculture in most developing countries including SVEs and LDCs.

"We recognize the members' collective resolve to advance negotiations where concrete progress can be achieved including focusing on elements of the DDA and with a view to achieve an outcome that would among others rectify some of the gross imbalances in the subsisting WTO rules on agriculture. To this end, the G33 submitted a proposal on some elements of the Draft [Agriculture] Modalities for early agreement to address food security, livelihood security, and rural development imperatives."

The ministers expected members' engagement to work on the G33 proposal to achieve the "permanent solution".

The ministers recognized the members' engagement in discussing an "interim solution" for the ninth Ministerial Conference (MC9) as well as other issues of negotiation for MC9.

"While we fully respect each member's rights and negotiating positions in the negotiation, we express our deep disappointment that in the Geneva process members failed to find convergence, despite all the efforts and flexibilities that [have] been shown by the G33 and other members."

The ministers thus strongly urged members to find ways to address the impasse considering the negative impact of failure to deliver concrete outcomes in Bali on the credibility of the WTO as the negotiating forum for multilateral trade rules, on the reinvigoration of the DDA agriculture negotiation "as well as to our constituents, specifically to the most vulnerable members of the population".

They noted with deep disappointment that the deadline to implement the elimination of agricultural export subsidies in 2013, as stipulated in the Hong Kong Ministerial Declaration, has been missed, and that a legally binding outcome to eliminate export subsidies and all export measures with equivalent effect cannot be realized in Bali.

They reiterated the importance of maintaining special and differential treatment in the areas of export competition as well as in tariff rate quota administration.

"We note that intensive and inclusive engagements on package for MC9 in Geneva have brought much progress in a large number of difficult and sensitive areas. We should build on existing efforts for further negotiations post-Bali in order to achieve balanced outcome."

Critical tool

The G33 ministers were of the view that having the "permanent solution" for the Public Stockholding for Food Security Purposes in Developing Countries contained in document JOB/AG/22 of 13 November 2012 is a critical tool for achieving "our broader food security, livelihood security and rural development concerns."

"We, therefore, call for immediate engagement to jump-start work for the permanent solution after Bali MC9 so as to conclude it during the currency of the interim solution."

The ministers committed themselves, and strongly urged other WTO members to continue delivering the Doha Development Agenda based on the Draft Agriculture Modalities of December 2008. They also urged WTO members to complete the Doha Round at the earliest.

"In the broader Doha agricultural reform, we underscore the need to secure Special Products (SPs) and Special Safeguard Mechanism (SSM). We underline that the special and differential treatment for developing countries including SVEs and LDCs in the agriculture negotiations must be operationally effective to enable developing countries to effectively take account of their development needs."

According to the statement, the G33 shall remain resilient and a dynamic group representing the evolving needs of the hundreds of millions of farmers in the developing world.

"Thus, we reaffirm our critical and complementary role in facilitating and ensuring that the global agricultural reform [is] attuned to needs of all developing countries as well as in establishing a strong, fair, and market oriented rules-based multilateral trading framework through meaningful and effective special and differential treatment for the food security, livelihood security and rural development of the developing world." *(SUNS7709)* ❒

"Bali package must allow ambitious food security policies"

by Chakravarthi Raghavan

GENEVA: The United Nations Special Rapporteur on the right to food, Olivier De Schutter, has said that the developing countries must be granted "the freedom to use food reserves to help secure the right to food, without the threat of sanctions under current World Trade Organization (WTO) rules."

The call from De Schutter came on the eve of the biennial WTO Ministerial Conference in Bali. The Bali meet is to try to reach agreement on proposals on developing countries' food stockholding for food security, as part of the Doha Round trade negotiations.

According to a 2 December press release by the Office of the UN Human Rights Commissioner, the Special Rapporteur said: "Trade rules must be shaped around the food security policies that developing countries need, rather than policies having to tiptoe around WTO rules."

The rights expert added: "Supporting local food production is the first building block on the road to realizing the Right to Food, and trade must complement local production, not justify its abandonment."

The expert warned that food security is at high risk when countries become overly dependent on global markets, as shown during the global food crisis of 2007-08. "They must develop ambitious and innovative food security policies that support their own production base, building on successful experiences in a growing number of countries," he said.

"Food reserves are a crucial tool, not just in humanitarian crises, but in the everyday struggle to provide stable income to farmers and to ensure a steady flow of affordable foodstuffs for poor consumers, many of whom lack a basic social safety net," De Schutter said.

Right to use reserves

The Comprehensive Framework for Action of the UN Secretary-General's High-Level Task Force on the Global Food Security Crisis, which includes the WTO secretariat, De Schutter pointed out, has called on states to use strategic grain reserves to stabilize prices and to immediately review trade policy options and their impacts on poor consumers and farmers.

"The Bali package should now enshrine the rights of developing countries to use public food reserves for food security without facing sanctions," he insisted.

The press release noted that India's 2013 Food Security Bill mandates public procurement of foodstuffs in order to distribute subsidized grains to much of the population, combined with a minimum support price to ensure adequate incomes for farmers. This has raised concerns that India could breach the tight limits on trade-distorting support applied to developing countries under current WTO rules.

The G33 group of developing countries, the press release said, has proposed exempting public stockholding aimed at supporting low-income or resource-poor producers from being considered as a trade-distorting subsidy, as part of an "early harvest" of Doha Round outcomes. A "peace clause" has meanwhile emerged as a means of exempting such schemes from WTO challenges for a given period.

"The risks of trade distortions must not be exaggerated," De Schutter said, insisting that any agreement in Bali must give developing countries sufficient guarantees to be able to push ahead with ambitious food security policies. He noted that the Indian Food Security Bill is aimed at buying in stocks for domestic distribution rather than export onto world markets.

For the Special Rapporteur, the solution is not to block any such policies, even though close monitoring is required to ensure that stockholding in one country does not result in its dumping on other developing world markets.

"It should not be forgotten," De Schutter said, "that developed countries are able to subsidize their farmers to the tune of more than $400 billion per year, without breaching WTO rules ... Support must also be allowed to reach smallholders in developing countries."

Recalling the conclusions of his 2011 report on the WTO and food security which highlighted the potential tension between stockholding for food security purposes and WTO disciplines, the UN expert outlined, in the press release, a series of additional flexibilities that developing countries need in order to reconcile food security and free trade.

"Temporary import restrictions, active marketing boards, and safety net insurance schemes must all be part of the toolbox," he said. "Even if certain policies are not disallowed [by WTO rules], they are certainly discouraged by the complexity of the current rules and the threat of legal action."

"In Bali and beyond, we must work to enshrine these flexibilities, and must continue to ask what kind of trade rules will allow us to combat food insecurity and realize the human right to food," the Special Rapporteur highlighted. *(SUNS7709)* ❒

CSOs call for permanent solution on food security

by Kanaga Raja

GENEVA: Rejecting a temporary "peace clause" on food security, over 270 civil society organizations (CSOs) and global union federations have called instead for a permanent solution over the G33 proposal on public stockholding for food security purposes.

