THIRD WORLD
Economics
TRENDS & ANALYSIS

Published by the Third World Network KDN: PP 6946/07/2013(032707) ISSN: 0128-4134 Issue No 591 16 – 30 April 2015

Developing countries must beware of unequal 'compromises' at WTO

With the Doha Round negotiations in the WTO making scant headway thus far, attempts are apparently afoot to seek compromise deals in which US interests are prioritized. Developing countries need to stand guard against such moves and work instead towards a Doha Round outcome that will improve their lot and redress existing inequities in the multilateral trading system.

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THIRD WORLD ECONOMICS is published fortnightly by the Third World Network, a grouping of organisations and individuals involved in Third World and development issues.

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• **Annual subscription rates:** Third World countries US$75 (airmail) or US$55 (surface mail); India Rs900 (airmail) or Rs500 (surface mail); Malaysia RM110; Others US$95 (airmail) or US$75 (surface mail).

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Printed by Jutaprint, No. 2, Solok Sungei Pinang 3, Sungai Pinang, 11600 Penang, Malaysia.

South faces uphill fight on food security, commitments on Bali decisions

Developing countries must guard against the prospect of an imbalanced Doha Round outcome at the WTO, in light of apparent attempts to prioritize US interests in any such agreement.

by Chakravarthi Raghavan

GENEVA: Having given away 'for free' the Trade Facilitation Agreement (TFA) – the only leverage they had over the US and the EU to ensure good-faith negotiations by the two in the Doha Development Round – developing countries are facing an uphill battle at the WTO to ensure a permanent solution to food security issues and translate into binding commitments the "best endeavour" decisions of the 2013 Bali Ministerial Conference.

If the developing nations do not take care and stand united to take a firm stand NOW, they face the prospect, as at Bali, of being fooled into accepting another empty bundle of accords, with the United States getting more concessions and benefits, in a compromise package 'mediated' by WTO Director-General Roberto Azevedo.

As drafted and approved, the TFA requires no change in the laws or regulations of the developed countries, only in developing countries, which in addition have to incur some infrastructure costs – with no benefit to them.

Former WTO Director-General Pascal Lamy has estimated, in remarks he made in Australia last year (as reported in *The Age* of 28 May 2014), that the gain to the developed countries as a result of the TFA would be the equivalent of a 10% tariff cut by developing countries.

The WTO General Council, in a special session on 27 November 2014, took three decisions:

- adopted a Protocol of Amendment for including the TFA in Annex 1A of the WTO treaty;
- decided that the Bali decision on public stockholding for food security purposes is to remain in place until a permanent solution is agreed and adopted, and that WTO members are to engage constructively to negotiate and make all concerted efforts to agree and adopt a permanent solution by 31 December 2015;
- agreed to work on a priority basis for legally binding outcomes on the other nine Bali Ministerial "best endeavour" decisions. These nine comprise four in agriculture relating to tariff-rate quota administration, export competition and phasing out of cotton subsidies, and five in the Doha development dossier including preferential access for services suppliers in least-developed countries (LDCs), and duty-free, quota-free market access for LDC products; and
- agreed to prepare a clearly defined work programme on the remaining Doha Development Agenda issues, with a deadline of July 2015 set for agreeing on this work programme.

After the Bali Ministerial Conference, an impasse had developed at the WTO when members, in particular India, discovered that in negotiating at Bali (not directly, but through the intermediation of the Director-General, as was subsequently learnt), they had agreed to a package on the basis of a purported US agreement to the package, on food security for example, that in fact proved to be incorrect. As a result, in further work at Geneva after Bali, these countries did not agree to move forward to accept the TFA and its associated Protocol of Amendment. It was only after some futile attempts to browbeat them into submission, and some direct negotiations between parties, that the decisions adopted at the General Council in November 2014 were evolved.

(The entire episode, as highlighted in comments and arguments by civil society, trade lawyers and some developing-country trade experts, has thrown up a range of issues, debated piecemeal and within closed groups. These issues however require wider debate and consideration in more open fora than the WTO.)

Subsequently, on 25 January this year, at the usual meeting of some invited trade ministers (hosted by Switzerland) on the sidelines of the World Economic Forum (WEF) gathering in Davos, there was a reiteration by the ministers of their resolve to engage seriously in the Doha Round and reach accords.

Since then, WTO members have been meeting in various committees and negotiating bodies, and going through the motions of discussions and negotiations, including on some new informal proposals (non-papers in WTO jargon) on the hard issues of agricultural subsidies and market access in goods (agriculture and non-agriculture or NAMA) and services trade. However, there has been very little progress.

The discussions have brought out that the only interest the US seems to have at the WTO is to get all members to accept the Protocol on the TFA and bring the agreement into force. As of now, 108 acceptances (the WTO membership currently numbers 161) are required for the agreement to come into force and be binding on those accepting the Protocol.

By the very nature of needed national processes and procedures, ratifications take time and despite the spin by the WTO at media briefings, it seems unlikely, at the present rate of progress, that this can be achieved by the time of the WTO's Nairobi Ministerial Conference in December 2015.

At the January trade ministers meeting in Davos, according to reports in the *Washington Trade Daily* of 26 and 27 January, Kenyan Foreign Minister Amina Mohammed had voiced the hope that by the time of the Nairobi conference, the WTO members would have ratified and brought the TFA into force and also complete the Doha Development Agenda. She had also told the *Washington Trade Daily* that she expected that all issues would be addressed, including a permanent solution to public stockholding programmes for food security purposes, so that the WTO would become relevant again as a trade negotiating forum.

[Also, according to a report in *Mint* (New Delhi), over a dinner meeting in January on the margins of the WEF meeting in Davos, trade ministers of the US, the EU, New Zealand and South Africa and WTO Director-General Azevedo, among others, broadly agreed to scale down ambitions in order to conclude the Doha Round negotiations in Nairobi.]

Kenya has planned a one-day informal meeting on 22 April in Nairobi and had recently invited about 30 key trade ministers and the WTO Director-General. Those invited included ministers from the US, the EU, China, India, South Africa, Indonesia, Brazil, Japan, Canada, Australia, New Zealand, Norway, Switzerland, Mexico, Chile, Colombia, Barbados, Lesotho and Egypt.

The proposed meeting has been described as an occasion for "brainstorming" to discuss and prepare the post-Bali work programme for concluding the Doha Round by the end of the year.

However, Kenya is reported to have been privately advised by several trade envoys of the invited countries that it is too early to discuss the post-Bali work programme at this juncture when there is a lack of clarity on several issues in the domestic support and market access pillars of the Doha agriculture dossier, and key members remain sharply divided on how to proceed in this area.

As a result, Kenya is said to be considering a postponement of the informal meeting.

Seeking meaningful outcomes

Renewed engagement in trade negotiations, with the WTO as the negotiating forum, is undoubtedly of great importance to the WTO secretariat and its officials, trade diplomats accredited to the WTO and trade establishments in countries around the world.

However, merely as a process and negotiating forum, it has no value for the people, more so for people in developing countries, if it cannot deliver some meaningful development outcomes that will better the lot of developing countries and ensure that the built-in inequities of the WTO multilateral trading system are remedied.

In particular, this development outcome and removal of inequities has to be achieved by ensuring that the major developed countries and trading entities like the US and the EU deliver on their promises and commitments at Marrakesh (for which the developing countries have already paid a heavy advance price). They must not be allowed to resile from their commitments on the specious argument of "changed circumstances and new trade realities" such as the so-called "global value chains", a trade narrative propagated by the WTO and ardently embraced by neoliberal economists ensconced in developing countries.

The "global value chains" narrative is nothing more than an effort to sell to developing countries, and their public demanding social equity, the discredited trickle-down theories to enable a US-EU transnational corporate stranglehold over developing-country markets. (See "WTO catching up with two-century-old manufacturing models", in C. Raghavan, *The Third World in the Third Millennium CE: The WTO – Towards Multilateral Trade or Global Corporatism?*, 2014, Penang: Third World Network, pp. 351-357.)

Discussions with ex-US official

Meanwhile, WTO Director-General Azevedo appears to have renewed his efforts to find some compromises acceptable to the US for converting the Bali "best endeavour" accords into commitments (as required by the General Council decision of 27 November) and wrap up the Doha Round, so that the WTO could then move on to "new issues" promoted by the US and the EU.

Towards this end, the Director-General has held two rounds of meetings with former US chief agriculture negotiator Joseph Glauber in March-April, in what appears to be a desperate attempt to find out the comfortable "parameters" that Washington can live with in the domestic support pillar of the post-Bali work programme on agriculture.

At least since the launch of the Doha Round in 2001, and more so since President Barack Obama entered the White House, a harsh US political reality facing trade negotiations has been that no trade agreement needing US Congressional approval and changes to US domestic law can succeed.

