

THIRD WORLD *Economics*

TRENDS & ANALYSIS

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Experts warn of threats to food and housing rights

In separate reports to the United Nations Human Rights Council, two independent UN rights experts have highlighted specific threats to realization of the right to food and the right to adequate housing.

According to the UN Special Rapporteur on the right to food, women continue to face widespread discrimination that is hindering their right to food. Meanwhile the Special Rapporteur on adequate housing has drawn attention to the plight of millions living under insecure tenure arrangements which leave them vulnerable to forced eviction or displacement.

- Rights expert highlights threats to women's right to food – *p2*
- Housing rights expert warns of global tenure insecurity crisis – *p4*

Also in this issue:

South experts discuss WTO Doha Round and Bali Ministerial *p7* *Central bank autonomy a dangerous mirage* *p13*

Contents

CURRENT REPORTS

- 2 Rights expert highlights threats to women's right to food
- 4 Housing rights expert warns of global tenure insecurity crisis
- 7 South experts discuss WTO Doha Round and Bali Ministerial
- 10 Need to accelerate work on all fronts, urges Lamy
- 11 "Information-sharing" meetings on agri proposal till early March at WTO
- 13 The world's worst judicial system
- 13 Central bank autonomy a dangerous mirage

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Rights expert highlights threats to women's right to food

Women suffer various forms of discrimination which in turn adversely affect their right to food, says a UN human rights expert.

by Kanaga Raja

GENEVA: While women's rights, including the right to food, are protected through a range of human rights instruments, "discrimination against women remains pervasive in all spheres of life", according to the United Nations Special Rapporteur on the right to food.

In his report (A/HRC/22/50) to the 22nd session of the UN Human Rights Council, which will take place on 25 February-22 March, Special Rapporteur Olivier De Schutter said that discrimination against women may result from laws that are themselves discriminatory. More often however, he added, the discrimination women face is the result of social norms or customs, linked to certain stereotypes about gender roles.

Such discrimination includes unequal access to productive resources such as land and to economic opportunities such as decent wage employment; unequal bargaining position within the household; gendered division of labour within households, which results both in time poverty for women and in lower levels of education; and women's marginalization from decision-making spheres at all levels.

"Only by addressing these different levels, including by challenging the existing distribution of family responsibilities between women and men, shall the root causes of discrimination women face be effectively addressed," he stressed.

The Special Rapporteur cited several human rights instruments that protect women's rights.

For example, the International Covenant on Economic, Social and Cultural Rights provides for the right to an adequate standard of living, including the right to food, to be guaranteed without discrimination (Article 2, paragraph 1).

A non-discrimination requirement is also imposed under the International Covenant on Civil and Political Rights, both in the enjoyment of the rights listed in the Covenant (Art. 2, para. 1) and in other spheres of life (Art. 26).

The International Convention on the

Elimination of All Forms of Discrimination against Women guarantees equality of treatment between women and men in a range of areas; it has a specific provision on women in rural areas, guaranteeing the rights of women to equal treatment, in particular, in land and agrarian reform as well as in land resettlement schemes (Art. 14). The Convention also guarantees adequate nutrition for women during pregnancy and lactation (Art. 12).

The Convention on the Rights of the Child, which sets out rights that should be guaranteed without discrimination (Art. 2, para. 1), also refers to the duty of states to protect the right to health of the child, inter alia, by the promotion of breastfeeding [Art. 24, para. 2(e)].

"Despite these requirements, discrimination against women remains pervasive in all spheres of life," De Schutter underlined.

The report says that the various forms of discrimination are interrelated. Disempowerment of women results in women facing discrimination as economic agents. This in turn means women are less economically independent, are exposed to violence and have a weaker bargaining position within the household and the community.

As a result, they continue to assume a highly unequal share of tasks and family responsibilities within the household – taking care of the children and the elderly or the sick, fetching wood and water, buying and preparing the food.

Women work more hours than men, although much of the work they perform remains informal, essentially performed within the family and unremunerated, and thus is neither valued nor even recognized. This leads to lower levels of education for women, and in an inability to seek better employment opportunities outside the home.

These various forms of discrimination against women and girls are human rights violations that states have a duty to combat, De Schutter said, adding that they affect directly the right to food of

women and girls.

"Improving the education of women and, thus, their economic opportunities, not only can make a substantial contribution to a country's economic growth, it is also the single most important determinant of food insecurity."

According to the report, a cross-country study of developing countries covering the period 1970-95 found that 43% of the reduction of hunger was attributable to the progress of women's education, almost as much as increased food availability (26%) and improvements to the health environment (19%) during that period combined. An additional 12% of the reduction of hunger was attributable to increased life expectancy of women, so that in total 55% of the gains against hunger during those 25 years is owed to an improvement of women's situation within societies.

"Discrimination against women as food producers is not only a violation of their rights, it also has society-wide consequences, because of the considerable productivity losses entailed."

Evidence suggests that countries where women lack land ownership rights or access to credit have on average 60% and 85% more malnourished children respectively. One study in Burkina Faso found productivity on female-managed plots in Burkina Faso to be 30% lower than on male-managed plots within the same household because labour and fertilizer were more intensively applied on men's plots. Yet, the literature also shows that with equal access to inputs, yields for men and women are very similar.

In 2010, the UN Food and Agriculture Organization (FAO) concluded that "if women had the same access to productive resources as men, they could increase yields on their farms by 20-30 percent. This could raise total agricultural output in developing countries by 2.5-4 percent, which could in turn reduce the number of hungry people in the world by 12-17 percent".

Plight of women workers

De Schutter explained that access to food can be secured: (i) by obtaining incomes from employment or self-employment; (ii) by social transfers; or (iii) by own production, for individuals who have access to land and other productive inputs.

Highlighting the plight of women as

waged agricultural workers, the rights expert noted that women farmworkers, who represent 20-30% of the approximately 450 million people employed worldwide as waged agricultural workers (the proportion is higher, at around 40%, in Latin America and the Caribbean), face specific difficulties.

Women are disproportionately represented in the "periphery" part of the workforce that coexists with the "core" segment of permanently employed farmworkers. This "periphery" segment of the workforce is made up of unskilled workers, often without a formal contract of employment, and their work is often seasonal or temporary (or classified as such even when it is in fact continuous).

The main reason why women are disproportionately represented in this segment is because they have fewer alternative options and are thus 'easier' to exploit, says the report.

"A number of the issues that in practice are of particular concern to women could be addressed in principle through effective policies and laws, and collective bargaining. These include equality of opportunity policies, equal pay for work of equal value, maternity leave and benefits, child care issues, reproductive health services."

However, De Schutter said, apart from the general problems related to unionization on farms, male-dominated unions do not always pay sufficient attention to issues that matter especially to women.

The report notes that women's access to employment in the industry or the services sectors of the economy requires improved access to education for girls, and infrastructural and services investments that relieve women from part of the burden of the household chores that women shoulder disproportionately.

"Improving access to education for girls requires that the incentives structures for families be changed, and that social and cultural norms that lead parents to interrupt the schooling of girls earlier than that of boys be challenged."

Many poor households are unable to send girls to school because of the costs, both direct and indirect (school fees or other costs related to attending school, such as uniforms and books), of doing so; because of opportunity costs (girls who go to school are not available to work within the household); because of the commute involved, when the fam-

ily lives at a far distance from the nearest school, and associated security concerns.

The report finds that various programmes have proven to be effective in removing some of these obstacles.

Bangladesh, for example, launched the Female Secondary School Assistance Project (FSSAP) in 1993; 10 years later, as it entered its second phase, the project covered one-quarter of rural Bangladesh and now benefits almost one million girls across the country in more than 6,000 schools. FSSAP provides a stipend to girls who agree to delay marriage until they complete secondary education, for a total cost to the programme of about \$121 per year per person; and it has improved sanitation facilities in schools.

Social protection

The report underlines that the right to social security, as guaranteed under the International Covenant on Economic, Social and Cultural Rights, includes access to health care; benefits and services to persons without work-related income due to sickness, disability, maternity, employment injury, unemployment, old age or death of a family member, including contributory or non-contributory pensions for all older persons; family and child support sufficient to cover food, clothing, housing, water and sanitation; survivor and orphan benefits.

