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WTO deadlock persists

No progress has been made in the WTO in breaking the impasse over the issues of trade facilitation and public food stocks, while negotiations in other areas have advanced little either. Member states were presented with this assessment of the state of play at the WTO's Trade Negotiations Committee on 16 October, as concerns arose that the standoff may prompt recourse to talks outside the multilateral framework.

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TFA/food security still at impasse, no progress in other areas

The deadlock in the WTO over trade facilitation and public food stocks remains unresolved, amid a lack of headway in other negotiating areas and concerns that some member states may now seek a non-multilateral approach to talks.

by Kanaga Raja

GENEVA: A solution for the current impasse over the issue of public stockholding for food security purposes in developing countries and adoption of the Protocol of Amendment on the Trade Facilitation Agreement (TFA) had not been found, WTO Director-General Roberto Azevedo reported to a formal meeting of the Trade Negotiations Committee (TNC) on 16 October.

Also reporting at the meeting were the chairs of the various Doha Round negotiating bodies, including on agriculture, non-agricultural market access (NAMA) and services, who essentially indicated that there had been no forward movement either on work in these other areas of the Doha agenda.

Appraising members on the current situation following a period of intense consultations since mid-September, the Director-General (DG), in his capacity as Chair of the TNC, said "we have not found a solution for the impasse."

Azevedo also said that in the eight weeks that members had until the December meeting of the WTO General Council, "it seems very unlikely" that a detailed, precise, modalities-like post-Bali work programme was possible.

He also maintained that members had been talking about the other, non-multilateral options that were open to them. "We may see these Members disengaging. We may see that these Members pursue other avenues. We may see that these Members explore other tracks – inside the WTO or outside."

Following the reports by the TNC Chair and the other negotiating group chairs, the US, speaking on the issue of trade facilitation, said that "on today's facts we must confront the reality that a fully multilateral agreement may not be possible..."

The US said that it "has been considering how best we might keep such an effort inside the WTO. All of us have experience in negotiating outside the WTO, but this is a moment in which the preferred options, at least from a US perspective, would involve keeping trade facilitation inside this organization and not being forced into a position considering an agreement outside of it."

According to one participant at the TNC meeting, developing countries voiced opposition to engaging in plurilaterals, and stressed instead on the principles of transparency and inclusiveness.

India told the meeting it believed that "one should abjure the temptation of seeking alternative approaches without assessing carefully the systemic implications of rearranging our founding value system."

India also expressed disappointment with the position of some members that no engagement was possible on the development of a post-Bali work programme till "we address the issue of trade facilitation implementation", adding that it saw the work programme as being on a separate track.

The African Group of countries highlighted a new narrative emerging that seemed to be pointing towards plurilateralization of the subsequent WTO agreements. It recalled the declarations of various African ministerial conferences which patently took a stand against plurilateral approaches to negotiations. "This remains valid today," it said.

The group of least developed countries (LDCs) were of the view that plurilaterals "are isolationist in nature and they undermine multilateralism."

No solution

In his statement at the TNC meeting, Azevedo provided his assessment of the situation following a period of intense and comprehensive consultations after an informal meeting of heads of delegation on 15 September.

The DG said "we have not found a solution for the impasse" and that as he feared, "this situation has had a major impact on several areas of our negotiations". It appeared to him that "there is now a growing distrust which is having a paralyzing effect on our work across the board."

He described the issues at stake as falling into four "concentric circles", the first covering trade facilitation and public stockholding, where he said that progress on the TFA was stalled as members waited for progress on the adoption of the Protocol of Amendment. And public stockholding was stalled too, as the conversations had ground to a halt. "So, how should we respond? Do we simply put these two Bali decisions on the shelf? Is there a way to move them forward?"

On public stockholding, his sense was that there was a widespread positive disposition to negotiate an outcome or a "permanent solution", but there also seemed to be an overarching reluctance to put other issues on hold while that "permanent solution" was sought.

Was there any way for members to move forward on these two issues in the context of the current paralysis and distrust they were now seeing, he asked.

According to the DG, in the second circle were the other eight Bali decisions, including on agriculture, the monitoring mechanism and the package of measures for LDCs. He said that members must consider what was going to happen with these issues.

On the post-Bali work programme, which has a mandated deadline of 31 December 2014, he noted that members had until the December meeting of the General Council, giving them eight weeks. On his aim for a very detailed and specific work programme that comes very close to setting out modalities, he said that in his view, "such a detailed and precise modalities-like work programme is now very unlikely to be ready by the end of the year."

The issue in the fourth and final circle, which encompassed all of the others, was what this meant for the organization itself, said Azevedo.

Once again the negotiating track was stuck, he said, adding that the lack of ability to find full convergence quickly leads to deadlock and deadlock leads to paralysis. "We have seen this situation too many times. So we can't continue in such an inefficient and ineffective way that is so prone to paralysis."

"Frankly, we know that Members have been talking about the other, non-multilateral options that are open to them. We may see these Members disengaging. We may see that these Members pursue other avenues. We may see that these Members explore other tracks – inside the WTO or outside," said the DG.

This could be the most serious situation that this organization had ever faced, he said. "I am not warning you today about a potentially dangerous situation – I am saying that we are in it right now."

Calling on members to think about "our next steps", the DG posed several questions: "What should we do with the decisions on trade facilitation and public stockholding? What should we do with the other Bali decisions, including the LDC package? How should we respond to the Ministerial mandate to develop a work programme on the post-Bali agenda? And how do we see the future of the negotiating pillar of the WTO?"

In his statement, the Chair of the General Council, Ambassador Jonathan Fried of Canada, said that the impasse had already had a "freezing" effect on the Bali implementation work in a number of bodies – and its impact may well further deepen and affect other areas of work.

Chairs' reports

The chairs of the various negotiating bodies also presented their reports.

The Chair of the Special Session of the Agriculture Committee (CoA SS), Ambassador John Adank of New Zealand, said that the meeting of the Special Session on 23 September confirmed what he had already heard in his consultations. It was evident from the various views expressed that the unresolved situation regarding the implementation of the trade facilitation protocol was clearly of significant concern to members, he said. He had heard a range of different perspectives or takes on what this meant for the work of the Special Session.

According to the Chair, a number of members underlined that unless the trade facilitation protocol could be adopted and opened for signature, it would not be possible to advance further work in the CoA SS or in any other committee mandated to pursue follow-up negotiations to Bali. These delegations pointed to the fact that Bali was a carefully negotiated package and that in order for work to be advanced across the board, it had to be advanced as a whole as envisaged in the Bali decisions in accordance with the sequential milestones outlined there.

In contrast, the Chair said, some other members suggested that, notwithstanding the current situation affecting implementation of Bali decisions, work should continue within the CoA SS as envisaged prior to the summer break. These members suggested that all issues in Bali decisions should be the subject of independent follow-up without linkages between issues.

Another set of members highlighted more generally the importance they placed on work within the CoA SS, given the importance of agricultural reform more broadly and the unique role that the WTO had to play in this regard. While these members underlined that they wanted to see progress, they also acknowledged that this would be extremely difficult in the current context, given that advancing issues required willingness for genuine engagement among members on the range of substantive issues that will necessarily feature in any post-Bali work programme. It was very evident to them that this kind of engagement was doubtful in the event that the impasse in respect of Bali implementation was not resolved, said Ambassador Adank.

In terms of more specific issues, in that meeting, the G33 country grouping clarified that it would see the Special Session of the Agriculture Committee, rather than the regular Committee, as the place for taking forward negotiations regarding the public stockholding issue.