The US administration and Congress have been at loggerheads, and there has been increasing and vociferous Congressional opposition (in particular from the Democratic Party) to giving the administration any authority to negotiate trade agreements with an advance commitment by Congress that it will vote "yes" or "no" to such agreements, but not change them.

Without this so-called "fast track" authority and assurances to the US' trade partners that any agreement would be accepted or rejected but not changed by Congress, no real progress or success can be expected, whether in multilateral or in regional negotiations for agreements like the US-promoted Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership.

The WTO Director-General, in his renewed efforts, appears to have specifically discussed with Glauber the 2008 revised draft agriculture modalities text (Rev.4 text) and its implications for the US farm bill enacted into law last year.

At issue is whether the new payment programmes in the current US law will overshoot the limits set out in the 2008 revised draft modalities. The limit for the overall trade-distorting domestic support (OTDS) for the US in the Rev. 4 text was agreed at $14.5 billion. But the current farm bill will need a cap much higher than this limit, according to several trade analysts.

Azevedo has also sought Glauber's assessment on how to proceed in the agricultural market access pillar, in which the Rev. 4 text had proposed a tiered formula with flexibilities for developing countries such as on "special products" and "sensitive products". It had also proposed a "special safeguard mechanism" for developing countries to ward off unforeseen surges in imports.

Against this backdrop, the Director-General's exclusive meetings with Glauber have assumed considerable importance, trade envoys told the *South-North Development Monitor (SUNS)*.

Citing a news story that appeared in the *Washington Trade Daily* on 1 April, one trade envoy from a developing country expressed concern that while WTO members are kept in the dark, the Director-General is discussing crucial details with the US and its former officials at this juncture.

"Simplified" approach

According to the *Washington Trade Daily* report, Glauber has maintained that "the 2008 revised draft modalities text is 'complicated' with many 'flexibilities' in the market access pillar." The former US official has said that developing countries want "many of the flexibilities to be confirmed and that is very difficult."

Azevedo is working on these issues because members have suggested a "simplified" approach, according to Glauber. Glauber welcomed the request-and-offer approach in market access, which he said would "provide greater clarity as countries would know about sensitive and special products".

[Argentina and Paraguay have recently put forward unofficially proposals (non-papers) involving a request-offer approach. The Argentine proposal is to be applicable to all market access negotiations – in agriculture, NAMA and services. Paraguay's non-paper of 17 March, revised on 18 March, is on agriculture, and involves cuts based on a formula, and "offers" to be tabled on that basis, with a specific request-offer approach to reach agreements. It provides for cuts in Uruguay Round (UR) bound tariffs which are above 10%.

[The 18 March Paraguay proposal lowers the level of ambition for developed countries and increases the level of ambition for developing countries – a form of reverse special and differential treatment, as India has called it, in rejecting it. The proposal does this in several ways:

[1. In the Rev. 4 text, developed countries are asked to undertake a "minimum" average cut of 54%. Paraguay's proposal says "average cut" of 54%. In the Rev. 4 text, developing countries are to do a "maximum" average cut of 36%. Paraguay's proposal says "average cut" of 36%.

[2. Paraguay's 18 March modality implies an average cut of 27% for developed countries, while developing countries are asked to make an initial offer that will be close to the 36% average cut. This is because cuts are not made to tariffs below 10% and developed countries have more tariffs bound at below 10% than developing countries.

[3. The minimum cut under the general formula represents a 40% level of ambition for developing countries compared to Rev. 4 and 34% level of ambition for developed countries and recently acceded members (RAMs) compared to the level of ambition in Rev. 4.

[Under the approach in the Paraguay non-paper, developed countries shall initially offer potential final Doha Round (DR) bound tariffs with average cut of [54]%, with a minimum cut of [20]% per tariff line; developing countries shall initially offer potential final DR bound tariffs with average cut of [36]%, minimum cut of [15]% per tariff line; RAMs shall initially offer potential final DR bound tariffs with average cut of [30]%, minimum cut of [10]% per tariff line; all members are encouraged to offer cuts in those UR bound tariffs below [10]%. If any cut is made, it will count towards the average reduction.

[When all the details of the Paraguay proposal (such as no cut required for UR bound tariff lines below 10%) are taken into account, research by the South Centre shows that on a conservative estimate, developed countries as a group would only be required to cut by 27% in their initial offer as per this modality (instead of minimum overall cut of 54% in Rev. 4). This is because around half of their *ad valorem* tariff lines are below 10% (no cut required) and the other half are either *ad valorem* tariffs at rates higher than 10% or non-*ad valorem* tariffs (which are assumed to be higher than 10% *ad valorem* equivalent). In comparison, developing countries are asked to initially cut 36% on average.]

But the G33 group led by Indonesia has already dismissed the "simplified" approach on the ground that such an approach would undermine all the flexibilities. China and India have denounced the Paraguayan proposal in market access that suggested average and minimum cuts.

During a Room D meeting in late March which some 30 countries attended, China severely criticized Paraguay for proposing a simplified approach, saying that the proposal was a front for some industrialized countries.

The G33 also dismissed the Argentine request-and-offer proposal, saying that it is aimed at undermining the modalities in the Rev. 4 text.

The US, on its part, wants market access only in three countries – China, India and Indonesia. Japan and the EU are not important for the US because they are being covered in free trade agreements, according to a farm analyst.

"The US wants to remove the flexibilities such as special products and special safeguard mechanism because it would remove uncertainty for their growing soya and cotton exports," the analyst said.

Domestic support "exposure"

As regards the disciplines in the domestic support pillar, Glauber, the former US official, had acknowledged the growing concern among countries about Washington's "exposure" in the farm bill to the disciplines as proposed in the Rev. 4 text.

Although "the farm bill is broadly consistent with the Doha limits [as laid out in the Rev. 4 text], there are some additional exposures due to very low prices [prevailing in the international market]," Glauber had suggested.

He had indicated that the $14.5 billion OTDS target negotiated in 2008 may have implications if current international prices "were to go lower." "We don't know yet all the implications," he was reported as saying by the *Washington Trade Daily*.

The US farm bill provides two options in the commodity programme for its farmers to choose from in relation to domestic payments. One option is that they can seek "price coverage" under which they would get compensated if international prices go below a threshold. The second option is "revenue coverage" or minimum revenue protection. "Farmers will have to sign up by April 7 whether they opt for price or revenue coverage," Glauber maintained.

In his address as a discussant during the US trade policy review at the WTO last December, the current New Zealand Ambassador to the WTO, John Adank, had raised several concerns about the US farm bill.

He said that although the US had eliminated the decoupled direct payments which had come under criticism, it has provided a range of new policies "that generally involve deficiency-type payments aimed at compensating farmers for reduced returns when prices or yields go down."

"However, naturally, the larger question that looms is how does the new Farm Bill position the US for its further participation, in terms of both its offensive and defensive interests, in the still to be completed Doha Round negotiations?" Adank had asked.

"This is not the way ..."

"Instead of holding constant discussions with key members to arrive at acceptable outcomes based on Rev. 4, the [WTO] Director-General wants first to find out what the US can live with in the post-Bali work programme," said a trade envoy from a developing country. "This is not the way negotiations ought to be conducted."

"You cannot have negotiations which deliver only to a strong power, this is ridiculous," said another envoy.

Negotiations, the envoy said, are for reforming the trade-distorting farm support programmes so that there is a level playing field for all members. "If a strong power is unwilling to reform its agriculture, then it is important that pressure is brought on the member to change, instead of acquiescing to that member."

The underlying rationale of new disciplines is that they enable countries to change after a period of five years, which is how the implementation period of five years is suggested, according to the envoy.

"It is clear that to achieve success a la Bali, the Director-General will do things only after he gets clearance from the US," the envoy added. *(SUNS7998)*❐

This article was written with inputs from Ravi Kanth and reports in the Washington Trade Daily *and* Mint *(New Delhi): www.livemint.com/Opinion/dtw4hEaCTFN7YGpMZbRazO/Corrosion-of-WTOS-mandate.html; www.livemint.com/Politics/L23ZQnrccsHq2L4LuEOaHM/Trade-ministers-agree-to-wrap-up-Doha-Round-of-talks-by-year.html.*

G33 insist on SSM, reject developed-country demands to drop it

The G33 developing-country grouping has opposed calls to do away with the proposed "special safeguard mechanism" in farm trade, describing it as an integral part of the WTO agriculture agenda aimed at managing price and supply shocks.

by D. Ravi Kanth

GENEVA: Members of the G33 farm coalition in the WTO seeking better terms for low-income and subsistence farmers in the developing countries have severely criticized attempts to scrap the special safeguard mechanism (SSM).

The SSM has been proposed in the WTO agriculture negotiations as a means for curbing unforeseen surges in imports of agricultural products from heavily subsidized beneficiaries of the WTO Agreement on Agriculture.

The G33 coalition, led by Indonesia, rejected demands from the developed countries, including Australia, Canada, the European Union, Japan, Norway and the United States, that the proposed SSM be dropped because of the ongoing plans to "recalibrate" the market access outcome in the agriculture negotiations.

