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Development financing meet yields meagre results

Held in Addis Ababa on 13-16 July, the third International Conference on Financing for Development came up with little in the way of concrete commitments and resources to support the development process. The Addis outcome was greeted with disappointment among developing countries and civil society watchers, with the latter decrying the lost opportunity to ensure people-centred, environment-friendly development finance.

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Failing to finance development?

The third International Conference on Financing for Development, held in Addis Ababa on 13-16 July, fell woefully short of delivering adequate means and resources to fund the development process.

by Bhumika Muchhala

NEW YORK: The third International Conference on Financing for Development (FfD) in Addis Ababa concluded on 16 July in bad faith as developed countries rejected the formation of a global tax body and dismissed developing countries' compromise proposal to strengthen the existing UN committee of tax experts.

Usually, when large conferences end after conflicts and climax in intergovernmental negotiations, there is a sense of exhilaration. This did not happen in Addis Ababa. Instead, there was deep disappointment among developing countries and many UN staff and outrage among civil society groups which had been following the FfD process over the last year. But among developed countries, there was relief, at best, or complacency, at worst. As the representative of Japan said in the final plenary, many developed countries including Japan felt relief.

As the civil society coalition on FfD stated in its reaction to the conference outcome document, the Addis Ababa Action Agenda, a fundamental opportunity was lost to tackle structural injustices in the current global economic system and ensure that development finance is people-centred and protects the environment. Not only does the Addis Ababa outcome not rise to the world's multiple crises, including finance, climate and distribution, it lacks the necessary ambition, leadership and actions to be associated with the post-2015 development agenda. Indeed, the outcome is wholly inadequate to support the operational means of implementation (MOI) for the Sustainable Development Goals (SDGs), and exposes an unbridged gap between the rhetoric of aspirations in the post-2015 development agenda and the reality of the void of actions in the Addis Ababa outcome, which does not scale up existing financial resources, let alone commit to new resources.

In light of the Monterrey Consensus and the Doha Declaration – the outcomes from the two previous FfD conferences – the Addis Ababa Action Agenda displays a retrogression from the past, which undermines the FfD mandate to address international systemic issues in macroeconomic, financial, trade, tax and monetary policies.

Failing to finance development?

The hallmark failure of the third FfD conference is the missed opportunity to create an intergovernmental tax body, despite the persistent push into the eleventh hour by a critical mass of developing countries led by India and Brazil. Such a global tax body, which would enable the UN to have a norm-setting role in tax cooperation in an equal capacity to that of the current monopoly of the Organization for Economic Cooperation and Development (OECD), would have been a meaningful advancement in global economic governance and domestic resource mobilization. The intransigence of developed countries against such a key step demonstrated their unwillingness to democratize global economic governance and their disregard for FfD and UN standards of "good governance at all levels" and "rule of law."

The core argument of developing countries is that given the reality that they are most affected by illicit financial flows, tax evasion and avoidance and transfer mispricing by large corporations, they should have an equal say at the international negotiating table on tax rules.

Given the glaring absence of new financial commitments, let alone the assurance of new and additional financial resources for climate and biodiversity finance, the majority of funds needed to finance the SDGs will come out of domestic budgets. However, ample research shows how hundreds of billions of dollars are extracted out of the corporate tax purse of developing countries, particularly in the resource-rich African continent. This is due to loopholes and tricks in the international tax architecture that is defined and dominated by the rich-country OECD grouping. A global

tax body could have shifted this power imbalance and delivered some fairness to global political economic structures.

The Addis Ababa outcome also legitimizes the predominance of private finance through blended finance and public-private partnerships (PPPs). This is problematic precisely because it is unattached to accountability measures or binding commitments based on international human and labour rights and environmental standards. A fast-growing body of evidence substantiates global concern over unconditional support for PPPs and blended financing instruments. Without a parallel recognition of the developmental role of the state and robust safeguards to enable the state to regulate in the public interest, there is a great risk that the private sector undermines rather than supports sustainable development.

The Addis outcome's blind trust in PPPs and blended finance is premised on the notion that such arrangements will lower the risk for private investment. The outcome makes no mention of the critical importance of inclusive and sustainable industrial development for developing countries, for the objectives of supporting economic diversification, adding value to raw materials and ascending the value chain, improving economic productivity and developing modern and appropriate technologies. Civil society had hoped that being in Addis Ababa, governments would remind themselves of the African Union's Agenda 2063 based on shared prosperity through social and economic transformation.

Similarly, there is no critical assessment of trade regimes. Instead of safeguarding policy space, the Addis outcome fails to critically assess international trade policy in order to provide alternative paths to commodity dependence, eliminate or at least review investor-state dispute settlement clauses in free trade agreements, and undertake human rights impact and sustainability assessments of such agreements to ensure their alignment with the national and extraterritorial obligations of governments.

Furthermore, the additional steps in Addis Ababa to address gender equality and women's empowerment seem to speak more to "gender equality as smart economics" than to women's and girls' entitlement to human rights, and show a strong tendency towards the instrumentalization of women by stating that women's empowerment is vital to enhance economic growth and productivity.

Regression in systemic issues

The core competencies of FfD are comprised of international systemic issues such as capital flows, external debt, trade, financialization and the monetary system. The ability of the UN to address systemic issues is routinely challenged by developed countries which argue that these issues are outside the UN's domain. Power and control over systemic issues and reforms are thus kept exclusively in the rich countries' domain of the Bretton Woods Institutions (the IMF and World Bank), the G7 and the G20.