At the same time, it was also clear that the willingness of many members to move this work forward was dependent on progress made on adoption and opening for signature of the trade facilitation protocol. A number of members also noted the importance of finding ways to address issues of concern to LDCs.

Against this background, the Chair said that his general conclusion from the last informal CoA SS meeting on 23 September unfortunately still held: in the absence of a solution to the current impasse in respect of trade facilitation and broader Bali implementation, there was no consensus on how work could be taken forward in the CoA SS.

In his report, the Chair of the Negotiating Group on Market Access

(NAMA), Ambassador Remigi Winzap of Switzerland, said that in the two earlier open-ended meetings of the negotiating group which had taken place on 31 March and 9 July, he had been able to report on fruitful exchanges with members in the preceding weeks and on a good engagement of the membership.

Unfortunately, he was not in a position to do the same at the meeting of 22 September, because he did not sense a comparable level of interest to engage in NAMA lately. He understood this to be a consequence of the deadlocked situation in the WTO since early July, and in particular after the deadline of 31 July passed without a General Council decision on the adoption of a trade facilitation protocol.

According to the Chair, the views expressed by members in the 22 September meeting may broadly be divided into three groups. For some, work on NAMA should continue. For others, business-as-usual was not possible because trust had been undermined as a result of the non-adoption of the trade facilitation protocol. Having said that, these members also said that they would be ready to move forward on NAMA once the current impasse was resolved. The view of the third group was that members should remain positive and wait for eventual results of ongoing consultations.

Ambassador Winzap said that although some members in the 22 September meeting had expressed support for further work on NAMA, his assessment, based also on bilateral contacts over the last few weeks, was that there was no appetite – and therefore also no consensus – in the membership at large to work on NAMA and to engage on this aspect of the work programme at this moment in time.

The Chair of the Council for Trade in Services in Special Session, Ambassador Gabriel Duque of Colombia, reported that his consultations showed that members acknowledged the existence of an impasse in the Doha Round, and that this was having a serious effect on the services component of the negotiations.

Reactions varied however as to the effect of this crisis, he said. Some members were committed nonetheless to continuing work in services, on the basis of previous milestones in the negotiations. Some added that the operationalization of the LDC services waiver should not be jeopardized by the overall impasse in the Doha Round negotiations.

However, a significant number of other members took the view that the services negotiations could not progress without full implementation of the Bali package, including the TFA. In their view, further negotiations were presently impossible, due to a climate of distrust arising from failure to agree on the TFA protocol.

Several members argued that in any case there could be no progress for now in services without any advances in the agriculture component of the Doha Round.

The Chair reported that at present there was no consensus within the body to move forward with the services negotiations within its mandate.

No consensus

The Chair of the Committee on Trade and Development (CTD) in Special Session, Ambassador Harald Neple of Norway, said that an informal open-ended meeting of the Special Session of the CTD was held on 19 September to ascertain members' views on the way forward given the impasse.

At that meeting, some members strongly regretted the non-implementation of the Bali package, in particular of the TFA-related deadlines, and said that had undermined the prospect of any productive engagement in the Special Session in the present circumstances. These members felt that without the full and faithful implementation of the Bali package, any attempts to stimulate work in the Special Session of the CTD at this stage would be unrealistic.

According to the Chair, other members, however, expressed the hope that the DG-led consultative process would lead to a resolution to the current conundrum. They also felt that given the centrality of development issues, the work programme on special and differential treatment should continue, in spite of the current stalemate. They hoped that this would have a positive trickle-down effect in other areas.

There was, therefore, no consensus amongst members on how to proceed with the work in the Special Session of the CTD given the impasse. There appeared to be somewhat greater convergence, but still no consensus, on the possibility of carrying on the work on LDC-specific issues, the Chair concluded.

In his report, the Chair of the TRIPS Council in Special Session, Ambassador Dacio Castillo of Honduras, said that he had held informal consultations with the most active members on 2 October to see whether there had been any new thinking on how to advance the work of the TRIPS Special Session, and on how to reflect it in a post-Bali work programme. It was his sense from these consultations that the situation in the TRIPS Special Session had not improved since his last report to the TNC in June.

The substantive positions of members had not changed and the appetite of delegations to engage in constructive work on the negotiations on a geographical indications register remained limited within the current overall negotiation framework, although several highlighted the continuing importance of this issue for them substantively.

Indeed, said the Chair, the majority of delegations in his consultations emphasized that they saw no possibility of engaging in work on any aspect of the post-Bali work programme as long as the implementation of the Bali decisions remained stalled. Those few delegations that did signal readiness to continue working on the post-Bali agenda offered no novel ideas on how to advance the process or the substance of the TRIPS Special Session negotiations.

In light of this, it seemed clear that any resumption of substantive work in this negotiating group remained dependent on resolving concerns of members that lay squarely outside the mandate of the TRIPS Special Session, the Chair said.

The Chair of the Committee on Trade and Environment in Special Session, Ambassador Wiboonlasana Ruamraksa of Thailand, said that the attention of delegations was now focused on obtaining greater clarity on the overall Bali implementation.

The Chair of the Negotiating Group on Rules, Ambassador Wayne McCook of Jamaica, said that in his consultations last spring the prevailing view was that the general approach and level of ambition on the so-called "core" issues of agriculture, NAMA and services needed to be defined before a serious discussion on the role of rules could be engaged. To date, he saw no indication that this had changed, nor had any delegation advised him otherwise.

The Chair of the Dispute Settlement Body in Special Session, Ambassador Saborio Soto of Costa Rica, said he intended to consult further with participants as to the next steps towards obtaining elements of a possible outcome on all issues, with the aim that these ele-

ments could be a basis of future work.

Balanced progress

In its statement at the TNC meeting, India (represented by Ambassador Anjali Prasad) said it concurred with statements that the negotiating pillar of the WTO was important and must yield results, but it was equally important to ensure that the results that "we are collectively seeking, respond to the needs and interests of all WTO members, particularly developing country members. It is in this context that Members termed the Doha Round of negotiations as a 'development' Round."

Reiterating its commitment to the implementation of all Bali decisions, India said that it had been emphasizing the need for balanced progress on all Bali outcomes, including the Bali Ministerial Decision on public stockholding for food security – an issue which was of utmost importance to India and several developing-country members.

India noted that whenever the membership had engaged seriously and with commitment, they had been able to quickly resolve the most challenging of issues.

On its part, it had been engaged with members in different formats and remained optimistic that members would be able to show flexibility and understanding on the public stockholding issue. It was also prepared to take a step forward towards an acceptable resolution of the issue which meets the aspirations of the membership.

India expressed disappointment with the position of some members that no engagement was possible on the development of a post-Bali work programme till the issue of trade facilitation implementation was addressed, saying that it saw the work programme as being on a separate track.

It reiterated its belief that the multilateral trading system was in the best interest of developing countries, especially the poorest and most marginalized among them. However, if the system failed to function in a just and fair manner, then the most vulnerable sections of the world's population would be left behind. "It is our collective responsibility to ensure that the multilateral trading system works for all."

In India's view, the Marrakesh Agreement establishing the WTO enshrined cardinal principles delineating the scope and functions of the WTO as well as the decision-making procedures. Members would recall that it was the outcome of extremely careful and prolonged deliberation and captured the values of inclusiveness and transparency with effective decision making.

"My delegation believes that one should abjure the temptation of seeking alternative approaches without assessing carefully the systemic implications of rearranging our founding value system," said Ambassador Prasad.