The "recalibration" approach is a concerted effort to kill the tiered formula approach – which provides for specific flexibilities for the developing and least-developed countries – in an attempt to conclude the Doha Round trade negotiations by the end of this year, several trade envoys told the *South-North Development Monitor (SUNS)*.

On 15 April Norway circulated a non-paper on market access which is a replica of what was earlier proposed by Paraguay but rejected by a majority of developing and poorest countries.

Norway proposed that developed countries shall reduce their tariffs by 54% on average from their current bound levels, with a minimum cut of 15% per tariff line.

The developing countries, according to the Norwegian proposal, will reduce tariffs by 36% on average, with a minimum cut of 10% per tariff line. The proposal has stated that developing countries shall be allowed to exempt 5% of their tariff lines with nil duty cut.

The recently acceded members (RAMs) can reduce their tariffs by 25% on an average basis, with a minimum cut of 10% per tariff line, according to the Norwegian proposal. The RAMs are allowed to exempt 10% of their tariff lines from any reduction commitment, Norway maintained.

The developed countries, however, have indicated their willingness to discuss a modified Special Safeguard (SSG), which they had successfully built into the Agreement on Agriculture.

Even Australia and Brazil, the two leading proponents for farm trade liberalization, are willing to consider a modified SSG while remaining opposed to the SSM, said several trade envoys.

Needed more than ever

At a 15 April meeting of over two dozen trade envoys convened by the chair of the Doha Round agriculture negotiations, Ambassador John Adank of New Zealand, Indonesia, on behalf of the G33, made a detailed presentation as to why the developing countries would need the SSM more than ever now to combat new challenges.

The G33 includes Indonesia, China, India, Kenya, the Philippines, Bolivia, Venezuela, Cuba, Barbados and 35 other developing and least-developed countries, among others.

Indonesia's trade envoy Ambassador Iman Pambagyo said the SSM is "proposed against the backdrop of two main limitations of the existing Special Safeguard or SSG."

The first limitation, according to Pambagyo, is that "only a few developing countries have access to the SSG, and developed countries have the largest percentage of tariff lines of entitlements and invocations."

The second limitation is that, for the few developing countries that can currently avail themselves of the SSG, "the mechanism is hardly accessible and is ineffective in addressing import surges or price depressions due to its complicated and outdated design and assumptions."

Moreover, the subsidized exports from the developed countries would hardly breach price triggers that are based on fixed reference prices of 1986-88. Further, calculating domestic consumption data on tariff-line basis for triggering the volume SSG has been a formidable if not impossible task for developing countries. Also, the lack of quality customs infrastructure would make it difficult to implement an effective SSG regime, the G33 insisted.

"In short, we need an improved, not a worse [mechanism], that is attuned to the needs and conditions of developing countries," the G33 maintained.

Therefore, the developing countries will need "a more simple, operable, and effective safeguard mechanism" to better manage against "world prices and supply which are becoming increasingly volatile due to increased climate change-induced disturbances and persistently high subsidization, and to respond to import surges and price declines that threaten small, subsistence farmers who overwhelmingly reside in the rural areas."

The SSM has always remained an integral part of the agriculture negotiations under the Doha Development Agenda, the G33 said. "There should be no questions on the mandate to advance [the SSM] proposal as it was captured in Paragraph 42 of the Doha Work Programme and Paragraph 7 of the Hong Kong Ministerial Declaration."

Indonesia criticized the ongoing attempts to "water down" the SSM with the inclusion of new, complicated and burdensome conditionalities. "A significant number of these conditionalities do not even exist for the SSG," the G33 said.

The chair of the agriculture talks, Adank, sought to know from the trade envoys as to "who should have access to agriculture safeguards in the future." He asked whether "access to safeguards [should] be linked to commitments to reduce tariffs," and whether safeguards should "be available to all tariff lines or to a limited number of lines."

In response to Adank's questions, the G33 argued that "all developing countries should have access to agriculture safeguard, and in particular the SSM," as it is a "critical deliverable" that is not linked with any Doha tariff reduction disciplines or commitments.

Indonesia said that the provisions of the SSM "breaching the pre-Doha bound rates under Rev. 4 and W7 documents have clearly embraced this principle and the July Framework and Hong Kong Mandate have not established a link between the SSM and the tariff reductions."

The SSM shall have no *a priori* product limitations as to its availability but the products will be specified in the final schedule, Indonesia argued. "However, there is no intention to apply SSM for every product in every import surge or price depression," Indonesia assured members.

On the question of triggers for invoking the SSM, the G33 said developing countries would need a "price-based trigger" as customs authorities can simply refer to price information which is always available on a real-time basis. "Price mechanism would address low-priced and/or subsidized exports which could otherwise dampen domestic prices and appetite of farmers to plant," the developing-country coalition argued.

More importantly, the price and volume triggers must be based on most recent or current market realities based on a three-year rolling average. Indonesia said that developing countries would use "volume triggers" when imports are 110%-135% higher on an average basis in the previous three years.

Several countries – India, Turkey, the Philippines, Barbados on behalf of the Africa, Caribbean and Pacific (ACP) group, Kenya, Lesotho, and Taipei on behalf of the recently acceded members – said the SSM has to be an integral part of the market access pillar of the post-Bali work programme to be finalized by end-July.

However, Australia and Canada, among others, severely questioned the need for the SSM, saying it would not only undermine market access but increase tariffs to the Uruguay Round levels. Australia said the SSM would make it difficult to implement market access commitments, while Canada maintained that a "recalibrated" approach in market access would not require the SSM. Australia and Canada were willing to discuss a modified SSG but not SSM, said a developing-country trade envoy who was present at the meeting.

Domestic support

In a separate meeting on 16 April on trade-distorting domestic support in agriculture, China severely criticized the United States for trying to escape the commitment to reduce trade-distorting domestic support by raising extraneous demands on others to make a contribution.

China said it would not do anything for the sake of the US, which has to reduce its domestic support as per the Doha mandate, according to a participant familiar with the meeting.

China said its *de minimis* support is less than what is allowed for developing countries, which is currently at 10%. Further, China argued that it is not required to make any commitment on aggregate measurement of support.

China asserted that it has a legitimate right not to cap its *de minimis* payments, suggesting that the nature of trade-distorting subsidies provided by industrialized countries is different from the subsidies offered by poor countries.

While conceding that it is a major contributor in domestic support, the US argued that what it called other major subsidizers, including China and India, must undertake appropriate commitments to conclude the Doha Round negotiations, according to participants familiar with the discussion.

The US emphasized that members must focus on the concept of overall trade-distorting domestic support as well as differentiate the domestic support based on input subsidies and market price support which are more trade-distorting than other partially decoupled support.

India said *de minimis* support is vital for its farmers, and protested attempts to create new demands and categories.

Canada said reduction commitments in overall trade-distorting domestic support and aggregate measurement of support are important in the "recalibrated" approach.

Brazil said it wants to take part in any final solution on domestic support commitments that are hammered out during discussions between key members, said participants present at the meeting. *(SUNS8005)* ❐

(continued from page 9)

more long-term financing to developing countries. China's money could push the world in the right direction.

In a devastating conclusion, Wolf says that the world needs new institutions. "It must adjust to the rise of new powers. It will not stop just because the US can no longer engage. If the results are not to America's liking, it has only itself to blame."

The winds of change are blowing in the global economy, and many in the West recognize and even support this.❐

Martin Khor is Executive Director of the South Centre, an intergovernmental think-tank of developing countries, and former Director of the Third World Network. This article first appeared in The Star *(Malaysia) (13 April 2015).*

Opposition to US "fast track" bill may destabilize TPP talks, says NGO

Proposed "fast track" legislation that would facilitate the passage of trade pacts such as the Trans-Pacific Partnership (TPP) is likely to be rejected in the US Congress, given broad opposition to both "fast track" and the TPP, says a US NGO.

by Kanaga Raja

GENEVA: The "fast track" trade authority bill introduced in both houses of the US Congress on 16 April risks destabilizing the Trans-Pacific Partnership (TPP) negotiations, due to the unprecedented level of both Congressional and public opposition that it currently faces, according to Public Citizen, a US-based public interest advocacy group.

In a 16 April press release, Public Citizen said that the fast-track bill [also referred to as Trade Promotion Authority (TPA)] would revive the controversial fast-track procedures to which nearly all US House of Representatives Democrats and a sizable bloc of House Republicans have already announced opposition.

Noting that the chief negotiators of the TPP were due to meet in the week of 20 April, the civil society group said that the unprecedented level of opposition to the fast-track bill may destabilize the talks, as the chances of the bill becoming law are extremely remote.

Public Citizen also charged that the bill proposed on 16 April replicates the language of the failed 2014 fast-track bill, and thus is expected to share a similar fate as the 2014 bill.