The Special Rapporteur said that in many cases, the specific situation of women is not considered in the design and implementation of programmes.

Highlighting the issue of women's access to social protection, De Schutter said that most social transfer programmes are in the form of cash transfer programmes which can be conditional or unconditional. However, partly because of concerns with the fiscal sustainability of unconditional cash transfer programmes, and partly in order to encourage poor families to invest more in their children and thus reduce the inter-generational transmission of poverty, conditional cash transfers (CCTs) have been expanding in recent years.

Noting that CCT benefits are usually given to women, as the "caregivers" of households – in Brazil, 94% of the recipients of the Bolsa Familia transfers are women – De Schutter, however, said that too little attention has been paid to the gender impacts of CCTs when such

programmes are put in place.

He also cited public works programmes that are designed to provide employment to families who have no other source of income; remuneration is usually in the form of cash (cash-for-work) or food (food-for-work), or a combination of both.

Many public works schemes set aside a quota for women. For example, India's Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), introduced in 2005 and which benefited 52.5 million households in 2009-10, provides for one-third of the employment to be allocated to women. The Rural Maintenance Programme in Bangladesh goes even further; it is an all-women programme, successfully employing over 50,000 rural women to maintain 60,000 miles of earthen roads.

While access to employment in such programmes can favour the empowerment of women, paying greater attention to the gender impacts could significantly increase their benefits to women, De Schutter stressed.

Challenges facing women producers

"Concerns have been expressed about the impact that the feminization of agriculture may have on local food security, given the obstacles women face which negatively affect their productivity. Indeed, women often have little legal protection or rights to property ownership, and they face cultural and social norms that hinder their ability to improve productivity," said De Schutter.

On how these challenges can be met, the Special Rapporteur said that in the longer term, improving education for women and expanding opportunities for them in off-farm employment are key. But for the large number of women who depend on agriculture, including, increasingly, urban and peri-urban agriculture, it is equally important – and urgent – to improve women's opportunities to thrive as producers.

"Gender-sensitive agricultural policies are required, consistent with guideline 8.6 of the Right to Food Guidelines concerning women's full and equal participation in the economy and the right of women to inherit and possess land and other property, and access to productive resources, including credit, land, water and appropriate technologies."

Access to land is key in this regard,

where "women face multiple forms of discrimination in accessing land". Women also face discrimination in accessing extension services. The third area is finance, where "microcredit schemes often target rural women specifically, who, even more than men, face obstacles in accessing credit."

"A human rights-based strategy to address gender discrimination against women includes four complementary requirements. It must relieve women of the burdens of household chores; it must be empowering and challenge the existing division of roles; it must systematically aim at taking into account gender in existing food security strategies; and,

as regards governance, it must be part of a multi-sectoral and multi-year effort, including independent monitoring of progress towards certain targets," said De Schutter.

States' obligation to remove all discriminatory provisions in the law, and to combat discrimination that has its source in social and cultural norms, is an immediate obligation that must be complied with without delay. This should be combined with the use of temporary special measures to accelerate the achievement of gender equality, and with effective remedies for women who are victims of discrimination, he added. (SUNS7524) □

Housing rights expert warns of global tenure insecurity crisis

The threat of eviction or displacement facing millions around the world is undermining the right to adequate housing, according to a UN rights monitor who advocates grounding security of tenure in a human rights framework rather than a narrow property rights regime.

by Kanaga Raja

GENEVA: "We are in the grip of a global tenure insecurity crisis," the United Nations Special Rapporteur on adequate housing Raquel Rolnik warned in her report to the 22nd session of the UN Human Rights Council.

In her report (A/HRC/22/46), the rights expert said: "Access to secure housing and land is a prerequisite for human dignity and an adequate standard of living, yet many millions of people live under the daily threat of eviction, or in an ambiguous situation where their tenure status can be challenged by authorities or private actors at any time."

Elaborating on the concept of security of tenure as a component of the right to adequate housing, the Special Rapporteur said: "The backdrop is one of a global tenure insecurity crisis, manifesting itself in many forms and contexts – forced evictions, displacement resulting from development, natural disasters and conflicts and land grabbing – and evident in the millions of urban dwellers living under insecure tenure arrangements."

Rolnik cited the Centre on Housing Rights and Evictions as estimating that between 1998 and 2008, forced evictions affected over 18 million people. The ad-

verse impacts of forced eviction are massive, increasing poverty and destroying communities, leaving millions in extremely vulnerable situations, she added.

Many others are displaced due to development projects. According to one estimate, in the 2000s, such development projects affected 15 million people annually. Preparations for mega-events are further sources of insecurity and forced evictions.

Conflicts and natural disasters, including those exacerbated by climate change, also trigger displacement and can undermine security of tenure. Over 26 million people were internally displaced at the end of 2011 due to armed conflicts, violence or human rights violations, while nearly 15 million were displaced due to natural hazards.

According to the report, the political economy of land deeply influences processes of development, urbanization and housing. Land speculation, as well as large-scale acquisition of land in rural areas – often non-transparent and managed poorly – undermine tenure rights and local livelihoods.

Coupled with drought and other climate-related changes, such activities are

major drivers of migration to cities, where adequate land and housing is often not available to newcomers, especially the poor.

"As a result, people settle in housing and settlements with insecure tenure arrangements. Unplanned and exclusionary urbanization has obvious impacts on tenure security."

Tenure insecurity is a global phenomenon, the Special Rapporteur said, noting however that "assessing the nature and scale of the problem is fraught with difficulties of definition as well as measurement, and precise data is not available."

Self-made and unplanned settlements, with precarious housing conditions, epitomize tenure insecurity in a very visible form. In many cities they now represent the largest single channel of land and housing supply for the majority of the population.

One UN-Habitat (UN Settlements Programme) study estimated that 924 million people were living in slums in 2001; an estimate for 2010 placed the number at about 828 million. However, by 2010, tenure security was not taken into account in the UN-Habitat measurements of slums, hence the latter figure offers only a very small insight into the current extent of tenure insecurity in urban areas.

Similarly, the revised indicator for the Millennium Development Goal target of improving the lives of 100 million slum dwellers does not include security of tenure. While this particular target was reached, the question remains as to whether this result reflects the real situation of slums and informal settlements worldwide, said Rolnik.

"Developing effective ways to measure tenure (in)security is an urgent imperative, including for the Millennium Development Goals and the United Nations development agenda beyond 2015," she stressed.

She explained that insecure tenure arguably annuls all other aspects of adequate housing – what is the point of having a well-insulated, affordable, culturally appropriate home, to cite only some aspects of adequate housing, if one is under daily threat of eviction?

At the same time, any housing initiative, whether in the context of urban renewal, land management or development-related projects, or in dealing with reconstruction needs after conflicts or

disasters, will inevitably have tenure security implications.

Conversely, when access to secure housing or land is provided, the potential for social and economic progress is immense – a fact recognized globally.

Key component

According to the Special Rapporteur, security of tenure is recognized as a key component of the right to adequate housing under international human rights law. In its general comment No. 4 (1991) on the right to adequate housing, the UN Committee on Economic, Social and Cultural Rights identified "legal security of tenure" as one of seven elements of the right to adequate housing [paragraph 8 (a)].

The Committee stressed that "notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups".

The obligation to confer legal tenure security is due to everyone, irrespective of the type of tenure held. The Committee on Economic, Social and Cultural Rights notes that states should take immediate measures aimed at conferring security of tenure. This language, on its face, articulates an immediate obligation to ensure a minimum degree of tenure security to all (to prevent forced evictions).

States are also called upon to confer security of tenure to all those who lack it. This seems to imply that one focus of state action should be on the most disadvantaged and insecure. An examination of the authoritative guidance of UN mechanisms confirms that states must secure tenure particularly for the most disadvantaged and marginalized, such as low-income groups, informal settlers and minorities.