Concerned

In its statement on behalf of the African Group, Lesotho said that the Group was acutely concerned by the turn of events since July. In the first instance, the political linkages that had been drawn between the current gridlock and other Bali decisions did not enjoy the support of the Group particularly because no element of the Bali outcomes created such a hierarchy or legal linkages regarding the implementation of Bali outcome decisions.

It was therefore paradoxical today that the Bali decisions which will undoubtedly be of benefit to African countries and LDCs were being engaged as a lever to diffuse the gridlock between the trade facilitation agreement and public stockholding decision.

In the second instance, said the African Group, it was regrettable that some members went to the extent of blocking the convening of one committee meeting in outright disregard of the rules of procedure of the concerned committee. This was indeed regrettable because this act set a procedural precedent whereby members can veto the convening of meetings. It hoped that this situation would be rectified.

In the third instance, the African Group had been extremely disappointed and alarmed by "disrespectful comments" used by some members during the very last meeting of the Preparatory Committee on Trade Facilitation. It wished to place on the record that such comments addressed to representatives of states were "highly unacceptable and will not be tolerated."

According to the African Group, there was a new narrative emerging which seemed to be pointing towards plurilateralization of the subsequent WTO agreements. Members may recall declarations of various African ministerial conferences which patently took a stand against plurilateral approaches to negotiations. "This remains valid today."

The African Group said it strongly believed in a strong multilateral trading system – a system that gives a voice to the marginalized members of the global community and a system anchored on the principle of multilateral consensus in reaching agreement on negotiated outcomes.

Devoid of this, the alternatives were well known to members. Going back to the pre-Uruguay Round negotiating environment or, as it were, the GATT days would be unacceptable to the African Group.

According to the African Group, at this critical juncture, "we must be careful to ensure that we do not set ourselves up into being locked in procedural discussion on how the organization working methods should be changed," saying that the substantive areas of interest to African countries remained unaddressed.

The African Group recalled that the issue of new approaches to negotiations predated the current gridlock. Today Members retained full options at their disposal to have exclusive arrangements as foreseen in the WTO Agreement. That is, whether through plurilateral agreements, regional trade agreements or mechanisms such as the preferential trade arrangements, these exclusive arrangements were available. These arrangements continued to be on an upward trend.

It was therefore unthinkable that with these legal options available, the organization should be reeling itself towards procedural agenda-setting discussions. On the contrary, every effort must be invested in ensuring full participation of developing countries and ensuring that negotiated outcomes were carried out in a transparent fashion and with the buy-in of all members.

For the African Group, it would seem premature for members to turn away negotiations from the substantive elements of the Doha Development Agenda to a new agenda in the form of a procedural question as to whether a consensus-based approach to negotiating outcomes was still relevant.

"We must therefore not allow the system that has been carefully constructed with safeguards that ensure full participation of weak members to collapse under our watch."

Uganda, on behalf of the LDCs, said that the LDC Group was committed to the implementation of all Bali outcome decisions including but not limited to the TFA. Of specific importance to its members were the LDC-specific issues such

as the LDC services waiver, duty-free quota-free market access, rules of origin and cotton.

According to the LDC Group, Bali had many decisions, and therefore, disagreement on one should not stop movement on other issues especially the work programme. The Group did not understand why, for instance, members should create linkages to LDC-specific issues. The LDC issues were not the ones causing the current impasse. "Our issues should be separated from the current impasse."

It noted that deadlines had been missed before, including on LDC-specific issues such as cotton, but it had never stopped movement on other areas of work in the WTO. It therefore called for the continuity of work. Members should not use this as yet another opportunity to deny LDCs the right to development.

On the implementation of the TFA, Uganda said it was no secret that the LDCs attached a great deal of importance to the question of assistance and support for capacity building. Did anyone seriously expect the LDCs to undertake the much-needed reforms, despite their paltry share of world trade, without the requisite assistance and support for capacity building, it asked.

It also said that patience and caution ought to be exercised on new approaches. It was not far-fetched to posit that, in fact, the WTO was fashioned in such a way that the interests of developed, developing and least developed countries alike were taken into account. The Marrakesh Agreement was constructed on the premise of accommodation, especially in decision-making.

"This is why many of us, especially the LDCs, despite its many imperfections, still consider it to be a field we can play on. However, some have taken exception and suggested that perhaps the WTO is not the place to negotiate, indeed, they have taken steps in that direction, unaided and uninhibited, in the past, and they continue to do so as well with the various plurilateral arrangements that are taking place. Our view is that plurilaterals are isolationist in nature and they undermine multilateralism."

The LDC Group said it was sad to imagine that hardly two months to the close of the year, "we have not even drafted an identifiable paragraph on the post-Bali work programme," adding that guidance was needed on how members were to take forward this part of the mandate. The LDC issues should not be sacrificed, it said.

Kenya, on behalf of the African, Caribbean and Pacific (ACP) Group of countries, stressed the urgency in preparing the post-Bali work programme to conclude the remaining issues in the Doha Round. It also looked forward to the expeditious resolution of the current impasse on the implementation of two Bali decisions in order to enable all members to reap the benefits of the achievements this year.

The ACP Group recognized that efforts to break the impasse were underway, and as a group, "we do not stand in the way of moving forward on all the decisions as taken at Bali, especially on TF [trade facilitation]. We, as a group, worked very hard to achieve not only the Bali package but also what we have achieved after Bali particularly the TF Trust Fund Facility. The facility will be indispensable for successful implementation of the TF Agreement once the deadlock is resolved."

On the post-Bali work programme, the Group noted that it circulated a document on principles that it had pronounced since the beginning of the year. It said that substantial work must be done by the end of November in order to meet the deadline of 7 December which was consistent with the timeframe agreed by ministers at Bali.

It said it believed in the multilateral trading system and wanted to capitalize on the years of the Doha Round negotiations to ensure inclusiveness, transparency and balance. Paragraph 47 of the Doha Ministerial Declaration must therefore be observed.

Shattered trust

In its statement at the TNC meeting, the US (represented by Ambassador Michael Punke) said that as of today there was no indication that the handful of members blocking implementation of the TFA had altered their position of 31 July in any way.

The US reiterated that, in response to specific concerns it heard from one member, it had made a specific offer of new flexibility to clarify that the duration of the Bali due-restraint mechanism would last until members reached agreement on a permanent solution for food security. "Implicit in this offer is the expectation that the Trade Facilitation Agreement will be implemented in the straightforward manner envisioned by our Ministers at Bali. For the time being, our offer stands as a way out of the current morass, but it has not been accepted," it said.

The US maintained that if there was one sliver of brightness over the past two months, it was the "large number of developing countries" that had moved forward to submit their Category A notifications under the TFA. As of today, 48 developing countries had demonstrated the seriousness with which they took their obligations, "even in the face of uncertainty created by others."

According to the US, trust had been shattered, "and business as usual in such circumstances is impossible. The Bali Package has been significantly undermined, and it is axiomatic that post-Bali work has been impacted. The reports today from the Director General and the chairs make crystal clear that the actions of a few have placed us in a situation of deadlock across a wide range of issues. This was wholly foreseeable."

"As for trade facilitation, on today's facts we must confront the reality that a fully multilateral agreement may not be possible. The immediate question is obvious: Can we salvage something from the work done by so many in this room?"

In considering options for preserving the work, the US said that it "has been considering how best we might keep such an effort inside the WTO. All of us have experience in negotiating outside the WTO, but this is a moment in which the preferred options, at least from a US perspective, would involve keeping trade facilitation inside this organization and not being forced into a position considering an agreement outside of it."