This call came in a letter sent on 20 November to the Director-General of the WTO Roberto Azevedo as well as WTO member states.

In their letter, the groups urged the global community, including the WTO Director-General and the member states, to address this issue and make changes in the Agreement on Agriculture that allow developing countries to use such subsidies for public programmes on food to support poor farmers and consumers.

"We demand that you do not make a mockery of the hunger of millions round the world by accepting a peace clause that is unusable and damaging for long-term solutions. We urge you to ensure that the international trade rules work for the people across the globe and not against them," the groups said.

Separately, also on 20 November, several Pakistani civil society organizations sent a letter to their capital-based officials as well as their country's negotiators in Geneva, in which they demanded that their government reject a short-term peace clause.

On 14 November, a letter was sent by Indian farmers to Prime Minister Manmohan Singh, in which they called on the Indian government to also reject the proposed peace clause text.

Among the international and regional organizations and networks that signed on to the letter sent to the WTO Director-General and member states were the ACP Civil Society Forum, ActionAid International, Africa Trade Network, IBON International, International Trade Union Confederation, LDC Watch, Oxfam, Peoples' Health Movement, Pesticide Action Network (Asia Pacific, and Africa), Public Services International, Social Watch, and Third World Network. A host of national organizations and individuals also signed on.

"Unfortunately the G33 proposal has found stiff opposition from the developed countries, notably the USA and the EU. Developed countries [are] using WTO rules to neutralize peoples' right to food," said Ranja Sengupta of the Third World Network, one of the signatories to the letter.

Serious concern

The CSO letter urged the Director-General and member states "to take the issue of food security in developing countries as a matter of serious and immediate concern, and not to render the G33 proposal on public food stockholding a travesty by asking developing countries to agree to the current text on the peace clause."

Across the developing world, it noted, millions of people, most of them poor, still do not have basic and minimum access to food.

According to the UN's Food and Agriculture Organization (FAO), 868 million were undernourished in 2011-12, including 304 million in South Asia and 234 million in Sub-Saharan Africa. Even more disturbing is the fact that nearly 3.1 million children under the age of 5 die each year because of poor nutrition (Hunger Statistics, World Food Programme 2013).

At the same time, in a volatile global economy, millions of small farmers are engaged in precariously poised food production that provides them essential livelihoods and caters to their own as well as their country's food requirements. Eradication of global poverty and hunger would be impossible without addressing these concerns.

"It is clear that the global economy, with all its growth, has failed to take care of both poor farmers and food consumers across the vast majority of developing countries and least developed countries (LDCs). In sum, they still need support from their own governments, supported by the global community."

However, said the CSO letter, the rules of multilateral trading that have been institutionalized through the WTO make it impossible for developing-country governments to provide this support. When the General Agreement on Tariffs and Trade (GATT, the WTO's predecessor) was negotiated, all, except 17, developing countries which were not giving any subsidy at that time were barred from increasing subsidies, and were to adhere to a limit of 10% of additional production that could be given out as subsidies.

In contrast, developed countries that gave massive subsidies to their agriculture sector were asked to reduce these trade-distorting subsidies by only about 20%. Moreover, they were allowed to shift most of their subsidies to a "Green Box" which was marked as non-trade-distorting.

"It is by now well established that both types of subsidies are very much trade-distorting and have undercut prices, encouraged dumping of subsidized agricultural products in developing country markets and … threatened global market access for developing country farmers."

"This twisted legacy of the WTO," the CSO letter added, "has resulted in a gross imbalance in global agricultural production, distribution and trading ... This has prevented developing country governments from providing essential support to their numerous small producers, or to poor consumers through direct measures, price supported public food stockholding or other processes, even if financially they are now able to do so."

For example, India's recently passed Food Security Act, which aims to provide minimum food entitlements to the poor 67% of the population, will need an allotment of $20 billion and will conflict directly with the WTO's set limits. The WTO-mandated obligations will constrain India from fully implementing its Food Security Act.

The letter noted that this peculiar juxtaposition in the WTO's agricultural trade rules has led the G33 group of developing countries to table a proposal on food security at the WTO that argues that public food programmes for supporting livelihoods of small farmers and food consumption of the poor should be considered part of the "Green Box" and allowed without limits by changing the existing Agreement on Agriculture.

Under the WTO rules, a subsidy through price support shall be calculated using the gap between the fixed external reference price and the applied administered price.

The reference price was fixed at average f.o.b. (free-on-board price from farm gate till its delivery on the ship) price notified by each country for 1986-88. Since the fixed external reference price is much lower than the minimum support price levels, the subsidy tends to get much inflated in comparison to reality.

In addition, said the letter, the entire production "eligible" to receive the subsidy and not the "actual" production is to be the basis for subsidy calculation, thus inflating subsidies further. Obviously for large developing countries the total subsidy calculated under broad price support programmes tends to significantly overstate the actual financial support provided to farmers.

On the other hand, the total domestic support of the US grew from $61 billion to $130 billion between 1995 and 2010. The EU's domestic support, which went down from 90 billion euros in 1995 to 75 billion euros in 2002, bloated again to 90 billion euros in 2006 and 79 billion euros in 2009. A broader measure of farm protection, known as total support estimate, shows the OECD countries' agriculture subsidies soared from $350 billion in 1996 to $406 billion in 2011.

Ineffective peace clause

Unfortunately, said the groups, the G33 proposal has found stiff opposition from the developed countries, notably the US and the EU.

This is despite the fact that in 2010, the poor in India received on average only 58 kg per person, 3.1 times less than the 182 kg per person of the 80 million beneficiaries of cereals food aid in the US. This is also 4.2 times less than the 241 kg for each of the 46.6 million beneficiaries of the Supplemental Nutrition Assistance Program (SNAP) or food stamp programme in the US.

"A matter of urgent concern is that all elements of the G33 proposal have now been rejected for consideration in Bali and a peace clause (or due restraint clause) on the G33 proposal is currently the only element being discussed at the WTO. A peace clause means that the use of such subsidies is still illegal but WTO Members will not go to dispute settlement for this period."

The letter noted that the Director-General has suggested a "take it or leave it" text on the due restraint clause for Bali. However, this is to be effective only for four years and does not guarantee that a permanent solution will eventually materialize.

Further, the conditions sought to be imposed are severe, said the letter, noting for example that the anti-circumvention/safeguard clause asks the member states to "ensure that stocks procured under such programmes do not distort trade".

"This broad condition may make it virtually impossible for any developing country to use this provision. This will dilute the already weak peace clause rendering it totally ineffective and would sound the death knell for millions of poor in India and in other developing countries," said the groups.

"The time to act, therefore, is now. Before it is too late, before millions perish because the global leaders could not rise above their own myopic agendas. Before hundreds of thousands of children are not able to make it to school or play or laugh because they are too weak from hunger. Before millions go to sleep not knowing what they will give to their family for food the next day," the letter underscored.