According to the report, national and regional case law offers similar guidance. For instance, the Supreme Court of India has called upon the state to provide some security of tenure to marginalized groups, such as pavement dwellers, and the South African Consti-

tutional Court and the European Court of Human Rights have addressed security of tenure and protection against eviction for the urban poor and inhabitants of informal settlements.

"There is no doubt that forced eviction constitutes a gross violation of a wide range of internationally recognized human rights. Providing protection against such practices is thus a core function of security of tenure," Rolnik said.

She said that her analysis demonstrates that a number of issues require further clarification under international human rights law. Treaty bodies, starting with the Committee on Economic, Social and Cultural Rights, have a particularly important role to play in efforts to provide more precise and comprehensive guidance with respect to security of tenure. National courts, aided by the use of strategic litigation, could provide another avenue to clarify aspects of security of tenure beyond preventing or seeking redress for forced evictions.

"At a more fundamental level, the above issues may require a paradigm shift away from correlating security of tenure with a property rights regime and towards the grounding of security of tenure solidly in the human rights framework. Related to this is the need to protect the right to adequate housing when it comes into conflict with the right to property."

While the full elaboration of the scope of "security of tenure" as recognized in the framework of international human rights law presents a range of challenges that have yet to be adequately met, the Special Rapporteur nonetheless underscored that security of tenure should be understood as encompassing, at a minimum: (a) legal protection from forced eviction, harassment or other threats; (b) recognition – legally, by authorities, but also by private actors – of the right to live in a secure place in peace and dignity; this recognition includes receiving support from authorities and equal access to and availability of all public services; (c) justiciability – in other words, security of tenure must be enforceable; to make this criterion truly effective may require the provision of legal aid to facilitate access to effective remedies; and (d) any other aspect required as a step towards the enjoyment of other components of the right to adequate housing, on an equal basis with others.

Planning policies

In addition to gaps in existing human rights guidance, the rights expert noted a number of challenges at the operational and policy level in a number of sectors bearing upon the security of tenure, namely, land governance, land management and administration, the role of public land, and urban planning (policies, laws and regulations).

She said that planning rules that often disregard cultural specificities and are based solely on the housing products offered to the upper classes or dominant groups, coupled with rigid and costly regulatory frameworks for how land and housing should be developed, often fail to meet the needs of the poor or of marginalized groups, putting formalization out of their reach and rendering them or their homes de facto illegal.

"Non-compliance with planning laws thus becomes a common justification for the evictions of long-established communities, often minorities or informal settlers. This has been the case in Israel, whereby non-issuance of construction permits often leads to irregular construction and, in some cases, to eviction and demolition orders to the detriment of minorities."

The Special Rapporteur however drew attention to what she said are some innovative planning regulations that exist to secure tenure for the most marginalized.

A significant example is the Brazilian "Special Zones of Social Interest" (ZEIS). ZEIS is a planning instrument, based on the constitutional recognition of the social function of property, regulating the use and occupation, for social housing purposes, of public or private properties. It is used to recognize existing informal settlements as well as to define unoccupied areas of the city as areas for social housing.

Regulations on "inclusionary zoning", which provide that any new city development must include "mixed types of housing", including a minimum percentage for social housing, are another positive example. Several cities in Canada and the United States have adopted such measures, while they are also envisaged in planning legislations in Colombia, France and the United Kingdom.

(continued on page 16)

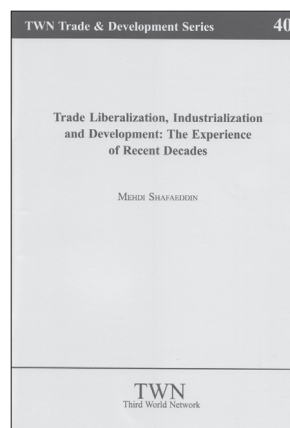
Trade Liberalization, Industrialization and Development: The Experience of Recent Decades

By Mehdi Shafaeddin

In this paper, the author analyzes the experience of countries in trade liberalization in the light of the debate between neoliberals and neo-developmentalists. The latter regard selective and gradual trade liberalization as necessary at a certain level of development and industrialization. The former group advocates universal, across-the-board and rapid liberalization by developing countries, irrespective of the level of development and industrialization of the country concerned.

The historical evidence from the early industrialization period, the author finds, does not support the claims of the advocates of universal and across-the-board free trade. More recent experience from the last quarter-century also bears this out, with developing countries which had undertaken full-blown trade liberalization facing de-industrialization or becoming locked in low-value-added manufacturing based on natural resources and assembly operations.

The paper also specifically compares the recent performance of China and Mexico, two economies which share similarities but which have followed different approaches to trade liberalization and industrialization. Mexico has been following policies recommended by the neoliberals, while the Chinese government has pursued an experimental and developmentalist approach, implementing policies for building the capabilities of domestic firms while also gradually liberalizing international trade. Their contrasting experiences, it is argued, point to developing countries' need for a dynamic and flexible trade policy that not only eschews premature liberalization but also operates in tandem with a development-oriented industrial policy.



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South experts discuss WTO Doha Round and Bali Ministerial

Trade diplomats and experts assessed the outlook for the WTO's Doha Round talks from a developmental standpoint during a recent conference on developing countries and multilateral negotiations.

by Kinda Mohamadieh

GENEVA: The fate of the WTO Doha Round and the agenda of the WTO's forthcoming Ministerial Conference in Bali were discussed during a conference organized by the South Centre from 31 January to 1 February in Geneva.

The South Centre conference on "The South in the global economic crisis and reviewing multilateral negotiations" convened a panel session on 1 February entitled "WTO and the multilateral trading system: The fate of Doha, the agenda of the Bali ministerial and beyond".

Speakers in the session included Rubens Ricupero, a member of the South Centre Board; Ambassador Srinivasan Narayanan, former Indian Ambassador to the WTO; Ambassador Faizel Ismail, permanent representative of South Africa to the WTO; and Lucas Saronga, acting permanent representative of Tanzania to the WTO. The session was moderated by Martin Khor, Executive Director of the South Centre.

Balancing the trade system

Khor began the session by stressing the need to make the existing global trading system "more fair and more effective". He noted that developing countries are trying to reform the existing rules, while developed countries have been making excessive demands on developing countries in the Doha Round despite its being supposed to be a "development round", and are also preparing to propose new rules that would make the system more imbalanced.

Ricupero, who is also a former Secretary-General of the United Nations Conference on Trade and Development (UNCTAD), reminded the conference that each time trade negotiations "hit the rock", a flurry of books and essays emerge with anguished calls for initiatives to save the world's trading system. These calls are usually supported by deliberate recipes imagining the future of the world trading system.

He noted a repetition of such a trend today, similar to that during the 1990s

when the Uruguay Round was increasingly seen as a hopeless proposition. It is surprising how similar the books and ideas that were advanced in that period are to those of the present day, he added.

Ricupero underscored the need to assess the propositions put forward around the future of the world trading system based on two criteria: (1) the macroeconomics of the proposals put forward, and (2) the accuracy of the narrative in terms of diagnosing and explaining the stalemate in the trade negotiations.

He stressed that the reactivation of the Doha Round should consider the macroeconomic framework defining the trade negotiations. He highlighted the role of countries with a trade surplus in providing the necessary increase in world demand, which could allow international trade to pick up.

Ricupero highlighted the fact that Germany's current account surplus stands at three times that of Japan and twice that of China. He added that most developing countries have larger deficits and smaller surpluses compared to the pre-crisis period. He expressed amazement at the lack of calls upon Germany to do its part in contributing to world demand, particularly because most developing countries have fulfilled their duties by increasing their imports of goods and services.

Ricupero said that free trade is not a benefit per se, but should be an active instrument in promoting development. According to him, trade negotiations should be exclusively judged based on the extent to which they contribute to development prospects in developing countries.

He added that the development dimension was the basic argument used to sell the Doha Round back in 2001. Currently, the reasons behind the deadlock in the negotiations stem from the decision of advanced economies to retract on their promises given when the Round was launched in Doha in 2001. They are also aggressively pushing to extract ad-

ditional concessions from other WTO members, irrespective of the negative impacts on development prospects, he said further.