In its statement, the European Union said that the current stalemate would have consequences on the WTO and the multilateral system.

There were a certain number of decisions taken in Bali which required further negotiations, the Doha work programme being the most prominent, it said. In view of the current stalemate, "we do not see the necessary conditions and trust present for WTO Members to engage in the difficult discussions which are needed to prepare the work programme."

"What we need now is to get out of this vicious circle. However, the solution has to be found through upholding the Bali decisions, not undermining them. This is also the only way forward that can allow us to recover the spirit of co-

operation and trust that made Bali possible," said the EU.

The EU further said that it had a long history of consistently supporting the multilateral system, which remained a core element of its trade policy. It had repeatedly expressed its interest and readiness to engage in discussions with a view to advancing and concluding the Doha Round. While it remained fully committed to these objectives, they could only be attained if the commitments made in Bali were adhered to.

The EU had already expressed its readiness to find a compromise regarding trade facilitation and public stockholdings as long as the substance of the Bali decisions did not change. It said that it remained ready to re-confirm the open-ended nature of the peace clause on public stockholdings and "we are ready to engage in further discussions to find a permanent solution. In order to do this, however, we need clarity regarding the willingness of all WTO Members to make good on their commitments. In concrete terms this means that the Trade Facilitation Protocol must be adopted, if the post-Bali process is to be put back on track." *(SUNS7897)* ❐

Save the WTO Secretariat

The dual, conflicting roles of the WTO Director-General as head of the Secretariat and chair of the Trade Negotiations Committee could erode confidence in the impartiality of the Secretariat, writes *Bhagirath Lal Das*.

NEW DELHI: Amidst the currently heated debates in the WTO, we have missed noticing a significant danger.

The Secretariat of the WTO is under a severe crisis of identity and runs the risk of losing its standing as a useful tool for conduct of business in the WTO.

This danger arises out of the conflict in the role of the Director-General (DG) as the head of the Secretariat and as the Chairman of the Trade Negotiations Committee.

The DG, being the head of the Secretariat, is a part of the Secretariat. Article VI of the WTO Agreement lays down: "... [The DG and the staff of the Secretariat] shall refrain from any action which might adversely reflect on their position as international officials."

An important requirement of an international official is that he/she must be, and also must appear to be, totally objective and impartial in respect of the positions and interests of individual members on any issue in the WTO.

Thus, when there are differences of opinion among the members during the negotiations for an agreement, the Secretariat, including the DG, has to keep scrupulously clear of any statement or attitude that may be, or even appear to be, siding with any particular line in the negotiations.

The Secretariat, including the DG, has to engage in assisting the process of negotiations as requested by the members, but the Secretariat, including the DG, has to be strictly and scrupulously objective and impartial in respect of the various positions of the members.

Such objective and impartial conduct should be followed right through the process of the negotiations. After the agreement is finalized, the role of the Secretariat, including that of the DG, is to facilitate implementation of the provisions of the agreement that has emerged and has been brought into operation.

Political role

When the DG is made the chairman of an intergovernmental body in the WTO, for example, the Trade Negotiations Committee (TNC), the role is significantly different.

Whereas the DG as a part of the Secretariat has to be neutral, whether or not the negotiations result in an agreement, the chairman of the intergovernmental body (in this case, the TNC) has to undertake a proactive role in bringing about compromises to arrive at a successful conclusion of the negotiations resulting in a final agreement. This is essentially a political exercise, as explained below.

The chairman of an intergovernmental body has to understand the stands and positions of various countries and assess the possibility of flexibility in this regard. He/she has to gauge the limits to which a government can go. This involves a deep political perception.

Then, the chairman uses various strategies to bring the differing positions nearer to one another. This is again an intensely political exercise.

In this way, the chairman has to operate as an active political entity with the objective of narrowing down the differences. Sometimes, the chairman assesses what the most acceptable position would be in the whole negotiating group and tries to steer the negotiations towards that end. He/she may have to use his/her political skill and weight to soften the positions of the countries/groups that vary widely from this stand.

The DG, while acting as the chairman of an intergovernmental body like the TNC, has to perform such a political role. And that function then detracts from his essentially neutral and technical nature as a part of the Secretariat. There is thus a clear conflict between these two roles.

If the subjects of the negotiations in the intergovernmental body involve widely differing national interests, as they normally do in an important body like the TNC, the conflict is accordingly more pronounced.

This conflict of roles clearly damages the position of the Secretariat (as the DG is a part of it) as a neutral, technical, objective and non-political body. It is likely to erode the confidence of the membership in the Secretariat, which is expected to be totally non-partisan in respect of the conflicting stands and positions of the countries.

The practice of the DG being the chairman of the TNC has continued for some years. It was there during the Uruguay Round too. This conflict has thus continued for a long time. But now the conflict is getting more and more pronounced.

The positions of countries are becoming sharply divided on various issues as the WTO negotiations are impinging on policies of vital economic and political interest to countries. The role of the chairman is thus getting into more and more complexities. Perhaps it may also be embarrassing at times, as the DG has to appear to be non-partisan while the chairman has to be fully involved politically to bring about a compromise.

In this process, the Secretariat is the entity that is most damaged in its reputation as an effective agent to facilitate the operation of the WTO.

In order to retain and protect the effectiveness and usefulness of the Secretariat, it may be wise to delink it completely from the political role. And that can come about only when the DG ceases to be the chairman of an intergovernmental body in the WTO. *(SUNS7897)*❐

Bhagirath Lal Das is a former Ambassador and Permanent Representative of India to the General Agreement on Tariffs and Trade (GATT) forum and GATT Council Chair in 1982. He was subsequently Director of International Trade Programmes at the UN Conference on Trade and Development (UNCTAD).

US announces deal with Brazil to end decade-long cotton dispute

The US and Brazil have agreed to bring to a close a longstanding trade dispute centred on US cotton subsidies.

by Kanaga Raja

GENEVA: The United States announced on 1 October that it had reached an agreement with Brazil that would settle a decade-long dispute at the World Trade Organization (WTO) over subsidies to US cotton farmers.

According to a press release issued by the Office of the US Trade Representative (USTR), under the terms of the deal, in exchange for a one-time final contribution by the US of $300 million to the Brazil Cotton Institute (IBA), Brazil will formally terminate its dispute with the US over this issue at the WTO's Dispute Settlement Body (DSB) within 21 days.

Brazil will also give up its rights to take countermeasures against US trade or take any further proceedings in the dispute, the press release added.

[In December 2009, Brazil had advised the DSB (see below) that on the basis of the arbitrator's awards and complete data, the authorization to retaliate would be for the amount of $829.3 million.]

The USTR press release said that Brazil has also agreed not to bring new WTO actions against US cotton support programmes while the current US Farm Bill is in force or against agricultural export credit guarantees under the GSM-102 programme as long as the programme is operated consistent with the agreed terms.

"I am pleased that the United States and Brazil have found a permanent resolution to the Cotton dispute," said USTR Michael Froman in the press release.

"Today's agreement brings to a close a matter which put hundreds of millions of dollars in US exports at risk. The United States and Brazil look forward to building on this significant progress in our bilateral economic relationship," he added.

"Through this negotiated solution, the United States and Brazil can finally put this dispute behind us," said US Secretary of Agriculture Tom Vilsack.