"In the complex labyrinth of international norm setting, it is the poor and marginalized who are being denied their livelihoods and minimum access to food. Global rules are challenging public provision of essential goods and services across the developing world. It is important for the WTO to address these concerns in its forthcoming and crucial ninth ministerial conference at Bali," it concluded. *(SUNS7702)* ❐

Time India says no to unfair deal, say Indian CSOs

by Gopa Kumar

NEW DELHI: Over 40 Indian civil society organizations, and prominent activists and individuals, in a joint letter have supported the Indian government's current stand at the WTO, and urged the government "not to give up the long-term interest of the nation for hazy short-term promises" and not give in either to pressure from the developed countries.

"We urge you," the signatories said in the open letter, "to stand firm and reject a Peace Clause that does not guarantee a permanent solution to the issue of price support to poor farmers in the country's sovereign endeavour for securing food for all."

"We urge you to ensure that there is a permanent solution to the food subsidy issue, [one] that enables India and other developing countries to purchase food from small producers for public stockholding, without this being counted as part of 'trade distorting subsidies' which are to be disciplined by WTO."

"Moreover," they said, "the method of calculating a 'subsidy' has to change. The present WTO method requires the government to buy food items from farmers at the 1986-88 price, which is outdated and very low; any price that is higher is counted as a 'subsidy', which is absurd and must be changed. Reference should be made instead to the present market price, not the 1986 price, the use of which results in developing countries being unfairly punished and being portrayed as over-subsidizing their farmers."

Any peace clause, the letter said, will be meaningful only if it will last until a satisfactory permanent solution is adopted. Moreover, the peace clause should be applicable not only to the Agreement on Agriculture (AoA) but also to the Agreement on Subsidies and Countervailing Measures and not be burdened with paralyzing conditions. "We also urge you to take a strategic position on trade facilitation (TF) that secures India's overall development needs and sovereign policy space."

Widespread poverty and hunger

Despite its high growth rate over the past few years (except the last two), India still has widespread poverty, hunger and malnutrition. Of its 600 million who depend on agriculture, 80% are poor small farmers who are near subsistence. While official poverty estimates put poverty at 21.9%, the National Commission on Enterprises in the Unorganized Sector (2007) had found that 77% of Indians, or 836 million people, lived on less than IR20 ($0.31) per day, living in abject poverty. The NC Saxena Committee puts poverty at 50%. Whatever the numbers, it is undeniable that hundreds of millions live close to the poverty line under precarious conditions.

India is positioned at 136th place in the 2012 UN Human Development Index. According to the global Hunger Index 2013, India is ranked 63 out of 120 countries and languishes far behind other emerging economies or even its neighbours Bangladesh and Pakistan. The report also points out that the level of hunger in India is at "alarming levels".

By agreeing to extend the coverage of the recently enacted National Food Security Act (NFSA) to 75% and 50% of the rural and urban population, the government has acknowledged the dire condition and urgent food needs of a large majority of its population.

Under such unconscionable conditions, the strengthening of both production and consumption systems in a synchronized manner is essential in order to ensure food security in India and to meet the hunger challenges that face 67% of the Indian population today. This can only be done through a strong Public Distribution System (PDS) which procures food from farmers, most of them poor themselves, at a Minimum Support Price (MSP) which is fair and remunerative, and then distributes it at a subsidized issue price to poor consumers.

Both the price and consumption components of the subsidy are crucial for supporting India's food needs. But the lopsided WTO rules in the Agreement on Agriculture, while allowing unlimited subsidies by developed countries, bar developing countries from providing essential price support even to poor farmers and even when the objective is to use such procured food to mitigate hunger and malnutrition of their poor food consumers.

The anomaly in the subsidies rules of the AoA is by now well known and accepted by all.

In this scenario, the proposal by the G33 group of countries, led by India, demands such subsidies should be included under the Green Box and be allowed without any conditions. This could have addressed the structural inequity in the AoA to an extent and has the potential to guarantee the food security of 670 million hungry Indians and others in similar conditions across developing and least developed countries worldwide.

However, in spite of giving huge subsidies themselves, the developed countries have rejected most of the elements of the G33 proposal, and the WTO Director-General Roberto Azevedo has recently offered only a partial and inadequate peace clause which gives India and other developing countries looking to use above-limit food subsidies "a temporary protection against legal action by other members under AoA."

Interestingly the original demand by the G33 that a peace clause, even if discussed, must operate "till a permanent solution is guaranteed", seems to have withered away in the current text and a peace clause that will expire in four years seems to be firmly established. A work programme is promised by the 11th Ministerial Conference but that does not equal a permanent solution nor does it allow the peace clause to operate till one is found. Moreover, the G33's proposal to extend this peace clause to other relevant agreements guiding subsidies, such as the Agreement on Subsidies and Countervailing Measures, has also fallen on deaf ears. Without that, India can still be dragged to dispute settlement. This is not all. The long list of onerous conditions imposed on this feeble offering has in fact made future disputes more likely. The proposal requires detailed information sharing by India on what is essentially domestic policy and limits the coverage to very few staple crops, tying India's hands in pursuing an independent and flexible food support policy.

So in essence, while a permanent solution is not guaranteed by the peace clause, what is guaranteed is permanent food insecurity where the government is likely to lose control over its food policy options.

Position on Bali

Under the circumstances, the Indian Cabinet on 28 November finally decided to accept the peace clause only if it guarantees a permanent solution and extends to the Agreement on Subsidies and Countervailing Measures. This is a welcome change from its earlier stance of accepting the peace clause offered by the WTO Director-General. Given India's food situation, there could not have been any other option.

Moreover, India's position vis-a-vis the trade facilitation agreement must be consistent with and subservient to its position on agriculture. India's major interest is not trade facilitation but safeguarding its policy space to ensure the right to development, food security and ensuring the basic well-being of its people.

The proposed trade facilitation agreement is again an instance of ignoring the needs and demands of developing countries during the current round of WTO talks. The developed countries have sought to promote import penetration through import facilitation, but remained unwilling to make binding commitments to help developing countries and LDCs with finance and technology so they can improve export facilitation, or in meeting the binding commitments they themselves seek. This is why, in spite of considerable push and shove by the US, developing countries have largely refused to budge.

Given that the trade facilitation agreement on the table is not pro-development, it makes no sense to accept it for the apology of a food security deal. In the "give and take" format the trade enthusiasts espouse so much, India is perfectly within its right to "give" only if it manages to "take" control of its food security and its policy space to do so.

"Until that can be guaranteed it is not in India's best interest and the interests of its people, to say yes to the grossly unbalanced, unfair and unlikely deal at Bali. And as a developing country that is acting to protect the long term development objectives for its people, India can hardly be blamed for it. In fact it should be hailed for this decision. In fact, development goals set up by the global community as a whole will again fall short if our food and nutrition security issues, coupled with producers' livelihood issues are not addressed squarely.

"We, as members of Indian civil society, believe it is time India says NO to an unfair deal. The Indian Commerce Minister and his delegation when negotiating in Bali must not be weighed down by the propaganda of developed countries and neo-liberal media reports as deal breakers. By doing so, he will do his people and other developing and least developed countries a long lasting favour." *(SUNS7709)* ❐

US groups urge USTR to support food security proposal

by Kanaga Raja

GENEVA: Some 38 civil society organizations and other groups from the United States have sent a letter to US Trade Representative (USTR) Mike Froman and the US Ambassador to the WTO Michael Punke expressing dismay at the US opposition to proposals made by developing countries at the WTO to address their food security objectives, including reducing volatility in food prices and supplies.