In a statement issued on 16 April, US Trade Representative (USTR) Michael Froman said that the Bipartisan Trade Priorities and Accountability Act (the TPA bill) represents "the most significant upgrade to our approach to trade in over four decades, including the requirement that labour and environmental protections be fully enforceable; new requirements for taking on unfairly subsidized foreign state owned enterprises; strong and balanced intellectual property protections; and new consultations and transparency requirements."

"TPA will move us one step closer to delivering trade agreements like the Trans-Pacific Partnership (TPP) and the Trans-Atlantic Trade and Investment Partnership (T-TIP) which will open growing markets to 'Made in America' exports, protect our workers, and ensure that America, not our competitors, sets the rules of the road on trade," he claimed.

Little support

In its press release, Public Citizen noted that because fast track involves a broad delegation of Congress' constitutional authorities to the president, Congress has rarely enacted it.

Since 1988, only two presidents have persuaded Congress to approve fast-track powers. In the 21 years since the North American Free Trade Agreement (NAFTA) took effect, fast track has been authorized only once – from 2002 to 2007. In 1998, the House voted down fast track for President Bill Clinton, with 71 Republican members joining 171 House Democrats, Public Citizen pointed out.

According to the US public interest group, many members of Congress that supported past US trade pacts oppose President Barack Obama's request for fast track for the TPP because the almost-completed pact does not include the disciplines against currency manipulation demanded by large majorities of senators and representatives.

"Especially after the president dismissed Congress' demand that the TPP include currency disciplines, many in Congress are simply unwilling to give up their constitutional trade authority for the TPP," said Lori Wallach, director of Public Citizen's Global Trade Watch.

"In the House of Representatives, there is almost no Democratic support, which is not surprising given that the Democrats' base of support – trade unions and family farm groups, environmental and free Internet advocates, faith and consumer groups and more – oppose Fast Track and there is a substantial bloc of Republican opposition given conservative groups also oppose it," she added.

Public Citizen underscored that the bill comes despite broad and growing US public opposition to fast track and the TPP. It cited a new bipartisan poll from the *Wall Street Journal* and NBC News that showed that 75% of Americans think that the TPP should be rejected or delayed. During the most recent Congressional recess, voters in Oregon, Massachusetts, Washington, Maryland and other states protested against fast track, citing the devastating impact past fast-tracked pacts have had on local jobs, small businesses and farmers.

According to the Public Citizen press release, in a typical two-year session of the US Congress, only between 2-5% of the bills that are introduced become laws.

The bill introduced on 16 April, which was sponsored by US Senate Finance Committee Chair Orrin Hatch (Republican-Utah), House Ways and Means Chair Paul Ryan (Republican-Wisconsin) and Finance Committee Ranking Member Ron Wyden (Democrat-Oregon), failed to attract a single House Democratic sponsor.

"The House of Representatives is where Fast Track and trade pacts always have their most difficult challenge, and this will certainly be the case in the current Congress," said Public Citizen.

Even though House Republican leaders support fast track, almost every House Democrat opposes it. Passing it would require a party line vote by Republicans to grant massive new authority to the Democratic president they have attacked for years as an "imperial president" who grabs power, it added.

"That scenario is already generating a chorus of opposition by tea party conservatives, especially as many conservative Republicans oppose Fast Track as a constitutional aberration anyway. Even with the corporate lobby in favour, the Republican leadership will be hard pressed to overcome this political dynamic."

Prominent Republican free traders have insisted that the TPP include enforceable disciplines against currency manipulation that would undercut Japan and other nations' practice of devaluating their currency to boost exports, said Public Citizen. Letters making that demand were signed by a super-majority of 60 US senators and 230 House members.

According to Public Citizen, senior Republican Sen. Lindsey Graham of South Carolina, an ardent "free trader" who has supported all past free trade agreements and whose leadership Obama would need to pass the TPP, says he will oppose it absent such terms.

"Officials from TPP countries, such as Japan, Canada, Chile, Australia and New Zealand, have expressed concern about the absence of Fast Track authority by the Obama administration, and TPP proponents in the US have repeatedly claimed that other TPP countries would not put their final offers on the table in the absence of Fast Track."

However, said Public Citizen, the

fast-track bill faces long odds for approval during this session of Congress.

It pointed out that the proposed bill makes only minor adjustments to the fast-track bill that was dead on arrival in the House when it was introduced in January 2014. At the time, only eight out of 201 House Democrats supported the bill and the House Republican leadership could not count more than 100 members as "yes" votes (any legislation requires a simple majority of 218 "yes" votes to pass the House of Representatives).

Since then, 14 of the 17 current first-term Democrats in the House have signed letters opposing or expressing serious concerns with fast track, despite pressure from the administration.

And, in contrast to past Congresses, a sizable bloc of first-term Republicans refused to sign a February letter declaring their support for fast track despite a major corporate lobby push, said the press release.

Public Citizen also said that Democrats and Republicans alike have objected to how fast track empowers the executive branch to use trade pacts to legislate through the backdoor on non-trade issues over which Congress and state legislatures have authority.

It recalled that the recent posting by WikiLeaks of the TPP's investment chapter has fuelled concerns by conservatives and liberals alike about the controversial investor-state dispute settlement (ISDS) system, which would allow corporations to skirt domestic laws and courts, and demand compensation from taxpayers for policies that investors claim violate new TPP privileges.

Were the TPP to be enacted with ISDS, more than 9,000 firms in the United States with parent corporations in TPP countries would be newly empowered to launch ISDS claims against the US government, Public Citizen warned.

Threat to public interest

Meanwhile, in a separate press release, the Center for International Environmental Law (CIEL) said that with fast track, Congress would lose its ability to ensure that trade pacts benefit workers, the environment and communities around the United States.

Modern agreements like TTIP are not simply about trade; they are about regulation, with wide-ranging effects on environmental, health and safety standards designed to protect the public interest, it said.

The press release quoted CIEL President Carroll Muffett as saying: "Trade agreements like the Transatlantic Trade and Investment Partnership and the Trans-Pacific Partnership, negotiated out of sight and with no meaningful public input, reflect the wish-lists of industry lobbyists, not the needs of the American people."

"Increasingly, these agreements deal less with inconsequential border taxes than with critical issues of public policy. Chemical safety, consumers' and workers' rights, and the power of federal and state governments to protect the public from hazardous substances and products all will be affected by the deals being negotiated. These deals would grant new rights to corporations and investors to undermine democracy and public policy in the name of private profit. Deals like TTIP and TPP demand public scrutiny and careful Congressional review. Fast track fails that standard and fails the American people," she added. *(SUNS8005)* ❐

Winds of change in Asia

The birth of new development banks led by developing countries and the failure of the US to block them are signs of the winds of change and rebalancing of economic power, especially in Asia.

by Martin Khor

In the last month, the international media have been carrying articles on the fight between the United States and China over the formation of the Asian Infrastructure Investment Bank (AIIB).

Also significant is that influential Western economic commentators have supported China in its move to establish the new bank, and judged that US President Barack Obama made a big mistake in pressurizing US allies to shun the bank.

The United States is seen to be scoring an "own goal", since its close allies the United Kingdom, Australia and South Korea decided to be founding members of the bank, as well as other European countries including Germany and France together with most of Asia. The US rebuked the UK for policies "appeasing China", but the UK did not budge.

The US did not give any credible reason why countries should not join the AIIB. US Treasury Secretary Jack Lew said the new bank would not live up to the "highest global standards" for governance or lending.

But that sounded like the pot calling the kettle black, since it is the lack of fair governance in the International Monetary Fund (IMF) and the World Bank that prompted China to initiate the formation of the AIIB, and the BRICS countries (Brazil, Russia, India, China and South Africa) to similarly establish the New Development Bank.

For decades the developing countries have complained about how the developed countries have kept their grip on the voting power in the IMF and the World Bank by clinging on to the quotas agreed upon 70 years ago. These do not reflect the vastly increased shares of the world economy that the emerging economies now have. Even the mild reform agreed by all that the quotas would be altered slightly in favour of some developing countries cannot be implemented, because of US Congressional opposition.

The big developing countries have been frustrated. They had agreed to provide new resources (many billions of dollars each) to the IMF during the financial crisis, but were rewarded with no reforms in voting rights.

Moreover, the unjustifiable "understanding" that the heads of the World Bank and the IMF would be an American and a European respectively remains in place, despite promises of change.

So much for legitimacy of lectures about good governance, merit-based leadership and democratic practice that are preached by the Western countries and by the IMF and World Bank themselves.

The BRICS countries then set up the New Development Bank, which will supplement or compete with the World Bank, while China created the AIIB which will supplement the Asian Development Bank (ADB), which also has a lopsided governance system.

The new banks will focus on financing infrastructure projects, since developing countries have ambitious infrastructure programmes and there is gross under-funding.