"Without this agreement, American businesses, including agricultural businesses and producers, could have faced countermeasures in the way of increased tariffs totalling hundreds of millions of dollars every year. This removes that threat and ensures American cotton farmers will have effective risk management tools," he further said.

A Bloomberg news report has quoted the Brazilian Foreign Ministry as saying in an emailed statement to the agency: "The deal would allow better competitiveness for Brazilian products in foreign trade, and the payment of $300 million contributes to mitigate the losses for Brazilian cotton growers."

"The deal is restricted to cotton and allows Brazil to question aspects of US Farm Bill at WTO for other products, if necessary," the Ministry said in its statement.

History of the dispute

Brazil had raised a dispute against the US back in 2002 concerning prohibited and actionable subsidies provided by the US to its upland cotton industry. The dispute ran through the gamut of panel, Appellate Body, compliance panel as well as its appellate proceedings, and finally to arbitration.

In August 2009, the WTO issued two separate reports concerning arbitration proceedings in the dispute.

In the first report, the arbitrator determined that the annual level of appropriate countermeasures in relation to the GSM-102 payments for fiscal year 2006 amounted to $147.4 million.

In the second report, the arbitrator determined that the annual level of countermeasures commensurate with the degree and nature of adverse effects determined to exist in relation to the marketing loan and counter-cyclical payments amounted to $147.3 million.

In November 2009, the DSB granted Brazil's request for authorization to suspend the application to the US of concessions and other obligations in the dispute. Subsequently, Brazil informed the DSB in December 2009 that on the basis of complete data related to fiscal year 2008 and calendar year 2008, obtained from the US and other sources indicated by the arbitrator, the total amount of countermeasures authorized to Brazil would be $829.3 million.

Providing some background to the dispute and some subsequent events, the USTR press release said that in June 2010, both the US and Brazil had signed a Framework Agreement, which expired in February 2014 when the 2014 Farm Bill was enacted.

According to the press release, under a related Memorandum of Understanding, the US had also made monthly payments to IBA for technical assistance and capacity-building activities in the cotton sector.

The new agreement also includes a related Memorandum of Understanding which, according to the USTR press release, sets out, amongst others, new rules governing fees and tenor for guarantees under the GSM-102 programme, a final transfer of funds to IBA, and additional support for technical assistance and capacity-building activities initiated under the 2010 Memorandum.

According to the latest Memorandum, the technical assistance and capacity-building activities related to the cotton sector include:

- pest and disease control, mitigation and eradication;
- application of post-harvest technology;
- purchase and use of capital equipment (e.g., storage and ginning equipment);
- promotion of use of cotton;
- adoption of plant varieties;
- observance of labour laws;
- training and education of workers and employers;
- market information services;
- natural resources management and conservation;
- application of technologies to improve the quality of cotton;
- application of methods to improve grading and classing services;
- design, planning and implementation of infrastructure projects required and solely used for storage, conservation and transportation of cotton, cotton seeds, and cotton inputs such as fertilizer; and
- research by Brazilian public and private institutions in collaboration with US research agencies.

For its part, under Section IV of the Memorandum, the US will not offer guarantees under the GSM-102 programme for loans of longer than 18 months, and shall not extend or renew the tenor of a guarantee after it is issued.

However, debt arising from default under a guaranteed obligation may be rescheduled, and guarantees under the GSM-102 programme shall not be used for debt rescheduling purposes.

The US is to also ensure that the fees for the GSM-102 programme guarantees will meet certain conditions, set out in Section IV of the Memorandum. The Memorandum itself is to terminate on 30

September 2018, unless the parties agree otherwise.

As to the "peace clause" set out under Section VI of the Memorandum, Brazil shall not request consultations under Articles XXII or XXIII of the GATT 1994 with respect to any of the following:

(a) the Commodity Credit Corporation GSM-102 export credit guarantee programme, or any export credit guarantees provided under the programme, while the programme operates in a manner consistent with the requirements described in Section IV (of the Memorandum on the operation of the GSM-102 programme); and

(b) any current domestic support programme or policy specific to upland cotton such as the Stacked Income Protection Programme described in Section 11017 of the US Agricultural Act of 2014, payments under any such programme or policy, or support to upland cotton producers under any other domestic support programme under current agricultural domestic support policies such as marketing loans described in Subtitle B of Title I of the US Agricultural Act of 2014, until 30 September 2018. *(SUNS7887)* ❐

US-Brazil deal an unconditional surrender

The terms of the cotton dispute settlement are heavily weighted against Brazil, contends *Steve Suppan*.

If the World Trade Organization trade dispute, US Upland Cotton Subsidies (WT/DS267), were a war, the 1 October Memorandum of Understanding (MoU) (www.ustr.gov/sites/default/files/20141001201606893.pdf) to settle the dispute contains Brazil's unconditional surrender to US demands.

The signing ceremony in Washington was timed to ensure minimal Brazilian press coverage, as Brazil focused on the 5 October presidential and sub-federal elections. Brazil won the cotton dispute in 2004. However, the United States tried various tactics to avoid complying with the WTO rule of law, including claiming that a dispute under the existing WTO rules could only be resolved under the terms of new rules in the yet-to-be-concluded Doha Round of WTO negotiations. Following an unsuccessful US appeal, Brazil was authorized by the WTO in November 2009 to levy up to $800 million in annual retaliation, including retaliation outside the agricultural sector.

It is useful to memorialize the MoU's terms of surrender and the shock-and-awe precedent it sets for any WTO member which is contemplating litigation against the US' 2014 Farm Bill. Then we can speculate about why Brazil agreed to settle for a relatively paltry sum and to abandon its rights as a WTO member to dispute the cotton subsidy terms of the 2014 Farm Bill.

First, the United States agreed to pay the Brazilian Cotton Institute (IBA is the acronym in Portuguese) $300 million. This one-time and final payment includes the $12.25 million monthly payments that the US had agreed in 2010 to pay IBA, but that the US Trade Representative said it had no Congressional authority to disburse as of October 2013. By reneging on its 2010 agreement, the US apparently created leverage to win this even more favourable end to Brazil's WTO-authorized right to retaliate.

In sum, the US is paying IBA $147 million that it already owed from the unpaid October-2013-to-September-2014 retaliation, plus another $153 million. The 2010 retaliation agreement required the United States to pay IBA $147 million annually until the US Congress changed the cotton subsidy payments and export/import loan guarantee conditions that were the subject of the trade dispute that Brazil launched in 2002.

In February 2014, Brazil requested the formation of a WTO compliance panel to ensure that the provisions affecting cotton in the 2014 Farm Bill would conform to the WTO ruling against US Upland Cotton Subsidies. The request also portended a possible broader battle against the Farm Bill's crop subsidy programme, in which taxpayers, not agribusiness, compensate farmers when prices fall below a legislated per crop reference price.

"Peace clause"

Under the terms of the MoU, Brazil must not only withdraw its current WTO compliance panel request, but also agree to a four-year "peace clause" during which it will not litigate the cotton subsidy and loan guarantee programme terms of the 2014 Farm Bill until its expiration in September 2018. The United States exported more than an average of 80% of all US-grown cotton from 2009-11, even while paying retaliation to Brazil during the last two years of that period. Now it can export an even higher percentage with no worries about further Brazilian cotton litigation. Brazil's Minister of Agriculture said, however, that Brazil maintains the right to dispute subsidy programmes for other crops in the Farm Bill.