In their letter dated 26 November, they urged Froman to support the G33's proposal to allow for greater public spending to ensure more stable food supplies and prices.

Among the groups which signed the letter were ActionAid USA, Center for Food Safety, Family Farm Defenders, National Farmers Union, Oakland Institute, Food First, Friends of the Earth USA, Global Exchange, Institute for Agriculture and Trade Policy, International Forum on Globalization, Just Foreign Policy, Oxfam America, Rainforest Action Network and Washington Fair Trade Coalition.

Market failures

"Food prices have been extremely volatile in recent years. This has been harmful to farmers in the global North and South. We continue to call for the establishment of grain reserves to dampen that volatility and advance fair prices for farmers everywhere," the groups said in their letter.

They noted that grain reserves are neither simple nor cheap to operate.

"Yet the alternatives are worse. The lack of insurance against market failure cost enormous sums of money in emergency assistance, money the international community has to pay. The lack of provision for instability also costs lives – lives lost to hunger as an immediate consequence, and lives blighted for several generations by the effects of malnutrition on fetal development."

International markets serve those with the greatest purchasing power. This makes market mechanisms alone inadequate from the perspective of those whose purchasing power to secure food for their families is eclipsed by other demands on food systems, including the demands that generate significant food waste, as well as the demand for feed and fuel.

The US government has intervened through both its agriculture and its social welfare programmes for over 100 years in recognition of market failures that need correction.

"Yet our administration's trade policy ignores our domestic experience. For instance, while many in Congress are fighting to retain public funding levels for the Supplemental Nutrition Assistance Program (SNAP) at home, you are seeking to undermine policy space for developing countries to fulfil their own food security objectives with far fewer resources than are available in the United States," said the groups.

Many of the poor in developing countries are often also small-scale agricultural producers, they noted.

"Contrary to the letter sent to you by US commodity groups and agribusiness interests on October 24, we, the many US farm, faith-based and non-governmental organizations working on agriculture, food security, nutrition, health and economic justice acknowledge that the current agriculture rules in the WTO (including domestic support) are rigged to support big agribusiness."

The groups added: "We do all countries a disservice when we promote only commercial export interests, ignoring the real political (and moral) imperative that governments are responsible for their citizens' welfare, including their right to adequate and affordable food and fair prices to agriculture producers."

The G33 food security proposal is an important first step in the re-framing of global trade rules to promote more equitable and stable markets, especially for countries that face huge food security challenges, they said.

"The US proposal for a 'Peace Clause' to suspend potential challenges to those efforts at the WTO is an unfair and inadequate response to a sensible proposal to explore new options to improve stability in national and global markets. We support the G33 proposal and call on the US government to do the same." *(SUNS7706)* ❐

ITA-II talks break down, no date set for resumption

WTO member states have failed to strike a deal to expand liberalization of trade in information technology products.

by Kanaga Raja

GENEVA: The negotiations at the World Trade Organization on expanding the product coverage under the Information Technology Agreement (ITA) broke down on 21 November, and are not expected to resume for the time being.

(ITA-I, negotiated amongst WTO members said to account for 90% of global trade in this sector, and concluded in December 1996, brought about an agreement for tariffs to be reduced to zero by the participants in that accord, who then inscribed this concession in their schedules of commitments, multilateralizing it on an MFN basis.)

Following a suspension of more than three months, the negotiations on expanding the product coverage under the ITA had resumed in the third week of October among some 25 members (the European Union counting as one).

The latest round of negotiations took place on 11-21 November and was coordinated by the EU.

According to trade officials, the participants in the committee on the expansion of ITA products had been expecting to conclude an agreement to expand the product coverage under the ITA and to reduce the list of sensitive items that would be excluded from trade liberalization (or with a long period of exclusion), in time for the Bali Ministerial Conference.

At a transparency session to inform members of the outcome of several bilateral negotiations that were held over the last 10 days, Ambassador Angelos Pangratis of the EU said that members will now need to hear from China for the resumption of the talks.

According to a press release issued here on 21 November by the EU mission to the WTO, the main outstanding issue is China's request for the exclusion of a large number of information technology (IT) products from trade liberalization.

According to the EU press release, the main obstacle to concluding the negotiations is a request from China to treat 141 products as "sensitive" and, of these, to exclude altogether from liberalization 59 important products.

"The EU regrets that China has so far been unable to contribute to the negotiations of the Information Technology Agreement (ITA) in a way that is consistent with China's position as the largest world exporter of IT products," said EU Trade Commissioner Karel De Gucht in the press release.

He added: "I call on China to urgently withdraw its excessive requests for exclusions of IT products from the negotiations, so that the talks can resume. We cannot afford to lose the momentum for a deal", which would liberalize over 1 trillion euros of trade, corresponding to 7% of total world trade in goods.

Disappointment and frustration

According to trade officials, at the 21 November meeting, the United States, Japan, Korea, Canada, Norway, Chinese Taipei, Switzerland, New Zealand, Australia and Costa Rica voiced strong disappointment and frustration.

Some blamed Beijing for the lack of constructive engagement, lack of flexibility and lack of ambition, trade officials added.

Japan said that many participants came with a mandate to conclude the negotiations and made concessions to reach an agreement, but not China.

According to trade officials, Chinese Taipei said that it was unfortunate that China, the biggest producer and exporter of IT products and the biggest beneficiary of the Agreement, had made no movement.

Australia also expressed regret that there was no flexibility shown by the major beneficiary of the Agreement.

According to trade officials, China's representative, Vice Minister Yu Jianhua, said that China received a list (a request for reducing China's sensitive items) that was "too long to manage".

He said that China showed "maximum flexibility" and contributed a lot, and shared the expectations of others on reaching an agreement. But there was "a gap in perceptions", he added.

According to trade officials, he further said that it was pointless to play a "blame game" and that there was now a need for reflection to accommodate each other's positions.

"We could not reach a deal this time but this is not the end of the road," said Yu.

Back in October, more than 160 civil society organizations and trade unions worldwide, including the International Trade Union Confederation (ITUC), had sent a letter to the ITA negotiating parties expressing concern that the expansion of the ITA "could further harm workers, particularly in developing countries, that have not yet benefited from the agreement, and possibly deteriorate the developmental prospects for those which participate."

"The information and communication technology (ICT) sector has enormous capacity to contribute to domestic industry creation, employment generation, and technological development. Unfortunately, claims of the ITA's potential benefits have failed to materialize for the majority of workers in participating countries," the letter had noted (see *TWE* No. 556). *(SUNS7703)* ❐

(continued from page 26)

To make matters worse, the US successfully sued to end the EU concessions, effectively shuttering banana growers unable to compete with huge US-owned plantations in Central America.

Before, "all the produce was sold and that was money in the pockets of people throughout the island, even in the smallest villages", Father Sean Doggett, a Catholic priest in Grenada, told IPS. "That came to a very sudden stop around 1998."