Ricupero stressed that if the promises made in Doha are not followed up, then "we need to be worried about the current state of trade negotiations".

Doha assurances

Ambassador Narayanan of India commenced his presentation by reminding the conference that developing countries were initially skeptical about starting a new round of negotiations in the Doha Ministerial Conference back in 2001.

He explained that seven major assurances were given and built into the Doha Ministerial Declaration based on which developing countries, including India, joined the consensus for a new Round.

Narayanan said that the assurances given to developing countries included: (1) that the needs and interests of the developing countries will be placed at the heart of the Doha work programme (paragraph 2 of the Doha Ministerial Declaration); (2) that negotiations on all outstanding "implementation issues" would be an integral part of the Doha work programme (paragraph 12 of the Doha Ministerial Declaration); (3) that a clear mandate for the implementation of Article 20 of the Agreement on Agriculture for further liberalization of trade in agriculture will be developed; (4) that the "less than full reciprocity" principle will be incorporated in negotiations around non-agricultural market access (NAMA); (5) that the liberalization of trade in services will be pursued according to Article XIX of the General Agreement on Trade in Services (GATS), upholding respect for the level of development of individual members and flexibility for developing countries; (6) that a commitment to the objective of duty-free quota-free (DFQF) market access for least developed countries (LDCs) will be upheld; and (7) that a decision on commencement of negotiations on the "Singapore issues" (i.e., investment, competition, government procurement and trade facilitation) will be postponed.

Of the seven assurances, only the assurance about the Singapore issues, apart from trade facilitation, was fulfilled, along with partial fulfilment of DFQF for LDCs, said Narayanan.

Writings and analysis have proliferated during the last two years discussing the reasons for the impasse in the Doha Round negotiations. Narayanan noted that the reasons behind the impasse include the impacts of the global economic crisis, and the slowdown of developed economies associated with high rates of unemployment, limiting their ability to offer concessions.

He also indicated the unreasonable demands made on the so-called "emerging countries" like China, India and Brazil to make concessions mainly for the benefit of developed countries.

He added that unlike during the Uruguay Round, developing countries have increasingly garnered awareness of the implications resulting from accepting binding commitments. Developing-country coalitions like the G33, NAMA-11, small and vulnerable economies (SVEs), LDCs, etc. have helped in collectively resisting the unreasonable demands, he said.

Moreover, they realized that it is better to ensure that the commitments they undertake are ones that could be implemented. Like-minded developing countries have recognized the added value of unity behind their demands, Narayanan said further.

He added that in counter-argument, developed countries claim that the stalemate was due to a lack of offers on the negotiating table. As part of their narrative, developed countries note that the world has changed and the mandate needs to be "rebalanced". They claim that "emerging countries" have benefited from the liberalization undertaken by developed countries since 1948 and should pay back.

Narayanan highlighted that, contrary to the claims that "emerging economies" are achieving convergence with the developed countries of the OECD in terms of economic achievement, World Bank figures (2012) show that the gap between "emerging economies" and the OECD countries persists in terms of per capita GDP. While average per capita GDP of OECD countries was \$41,225 in 2011, it was \$12,594 in Brazil, \$8,070 in South Africa, \$5,445 in China, \$9,977 in Malaysia and \$1,489 in India. Moreover, "emerging economies" are home to large numbers of the poor of the world living below \$1.25 per day, he said further.

As regards the outcome of the upcoming Bali Ministerial Conference of the WTO, Narayanan stressed that the credibility of the global trading system necessitates a balanced outcome at Bali

that is in the interest of developing countries.

He underlined that the Bali Ministerial should not become "the farewell ministerial for the Doha mandate". He added that the "Doha Round must be completed with the development mandate intact and on the basis of the single undertaking".

He noted that the developed countries are strongly pursuing the initiative on trade facilitation as an "early harvest" while marginalizing the rest of the Doha mandate. A trade facilitation agreement would be binding on even small and vulnerable economies and LDCs. In the present form, he said, the trade facilitation rules are basically an import facilitation agreement.

Narayanan explained that an early harvest is only a sub-clause of paragraph 47 of the Doha Ministerial Declaration. The main point of that paragraph is that all negotiations should be carried out on the basis of a single undertaking. He added that a consensus decision on an early harvest should not upset the overall single-undertaking nature of the negotiations.

He called upon developing countries to resist attempts and proposals aimed at changing the basic structure and modality of decision-making in the WTO.

He further stressed that the outcome from the Bali Ministerial should necessarily include the core LDC issues, including DFQF and cotton, as well as the G33 proposal on food security.

Adding that agriculture has been the most important sector in the current round from developing countries' perspective, he underlined that "abandoning the agriculture negotiations (built in Article 20 of the Agreement on Agriculture) will upset the rights and obligations arrived at, at the end of the Uruguay Round, to the disadvantage of developing countries".

He also reminded the conference that agriculture had been kept out of the negotiating agenda for 60 years to the benefit of developed economies. He added that the December 2008 draft negotiation texts are the products of seven years of negotiations and should not be jettisoned.

Narayanan called on developing countries to resist the pressures to add new issues like investment, competition and energy security to the negotiating agenda at the cost of the Doha Round.

He added that a plurilateral services agreement applicable only to its mem-

bers would not be WTO-consistent. He explained that Article V of the GATS, dealing with the compatibility of economic integration arrangements outside the WTO, necessitates fulfilling the "substantial sectoral coverage" criterion.

Moreover, adding such an agreement as a WTO plurilateral agreement (i.e., as an Annex IV WTO agreement) has to be approved by WTO members exclusively on a consensus basis (based on Article X.9 of the WTO Agreement), he added.

Narayanan cautioned that powerful WTO members are hoping for divisions among "emerging economies". They try to promote suspicion between "emerging economies" as a strategy to attract them to join the negotiations on a plurilateral agreement. He noted a heavy responsibility on "emerging economies" towards other less-developed countries in order to ensure that the idea of a plurilateral agreement does not succeed.

He concluded by underlining that "the long-term interest of developed countries is in the development of the developing countries".

Major trends

Ambassador Faizel Ismail of South Africa commenced his presentation by calling upon developing countries to prepare for Bali and what lies ahead in the post-Bali period, based on a longer-term approach to the global trading system.

He highlighted three major trends that have emerged during the Doha Round impasse since 2008. First, a large number of commentators and academics declared the Doha Round effectively dead; second, a large number of writers argued that one of the reasons behind the impasse is that "emerging economies" are not offering enough and should be graduated out of the current developing-country status; and third, a new narrative on trade is emerging which revolves around "global value chains" (GVCs) and is linked to promotion of "new pathways" for the WTO.

He explained that the policy prescriptions passed to developing countries within this context focus on reducing barriers to these supply chains, including barriers to movement of goods and services. They include as well an argument in support of the trade facilitation agreement.

He added that the approach to "new pathways" is reflected in attempts to promote changes in the WTO negotiations

away from the principles of single undertaking and consensus-based decisions towards majority voting, issue-by-issue negotiations, request-and-offer approach and plurilateral agreements (i.e., agreements that have a narrower group of signatories than the full WTO membership, and that apply only to those signatory member states).

Ismail critiqued a report entitled "Enabling Trade: Valuing Growth Opportunities" which was released by the World Economic Forum in collaboration with Bain & Company and the World Bank (January 2013). The report claims that "reducing supply chain barriers to trade could increase global GDP up to six times more than removing tariffs". He challenged the statistical background behind this analysis, including how barriers to GVCs are quantified. He also questioned the impacts on growth and welfare of reducing barriers to GVCs.

Ismail argued that such analysis makes simplistic assumptions that imports create exports. This kind of simplicity pushes aside the debate on the need for active policies at national and international levels to address beneficiation, diversification, capacity-building and assisting developing countries to make real gains from trade and to move up the value chain.

He added that the arguments for a self-regulating market remain divorced from concerns around unemployment, inequality and poverty. They do not consider the asymmetries of global power that define the global economy, he said further.

As a strategy towards the Bali Ministerial Conference, developing countries should put LDC issues, including agriculture, as a priority, noted Ismail. He concluded by urging developing countries to "build their own narrative about what they want from the current Doha Round, and how they view the multilateral trading system and the key elements and principles underpinning it".