Of course, having negotiated this "peace clause," there is no reason to believe that the United States could not negotiate another similar "peace clause" against WTO litigation regarding the 2023 Farm Bill and so on. In effect, the United States would achieve a trade policy version of perpetual "peace," while remaining itself free to launch litigation against the agricultural subsidy programmes of other WTO members.

The MoU allows Brazil to spend the $300 million only on a detailed list of permitted activities and Brazil is required to report semi-annually to the United States how it has spent the money that it is receiving in lieu of WTO-authorized retaliation. The permitted activities do not include the financing of cotton planting, as IBA producers had demanded.

Among the permitted activities is cotton research "conducted in collaboration" with the US Department of Agriculture, with US universities and possibly in "partnership with third country institutions." This latter permitted activity is the only aspect of the MoU that refers, however obliquely, to the WTO's programme to aid four African countries which are dependent on cotton for export revenues (the so-called C-4 countries) but which are in competition with heavily subsidized cotton growers and exporters.

In 2006, the US-based Institute for Agriculture and Trade Policy (IATP) analyzed the "WTO cotton crisis" in the C-4 countries in the context of the WTO failure to prevent agricultural export dumping and the price dominance of polyester textiles derived from oil, whose massive subsidies and price distortions are not subject to WTO rules. The cotton price and export revenue crisis continues. Cotton prices on the Intercontinental Exchange fell about 27% between June and mid-August 2014, and more than any other commodity in 2014 on the Goldman Sachs Commodity Index.

US cotton growers can live with and even prosper under low prices, even at prices below the cost of production, thanks to the 2014 Farm Bill's Stacked Income Protection Plan and other taxpayer-funded subsidies. However, C-4 cotton farmers cannot prosper, or even

survive, in such a price environment. IATP has contended for more than a decade that US agricultural export dumping, i.e., trading at below the cost of production, is permitted under WTO rules. Instead of resolving that unfair trading practice, the WTO Agreement on Agriculture (AoA) limits the annual domestic subsidies (Aggregate Measurement of Support or AMS) of its members, the statistical basis for Brazil's dispute with US Upland Cotton Subsidies.

Clearly, the United States has a number of diplomatic weapons that may have influenced Brazil's decision to capitulate in US Upland Cotton Subsidies. Well-calculated threats to counter-retaliate via tariff and non-tariff measures without WTO authorization in both agricultural and non-agricultural sectors; the possibility of attacking the value of the Brazilian currency through dark market foreign exchange trading exempted from Dodd-Frank financial reform legislation; intelligence gathered through surveillance of Brazilian officials, including the President of Brazil, as revealed by Edward Snowden: these are among the weapons that could have been used to persuade Brazil that it was in its best interests to take pennies on the dollar of WTO-authorized retaliation and give up its rights to litigate US Farm Bill subsidy measures.

More prosaically, however, Brazil's business interests in the United States, including its globally dominant JBS meatpacking firm, are more lucrative than cotton even when processed as a textile. Surrendering on US cotton subsidies may be a price Brazil is willing to pay for unspecified market access opportunities and US regulatory favours for Brazilian industry and finance in the United States.

But that truce among the two trading giants disregards the disastrous impacts of dumping on the African farmers and cotton exporters who continue to confront unfair trade rules negotiated without their participation or consent. The US technical assistance plan for the C-4 countries budgeted for $16 million in 2012, i.e., $4 million each or less than a third of the retaliation payments that the US sent to Brazil each month for more than two years. The C-4 countries were third-party plaintiffs in US Upland Cotton Subsidies, but never saw a dollar of the vastly reduced WTO-authorized retaliation. ❐

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Rights expert calls for review of investment treaties

Pointing to the threat that the activities of transnational corporations (TNCs) can pose to the enjoyment of human rights, a UN rights expert has urged a review of corporate-friendly investment accords and proposed an international treaty to deal with rights abuses by TNCs.

by K.M. Gopakumar

NEW DELHI: Investment treaties should be reviewed to ensure that states have the right to make changes in their laws and policies to further human rights regardless of the impact of such changes on investors' rights.

This recommendation came from the United Nations Special Rapporteur on the right to health, Anand Grover, who just completed his term, in his last report to the UN General Assembly.

The General Assembly was expected to consider this report in the third week of October.

The report notes that nearly 40 countries have already begun renegotiation of international investment treaties.

Bilateral investment agreements are under intense scrutiny from various governments and civil society organizations due to the onerous obligations they impose on governments and to the upscaling of the rights of transnational corporations (TNCs).

The Grover report also calls for an international treaty to hold TNCs accountable for their violations of human rights.

These issues are addressed in the section of the report which examines the accountability deficit of TNCs on violations of human rights including the right to health.

In other sections, the report – which is concerned with a number of critical elements that affect the effective and full implementation of the right to health framework – discusses the justiciability of the right to health, progressive realization of the right to health and enforcement of the right to health.

TNCs and human rights

The report notes that TNCs' "increasing presence in the world economy has enabled them to influence international and domestic law-making and infringe upon States' policy space".

On human rights violations, the report states that TNCs "have also affected the rights of large communities with impunity, causing displacement, contamination of groundwater and loss of livelihood. They have directly perpetrated serious human rights violations, in particular in developing and least developed countries.

"They have thus seriously affected the laws, policies and social and economic environments of States and have violated the economic, social and cultural rights of individuals and communities, including the right to health."

The report further says that it is "difficult for States or affected individuals to hold foreign transnational corporations accountable for harmful actions that were orchestrated through their domestic subsidiary".

According to the report, "the magnitude of violations by transnational corporations and the ease with which they can evade responsibility for such violations call for an international mechanism to hold them liable for human rights abuses".

The report also points out the shortcomings of a 2011 document prepared by the Special Representative of the UN Secretary-General on human rights and transnational corporations and other business enterprises: "Guiding Principles on Business and Human Rights – Implementing the United Nations 'Protect, Respect and Remedy' Framework".

The first pillar of the Principles requires states to take measures including institution of laws to ensure the accountability of TNCs for their human rights violations.

"It could be argued, however," says the Grover report, "that the State obligation to protect, which is already an important obligation of States under international human rights law, has been ineffective against transnational corporations."

Further, the report also critiques the idea of extending incentives for TNCs to comply with human rights standards. It states that providing incentives for compliance makes respect for rights a means to attain an end (the promised incentive), but does not foster respect for rights in and of themselves.

The report further points out that access to remedy against human rights violations mentioned in the Guiding Principles becomes ineffective due to the inability or unwillingness of states to hold TNCs accountable for their human rights violations.

The report adds: "The Guiding Principles also fail to take into consideration the existing political context, whereby developing countries may be vulnerable to undue influence from transnational corporations. Business interests may be protected at the cost of the human rights of those affected communities that remain dependent on States to hold corporations accountable for violations. Non-binding responsibilities have therefore not prevented transnational corporations from violating human rights."

According to the report, "there is an urgent need for an international instrument that can address the increasing complexities presented by transnational corporations' multi-jurisdictional organization and global influence. Moreover, because not all States have a robust regulatory mechanism, owing either to their poor negotiating power or because they are unwilling to hold domestic corporations accountable for harms caused, obligations should also be conferred on domestic corporations".

Apart from the accountability and monitoring mechanism, the report calls for an effective enforcement mechanism to remedy and discourage violations.

Towards this end, the report proposes an adjudicatory mechanism to examine individual or state complaints against transnational or domestic corporations.

(The UN Human Rights Council in June passed a resolution to start a process for an international legally binding instrument on TNCs. The resolution is titled "Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights". See *TWE* No. 574.)