Countries turned to tourism, but the recovery from the global financial crisis has been slow and uneven – in Grenada, unemployment doubled between 2008 and 2012.

Doggett and other members of the Grenadian Conference of Churches (COC) sat down with the IMF and the Grenadian government in October, proposing the creation of a "conference of creditors" to negotiate the terms of a two-thirds debt reduction and calling on the IMF to attach greater importance to poverty reduction and unemployment.

In 2013, Grenada's debt payments will amount to over 250% of what it spends on education and health.

"There is no way that Grenada can pay off its debt as it stands," Doggett told IPS. "We need to get out of this cycle of indebtedness and get on a development path that is more sustainable."

"Having debt hanging around the neck of people forever and ever is contrary to the biblical concept of Jubilee, of debt forgiveness ... this is as much an issue of justice and the building of a better society," he said. *(IPS)* ❐

Two events affecting the TPPA

Two recent events may have significant impact on the Trans-Pacific Partnership Agreement – opposition by US Congress members to "fast-track authority", and the leaking of the TPPA's intellectual property chapter.

by Martin Khor

The process to conclude the Trans-Pacific Partnership Agreement (TPPA) by this year met two obstacles in November.

A quite unexpected event took place in Washington in the week of 11 November when an overwhelming majority of Democrats in the US Congress made clear they oppose "fast-track authority" for trade deals.

Of the 201 Democrats in the House of Representatives, 166 sent letters to President Barack Obama rejecting his push for a bill to grant him fast-track authority. It is embarrassing that the President's own party's Congress members are so opposed to giving him the authority. Another 28 House Republicans have also so far announced their opposition. Since 218 votes (a majority of the 435 representatives) are needed in the House to get fast-track authority, there appears to be little chance that the President will get his trade authority.

Congress has the power to adopt trade agreements negotiated by the administration. Under fast-track authority, Congress must approve or reject an agreement in total but cannot alter it, thus enhancing the chances of the agreement being approved as a whole.

Failure to obtain fast-track authority would have serious implications for the TPPA, especially since the US is by far the most important country.

Firstly, without fast-track authority, the US Congress can make any changes they want to the final TPPA text agreed to by all countries. Thus, even if the US negotiators agree to meet the demands of other TPPA countries on their sensitive issues and points, there is little certainty that Congress will concur. Its members can be expected to seek to alter parts of the agreed text of the TPPA, otherwise they can reject the deal. The whole TPPA could thus unravel even after it has been signed by all the countries.

Sensitive issues which have been tabled by other TPPA countries that are contrary to the original US position include an exclusion from the TPPA for tobacco control measures (a proposal championed by Malaysia), and no lengthening of the period for patents for medicines and several other demands against strengthening patents and copyright (a demand made by many countries).

Other sensitive issues that have been taken up by Malaysia include having higher thresholds for the value of projects that must be opened up to foreign competition in government procurement; the investor-state dispute settlement system (whereby foreign investors from other TPPA countries can sue the host government in an international court); and new rules to govern what can and cannot be done by state-owned enterprises.

In the give and take of negotiations, the US may water down its position and bend a little to the wishes of others, to secure a deal. Since the US is known to negotiate within the boundaries of a template, there isn't much room for it to alter its original positions; nevertheless there is some room.

Without fast-track authority, however, there can be little confidence that the positions reached after difficult and painful negotiations will be upheld by Congress, which may demand a reopening of some agreed texts. This has indeed happened in the case of some recent US trade agreements that were sent to Congress without fast-track authority.

Secondly, it emerged that a major reason some of the Congress members oppose fast-track authority is their resentment of the process or contents, or both, of the TPPA itself. Therefore there may not be support for the TPPA in Congress, even if the US positions prevail in the final deal.

The TPPA negotiations and texts are secret. After years of protest, Congress members can only read specific TPPA chapters in their offices but they are not allowed to take detailed notes, keep the text or discuss what they saw.

In 2012, over 130 House Democrats wrote to Obama criticizing the secrecy as well as the likelihood that the TPPA is likely to repeat rather than improve upon the existing US trade template, including weakening the Buy America provisions, providing extraordinary investor-state privileges, and restricting access to medicines in developing nations. Then in the week of 11 November, 166 House Democrats made public their objection to fast-track authority.

A combination of many Democrats who dislike the TPPA and many Republicans who dislike Obama and his presidency will probably torpedo fast-track authority. If this happens, other TPPA countries can have no confidence that the concessions they make or that the US makes will satisfy the US Congress.

Leaked text

The second blow to the TPPA negotiations was the leak, also in the week of 11 November, of the 95-page intellectual property chapter by WikiLeaks. The chapter has many sensitive issues, as patent and data exclusivity clauses affect prices and access to medicines, while access to information and knowledge (including in the digital and Internet sphere) is affected by copyright.

The leaked text has been studied by many civil society groups, which have already lodged criticisms and protests against the positions of the US, while noting the efforts by some other countries that are seeking to reject or blunt some of the US-proposed texts.

This battle of different positions of various countries is revealed by the leaked August 2013 text. It shows how far apart the negotiating parties still are, raising doubts as to whether a deal can be struck by December.

The existence of the leaked text, which shows that the US is still (up to August) sticking to its old positions that had already angered health and Internet freedom groups, can be expected to fuel even greater criticisms and actions by civil society.

It is noteworthy that there are many American groups in the forefront of opposition to the US positions in the intellectual property chapter, and they have influence over Congress members' views on the TPPA.

These two significant events indicate it is difficult to meet the deadline of reaching final agreement on the TPPA by December.

On the other hand, with opposition

growing, some countries especially the US may intensify their resolve to urgently finish the negotiations before other unexpected developments further damage the chances of concluding a deal.

Negotiators and leaders of other TPPA countries should however take seriously the probable failure to obtain US fast-track authority. Is there a point in continuing to commit so much manpower and financial resources to the negotiations when there is little certainty that the sensitive issues agreed to in a deal can withstand the scrutiny and vote of the US Congress? ❐

Jobless growth, the 21st-century condition

A UN development agency is advocating a policy rethink on the part of the world's least developed countries to boost sustainable and productive employment.

by Samuel Oakford

NEW YORK: The world's poorest countries are rethinking economic policies that – even during periods of breakneck growth – have failed to provide quality employment capable of matching a demographic boom.

The disparity between growth and jobs is no starker than in the 49 least developed countries (LDCs), which, according to a recent UN Conference on Trade and Development (UNCTAD) report, will need to create 16 million positions every year if they are to keep up with new entrants into their rapidly expanding workforces.

For decades, despite criticism from the UN and elsewhere, LDC governments were urged by multilateral lenders to cut public spending, curb inflation and end trade tariffs that protected domestic industries. But today's ubiquitous "jobless growth" has countries looking in the opposite direction.

"These countries have gone through radical policy reforms," said Mussie Delelegn, officer-in-charge at UNCTAD's New York Office.

"In the 1980s many of them implemented structural adjustment programmes. The assumption that growth would automatically translate into employment and poverty reduction has not been seen."