He added that developing countries have articulated many of these principles, including inclusiveness, participation, special and differential treatment, and equity. Still, there is urgency for developing countries to articulate their vision on how the WTO needs to be reconstituted and redefined, said Ismail.

LDC issues

Lucas Saronga of Tanzania stressed that the Bali Ministerial Conference

"should not be an end of the line but a stepping stone on a longer-term roadmap leading to the conclusion of the Doha Development Round", and that the "Doha development mandate should be respected and not eroded".

He added that the outcomes of the previous WTO Ministerial Conference (which took place in Geneva in 2011) should be respected and should be a basis for the Bali conference, while "full participation of all members, inclusiveness, and transparency should be maintained".

Saronga said that resolution of the LDC issues should be accorded top priority despite the current impasse in the negotiations. He added that "no balance is required for LDCs because of their negligible weight in the world economy".

LDCs had put forward the proposal of DFQF market access for their exports back in the first WTO Ministerial Conference in Singapore in 1996, he said. In the Millennium Declaration (2000), the international community pledged to adopt a policy of DFQF market access. Currently, most developed countries are implementing DFQF schemes while developing countries are increasingly taking steps in this regard. On cotton, WTO members reaffirmed their commitment at the Hong Kong Ministerial Conference (in 2005) to having an explicit decision. These issues have still not been resolved, he added.

On plurilateral agreements, Saronga said that such arrangements would lead developing countries and LDCs to lose their special-and-differential-treatment flexibilities under the WTO.

He added that while LDCs may not be targeted to join such agreements, creating more plurilateral agreements, such as the International Services Agreement, would eventually lead to a club within a club. Such developments, he underlined, would have "systemic implications for the WTO and will erode the multilateral nature of the institution" while undermining the single-undertaking principle.

With regard to the trade facilitation negotiations, Saronga noted that "LDCs do not agree with 'cherry picking' of the agreement in its current form". He stressed that "any outcome on trade facilitation must ensure both internal and external development balance".

As he noted, this would include "acquisition of capacity to implement the trade facilitation rules and obligations, and safeguards such as periodic implementation review mechanism to assess

the extent to which the implementation of the new rules and obligations [is] contributing to the overall sustainable economic development of developing and least-developed countries".

As regards early harvest, Saronga said that "if early harvest takes place, then it should include LDCs' issues that integrate them into the multilateral trading system", including DFQF market access and cotton.

He stressed that implementation and special-and-differential-treatment issues should be resolved as well. He cautioned that most of the 28 special-and-differential-treatment provisions and the monitoring mechanism as currently on the table "have little or no value ... and need to be improved".

Saronga noted the attempts of developed countries to introduce new issues (e.g., investment, competition, energy security, climate change, etc.) as replacement for completing the Doha Round. However, he stressed that 20th-century issues, including implementation, special and differential treatment, as well as the LDC package issues, should be resolved first.

On the LDCs' transition period to implement the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Saronga explained that the extension of the transition period under Article 66.1 of the Agreement ends on 1 July 2013. However, the economic situation of LDCs has not significantly changed in terms of technological base and the overall constraints they face. LDCs are asking for maintaining the flexibilities in accordance with Article 66.1 as long as those constraints remain.

He said that Article 66.1 provides that the Council for TRIPS "shall, upon duly motivated request by a least developed country Member, accord extensions of this period". The LDC group has tabled a draft proposal of a "duly motivated" request to the Council. Accordingly, Saronga underlined, the extension is supposed to be automatic. He recalled that the 2011 Ministerial Conference had invited the TRIPS Council "to give full consideration to a duly motivated request from LDCs". He called for the support of developing countries and other member states when the proposal is discussed in March.

Dangers of GVC agenda

Following the presentations by the panellists, during the question-and-an-

swer session, Yilmaz Akyuz, chief economist of the South Centre, explained that today's global production chains are organized and controlled by multinational companies from the industrial countries. He added that the GVC agenda is focused on pushing free trade but holds much more dangers. The integration in these networks of global production is not governed by a country's development strategy, but rather by the profit strategies of the multinational companies.

Akyuz cautioned that the GVC narrative represents a nexus of trade, investment and services issues. Through this narrative, he noted, developing countries are being presented with a bundle of negotiation agendas including on NAMA, services and the Singapore issues, all in a single package.

Ambassador Marion Williams, permanent representative of Barbados to the WTO, cautioned that the trade facilitation agenda as it stands facilitates imports and not exports. She refuted the assumption that technical assistance on trade facilitation will solve the problems facing developing countries.

Often, she noted, the difficulty arises from the impact of trade facilitation measures on the economies of net-importing developing countries. The proposed trade facilitation text does not deal with how to stimulate their exports or how to address the resulting increase in their imports.

The trade facilitation agenda as it stands will benefit net exporters. Net importers, on the other hand, could face the risk of dispute settlement challenges if they fail to implement the many trade facilitation measures that they would have to agree to as part of the agreement. Many developing countries have not implemented any yet.

Williams stressed that special and differential treatment under the trade facilitation agenda should not be limited to longer implementation periods. She called for a different approach to trade facilitation negotiations, one which includes safeguards for developing countries, especially net importers, as well as impact assessments, especially for LDCs and small and vulnerable economies.

Chakravarthi Raghavan, Editor Emeritus of the *South-North Development Monitor* (SUNS) bulletin, said if there is an attempt to incorporate a plurilateral services agreement in the WTO, it would be a fraud on the Marrakesh Treaty and international public law, and developing countries should continue to say no. Developing countries should refuse to ac-

cept it, he said.

He also said that the "black box" in the global value chain (the nexus of trade, investment and services issues) to which Akyuz alluded contained within it another black box, namely, the ability of the multinational companies involved in the global chains to allocate their incomes and profits to jurisdictions

like the Cayman Islands where there is no taxation, so that they avoid taxes in the countries which actually incur expenditures on infrastructure and where production and sale take place. (SUNS7522) □

Kinda Mohamadih is a senior researcher associated with the Arab NGO Network for Development.

Need to accelerate work on all fronts, urges Lamy

Noting that "time is not on our side", the WTO head has called for a redoubling of negotiating efforts among member states in order to achieve concrete outcomes at the trade body's yearending Bali Ministerial Conference.

by Kanaga Raja

GENEVA: The Director-General of the World Trade Organization (WTO) has urged members to "accelerate work on all fronts, shift to a higher gear and work with greater determination" if they want to arrive at the ninth WTO Ministerial Conference (MC9) in Bali this December with a relevant package of deliverables.

In his statement at an informal meeting of the WTO's Trade Negotiations Committee (TNC) on 22 February, Pascal Lamy, in his capacity as Chair of the TNC, noted that there were only about 20 working weeks till the summer recess (in August).

He said: "My sense of the state-of-play, at this stage, is that there is some acceleration but it is still too slow to be comfortable. And time is not on our side."

The informal TNC meeting took place just before the WTO General Council held its meeting on 25 February.

Citing some meetings he had participated in since members last met in December 2012, Lamy said that during all these meetings the message he heard was that "the Bali Ministerial needs to deliver concrete outcomes. That a mere house-keeping Ministerial will not be in line with the need to strengthen the multilateral trading system."

Assessment

The TNC Chair went on to give his assessment of where the process stands on three areas which he said are now clearly emerging as deliverables for MC9: trade facilitation, agriculture and development/LDC (least developed country) issues.

On trade facilitation, Lamy said that the negotiating group is continuing to make progress on several complementary tracks.

These negotiations, he said, have three objectives: to expedite the movement, release and clearance of goods, including goods in transit, by clarifying and improving GATT (General Agreement on Tariffs and Trade) rules and disciplines; to enhance technical assistance and support for capacity building in this area; and to provide for effective customs cooperation.

To achieve those objectives and to set up the successful implementation of a new Trade Facilitation Agreement in the WTO, Lamy said "we all need to mobilize in our capitals the resources and support from Ministries of Trade and Commerce, from customs administrations and from other border agencies, who are the direct responsibility of other ministries, such as finance, industry, agriculture, transportation and so on, as well as from Development Ministries."