International investment agreements

The Grover report states that international investment agreements allow TNCs to reduce states' policy space and states' power to introduce health laws in the public interest.

It states, "Given that the agreements are concluded between States, they do confer no obligations on transnational corporations to respect, protect and fulfil the right to health, allowing corporations to continue profit-making activities even if they are violating individuals' right to health."

The report questions the secrecy and lack of consultation at national level while negotiating investment agreements.

It points out, "The rights to information and to participate in the decision-

making process are essential for the enjoyment of the right to health. Those elements of the right to health framework are undermined when international investment agreements are negotiated and concluded in secrecy."

According to the report, "the practice of withholding information from stakeholders such as civil society groups has been held to be non-discriminatory, even where the same information was provided to corporations with the justification that corporations have expertise in matters relating to free trade agreements. Such inequity in access to information can enable corporations to influence the content of an international investment agreement in their favour".

The report warns of the threat of investment and trade agreements on the enjoyment of the right to health.

"Pharmaceutical companies may be able to challenge the patent laws of host States if such laws do not comply with investors' rights under the free trade agreement, even though such patent laws may be compliant with the Agreement on Trade-Related Aspects of Intellectual Property Rights. States may thus be unable to check the increasing cost of medicines, which undermines their core obligation to ensure access to health facilities, goods and services, including essential medicines, especially for vulnerable groups."

The report notes that "international investment agreements are treated as a stand-alone legal code and often do not contain references to the right to health. They should, however, be interpreted in a manner that does not conflict with human rights law ..."

The report calls on states to review these investment agreements to ensure that states have the right to change laws and policies in furtherance of human rights irrespective of the impact of such changes on the investor's right.

In the absence of an international legal framework to hold TNCs accountable for their human rights violations, the report calls upon states to incorporate provisions in investment agreements to enable them to hold TNCs liable for human rights violations in both the home country and the host country.

Further, the report also urges states "to ensure their ability to implement human rights-friendly laws is not in any way hindered by the [investment] agreement".

Grover's report stresses various shortcomings of the investor-state arbitration process provided for in investment agreements.

According to the report, "the high

(continued on page 16)

New hepatitis cure far too costly

A new cure for Hepatitis C has given new hope, but its price is far too high, while a scheme to supply to poor countries excludes middle-income nations.

by Martin Khor

A controversy is brewing over a new cure for Hepatitis C because it is extremely expensive and patients in middle-income countries will find it way beyond their budget.

Worldwide, 170 million people live with the Hepatitis C virus (HCV), and every year 3-4 million more are infected, and there are around 350,000 deaths. Hepatitis C is thus a major public health problem, and called a "silent killer" because it can lead to serious liver ailments, including cancer, for those who are infected.

The good news is that a new drug, sofosbuvir, was approved last year by the American health authorities. The medicine has an effectiveness rate of around 90%, making it superior to the older medicines which have a lower success rate and some serious side-effects.

The bad news is that the producer, the US firm Gilead, put a very high price tag of $84,000 for a 12-week course. Each pill thus costs $1,000.

The price could be set so high because the older and less effective alternatives cost about a third of that level, and the company also argued that a liver transplant (which the new medicine's cure would make unnecessary) would cost much more.

Revenues from the new medicine since late last year have already run into many billions of dollars.

At that kind of price, only the very rich can afford the new medicine. Patients in the West have difficulty even if they are insured, as the insurance companies or the National Health Service might not be able to put this expensive drug on their approved list.

There is now a wave of anger among health and patients' groups throughout the world. Here is a life-saving medicine which is being priced out of reach, because the patents being filed by the company prevent competitors from producing cheaper versions.

Opposition to a patent application was filed in India by a group, Initiative for Medicines, Access and Knowledge, on the ground that the drug made use of an existing compound. In Indian law, patents need not be given for new uses of existing medicines or their compounds.

Restrictive agreements

Facing mounting opposition, Gilead came up with a new initiative. It entered into agreements with seven companies in India, allowing them to produce their own versions of sofosbuvir as well as another medicine, ledipasvir (which can be taken in combination), at prices these companies will set themselves.

A study at Liverpool University found that a full course of generic sofosbuvir could cost as low as $101 and ledipasvir, $93. Another estimate is that the cost could be $135-400. Thus the Indian companies' prices are expected to be well below a thousand dollars.

An example from a decade ago is useful. When medicines for HIV/AIDS sold for $15,000 a patient a year, Indian companies produced generic versions for $350 a patient a year, and their prices have fallen further to about $65 today.

There is however a major flaw in this new plan. While the agreements allow the Indian companies to sell the medicine in India and in some other countries, they are not allowed to market it in 51 middle-income developing countries, including Argentina, Brazil, China, Malaysia, the Philippines and Thailand. Patients and governments in these countries will thus be blocked from obtaining the cheap medicine coming from India.

The originator company plans to sell its brand in these excluded countries and thus reap high profits. The price it charges may be less than $84,000 but significantly higher than the Indian companies' prices.

The medical group Medecins Sans Frontieres has criticized this discrimination. It said: "Hepatitis C is especially prevalent in middle-income countries, with approximately 73% of the burden in these countries. But disappointingly many of these countries remain excluded from accessing Gilead's lowest price and the generic versions licensed by these agreements."

Patients in the excluded countries have expressed their anger. In Malaysia, the Positive Malaysian Treatment Access and Advocacy Group and the Third World Network said the new oral medicines bring new hope for Hepatitis C patients but these hopes were dashed by the restrictive terms of the agreements, thus "condemning to death many of the 50 million HCV patients living in territories excluded from the scope of the voluntary licence such as Malaysia, Thailand, Philippines and China."

Thirteen Thai non-governmental organizations (NGOs) issued a statement that they are appalled by the agreements that the originator signed with the Indian companies, which they said represented "corporate greed building yet another barrier to access to a new medicine needed by millions of people with HCV infection in middle-income countries".

"In those middle-income countries not included in the deal, millions of people will be effectively handed a death sentence as the new life-saving medicine will be unaffordable."

The Brazilian Network for Integration of Peoples said it "vehemently repudiates the agreements which treat medicines as commodities, preventing millions of people to have access to medicines."

Patients in the affected countries, and their support groups, including the above, are calling on their governments to act to ensure that their citizens have access to the new medicine.

The countries are allowed by the WTO's intellectual property agreement not to grant patents if the medicines are not new or genuine inventions. If patents have been granted, the governments can issue compulsory licences that allow generic companies or government firms to produce and sell generic medicines at cheap prices.

Alternatively, the governments can ask the company to include their countries among those that the Indian companies can supply to, or else that the prices charged by the company be the same as those of the cheapest generics.❐

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. This article first appeared in The Star *(Malaysia) (13 October 2014).*

Family farming crucial in fight against hunger

Voices within the UN system are calling for greater support for family farming, which makes up the majority of global agriculture and is key to combating hunger and protecting resource sustainability.

by Kanaga Raja

GENEVA: The United Nations Special Rapporteur on the right to food, Hilal Elver, has stressed the importance of family farming as a crucial element in the global fight against hunger.

In a UN news release on the occasion of World Food Day on 16 October, the rights expert called on governments to protect the rights of family and smallholder farmers working worldwide.

World Food Day this year is focusing attention on the issue of family farming, with the theme "Feeding the world, caring for the earth".

Meanwhile, the UN Food and Agriculture Organization (FAO) released its *State of Food and Agriculture 2014* report on 15 October, in which it underlined that the family farm is a potentially crucial agent of change in achieving sustainable food security and in eradicating hunger in the future.