Critics anticipate that the new banks will finance projects that the World Bank or ADB would reject for not meeting their environmental and social standards. But that is attacking something that hasn't yet happened. True, it would be really bad if the new banks build a portfolio of "bad projects" that would devastate the environment or displace millions of people without recognizing their rights.

It is thus imperative that the new banks take on board high social, environmental and fiduciary standards, besides having good internal governance and being financially viable.

The new institutions should be as good as or better than the existing ones which have been criticized for their governance, performance and effects.

It is a high challenge and one that is worth taking on. There is no certainty that the new banks will succeed, but they should be given every chance to do so.

Jostling for influence

The significance of the AIIB in particular is being seen as related to the jostling between the US and China for influence in the Asian region.

A few years ago, the US announced a "pivot" or rebalancing to Asia. This included enhanced military presence and new trade agreements especially the proposed Trans-Pacific Partnership (TPP). It seemed suspiciously like a policy of containment, or partial containment, of China. The US combines cooperation with competition and containment in its China policy, and it retains the flexibility of bringing into play any or all of these components.

China last year announced its own two initiatives, a Silk Road Economic Belt (from Western China through Central Asia to Europe) and a 21st-century Maritime Silk Road (mainly in Southeast Asia). The first will involve infrastructure projects, trade and public-private partnerships, and details of the second are being worked out. The AIIB can be seen as a financial arm (though not the only one) of these initiatives.

China is also part of negotiations for the Regional Comprehensive Economic Partnership (RCEP) that does not include the US, and last year it also initiated a study to set up a Free Trade Area of the Asia-Pacific, which will include the US.

These two intended pacts are an answer to the US-led TPP. It is still uncertain whether the TPP will be concluded, due to both domestic US politics as well as inability to reach consensus yet among the 12 negotiating countries on many contentious issues.

Meanwhile prominent Western opinion-makers are urging the US to change its policy and to accommodate China and other developing countries.

Larry Summers, former US Treasury Secretary, said this past month will be remembered as the moment the US lost its role as the underwriter of the global economic system, citing the combination of China's effort to establish a major new institution and the failure of the US to persuade dozens of its traditional allies to stay out of it. He called for a comprehensive review of the US approach to global economics, to allow for substantial adjustment to the global economic architecture.

Martin Wolf of the UK-based *Financial Times* said that a rebuff by the US of China's AIIB is folly. This is because Asian countries are in desperate need of infrastructure financing and the US should join the bank rather than pressuring others not to.

The real American concern is that China might establish institutions that weaken its influence on the global economy, Wolf said, adding that this is wrong since reforms on influence in global financial institutions are needed and the world economy would benefit from

(continued on page 6)

The search for solutions to debt distress

How Argentina's experience highlights the need for fair debt workouts

Argentina's difficult experience with debt, default and restructuring has shown more than ever why a viable means of resolving sovereign debt crises is so urgently necessary. The following extract from a Debt and Development Coalition Ireland report examines some of the proposed solutions put forward as well as the need to reform a global economic system that gives rise to such problems in the first place.

The Argentine debt case has highlighted the urgent need for a profound debate on the framework of international lending and borrowing and the national and international economic systems based on these financial flows. Specifically, Argentina's experience (see box) highlights the imperative need for some form of generally agreed-to process to solve sovereign debt crises and defaults. It is therefore urgent that activists, academics and politicians work together to find solutions that are both fair and sustainable, guaranteeing a fair process of resolution of sovereign bankruptcies for all involved.

The lack of established mechanisms and impartial institutions to deal with defaults is particularly problematic. Over the last decades, there have been multiple debates and proposals on what is the most fair and equitable way to resolve sovereign defaults. Proposals can be broadly grouped into two main categories. On one side, the initiative originally spearheaded by the US Treasury Department – and more recently supported by the International Capital Market Association (ICMA) and the International Monetary Fund (IMF) – is a "market solution." This approach promotes changes to bond contracts aimed at preventing holdouts (especially vulture funds) from having the possibility of impeding or derailing a restructuring process.

On the other side are those promoting a more formal, "statutory" solution. In its most reduced form, this means legislation at the national level blocking vulture funds from using courts to sue periphery countries. More ambitiously, others call for some form of international legal framework to enable working out sovereign defaults.

In what follows, we summarize some of the more representative proposals. The list is not comprehensive, but aimed at providing a general view and also useful information for discussion.

"Market-based" solution: collective action clauses

Collective action clauses (CACs) were first promoted by the US Treasury as a non-statutory, market solution to the problems of sovereign default and restructuring. They have become quite prevalent in sovereign bonds since the crises of the 1990s, especially since the Argentine crisis of 2001. Mexico was the first major sovereign issuer to include CACs in its sovereign bonds in February 2003. Since 1 January 2013, all eurozone government bonds with a maturity greater than one year are required to include a standardized CAC.

What are collective action clauses? CACs are a set of contractual provisions included in the terms of a sovereign bond. Two types are most commonly used. The first is a modification clause, which allows a specified majority of bondholders to agree to changes in the terms and conditions of the bond. In other words, in the case of a debt restructuring, if a specified majority of bondholders agrees, the original bond's conditions (maturity, rate of return, principal amount) can be changed. The second type of CAC is an acceleration clause, which prevents individual bondholders from demanding full payment after a default, requiring a specified percentage of bondholders to agree on such a demand for it to be executed.

CACs have been promoted by the US Treasury and more recently by the IMF and the ICMA. These institutions have promoted financial market deregulation for decades, contributing significantly to the current state of affairs (cyclical financial crises, economic austerity, increases in job insecurity and poverty). It is therefore excellent news that they now publicly recognize the importance of placing limitations on vulture funds. Their favoured solution is a "market solution," which in their view is preferable to national or international regulation of financial capital.

However, there are well-founded doubts about the ability of CACs to deal with vulture fund holdouts in the future. As economics Nobel laureate Joseph Stiglitz (2014) remarks, "If it were so easy to resolve such issues by private contract, then bankruptcy laws and bankruptcy courts would not be such an integral part of the financial system in the United States – private contracting would exist in the corporate-debt context, making bankruptcy courts superfluous." Stiglitz adds that, to his awareness, "no advanced country has been able to manage efficient restructuring of private debts through exclusive reliance on collective action clauses." It seems obvious, therefore, that if CACs are insufficient for private bankruptcies, they are even more inadequate for sovereign bankruptcies, where the context and issues are far more complex.

There is an additional problem with CACs, known as the "aggregation" problem. A collective action clause applies to only one bond series. Countries, over time, issue many different series of bonds. If the country should default, the issue arises as to how to calculate majorities for the CAC to take effect. If a majority for each bond series has to give approval for a restructuring offer, then one single series with a majority that opposes the restructuring process – a holdout series – could effectively block the entire restructuring process.

As Weidemaier and Gulati (2013) show, modification and acceleration CACs have been used for a long time, and financial market participants did not seem to assign to these clauses much value. In other words, if historically CACs were not valued as tools to avoid holdout complications during debt restructuring processes, it must be shown why now the situation is different. Indeed, as Gelpern and Gulati's (2006) case study shows, there is little reason to believe that they would be useful now.

There is, therefore, good reason to believe that it is un-

The Argentine debt debacle

The story of Argentina's 2001 debt crisis and default starts 25 years earlier, with the bloodiest military coup in the country's history and the implementation of neoliberal economic reforms. Since then, Argentina has had two major cycles of unsustainable debt accumulation and default. The first cycle took place during the dictatorship itself: between 1976 and 1983, Argentina's public debt quintupled, increasing from $9 billion to $45 billion. The second cycle occurred between 1991 and 2001 when Argentina's public debt increased from $60 billion to $144 billion, leading to Argentina's spectacular December 2001 default.

Did default result in the catastrophe predicted by pundits for the European periphery countries should they try to follow Argentina's example? Quite the contrary: after default Argentina began a remarkable recovery. Default reduced external payment obligations and eliminated Argentina's dependence on foreign capital markets. More importantly, Argentina no longer had to submit to International Monetary Fund tutelage, since it was no longer requesting IMF loans.

Argentina restructured its defaulted debt in 2005 and 2010. The restructuring was considered successful, with 92.4% of defaulted debtors accepting the government's offer that included a substantial capital reduction, longer maturities and lower interest rates. A small sub-group of the 7.6% of creditors that did not accept the government's restructuring offer are speculative investment funds – commonly referred to as vulture funds – who sued the Argentine government in New York courts for full payment. The US courts ruled in favour of the vulture funds, putting the entire Argentine debt restructuring at risk of collapse and leaving the country on the verge of yet another default.

As a result of the ruling, Argentina was forced into an impossible situation. If it chose to abide by the ruling, it would have exposed itself to similar lawsuits by the remainder of the 7.6% of holdout creditors, totalling an estimated $15 billion. Additionally, the creditors that had accepted the restructuring offers could have claimed that Argentina was making a better offer to holdouts and claim the same, improved offer, resulting in an unserviceable debt load and a new default.