"This points to the great importance of political work in capitals now, to ensure that all the relevant ministries are aware of what we are doing, that they are cooperating to secure the success of the negotiations for the Bali Ministerial, and that they are fully aware of what they will have to do to implement the new Agreement. This political work cannot be left until the last minute," he stressed.

As to how he sees where things stand, Lamy said that on Section I, which is essentially about building commitments, the onus is on proponents to expedite consensus-building around issues

such as advanced ruling, fees and charges, expedited shipments, pre-shipment inspections, to name a few.

"What we need is proponents to accelerate the work which is ongoing to close gaps," he added.

Lamy said that his sense was that "you should avoid getting lost in the detail of customs procedures and regulations. In negotiating the provisions of the new Agreement, it would be important to stick to achieving the general and shared objective of facilitating trade."

He added: "The negotiation is not about full harmonization of customs procedures, but about a major step forward towards enhancing existing GATT disciplines."

On Section II, which is essentially about flexibilities linking to scheduling commitments, the TNC Chair underlined that the main question is to find a "modus operandi" for Category C, i.e., the link between the implementation of commitments and the provision of capacity-building.

According to the TNC Chair, the key here is to find a formula that will provide a credible level of assurances for all.

"And this is important because this agreement represents a new approach to building effective S&D [special and differential treatment] provisions into the WTO. It is more about progressive convergence than about exclusions or exceptions; and its value will extend well beyond the trade facilitation negotiations."

Lamy noted that needs assessments, and matching up individual needs with donor support from national development agencies as well as multilateral and regional agencies, will be essential in this respect.

"In a nutshell, progress, but we need [to] see the trade facilitation negotiations switch to a higher gear," said Lamy.

On agriculture, the TNC Chair said that discussions have so far focused on two substantive proposals – one on TRQ (tariff rate quota) administration, and one focused around public stockholding for food security purposes.

On the TRQ administration proposal, and subject to various sensitivities that will need to be addressed at the right moment, members have continued to indicate a willingness to achieve a deliverable for Bali in this area.

On the proposal on public stockholding for food security purposes, Lamy said that there is a two-stage process underway: first, a technical phase

"Information-sharing" meetings on agri proposal till early March at WTO

In light of a proposed early agreement in the Doha Round on food security issues, a series of meetings will be convened at the WTO to raise member states' understanding of already existing food security schemes.

by Kanaga Raja

GENEVA: A series of "information-sharing" meetings at the technical level concerning a G33 proposal on public stockholding for food security are to take place from the week of 18 February through to early March, an informal meeting of the Special Session of the WTO Agriculture Committee has heard.

According to trade officials, the Chair of the Special Session, Ambassador John Adank of New Zealand, said that the purpose of the meetings (the actual dates of which are yet to be announced) will not be to negotiate at this stage, but to improve members' understanding of practices and policies currently in place.

This series of meetings will be purely to share information, without affecting members' negotiating positions or their rights and obligations in the WTO, the Chair added.

Way forward

In his opening statement at the informal meeting on 15 February, the Chair said that the meeting was an organizational one to discuss the way forward with the "information-deepening exercise" on the G33 proposal on some elements of the December 2008 draft agriculture modalities text for early agreement to address food security issues (see box next page for details of the G33 proposal).

He added that following the introduction of this proposal last November, there had been various informal discussions amongst members which highlighted that, given some of the complexities of the subject matter involved in the proposal and to understand its implications, more factual information was required on the relevant programmes and policies in place amongst members.

The Chair said that on that basis, in order to facilitate a more substantive discussion, he had sent out a questionnaire last December asking members implementing the programmes of public stockholding for food security purposes and domestic food aid to provide background information. He noted that as of now, there are around 22 responses to the questionnaire.

"... I think we are therefore now in a position to deepen this work at a technical level," Ambassador Adank said.

He added that the way he sees the work forward here is that "we need to initiate a process of technical discussions beginning next week and these technical discussions will consist of a series of meetings that will allow members that have provided background information on their public stockholding and food aid programmes to present any additional information that they may want to by way of background to their submissions, or provide additional comments, should they wish to do so."

He stressed that this is meant very much "to be a technical process, not a political process, whose aim is to enhance common understanding of the information provided and of the context for the G33 proposal."

The Chair further said that all of the discussions will be without prejudice to members' negotiating positions in the Doha Round or to their rights and obligations under the WTO.

He underlined that what he would very much like to see is for this information-exchange and question-and-answer process to be concluded by the beginning of March, "so that we can then engage in a more substantive discussion of how members view this proposal and assess its implications and their reactions to it", taking into account all the information that has been provided by members since the proposal was first introduced last year through the questionnaire and the subsequent discussion.

"So, the real goal of this process is, I think, to improve our understanding of the existing domestic programmes that members have in this area addressed by the proposal," he said. This is very much an "information-sharing exercise so that we understand these programmes", he added.

He reiterated the sense of urgency that everyone feels about this process – about the need to get a process underway at the technical level which will allow for all the information that will enable a substantive discussion to be transacted and digested amongst the technical-level experts that make up the Agri-

(continued on page 14)

The G33 proposal

The G33 proposal of last November is on some elements of the draft agriculture modalities text of December 2008 for early agreement to address food security issues.

The proposal, whose text is drawn from Annex B of the draft modalities, notes that at the eighth WTO Ministerial Conference (held in Geneva in December 2011), ministers expressed their readiness "to advance negotiations, where progress can be achieved, including focusing on the elements of the Doha Declaration that allow Members to reach provisional or definitive agreements based on consensus earlier than the full conclusion of the single undertaking".

The G33 said that with a view to advancing negotiations so as to achieve at least some outcomes in agriculture, which lies at the heart of the Doha Development Agenda, it is proposed to focus on one of the elements of the Doha Ministerial Declaration (DMD) which is of importance to developing countries, viz., food security.

The proposal noted that significant progress has already been achieved in the Doha Round negotiations which recognize the serious concerns of food security in developing countries.

"This has assumed the character of a global concern in the past few years with a need for urgent action. Accordingly, it is proposed that some of the elements in the Revised Draft Modalities for Agriculture Text (TN/AG/W/4/Rev.4) relating to food security are taken up for a decision in accordance with paragraph 47 of the DMD."

Accordingly, without prejudice to the overall conclusion of the Doha Round negotiations based on the single

undertaking and noting that there are other elements in the Revised Draft Modalities for Agriculture Text which can also partially address food security, the G33 said it has proposed that a decision be taken to include the following elements of TN/AG/W/4/Rev.4 as part of the Ministerial Declaration at the Bali Ministerial Conference.

Proposed amendments

It has proposed amending Annex 2 of the WTO Agreement on Agriculture (which deals with domestic support and exemption from reduction commitments).

Firstly, the G33 has proposed adding a new sub-paragraph (h) to the existing paragraph 2 of Annex 2 (on general services under government service programmes):

"(h) policies and services related to farmer settlement, land reform programmes, rural development and rural livelihood security in developing country Members, such as provision of infrastructural services, land rehabilitation, soil conservation and resource management, drought management and flood control, rural employment programmes, nutritional food security, issuance of property titles and settlement programmes, to promote rural development and poverty alleviation."

Secondly, the G33 has proposed modifying the existing footnote 5 of Annex 2 as follows:

"For the purposes of paragraph 3 of this Annex [on public stockholding for food security purposes], governmental stockholding programmes for food security purposes in developing countries whose operation is transparent and con-

ducted in accordance with officially published objective criteria or guidelines shall be considered to be in conformity with the provisions of this paragraph, including programmes under which stocks of foodstuffs for food security purposes are acquired and released at administered prices, provided that the difference between the acquisition price and the external reference price is accounted for in the AMS [Aggregate Measurement of Support]. However, acquisition of stocks of foodstuffs by developing country Members with the objective of supporting low-income or resource-poor producers shall not be required to be accounted for in the AMS."