Protecting family farmers' rights

According to the UN Special Rapporteur, family farming is a crucial element in the global fight against hunger, and key to the protection and sustainability of natural resources.

"With over 70% of the world's food production reliant on family farmers, this type of farming represents the vast majority of agriculture worldwide, both in developed and developing countries," said Elver.

"Most of these farmers own less than two hectares of land, and cultivate only a small share of the world's farmland. Protecting their rights is paramount to the eradication of hunger and ensuring food security and adequate nutrition," she added.

The rights expert noted that there are an estimated 500 million family farms worldwide, many of which currently face increasing challenges that are undermining agricultural production, including soil erosion, increased water scarcity, deforestation, climate change, globalization of the food sector and an ever-expanding monoculture for export, and large corporations.

"Family farming is based on tradition, and forms the social fabric of many societies playing a key role in protecting the world's biodiversity and promoting the sustainable use of natural resources," Elver underlined.

She noted that women, who account for some 43% of the agricultural labour force in developing countries, play a crucial role in enhancing food security and nutrition in the household as well as increasing agricultural output. She stressed that every effort must be made to ensure that they are afforded the same rights and access to necessary resources as their male counterparts.

"On the occasion of World Food Day, I urge all States to show a more meaningful commitment to the development of social and economic policies specifically targeted at smallholder and family farms."

The Special Rapporteur called on all governments "to do everything in their power to ensure that the rights of family and smallholder farmers working worldwide to eradicate hunger and sustain natural resources are protected."

Innovation

According to an FAO press release on its *State of Food and Agriculture* report, family farms are the custodians of about 75% of all agricultural resources in the world, and are therefore key to improved ecological and resource sustainability.

They are also among the most vulnerable to the effects of resource depletion and climate change. While evidence shows impressive yields on land managed by family farmers, many smaller farms are unable to produce enough to provide decent livelihoods for the families.

FAO said that family farming thus faces a triple challenge: yield growth to meet the world's need for food security and better nutrition; environmental sustainability to protect the planet and to secure their own productive capacity; and productivity growth and livelihood diversification to lift themselves out of poverty and hunger.

The FAO report argues that family farms must be supported to innovate in ways that promote sustainable intensification of production and improvements in rural livelihoods. Innovation is a process through which farmers improve their production and farm management practices. This may involve planting new crop varieties, combining traditional practices with new scientific knowledge, applying new integrated production and post-harvest practices or engaging with markets in new, more rewarding ways.

But innovation requires more than action by farmers alone, says the report. The public sector – working with the private sector, civil society and farmers and their organizations – must create an innovation system that links these various actors, fosters the capacity of farmers and provides incentives for them to innovate.

According to the report, more than 500 million family farms manage the majority of the world's agricultural land and produce most of the world's food. More than 90% of farms are run by an individual or a family and rely primarily on family labour.

Family farms are by far the most prevalent form of agriculture in the world. Estimates suggest that they occupy around 70-80% of farm land and produce more than 80% of the world's food in value terms.

The FAO report noted that the vast majority of the world's farms are small or very small, and in many lower-income countries farm sizes are becoming even smaller. Worldwide, farms of less than 1 hectare account for 72% of all farms but control only 8% of all agricultural land.

Slightly larger farms between 1 and 2 hectares account for 12% of all farms and control 4% of the land, while farms in the range of 2 to 5 hectares account for 10% of all farms and control 7% of the land.

In contrast, only 1% of all farms in the world are larger than 50 hectares, but these few farms control 65% of the world's agricultural land.

According to FAO, in many high-

income and upper-middle-income countries, large farms, responsible for most agricultural production, account for most farm land, but in most low- and lower-middle-income countries, small and medium-sized farms occupy most farm land and produce most of the food.

Small farms produce a higher share of the world's food relative to the share of land they use, as they tend to have higher yields than larger farms within the same countries and agro-ecological settings, it added.

"The highly skewed pattern of farm sizes at the global level largely reflects the dominance of very large farms in high-income and upper-middle-income countries and in countries where extensive livestock grazing is a dominant part of the agricultural system," said the report.

In a foreword to the report, FAO Director-General Jose Graziano da Silva said that about 842 million people remain chronically hungry because they cannot afford to eat adequately, despite the fact that the world is no longer short of food.

"In a disconcerting paradox, more than 70% of the world's food-insecure people live in rural areas in developing countries. Many of them are low-paid farm labourers or subsistence producers who may have difficulty in meeting their families' food needs," he said.

"As we look towards 2050, we have the additional challenge of feeding a population that is eating more – and sometimes better and healthier diets – and that is expected to surpass the 9 billion mark. At the same time, farmers, and humanity as a whole, are already facing the new challenges posed by climate change," he added.

"Hence, the quest is now to find farming systems that are truly sustainable and inclusive and that support increased access for the poor so that we can meet the world's future food needs. Nothing comes closer to the sustainable food production paradigm than family farming," he further said.

While family farmers are key to food security worldwide, they have also been considered by many as an obstacle to development and have been deprived of government support, he said.

"That is the mindset we need to change. Family farmers are not part of the problem: on the contrary, they are vital to the solution of the hunger problem," da Silva stressed. *(SUNS7896)* ❐

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cost of arbitration and the threat of an adverse judgment can create a chilling effect on States, dissuading them from fulfilling their right to health obligations." In addition, "these disputes may also deplete States' resources, which can affect their ability to progressively realize the resource-dependent aspects of the right to health".

It notes that there were 568 known cases of investor-state arbitration as at 2013. Most were brought against developing countries and nearly 85% were brought by investors from developed countries.

The report states that "the current system of investor-State dispute settlement also suffers from bias and conflicts of interest. The dispute settlement is controlled by a small clique of arbitrators and lawyers, and the same person may be counsel, arbitrator and adviser to an investor or State at different times".

According to the report, "the enormous size of [arbitration] awards can have a negative effect on the State's ability to implement health policies. For example, in *CME v. Czech Republic*, the compensation awarded to the investor was equal to the entire health budget of the State."

Recommendations

The key recommendations of the report are as follows:

- States review, renegotiate or enter into international investment agreements in an open and transparent manner, with the participation of affected communities and other stakeholders;
- International investment agreements should include provisions that:

(a) confer human rights obligations on host and home states and investors;

(b) allow host states to modify existing laws, or adopt new laws, to comply with their obligations under the right to health or in times of crisis affecting the entire state;

(c) enable states to initiate disputes when investors do not comply with or violate the right to health.

- Investor-state dispute settlement systems should be made transparent and be modified to:

(a) ensure that arbitrators are unbiased;

(b) establish a regionally representative, permanent panel of arbitrators;

(c) require the details of a dispute to be published and continuously updated as soon as an investor issues the notice of intent;

(d) ensure that non-parties to disputes have the right to attend arbitration proceedings;

(e) ensure that those who are not party to the dispute, especially affected communities, have a right to make written and oral submissions;

(f) allow arbitration to be conducted in host states to facilitate access to the arbitration by interested parties;

(g) institute a system of review of arbitration awards to reduce arbitrariness.

- The adoption of an international treaty that will:

(a) confer specific, binding human rights obligations, including the right to health, on transnational corporations;

(b) prevent investors from encroaching on states' policymaking space;

(c) provide for an accessible and effective adjudicatory forum where states and individuals can hold transnational corporations accountable for violations of the right to health.

- Until an international treaty is formulated, states should adopt a declaration on human rights obligations of transnational corporations. *(SUNS7893)* ❐