If Argentina chose to ignore the court's ruling, it would also face severe problems as a substantial portion of restructured bonds are paid through the Bank of New York Mellon, a bank under the legal jurisdiction of the Southern District Court of New York. The court forbade the bank from paying restructured bonds unless it also paid the vulture funds at the same time. Therefore, if Argentina is not to be forced into default by the judge, it needs to find alternate routes for making payments.

The New York courts' ruling in favour of the vulture funds not only complicates Argentina's future, it also poses potentially insurmountable problems for any future sovereign debt restructuring. ❐

likely that market solutions will provide a meaningful solution to the holdout problem in general, and the vulture fund problem in particular.

Statutory solutions

What are the alternatives? Barring a desirable but unlikely complete overhaul of the international financial architecture, there are two broad alternatives. The first is for individual nation states, especially those with internationalized financial markets, such as the US, the UK, Germany and Japan, to implement some sort of vulture fund restrictions. The second alternative is an international legal framework to deal with sovereign defaults and debt restructuring. We will discuss each in turn.

National vulture fund legislation

Faced with the lack of a global sovereign debt restructuring framework and the inadequacy of CACs, some civil society organizations in Europe and the US have promoted legislation at the national level to curtail vulture fund activity. The intention behind these initiatives is to limit vulture funds' legal options in countries under whose legislation sovereign bonds are issued and in countries with strong economic aid programmes to poor countries. Belgium and the UK offer two examples of successful, if limited, vulture fund legislation. There were proposals presented to the national legislative bodies in the US and France which have not been turned into law as of this writing.

The Belgian law was the first national legislation curtailing the range of action of vulture funds. According to Sookun (2010), this 2008 law "provides that no monies granted by the Belgian authorities can be seized by or transferred to vulture funds or any other creditor. This legislation has automatically barred any vulture fund from pursuing any Belgian money or companies investing in the sovereign debtor country to obtain repayment." In other words, the Belgian law prevents vulture funds from seizing official government aid to poor countries.

The UK Debt Relief (Developing Countries) Act went into force in 2010. The bill's purpose was to curtail vulture fund legal action in UK courts against heavily indebted poor countries (HIPCs). The UK law applies to qualifying debt contracted before the date when the law went into effect (8 June 2010). How does the UK law limit vulture funds? It limits the "recoverable amount" of "qualifying debts" to a "relevant proportion." The relevant proportion is the proportion established by the HIPC formula, determined on a country-by-country basis. In other words, vulture funds are obliged to take the same reduction as the other HIPC creditors.

In addition to the Belgian and UK laws, bills were introduced to the US Congress (2008 and 2009) and to the French Assembly (2007). Neither the US nor the French bills have made it into law at the time of this writing since they have not yet garnered sufficient congressional support.

While the Belgian and UK laws are clearly an important step in the right direction, they are still quite limited in scope and would need to be broadened in order to effectively deal with vulture funds. First, they only apply to HIPCs, clearly excluding other periphery countries from the benefits of protection from vulture fund attacks. Second, in the case of the

UK law, only HIPC debt contracted prior to 2010 is protected, while debt contracted since is potentially a vulture fund target. Third, in the case of the Belgian law, it applies only to official Belgian government aid; other debt or financial flows are not included.

Existing legislation needs to be broadened, and more countries need to enact such legislation – especially countries like the US, France, Germany and Japan, whose financial markets and laws are used to issue sovereign debt and whose courts can be used by vulture funds to litigate.

International debt workout mechanisms

Over the last decades, debate on the desirability and need for an international framework to resolve sovereign debt crises has intensified. Most proposals fuelling this debate have come from civil society organizations and academics working with these organizations. The unifying thread of these proposals is the realization that sovereign defaults are extremely complex, much more so than private sector bankruptcies, and therefore there is a need for an international framework to deal with sovereign debt crises, defaults and debt restructuring.

An early example is Kunibert Raffer's (1990) proposal to internationalize the municipal bankruptcy chapter of the US Code (so-called Chapter 9). According to Raffer, this piece of US legislation has the necessary regulatory instruments to deal with a sovereign insolvency. Since there is no existing international insolvency court, arbitration would be carried out by an ad hoc arbitration panel. While the result of such a process would be informal, it would still have clear and pre-defined rules and principles, particularly regarding the protection of the debtor nation's sovereignty.

In 2001, the IMF presented a proposal for a Sovereign Debt Restructuring Mechanism (SDRM). While the proposal was not adopted due to lack of support from the US, it is significant because the IMF acknowledged the need for an internationally agreed-to mechanism to deal with sovereign debt crises. However, the proposal had a very substantial shortcoming: the IMF was to be a part of the tribunal with substantial decision-making power. This presented a clear conflict of interest since the IMF is often a creditor and its conditionality generally accelerates debt crises. Raffer (2006) wittily titled the IMF's SDRM proposal as "Simply Disastrous Rescheduling Management."

More recently, an alternative was put forth by Latin American economists Alberto Acosta and Oscar Ugarteche (2003). They propose the creation of an International Board of Arbitration for Sovereign Debt (IBASD), that is, an international insolvency court, accompanied by an International Financial Code and full debt audits before any debt negotiation or restructuring.

Finally, the United Nations Conference on Trade and Development (UNCTAD) has also been spearheading a process of broad consultations on the development of a debt workout mechanism.

Debate on an international debt workout framework was revitalized as a result of a resolution passed on 9 September 2014 by the United Nations General Assembly (UNGA) calling for the creation of a "multilateral legal framework for sovereign debt restructuring." The initiative was triggered by Argentina's experience with vulture fund lawsuits and promoted by the G77 developing countries plus China. The resolution was supported by an overwhelming majority of countries: 124 voted in favour, 41 abstained and only 11 voted against (17 countries were not present for the vote).

Beyond debt issues: questions about the international financial order

Discussions on sovereign defaults and debt restructuring can often be quite detailed and technical and tend to focus narrowly on the issues at stake. However, deeper questions need to be asked about the nature of the international financial architecture and international economic relations more generally if we are to address debt-related problems in a sustainable and lasting way.

Perhaps a good starting point is to analyze why it is that between 1944 and 1970 (when the Bretton Woods agreement was in force) there were no debt or financial crises in the world economy, whereas the periods before 1944 and after 1970 are riddled with such crises. The answer lies in the strict financial regulation that existed between 1944 and 1970, both for national economies and for international capital flows. During this period, financial capital was at the service of the needs of production, employment and economic development. Not surprisingly, this resulted in the longest-running period of economic expansion since capitalism became the dominant economic system. Since the early 1970s, increasing deregulation of domestic and international financial systems has resulted in generalized economic instability and repeated financial and debt crises.

This begs the question: are we better off in a financially deregulated world? Since the mid-1970s, financial capital has become dominant, forcing substantial changes in economic policy objectives. While full employment was a central policy objective of the postwar period, since the mid-1970s price stability (low inflation) has become the overriding objective even at the cost of prolonged economic recessions. Low inflation worldwide ensures that profits from financial investments around the globe will maintain their value. In other words, rather than guaranteeing full employment and welfare improvements, economic policy has become dominated by the need to guarantee financial investment profits worldwide. As a result, job insecurity has grown, real wages have fallen, and economic volatility has become the norm. Financial sector profits, however, have been ample despite repeated "bubbles" and crashes. And, when crashes occur, the state (in other words, workers and taxpayers) steps in with handsome bailouts.

An important part of the global financial system's profits comes from debt issued by periphery countries in the world's main financial markets. When periphery countries face difficulties servicing their debt, the international financial institutions step in with economic austerity policies that systematically make matters worse. Periphery countries are therefore in an impossible situation. First, they must implement austerity policies that result in recession, poverty and unemployment. The alleged purpose behind these policies is to get the country to be able to service its debt again, even if this rarely happens. Second, when default and/or a debt restructuring eventually ensues, countries have to deal with extremely complex and costly processes and the possibility of vulture funds suing them in Northern legal jurisdictions. Finally, if a restructuring is successful, countries are usually left with heavy debt burdens for decades and the real possibility of further debt crises. This inevitably results in having to postpone development objectives and policies aimed at improving the livelihoods of the periphery's majorities.

So, the picture should be clear: working people are not better off in a world dominated by deregulated finance. Financiers are bailed out, corporations avoid taxes through tax havens and fiscal paradises, and working people are consistently forced to foot the bill. Unequal power relations between centre and periphery countries are enforced by the international financial institutions, guaranteeing that wealth and power concentration continue apace.

Clearly we need a new global financial architecture. But more than that, we need a new global economic architecture, where full employment, environmental sustainability, and respect for the full range of human rights are guaranteed.