Though the percentage of people living in extreme poverty (less than $1.25 per day) has declined in LDCs, their numbers have increased due to population growth.

While the economies of LDCs expanded yearly by over 7.5% in the decade before the 2008 financial crisis, employment growth per annum stood at just 2.9% between 2000-12, barely ahead of the population growth rate of 2.3%.

Unemployment numbers, which have remained steady at roughly 5.5%, can't be used in the ways they are in developed countries. The vast majority of employment is tenuous and offers little in the way of security – in 2010 over 80% of jobs in LDCs were considered "vulnerable."

In 2011, the Istanbul Programme of Action concluded that to eradicate poverty and achieve inclusive growth, LDCs would have to grow by at least 7% annually between 2011-20. But the UN estimates most LDCs will miss that target by 1-2 percentage points in the next several years.

Stimulating employment

If high growth couldn't buoy the job market during boom years, a period of slower increases will require specifically catered policies to spur employment.

Monetary policy "should be less fixated on attaining an inflation rate in the low single digits than on targeting full employment of productive resources," wrote Muhkisa Kituyi, Secretary-General of UNCTAD, in an introduction to the report.

"Given the relatively weak private sector in many LDCs, it is more likely and realistic that in the short to medium term, the investment push required to kick-start the growth process will originate in the public sector."

To pay for increased outlays, governments should raise taxes on high-income companies and individuals, introduce value-added taxes (VAT) on luxury consumption and "refrain from tariff cuts until alternative sources of revenue are put in place."

Under these guidelines, the game of attracting investment would no longer be a race to the bottom.

Employment in LDCs tends to be concentrated at two extremes: either in informal small and micro enterprises or in huge capital-intensive export industries.

At one end are businesses consisting of no more than a family or even one young person. At the other, commodity prices, which the International Monetary Fund (IMF) expects to steadily drop in coming years, have dictated hiring – and firing.

Missing are the medium-sized enterprises that provide stable jobs in much of the developed world.

Experts agree that building that sector will rely in large part on domesticating value-added industries for primary exports – processing iron instead of simply shipping off ore, for example.

A 2011 law in India – a developing country but not an LDC – aimed to accomplish this by setting a 30% export tax on iron ore. With the incentivization of domestic refining, the price of steel in the country fell, benefiting other local industries.

In Chile, despite its reputation as a free-market paradise, the government has maintained a strong hand in copper production, ensuring jobs in processing and preserving sovereign ownership.

But in LDCs, value added in the manufacturing sector remained flat at 10% between 2001 and 2011.

"Countries were unaware of the value of their exports and value added," Delelegn told Inter Press Service (IPS). "Information asymmetries indicate the playing field is not equal – the companies have the information."

But as LDCs gain knowledge and confidence at the bargaining table, they are pushing for better terms.

Botswana is one of only three countries to have graduated – in 1994 – from LDC status. Early on, it decided to pass laws that created floors for local employment and domestic enterprise in the diamond industry.

"Botswana increased the employment intensity of the diamond sector, which assisted them to capture more of the value gained locally – they were cutting, polishing, processing," said Yao Graham, coordinator of Third World Network Africa, which helps facilitate the Africa Mining Vision, a pan-African mining framework that several countries have already adopted.

"For the past 20-30 years, African governments have ... prioritized getting a share of the revenue of mining, through the exclusion of everything else," Graham told IPS.

"The World Bank famously summarized it in its Strategy for African Mining for 1992 when it said that African governments should not be interested in employment or control of the minerals."

"I think the mining boom of the past decade underlined very clearly, actually, that this was a very flawed strategy."

Disappointing local employment has given other African countries the green light to renegotiate revenue-sharing with companies and implement tax schemes that retain jobs and capital.

Ghana is looking to incorporate policies similar to Botswana's into its domestic gold industry, which last year topped $5 billion. And in Namibia, the government has set up a national mining company, hoping to replicate Chile's CODELCO and not the bloated state-run enterprises of post-independence Africa.

The problem is more complicated in textile-exporting countries like Bangladesh, where policy recommendations centre on more nebulous "technical advancement."

If Chile is a model for mineral exporters, garment producers look to Taiwan, South Korea and Singapore, all of which began by manufacturing textiles before graduating to more complicated consumer goods and electronics.

But countries worry they may have already missed the boat and it remains to be seen if low wages in LDCs can make up for a lack of expertise.

Ensuring sustainable, value-additive employment would help LDCs become less reliant on foreign aid, which can fluctuate with the global economy.

Studies have shown official development assistance (ODA) is "five times more volatile than GDP and three times as volatile as exports" and tends to potentiate upturns and recessions.

"Any instability will disrupt aid flows and flows of remittances from migrant workers," said Delelegn.

Countries are beginning to understand that the one-size-fits-all recommendations of the past simply don't hold water anymore.

"During the Asian financial crisis, the only country that mitigated the negative impact of the crisis was Malaysia, which had put in place policies and strategies that effectively controlled free flow of capital," said Delelegn.

The mea culpas are slow in coming. In 2011, the IMF quietly admitted in a paper that capital controls had their place. But for LDCs, a more powerful realization may be that they don't need an IMF admission at all. *(IPS)* ❐

A Global Green New Deal for sustainable development

***Jomo Kwame Sundaram* calls for a bold new package of national and multilateral developmental initiatives to tackle the economic, social and environmental crises of today.**

ROME: Eight decades ago, during the Great Depression, newly elected US President Franklin Delano Roosevelt introduced the New Deal consisting of a number of mutually supporting initiatives.

The most prominent of these were: a public works programme financed by deficit financing, a new social contract to improve living standards for working families, and regulation of financial markets to protect assets of ordinary citizens and to channel financial resources into productive investment.

Today, we are in the midst of another protracted economic slowdown. The world needs a New Deal which is both global and sustainable. The current system and crisis are global in nature, requiring a corresponding response.

It also has to be sustainable. We are in the midst of economic, social and environmental crises, with global warming looming larger. We are also threatened by pollution, natural resource degradation, loss of forests and biodiversity, as well as sociopolitical instability due to growing disparities.

Sustainable pathway

The Global Green New Deal (GGND) should move all to a different, sustainable developmental pathway – in the spirit of Rio.

The GGND should have ingredients similar to the original New Deal – namely public works employment, social protection, and increased productive investments for output and job recovery.

After half a decade of economic contraction and stagnation, with even developing countries slowing down recently, it is urgent to prioritize economic recovery measures, and not to expect recovery at the expense of others.

The GGND should be part of a broader counter-cyclical response with three main elements.

First, national stimulus packages in developed and developing countries aiming to revive and green national economies.

Second, international policy coordination to ensure that developed countries' stimulus packages generate jobs in the North and strong developmental impacts in developing countries.

Third, greater financial support for developing countries, as with the Marshall Plan.

Such investments should lead to the revival of growth that is both ecologically sustainable and socially inclusive. Support for agriculture should be an important feature of national stimulus packages in developing countries, with special attention to promote "climate-smart" and ecologically sustainable agriculture.