Thirdly, the G33 has proposed modifying the existing footnote 5&6 of Annex 2 as follows:

"For the purposes of paragraphs 3 and 4 of this Annex [paragraph 4 is on domestic food aid], the acquisition of foodstuffs at subsidized prices when procured generally from low-income or resource-poor producers in developing countries with the objective of fighting hunger and rural poverty, as well as the provision of foodstuffs at subsidized prices with the objective of meeting food requirements of urban and rural poor in developing countries on a regular basis at reasonable prices shall be considered to be in conformity with the provisions of this paragraph. This is understood to mean, inter alia, that where such programmes referred to in this footnote and paragraph 4 above, including those in relation to lowering prices to more reasonable levels, involve also the arrangements referred to in footnote 5 to paragraph 3, there is no requirement for the difference between the acquisition price and the external reference price to be accounted for in the AMS." (SUNS7525) □

culture Committee.

According to trade officials, Ambassador Adank urged members to move swiftly and avoid procedural "wrangling", because time is running short for deciding on this and other issues that could be earmarked for agreement at the WTO's ninth Ministerial Conference (which will be held in Bali on 3-6 December). "I think everyone recognizes that we're in an extremely time-bound process of preparations for the Bali Ministerial Conference..."

According to trade officials, members that spoke supported the process and recognized that time was running short.

Some members were of the view that the issue needs to be considered with real-life information about how countries implement stockholding for food security, what the constraints are, and what their intentions are.

According to trade officials, some said that members should avoid abstract discussions about wording, while some others said that countries with questions should submit them in advance so that officials in capitals can prepare answers.

Several members called for a clearer timetable of meetings and topics to be discussed over the coming months so that delegates based in Geneva and in

the capitals can prepare better and decide when to travel.

According to trade officials, the Chair responded that a clearer picture of what will be needed will emerge once the technical meetings start.

Some members said that they would like to know by the summer break (August and early September) all the proposals that will be on the table for the Bali conference.

On the concerns expressed by some over the agriculture negotiating sessions clashing with meetings on other subjects, Ambassador Adank said he is aware of the concerns and will try to avoid clashes. (SUNS7528) □

The world's worst judicial system

More countries are realizing how they are at the losing end of a biased arbitration system that is loaded against them in investment cases that can cost them billions of dollars.

by Martin Khor

It must be the world's most problematic and outrageous judicial system. Its decisions can cost a country billions of dollars. It is riddled with conflicts of interest involving the judges, the lawyers and the proponents of the case. Yet its hearings and decisions are shrouded in secrecy and even the very existence of the cases is often not public information.

This is the arbitration system at the heart of international investment agreements.

Many countries are signatories to these agreements. There are around 3,000 bilateral investment treaties (BITs) signed by pairs of governments. And there are also bilateral free trade agreements (FTAs) which have an investment chapter that is similar in content to the BITs.

Under these treaties, foreign companies can sue governments if the latter introduce policies that these companies deem affect their future incomes. The treaties define "expropriation" to include depriving investors of future profits due to new regulations.

Thus, a tobacco firm has sued Australia and Uruguay for requiring cigarette boxes to have plain packaging. When Ecuador cancelled a contract with an American oil company for violating the terms of the contract, the company brought a case and was awarded \$2.4 billion.

Another company sued Germany for two recent policies requiring tighter regulations on coal-fired power plants to reduce carbon emissions and phasing out nuclear power following the Fukushima nuclear disaster. Indonesia is being sued for \$2 billion by a British mining company after the government revoked a licence that it found was faulty.

Public interest groups have criticized BITs for preventing or discouraging governments from introducing health, environmental and pro-development policies.

A small group of lawyers, working either for investors or as arbitrators, and who are based in Europe and North America, have been benefitting from the boom in litigation linked to investment

agreements, and they also encourage big companies to sue governments, according to a recent report by two European groups, Transnational Institute and Corporate Europe Observatory.

In disputes relating to most BITs and FTAs, the arbitration is conducted by the International Centre for Settlement of Investment Disputes (ICSID) at the World Bank in Washington.

Lopsided system

The report, "Profiting from Injustice", revealed that:

- Only 15 arbitrators, nearly all from Europe, the US or Canada, have decided 55% of all known investment-treaty disputes. This small group sit on the same panels, act as both arbitrators and counsels, and call on each other as witnesses.

- Many arbitrators show a clear bias towards investors. Several prominent arbitrators have been members of the board of major multinational companies, including those who filed cases against developing countries.

- A few law firms have been encouraging investors to sue governments, as a weapon to weaken or prevent laws on public health or the environment. These investment lawyers are the new "ambulance chasers" and have fuelled an increase in cases from 38 in 1996 to

450 known cases in 2011.

- Countries have to pay exorbitant legal and arbitration costs averaging over \$8 million per dispute and exceeding \$30 million in some cases. The Philippines spent \$58 million defending two cases against a German firm.

- Lobbying by arbitration law firms and arbitrators succeeded in stopping reform of investment agreements in the EU and US in the last four years.

- Fairness and independence of investment arbitration is an illusion.

Frustrated with the BITs and its arbitration, a growing number of governments have retreated from the system.

Recently, India started a review of its existing BITs and suspended all BIT negotiations to protect itself from frivolous litigation. In 2011, Australia announced it would not include investor-state disputes in its future trade agreements.

In South Africa, the Cabinet decided to stop negotiating new BITs and to renegotiate existing ones. Bolivia, Ecuador and Venezuela terminated several treaties and have withdrawn from ICSID.

Officials of many developing countries admit that they signed the BITs without realizing the full implications. One problem is a "survival clause" in many BITs: even if a country withdraws or if a treaty expires, the provisions will remain in force for 10 or 15 years.

In any case, awareness of the problems in the agreements and the unfairness of their arbitration system is growing, and calls for reform are being made by more countries. □

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.

Central bank autonomy a dangerous mirage

The concept of central banks' independence belies their subordination to the dictates of financial capital, writes Alejandro Nadal.

The global financial crisis is breathing and evolving. In Europe it is treated as a sovereign debt crisis. But given the fact that the crisis exploded in the midst of the private financial sector, how did we get here?

Four decades ago, more precisely on 3 January 1973, a new law on central banking was approved in France. The new statute for the Banque de France

contained critical provisions for the independence of the monetary institute. Article 25 turns out to be particularly relevant for today's debate on Europe's crisis. It stated that the Treasury would not be able to resort to the Banque de France to borrow money.

This represented a historic transformation in public finance and left the state at the mercy of the private commercial

banking system. Instead of using the money emission capacity of the central bank, the French government had now embarked on a new course, one that turned out to be a milestone in financial liberalization. Many other countries followed this example. Incidentally, when the law was passed Georges Pompidou was the President of France. He had been director of the Banque Rothschild between 1956-62, a fact that generated suspicion as to the motivations of the Loi 73-7 of 1973.

The international environment that surrounded this event was marked by the decision of then US President Nixon in 1971 to suspend all sales and purchases of gold. The days of dollar-gold convertibility were over. Soon after this, Treasury Secretary John Connally shocked European leaders worried about the export of American inflation with his famous quip, "It's our currency but it's your problem." That of course did little to allay the fears of Europe's financiers.

The collapse of the Bretton Woods system had critical implications for the financial sector. As it created new risks for investors who now had to meet the challenge of flexible exchange rates, it also opened new opportunities for speculation in the foreign exchange markets. Financial liberalization was needed for the arbitrating operations that capital required to take advantage of the opportunities flexible exchange rates offered. And while this was being considered and promoted on all fronts, the idea of central bank independence came to life.

In thrall to private finance

In theory this move would separate monetary policy from the vagaries of political winds that could take an economy down the easy road of temporary economic growth at the risk of generating long-term inflationary pressures. This would also prevent monetization of the debt arising from irresponsible fiscal deficits and, at the same time, condemned monetary policy to a passive stance. Not only was monetary policy shielded from democratic processes, but it also became subordinated to the dictates of financial capital.

The French law for the central bank has since ceased to exist. It was substituted by Article 104 of the Treaty of Maastricht and later by Article 123 of the

Treaty of Lisbon that prohibit overdraft facilities or any type of credit facility in favour of central governments and regional or local public authorities. In summary, central banks are forbidden to openly finance government operations. Thus, in addition to the scandalous regime of private monetary creation by private banks (who create money out of thin air, lend it and charge interest), we also ended up with a situation in which the state's finances depend entirely on the commercial banking system.