Recommendations for action

From the presentation above, it should be clear that, at least for the time being, no single proposal will provide a definitive solution in the transition to a more just and fair international order. Consequently, we suggest the following guidelines for action:

1. Promote multiple and concurrent measures rather than focusing exclusively on "market solutions"

National governments should support more effective collective action clauses, national and/or regional legislation limiting vulture fund activity, and a multilateral approach that should ultimately aim to override the inadequacies and limitations of the former mechanisms. Tackling the problem of sovereign defaults and debt restructuring from these different angles will make it less likely that vulture funds will be able to intervene.

2. Participate actively in multilateral framework negotiations

The multilateral approach has many areas in need of greater clarity: institutional framework, trigger mechanisms, scope of the process and arbitration criteria, to name a few. Therefore, it is critical that a wide range of organizations participate in the process – especially those expressing the views of people affected by debt crises – through the available UN channels. The upcoming meetings of the UN ad hoc committee established to implement the September 2014 UNGA resolution should provide opportunities for such voices to be heard.

3. Participate based on non-negotiable working principles

Governments should use the following non-negotiable working principles in negotiations on a multilateral mechanism:

– *No decision-making role for the IMF and other international financial institutions.* These institutions are or have been creditors of many countries, with policy conditionality that usually makes debt crises unavoidable. Furthermore, the financial liberalization policies they have promoted are a direct cause of the instability and volatility of the international financial system. They are not, therefore, neutral players and should have no decision-making role in the multilateral framework.

– *The resulting mechanism should be legitimate and impartial.* Lineau (2014) has identified three aspects of legitimacy: source, process and outcome. The same author has identified three aspects of impartiality: institutional, actor and informational. They are a good starting point to think about these issues.

– *Equality of all sovereign nations.* All nations should receive equal treatment and have equal rights, whether periphery or centre countries.

– *Protection of the entire range of human rights.* No population should be expected to have to forego fulfilment of their human rights in order to fulfil financial obligations.

4. Support sovereign nation prerogative to default

The international financial architecture being what it currently is means that debt will continue to be an issue, especially for periphery countries, for quite some time. Until lasting solutions are found, solidarity with national government decisions to not pay illegitimate and unsustainable debts must deepen. As we have learnt from the experience of Argentina, default was the wisest choice even if the mainstream press demonized the country for taking this step. The media narrative and scaremongering of citizens and politicians currently dealing with debt crises must be challenged.

5. Work to bring about a more equitable and balanced international economic order

As highlighted above, sovereign debt issues expose the power and economic imbalances that are at the core of the global economic system. New debt resolution tools and mechanisms may alleviate some suffering in times of debt crises, but will not ultimately change the international financial architecture nor solve its many profound problems. This is why much deeper changes are needed, including:

– Putting an end to the macroeconomic policies of fiscal consolidation and austerity, often imposed through external policy conditionality. These policies cause deep recessions that hurt working people the most and turn debt burdens more unsustainable. Policies should be aimed at improving worker welfare and maintaining high levels of employment.

– Putting an end to fiscal benefits for economically powerful actors and the wealthy. Tax justice, meaning higher taxes for corporations and the wealthy sections of society, should be implemented to ensure support for achieving economies that serve the public good and not powerful minority interests.

– Implementing more detailed controls on lending practices to regulate the intense level of debt flows in the global economy. ❐

The above is extracted from "Toward Justice Centred Debt Solutions: Lessons from Argentina", a report published by Debt and Development Coalition Ireland (DDCI) and written by Alan B. Cibils, Chair of the Political Economy Department at the Universidad Nacional de General Sarmiento in Buenos Aires, Argentina. DDCI is a membership organization based in Ireland working for global financial justice. The full report is available on the DDCI website (www.debtireland.org); DDCI can be contacted at hello@debtireland.org.

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(continued from page 16)

that will primarily benefit transnational shipping and logistics corporations rather than foster development.

Under the peace clause, countries with existing subsidy programmes could not be subject to a legal case by another WTO member, if they comply with onerous reporting requirements and prove that their subsidies are not distorting markets (something that the United States is not required to do for its subsidies). No new programmes may be implemented, and there was no guarantee that a permanent solution would be agreed at the end of the four years.

However, there was a wrinkle. Legal ambiguity in the text meant that it was not clear whether the peace clause would be in effect until a permanent solution was agreed, or only for four years – and would then expire. Thus when the new government of India came to office last spring, they requested a clarification that the peace clause would be in effect until a permanent change in the rules was agreed. Again, the United States refused to make this clarification – demonstrating that indeed, it had been planning on allowing the peace clause to expire without a new deal in place.

India then countered that it would not let the other aspects of the Bali Package come into effect until it had received this simple clarification. And while the United States spent the summer blaming India for supposedly scuttling the Bali Package, it refused to agree to the clarification. Indian farmers kept the pressure on their government, and global civil society supported them.

Months dragged on, but the US corporations which didn't want their trade facilitation deal imperilled won out – and the US finally agreed to allow the peace clause to remain in place until a permanent solution is agreed. WTO members also agreed to "make all concerted efforts to agree and adopt a permanent solution on the issue of public stockholding for food security purposes by 31 December 2015," moving up the date by two years. This means that a decision should be taken at the upcoming WTO ministerial meeting in Nairobi, Kenya, on 15-18 December this year.

As part of the Bali Package, countries also agreed to relaunch the Doha Round, which includes expanding the WTO's deals on trade in goods, services and agriculture. The Round should instead focus on fixing other drastic problems with the existing WTO, but these negotiations are likely to stretch on for years, if they are ever concluded.

An opportunity for real change

In contrast, the immediate opportunity to strike a deal to remove food security programmes from WTO disciplines by December 2015 is quite real and far more possible. It won't come close to "fixing" the WTO. Many argue that the Committee on Food Security of the UN Food and Agriculture Organization (FAO), not the WTO, should be the global body that regulates agriculture, because the main focus should be on guaranteeing global food security and food sovereignty, not the WTO's myopic focus of merely increasing trade. But no member is proposing to take the WTO out of agriculture, and there are many who argue that removing agriculture from the WTO would only make global agricultural trade even more unfair.

But removing WTO obstacles to food security – by allowing developing countries to invest in their own agricultural production and feed their own populations, thus reducing their dependence on global food aid – should be achievable. This would involve allowing developing countries to operate public stockholding for food security purposes, allowing developing countries to protect their markets against import surges through a workable Special Safeguard Mechanism, and prohibiting export subsidies which damage other countries' domestic production.

Achieving this change would remove the most damaging aspect of the current WTO, as the global trade rule most responsible for keeping farmers poor and keeping over 800 million people hungry worldwide. It would bring the WTO rules more in line with the global consensus on agricultural investment and food security. It would allow countries to be more self-sustainable, which, in the United States, Republicans and Democrats alike should appreciate. It would allow more poor nations to achieve Millennium Development Goal (MDG) number 1: eradicating extreme poverty and hunger. It could save some of the 99 million children under age five who are undernourished and underweight. It won't solve global hunger, but it will remove key WTO obstacles to developing countries' efforts to reduce hunger in their own countries.

What is it going to take? Anti-hunger groups worldwide will need to take up the cause and bring their powerful advocacy to bear on the issue. Farmers, right-to-food campaigners and development advocates in Africa, Asia and across the developing world – like the ones in India who achieved landmark legislation – will need to pressure their governments to support food security in the WTO. Unity among developing countries and least developed countries (LDCs) will be essential.

The US Trade Representative and Department of Agriculture must be exposed for their divide-and-conquer tactics, as they are currently circulating inaccurate and misleading information about India's stockholding programmes to scare the LDCs in the WTO. Likewise, European and other developed-country solidarity with the poor and hungry must be mobilized. International agencies with a voice on food security must speak out, as has the former UN Special Rapporteur, that the WTO must be adapted "to ensure compatibility with the establishment of food reserves," noting that this should be "agreed to immediately and without expectation of trade concessions."

It can be done. There is a short window to act. Let this opportunity not be missed. ❐

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Investing in agriculture in developing countries: the whole world says yes, but the WTO says no

Global trade rules enshrined in the WTO are in need of reforms that would allow developing countries to invest in agricultural production for the purpose of ensuring food security.

by Deborah James

Farmers, development activists and food security advocates alike are united on the need for resilient agro-ecological local food systems to achieve the right to food. Unfortunately, there remains an international constraint towards achieving this: The global rules that actually govern agriculture – not just for trade but also domestic production – are set in the World Trade Organization (WTO), and they are appallingly unfair and antiquated.

Fortunately, we now have the best chance in 20 years of changing the single most damaging aspect of the WTO: the rules that prohibit developing countries from investing in their own farmers.

Unfair, antiquated rules in the WTO

The Agreement on Agriculture, which would become a foundational part of the WTO, was finalized in 1994. At that time, it was agreed that agricultural subsidies would be capped at their then-current level, and would be subject to gradual reduction. This applied most strongly to subsidies for food that would be exported, but it also applied to domestic subsidies, except in certain specified circumstances.