After a half-century of decline, except in the mid-1970s, real agricultural commodity prices were rising from about a decade ago.

The recent price trend reflects yield growth slowing in recent years, while demand continued to grow rapidly.

Rising incomes have increased food demand for humans and animal husbandry, while demand for biofuels has expanded rapidly in the last decade.

Higher and more volatile food prices threaten the food security and nutrition of billions. Prices were increasingly volatile for over half a decade, with successively higher peaks in 2007-08, 2010-11 and 2012.

"Financialization" – linking markets for commodity derivatives with other financial assets – also worsened price volatility.

Creating jobs in developed countries with strong developmental impacts should be part of developed countries' stimulus packages. Over the longer term, reforms of the international financial and multilateral trading systems should support sustainable development.

Until recently, official development assistance for agricultural development in developing countries had declined for decades. Meanwhile, rich countries have continued to subsidize and protect their farmers, undermining food production in developing countries.

Food security should be treated as a global public good since the political and social consequences of food insecurity have global ramifications. Hence, there should be a multilateral response to ensure food security.

The Green Revolution of the 1960s and 1970s – with considerable government and international not-for-profit support – greatly increased crop yields and food production, reducing hunger, starvation and poverty. However, efforts for wheat, maize and rice were not extended to other food crops.

We need a second-generation Green Revolution to promote sustainable, including climate-smart, agriculture, especially for water-stressed, arid areas. Public investments – with international assistance – must provide the incentives and other support needed to increase family farm investments.

Many other complementary interventions are urgently needed. Food security cannot be achieved without much better social protection. Resources are needed to strengthen social protection for billions in developing countries to ensure decent employment, food security and more sustainable development.

But sustainable social protection requires major improvements in public finances. While revenue generation requires greater national incomes, tax collection can still be greatly enhanced through improved international cooperation on tax and other international financial matters.

Clearly, the agenda for a Global Green New Deal requires not only bold new national developmental initiatives, but also far better and more equitable multilateral cooperation offered by a strong revival of the inclusive multilateralism of the United Nations system. *(IPS)* ❐

Jomo Kwame Sundaram is Assistant Director-General and Coordinator for Economic and Social Development at the Food and Agriculture Organization (FAO) of the United Nations.

Deja vu all over again for indebted Caribbean

High debt, and the austerity policies associated with it, continue to plague the nations of the Caribbean.

by Samuel Oakford

NEW YORK: On 23 May, shortly after wrapping up negotiations on the International Monetary Fund's (IMF) $958 million loan – its second in three years – to keep Jamaica out of default, the Fund's mission chief in the country, Jan Kees Martijn, set out to visit Croydon, a former plantation settlement in the mountainous northwest of the island.

Also in Croydon that day was Verene Shepherd, professor of social history at the University of the West Indies and chair of the national reparations commission.

Shepherd was recording her weekly radio show *Talking History* – she was marking the anniversary of the hanging of Samuel Sharpe, leader of the slave rebellion of 1831-32 – when she ran into Martijn being led through town by the local chamber of commerce.

The phlegmatic Dutch technocrat listened as Shepherd discussed the brutal history and economic legacy of slavery, one difficult to compute in dollars and cents (though Shepherd has, at $7.5 trillion), but something that many in the region feel should at least footnote every budget shortfall and each emergency loan taken.

"I tried to tell him that you are looking at the end result of colonization," Shepherd told Inter Press Service (IPS). "It's easy to say 'you're independent now, stop complaining' but it's very hard to distance what is happening now from the past."

Though Shepherd was aware that in October Jamaica would be one of 14 Caribbean countries to sue Britain, France and the Netherlands for slavery reparations, she wished Martijn well, and the IMF team continued on to their heritage tour.

Debt burden

Since 1990, there have been 37 debt restructurings in the Caribbean, a problem critics say international bodies like the IMF are woefully unprepared to tackle. Barbados, Belize, Jamaica, Antigua and Barbuda, Grenada, St. Kitts and Nevis, and St. Lucia all have public debt higher than 80% of GDP; in Jamaica, the figure is 143.3%.

Under the current IMF agreement, Jamaica is expected to run a primary surplus of 7.5% of GDP, higher than all but a few large oil exporters.

"It's farcical in many respects and reflects badly on the IMF," Gail Hurley, policy specialist at the United Nations Development Programme (UNDP), told IPS.

Caribbean governments are incentivized to refinance, regardless of terms, because it frees up money to be spent during their term in office.

"It kicks the can down the road," Hurley said. "It releases money in the short term, and you can say to your people I have an extra 500-600 million to spend on education and health, but the debt remains unchanged."

In 2010, even the IMF saw a "haircut" – a reduction in the debt's principal – as desirable, but it was the Jamaican government, wary of short-term repercussions in private sector capital flows, that refused a reduction and chose instead to restructure – altering the maturity and rate alone – only to do so again three years later.

The initial 2010 IMF agreement was eventually nullified by a Jamaican court that ruled the government could no longer withhold back pay to public sector workers, a part of the IMF's guidance.

Without IMF agreements and the analysis they come with, private investors as well as bilateral and multilateral lenders like the World Bank are reticent to offer their own funding. If they have already, they may freeze funds, a chain of events that occurred following the court's ruling.

Already this year, bondholders in Belize took 10-20% cuts, and in St. Kitts and Nevis, investors have seen 50% "haircuts" on their principal.

Austerity

In a February report, the IMF found that the "main challenges for Caribbean small states looking ahead include low growth, high debt and reducing vulnerabilities from natural disaster." Yet even after issuing a mea culpa of sorts for pushing austerity in Europe following the 2008 financial crisis, the IMF turned around and insisted those very policies – ones that led to contractions and unemployment – were the only way out of the Caribbean's fiscal mess.

"There's been a split in their policies for rich countries and for developing countries," said Jake Johnston, research associate at the US think-tank Center for Economic and Policy Research (CEPR).

"There's been a lot of talk about the new IMF and in some cases they have been more lenient, but when you are talking about developing countries what they are still pushing is from 15 years ago."

Despite successive loans from the IMF, Jamaica still spends around half its budget on interest payments, crippling the country's ability to provide social services and prepare for natural disasters.

After Hurricane Sandy struck Jamaica one year ago, "they couldn't repair or prepare for the next one because they were constrained by the IMF budget", Johnston told IPS.

The IMF said it was unable to comment for this story because a team was currently in the country.

However, holding back spending can lead to a dangerous feedback loop: experts predict that for every dollar a country forgoes today on climate change mitigation, it will spend six or seven on disaster response in a few years' time.

Media portrayals of the crisis tend to rely on sources in the IMF and investment community and adopt the same terse tough-love language they favour that serves to distance themselves from people on the ground. Depictions often treat extreme weather and zero-growth economies as if in a vacuum, without interrogating their climatic or historical causes.

Caribbean economies were ushered into independence underdeveloped and limited by colonial regimes that favoured primary exports over industrialization. Countries came to rely heavily on preferential trade agreements that the EU offered former colonies.

The 1973 oil price shock forced many to take out dollar-denominated loans to pay for energy.