This situation is not limited to European countries. An International Monetary Fund (IMF) study reveals that from a sample of 152 countries, about two-thirds either prohibit central banking lending to the government or restrict it to short-term loans (mostly to smooth out fluctuations in tax revenues). In the case of developed countries, as well as in countries with flexible exchange rate regimes, the restrictions on government financing are rather strong. Finally, when short-term loans are allowed, market interest rates are charged.

The main policy objective of central bank independence is price stability. This is not the same as macroeconomic stability, as we know. But it is the only rationale for the so-called independence of

central banks. The result has been the colossal expansion of interest payments from governments to the private banks. Using Eurostat numbers, Simon Thorpe found interest payments for 2011 in the European Union amounted to 370.8 billion euros (11% more than in 2010). That's a whopping 2.9% of the EU's GDP.

As the recession hit Europe, tax revenues dropped and expenditures increased (as more unemployed people needed public support). Because of the prohibition to borrow interest-free from the central bank, governments had to go to the financial markets. Here they met with higher interest rates, as well as demands for changes in macroeconomic policies that led to increased austerity and a deeper recession. If governments could refinance their debt through their central banks they would instead save colossal amounts of money. Under present rules this is not possible. Central banks' independence is a mirage covering their subordination to the world's private banking system. □

Alejandro Nadal is a professor at the Centre for Economic Studies of El Colegio de Mexico. This article is reproduced from the Triple Crisis blog (triplecrisis.com/central-bank-autonomy-a-dangerous-mirage/, 19 February 2013).

(continued from page 11)

which will take place over the next two weeks to enhance understanding of existing domestic programmes in the area of public stockholding and domestic food aid (see following article). This is being done on the basis of the information provided by members so far on a questionnaire which the chair of the agriculture negotiations sent out at the end of last year.

Once this exercise is completed by early March, "it could pave the way for more informed and therefore more efficient discussions around the proposal on the table. The key is to ensure all relevant information is on the table and engage into substantive discussions to better understand the issues at stake."

Lamy further noted that the secretariat is now also preparing a compilation of information on export competition and export restrictions pursuant to a proposal tabled by the G20 last year.

On development and LDC issues, Lamy said that work in the Special Session of the WTO Committee on Trade

and Development (CTD SS) has progressed steadily in accordance with an agreed schedule of fortnightly meetings taking place in an open-ended format.

Discussions have focused on three clusters of issues: the 28 Cancun proposals, the Monitoring Mechanism and the six agreement-specific proposals (relating to the Agreements on Sanitary and Phytosanitary (SPS) Measures and Import Licensing Procedures). There have also been additional bilateral, plurilateral and small-group meetings.

"Some progress has been made in all three clusters," said Lamy.

On the 28 Cancun proposals, Lamy said that members have initially focused on six proposals which were identified as ones affected by developments since their adoption "in principle". This will be followed by a consideration of the remaining 22 proposals.

Members have also continued their discussions on the elements of a Monitoring Mechanism on S&D.

Lamy said that negotiations are progressing well although "some sticky issues remain, especially the varying in-

terpretations that members have on the mandate."

Lamy further said that the CTD SS has also been actively considering six agreement-specific proposals relating to the SPS Agreement and the Agreement on Import Licensing Procedures. "Some progress has been made on this work and I very much hope that the remaining divergences can be addressed quickly."

With regard to Category II proposals that were referred to other WTO bodies, Lamy said that the chair has held consultations with the secretariats of the concerned bodies and will soon be circulating a report based on his assessment of the state of play on these proposals.

The key here, he stressed, is to redouble efforts in consultation as well as flexibility from all sides.

On the LDC-specific issues (preferential treatment to services of LDCs, duty-free quota-free market access, cotton), "we are awaiting the proposals from the LDC group, so that work can commence on them."

Lamy also said that on the extension of the transition period for LDCs to implement the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), "the key is to give due consideration to the proposal on the table rapidly, given that the July deadline on this matter is fast approaching."

Of course, he said, focus on these areas does not mean that work in the other negotiating bodies will be put on hold until the end of MC9.

"As you yourselves have often repeated, Bali is not the end of the line," Lamy told the membership, adding that discussions need to continue on all fronts and that he will continue to meet regularly with all the negotiating group chairs to explore how members ensure that each area optimizes its role for MC9 and beyond.

The TNC Chair also reported that he has started a first round of consultations on the post-Bali scenario under two assumptions: one, that Bali delivers; and two, that these consultations do not detract from the main goal of delivering in Bali.

"I will continue with these consultations over the coming weeks and will report to the membership at a later stage," Lamy said.

A number of delegations spoke following the TNC Chair's statement. (SUNS7532) ☐

Implementation-Related Issues in the WTO: A Possible Way Forward

The set of multilateral agreements under the jurisdiction of the World Trade Organization (WTO) governs the conduct of international trade. Implementation of the commitments imposed by these agreements has, however, given rise to a host of problems for the WTO's developing-country members, ranging from non-realization of anticipated benefits to imbalances in the rules.

These implementation-related issues have been on the WTO agenda for over a decade, yet meaningful resolution is still proving elusive. This paper documents the progress – or, more appropriately, lack thereof – in the treatment of the implementation issues over the years. It looks at the various decisions adopted, to little effect thus far, by the WTO in this area, including the 2001 Doha Declaration which incorporates the implementation issues into the remit of the ongoing Doha round trade talks.

The paper exhorts the developing countries to draw upon the Doha mandate to bring the implementation issues back to the centrestage of negotiations. As a practical measure given the resource constraints developing-country negotiators face in the WTO, it is proposed that the implementation issues be taken up according to a suggested order of priority. Prioritization notwithstanding, the paper stresses that developing countries have every right to seek solutions to each of these longstanding, long-neglected issues.

Implementation-Related Issues in the WTO

A Possible Way Forward

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(continued from page 6)

Recognizing tenure rights

The Special Rapporteur noted that development actors and governments are increasingly moving towards more flexible and expansive ways of recording and recognizing tenure forms and tenure rights. Tools and approaches are being developed and implemented to that end. They often build upon existing practices or rights, and involve communities (such as participatory mapping).

There are also legal instruments to recognize or regularize tenure rights, such as "adverse possession" in common law systems or the similar concept of "*usucapiao*" in Brazil.

Rolnik however said that questions remain as to the minimum conditions that these approaches should fulfil to ensure security of tenure, what type of institutional arrangements are required for implementation, and whether such approaches can be replicated in diverse contexts and at scale. This is particularly

relevant to those forms of tenure that have received less attention and support in research, policy and practice, such as community land trusts, collective tenure models and cooperative ownership.

She summarized that while human rights mechanisms and courts at national, regional and international levels have primarily focused on forced evictions, policies and practices pertaining to land tenure have taken a fully different approach, with an emphasis at the start on securing tenure through land titling programmes, based on the granting of property rights. The past decade has seen some developments towards more flexible and encompassing approaches to recognize and protect various forms of tenure.

"This evolution, from a narrow focus on property rights towards a more expansive recognition of diverse forms of tenure and rights – while still uneven and incomplete – is significant. There is a risk in relying on property rights as the means by which to best secure tenure. Rather, security of tenure should be

clearly articulated and grounded in the international human rights framework and expressed in a variety of tenure forms."

An obvious need, confirmed by consultations with a wide range of stakeholders, is for more specific and comprehensive human rights guidance on security of tenure. Existing legal and policy guidance is incomplete and sparse. Many questions remain as to the precise state obligations with respect to conferring legal security of tenure, and the scope and content of security of tenure under international human rights law.

"Much work remains to be done to harmonize law with practice – both fields have much to learn from each other. The ultimate objective is to ensure that legislation and a wide range of practices and policies are available and effective to recognize, record and protect all forms of tenure that are legitimate under international human rights law, on par with one another, and protect holders of those tenure rights equally," Rolnik concluded. (SUNS7526) □

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