The core unfairness of this arrangement resides in the fact that it was overwhelmingly rich countries that were subsidizing agricultural production at that time. Developing countries, by and large, were either too poor or subject to restrictions by the International Monetary Fund or the World Bank against agricultural subsidies. The argument was that countries would be better off producing cash crops like coffee or sugarcane for export, and then buying food in the global market for cheaper than they could produce at home.

But things did not work out that way. Many countries producing the same commodity led to oversupplies, which brought down prices. Aggressive deregulation of agriculture and consolidation of retail chains has led to downward pressure on global prices. Climate change has led to droughts that even the World Bank says will only get worse. Financialization of, and speculation in, the commodities market has led to volatility in world food prices, with speculators getting rich but prices staying low for poor producers. These problems together caused food prices to skyrocket, resulting in two global food crises that induced widespread hunger and rioting across the globe while enriching profits for transnational agribusiness producers and suppliers.

Food products are not the same as widgets, as most people have come to appreciate, and should not be subject to the same rules in the WTO – rules that are explicitly designed to increase trade in food rather than facilitate global food security.

At the same time, this food security fight illustrates a core problem of the WTO. The rules that govern global trade were set during a time in which the neoliberal ideology of deregulation and privatization was ascendant, following the collapse of the Soviet Union. In the period since, these policies have led to a number of global economic, financial, food and climate crises, and the pendulum has swung back to a more complex view, which posits that the private sector and the public sector each has a role, and that issues such as human rights, food security, financial stability and climate survival must be dealt with through public deliberations with a focus on the public good, and not dictated by corporate craving for private profits.

Global consensus: Invest in domestic production

Every international body that deals with agriculture has come to recognize the need to prioritize food security over simply promoting trade. While the original Rome Declaration on Food Security in 1996 talked about ensuring food security through market-based mechanisms, the 2009 World Summit on Food Security placed emphasis instead on national investments in agriculture. The African Union announced in the Maputo Declaration in 2004 the commitment by each country to invest 10% of national budgets in agricultural production, which it reiterated last year in launching the "Year of Food Security."

Olivier De Schutter, the former UN Special Rapporteur on the Right to Food, has detailed how WTO policies are incompatible with the right to food, and has made concrete suggestions for what changes need to be made in his superb paper, "The World Trade Organization and the Post-Global Food Crisis Agenda: Putting Food Security First in the International Trade System," which caused a massive uproar at the WTO. He highlighted the importance of developing countries maintaining food reserves, as well as the importance of protecting their markets from international market volatility.

In the proposed Sustainable Development Goals (SDGs) being negotiated at the United Nations, the need for developing countries to invest in food production is highlighted as a priority more than half a dozen times. The South Centre's extensive report on the issue documented the need for equity and justice and thus a change to the WTO's rules on agricultural subsidies.

Some developing countries are taking action. In India, more than half of the population depend on agriculture, and most farms are no larger than a few acres. Meanwhile, hundreds of millions suffer from hunger and a lack of access to adequate food; half of children under five years old in the country are chronically malnourished. The Indian Food Security Act is intended to reduce poverty among both producers and consumers. It purchases food from poor farmers at a Minimum Support Price (MSP), and then distributes that food to the poor through a Public Distribution System (PDS) in what is called a public stockholding, or food reserves, programme. And amazingly, this is where it runs afoul of the WTO.

Despite the global consensus, the actual rules in the WTO remain unchanged from decades past. WTO rules do not allow developing countries that were not subsidizing in 1994 to subsidize beyond the *de minimis* (Latin for "so small it's not worth tracking") amount allowed to all WTO members. Meanwhile, the United States and Europe are allowed tens of billions a year in overtly trade-distorting subsidies for exported products, and have yet to implement the abolition of those subsidies to which they agreed nearly 10 years ago.

But that's not the only problem. When calculating the subsidies, the rules state that countries must figure the difference not between the MSP and current prices; they have to use the WTO "reference price," which is – get this – the average world price from 1986-88. As if the price of rice or wheat more than 25 years ago had any bearing on today's markets. Since developing countries have experienced far more inflation than have developed countries, this "reference price" is another aspect of the injustice – not to mention ludicrous nature – of the current rules, as regularly argued by India's former Ambassador to the WTO, Jayant Dasgupta.

While this reference price must be used by developing countries to calculate the subsidies for the type of public stockholding and food reserves programme recommended by most experts, the same is not required of developed countries, including the United States in reporting its Supplemental Nutrition Assistance Program (SNAP). Subsidies to consumers to purchase food (processed or healthy, foreign or domestically produced) in the market are not disciplined, although many would claim that they "distort the market" just as much as food reserves programmes.

Countries as diverse as Bangladesh, Botswana, Cameroon, Egypt, Ghana, Kenya, Malawi, Morocco, Nepal, Senegal, Tanzania, Tunisia, Zambia, Zimbabwe and many others have public stockholding programmes, in line with the African Union and proposed global SDG commitments. Many more countries are currently developing them.

In essence, because these countries are attempting to reduce poverty both on the consumer and the producer side, their programmes run up against the WTO rules and are subject to absurd accounting rules which vastly overinflate the subsidies, while countries like the US are allowed to directly distort markets through export subsidies and have rights to unlimited subsidies through the SNAP. This paradox has allowed corporate lobbyists and industry to hypocritically claim that India and other developing countries' subsidies are orders of magnitude more than what is actually invested.

Many farmers and other groups, such as ActionAid International and the Alliance for Food Sovereignty in Africa, are pushing at the domestic level to ensure that investments are directed to support agro-ecological solutions rather than imported chemical inputs, corporatization and land grabbing. But the rules must still be changed in order to allow for these types of investments.

In addition, sometimes countries experience an "import surge" of subsidized food imports, which can result in a precipitous price drop, negatively affecting domestic production. This is especially the case in net food-importing developing countries. But while most developed countries have access to price insurance and the Special Safeguard (SSG) provision in the WTO (which allows certain countries to temporarily increase protective tariffs during import surges), developing countries and their farmers do not have access to these mechanisms. Developing countries in the WTO have demanded a workable Special Safeguard Mechanism (SSM) that would be tailored to the market dynamics and needs in their countries, as the SSG was tailored decades ago to the dynamics in developed countries.

The point is that there are straightforward changes that urgently need to be made to global trade rules, simply to allow developing countries to make the investments in agricultural production that the entire world sees as essential to guaranteeing global food security.

Proposals towards a solution for food security, and hypocritical resistance

Fortunately, change is afoot. A group of 46 developing countries, supported by the Africa Group and other groups totalling over 100 countries, have introduced a proposal at the WTO to change the rules to allow developing countries to invest in agriculture for domestic food security purposes. Given the global consensus, a solution should seem well within reach.

Unfortunately, throughout 2013, the United States blocked negotiations on the food security proposal. It unscrupulously argued that India was trying to "roll back commitments" or that its distribution of poor farmers' produce to poor citizens would somehow distort global markets.

These claims are egregiously hypocritical, because the United States is the world's largest agriculture subsidizer. The United States filed domestic support of over $139 billion in 2011 – which is, astoundingly, double the amount of those subsidies in 1995. Most of this is for food stamps for the poor. But the US is still allowed around $15 billion in overtly trade-distorting support. And while the European Union's notified domestic support of $79 billion is still high, at least it has been reduced since the WTO's inception. In fact, members of the rich-country Organization for Economic Cooperation and Development spent a total of $258 billion subsidizing agriculture in 2013, according to the organization.

The United States has lost several cases at the WTO, as its farm subsidies have been found to distort the level playing field. US cotton subsidies alone – which enrich a few thousand producers in politically important Congressional districts – have so depressed global cotton prices that Brazil has twice won WTO cases against the US. But rather than change the subsidies, the US now pays off Brazil to the tune of hundreds of millions of dollars. Unfortunately, this arrangement leaves less politically powerful small farmers in Benin, Burkina Faso, Chad, Mali and other African cotton-producing countries who have been suffering for years, in the dust.

In advance of the last ministerial decision-making meeting of the WTO in Bali, Indonesia, in December 2013, the UN Special Rapporteur on the Right to Food again called for developing countries to be granted the freedom to use food reserves to help secure the right to food, without the threat of sanctions under the WTO. "Trade rules must be shaped around the food security policies that developing countries need, rather than policies having to tiptoe around WTO rules," the expert said. Indian farmers called on their government not to give in, a position that was supported by over 286 organizations of international civil society. The food security coalition in the WTO, led by India, fought a hard battle against US intransigence.

A temporary peace clause

In the end they were able to gain a commitment for further negotiations; WTO members would try to find a permanent solution through future talks, but gave themselves an entire four years to do so. In the interim, a "peace clause" would be in effect. In return, developing countries gave the rich countries a permanent Trade Facilitation Agreement, as part of what is called the "Bali Package."

It is deplorable, but not surprising, that the first "early harvest" in the Doha Round – which developing countries had only agreed to rich countries' demands to launch, on the basis that it was to be a "development" round – is an agreement

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