When interest rates in the US shot up, payments on those loans ballooned and countries in the region had no choice but to accept the structural adjustment that accompanied IMF and World Bank bailouts, a position they've been in ever since.

(continued on page 21)

The continuing debt debacle

While the nature of debt vulnerabilities has changed, the debt crisis is far from over, according to a new report published by Eurodad – the European Network on Debt and Development. The executive summary of the report is reproduced below.

In the sixth year of the global financial crisis, debt vulnerabilities have changed, but overall they have not been substantially reduced. The good news is that the number of bank failures has dropped since the height of the European financial crisis. However, the downside is that governments have paid a high price to stabilize the financial sector, and sovereign debt levels have surged. Attention must still be paid to the volatility and bursting speculative bubbles in middle-income countries, and ever-riskier debt profiles in low-income countries. Unsustainable and illegitimate debt is still a risk to financial stability and, ultimately, to the economic and social fabric of our nations.

Eurodad believes that the debt crisis is far from over, and here are 10 reasons why:

1. Economic imbalances continue to boost external debt: The world remains divided into surplus and deficit countries. International institutions are imposing austerity policies on deficit countries but no pressure is put on surplus countries. The collapse of trade at the peak of the global financial crisis made surpluses and deficits temporarily narrow. However, since 2010, imbalances have increased again. Global current account divergences accounted for 2% of the world's gross domestic product (GDP) in 2012, which is not much below the peak of 3% in 2006 that triggered the worldwide financial crisis.

2. Capital is moving around the globe in an uncontrolled way: Recent data suggests that middle-income countries (MICs) are the next victim of absent or limited measures to regulate international capital movements. Lax monetary policies in rich countries since the crisis started have sent waves of speculative capital to the Global South. In 2010, 70% of global capital outflows originated from the US and Europe. Developing countries' capital controls were too weak to stop foreign money from flowing in, appreciating their currencies and causing speculative bubbles. Now it is flowing back, making the currencies of MICs such as Brazil and Turkey drop by a quarter of their value.

3. Private debt is on the rise: Excessive private debt triggered the crisis in the US and Europe six years ago. Now private debt in middle- and low-income countries is surging. In developing countries, external debt has doubled over the past decade to reach $4.5 trillion in 2011. Private borrowers were the major driver.

4. Sovereign debt is higher than ever in some places: Rich countries have defused their private debt problem through public bailouts. As early as 2009, the International Monetary Fund (IMF) estimated that advanced economies had already provided headline support to the financial sector to the tune of half of their GDP. As a consequence of bailouts and the economic crisis, sovereign debt in rich countries has surpassed the threshold of 100% of their GDP, reaching its highest levels since the Second World War. A new wave of sovereign debt workouts appear to be due.

5. Sovereign debt is riskier than ever in other places: Low-income countries (LICs) receive less concessional funding. Their new debt is riskier overall and comes increasingly from private sources, at higher costs and shorter maturities. Several LICs are starting to issue bonds on financial markets for the first time, but the financial crisis has proved that investors' appetite to invest in developing-country bonds is very fragile. The yield for the Ghanaian bond issued in 2007, for example, surged from less than 8% in 2008 to more than 20% in 2009, falling back to less than 5% in 2012. It is uncertain if investors will make fresh money available when current bonds mature and need to be refinanced.

6. The time-bombs that are contingent liabilities could detonate at any time: A badly regulated banking sector and public-private partnerships still contain hidden debts that amount to several times the annual GDP in some countries. The fiscal costs of recent banking crises in Cyprus, Greece and Ireland are estimated to exceed 60% of these countries' GDP. These can be direct costs through recapitalization of banks and public guarantees, or indirect costs through foregone tax revenue and the harmful economic impact of crises. Effective firewalls to protect the public side from taking on contingent liabilities still do not exist.

7. Tax evasion and avoidance, and aid cuts, are undermining public income: Endemic tax evasion and avoidance threatens public finances everywhere. According to research by the US think-tank Global Financial Integrity, developing countries lost $859 billion in illicit capital outflows in 2010. More money was lost through tax evasion than through crime and corruption combined. Recent aid cuts also pose a challenge to the poorest countries. The gaps are being filled through new borrowing, driving debt levels up.

8. Debt limit policies are subject to political manipulation: Debt limits such as those set by the IMF should keep new borrowing and lending within sustainable limits and signal to governments and donors that they should seek new assistance only in the form of grants. In practice they are being lifted or ignored whenever it is politically expedient.

9. Responsible financing standards are rarely followed: Although the buzzword "responsible financing" is rhetorically high on the agenda of the United Nations, the European Union and the G20, in practice there is little compliance with responsible financing standards. Export credits for the arms trade are just one example of this. Recently, UK-made military hovercrafts were exported to heavily indebted Pakistan, guaranteed by the UK Export Finance Agency. In the same month, the IMF had to approve a $6.6 billion Extended Fund Facility loan to Pakistan to boost the country's liquidity and avoid defaults, stating that "Pakistan faces slow growth, declining reserves, increasing fiscal deficit".

10. Effective debt workout mechanisms do not exist: Six years into the global financial crisis, there is still no standing and effective mechanism that could tackle unsustainable debt before crises come to a head. Unless new global initiatives bear fruit, muddling through remains the default approach. It might get even worse: HIPC – the semi-structured debt relief initiative for the heavily indebted poor countries – is coming to an end and will not be followed up. And the current non-system of voluntary restructurings by coalitions of willing creditors is under massive attack by court rulings that favour vulture funds litigation and open the doors to free-rider behaviour.

All of these debt vulnerabilities are due to two simple facts. Since the crisis began:

- Debt has not been cancelled or paid off, it has simply been shifted from one balance sheet to another, and primarily from the private purse to public or government coffers.
- The opportunity to use the financial crisis for fundamental reforms in national and international debt management and debt crisis prevention and resolution has largely been wasted.

Recommendations

The striking governance gaps are, in essence, all known to decision-makers. Six years into the crisis, Eurodad is calling on governments and international institutions to take the necessary steps to deal comprehensively with the debt crisis:

- **Resolve ongoing debt crises and reduce legacy debt:** Introduce an orderly insolvency regime for states. As stated in Eurodad's debt workout principles (Eurodad, 2009, "A fair and transparent debt workout procedure: 10 core civil society principles"), a new debt resolution mechanism for sovereign debtors must be independent from creditors; be transparent in decision-making; and take the developmental needs of indebted states and the human rights of their citizens into account when decisions are made.
- **Prevent future crises caused by unsustainable and illegitimate debt:** Agree on a comprehensive and binding set of responsible financing standards and ensure compliance of all creditors and debtors, private and public. The Eurodad Responsible Finance Charter (Eurodad, 2011, Responsible Finance Charter; http://eurodad.org/uploadedfiles/whats_new/reports/charter_final_23-11.pdf) can provide valuable guidance and inspiration for decision-makers in this process. ❐

The full text of the Eurodad report, "The new debt vulnerabilities: 10 reasons why the debt crisis is not over", is available on the Eurodad website www.eurodad.org. The November 2013 report was written by Bodo Ellmers and Diana Hulova.