However, not only does the UN have a longstanding history in substantively analyzing and proposing reforms on systemic issues, it is also the only universal forum where all countries, from the smallest island nation to the poorest landlocked country, have a voice and a vote in the General Assembly. The UN is also the only forum that connects systemic issues to the global partnership for development that recognizes North-South cooperation at its centre, based on historical responsibility and variances in levels of development and capacity, as well as the global rules and drivers that determine national policy space for development.

With regard to such systemic reforms, the Addis Ababa outcome explicitly ignores a landmark initiative in the UN itself to establish an international statutory legal framework for debt restructuring. Instead, it reaffirms the dominance of creditor-dominated mechanisms, such as the Paris Club, whose inequitable governance was criticized in the Doha Declaration of 2008. The outcome also welcomes existing OECD and IMF initiatives which do not address the scale of debt problems afflicting many developing countries today, such as Jamaica, which, according to its finance minister's intervention in Addis Ababa, won't be able to finance its SDGs until its external debt can achieve sustainability in 2025. Clearly, servicing creditors is seen as having priority over development goals. Reversing this order by incorporating national development financing needs into debt sustainability analyses was not addressed by the Addis Ababa outcome.

In spite of the global recognition that capital controls are crucial to developing countries' ability to protect themselves from financial crises, the outcome document demotes the use of "capital flow management measures" as a last resort "after necessary macroeconomic policy adjustment." This is a regression from the Monterrey Consensus of 2002, which recognized that "measures that mitigate the impact of excessive volatility of short-term capital flows are important and must be considered."

Similarly, the Addis outcome removes a clause on special drawing rights allocations for development which existed in previous iterations of the outcome document. Again, this is a step backwards from Monterrey, which addressed SDR allocations in two clauses.

Despite these critical retrogressions, there are two beacons of light in the Addis outcome: the establishment of a Technology Facilitation Mechanism (TFM) in the UN that supports SDG achievement, and an institutionalized follow-up mechanism for FfD that will involve up to five days of review every year to generate "agreed conclusions and recommendations." However, this follow-up forum has to be shared with the review of MOI for the post-2015 development agenda, going against developing countries' call for the FfD follow-up to be distinct and independent from that for the post-2015 development agenda in order to maintain focus on FfD as a separate and longstanding agenda.

While the TFM has positive potential, especially if it addresses intellectual property rights and endogenous technological development in poor countries, it is at the same time not tantamount to the financing items that comprise the development agenda. As such, the TFM helps obscure the paucity of political ambition on the FfD agenda.

A crisis of multilateralism

Perhaps the most sordid mark of a process that occurred in bad faith is the fact that negotiations never transpired in Addis Ababa. There was no official plenary, no proposals articulated and no document projected onto a screen to amend. Instead, what took place over four days in Addis Ababa was a behind-the-scenes pressure campaign exerted by the most powerful countries on developing countries. One developing-country delegate revealed that the pressure included bullying and blackmailing to silence many developing countries who can't afford to be politically defiant. Another delegate disclosed that he had never before experienced such an ab-

sence of transparency in discussions. Some observers commented that the atmosphere in Addis Ababa was akin to a "Green Room" style of discussions, where private discussions take place in small groups without any semblance of openness or transparency. [The term "Green Room" was first used for meetings of selected member states in trade negotiations at the General Agreement on Tariffs and Trade (GATT) forum and later the World Trade Organization.]

These underhanded tactics were exacerbated by the asymmetrical influence of member states over the Co-Facilitators, with developing countries often left wondering how a proposal that was not discussed in plenary found its way into a draft version of the outcome document. In the 25 June draft of the outcome document, new text appeared that said, "We affirm that the present Accord is not intended to create rights and obligations under international law." This text, introduced by a developed country, clearly sought to negate any concrete impact of an FFD outcome on both normative and legal levels. In the days and weeks preceding Addis Ababa, the G77 group of 134 developing countries managed to remove this damaging text from the outcome document while clarifying a set of key issues for the group.

These included the upgrading of the UN tax committee into an intergovernmental tax body; an adequate follow-up mechanism for reviewing the implementation of FfD outcomes starting from the 2002 Monterrey conference; the Rio principle of "common but differentiated responsibilities" (CBDR); and the link between FfD and the post-2015 development agenda through the role of MOI.

A central strategy of developed countries was the effective distortion of developing-country narratives and priorities, or the creation of new narratives to undermine the longstanding arguments of developing countries. Throughout the negotiations at UN headquarters in New York in the run-up to the Addis Ababa conference, the European Union created a narrative based on the phrase "the world has changed". This narrative postulated that developing countries' emphasis on international public finance and red line on CBDR did not reflect the fact that the world has changed since Monterrey in 2002. Much of the FfD text, the EU said, was still premised on an outdated North-South construct which did not reflect the complexity of today's world. Germany reinforced the EU's position, adding that the G77's positions did not consider the reality that emerging economies are now capable of taking on some of the financing burdens for development. As such, Germany clarified that the SDGs could not just be funded by developed countries.

India provided a succinct response to this challenge thrown by the EU to middle-income countries, particularly the emerging market economies such as China, Brazil and India, to provide financial resources alongside developed countries. India pointed out that the 30 richest countries of the world account for only 17% of the global population but over 60% of global GDP, more than 50% of global electricity consumption and nearly 40% of global carbon emissions. The *UN's Inequality Matters – World Social Situation 2013* report said that in 2010, high-income countries generated 55% of global income, while low-income countries created just above 1% of global income even though they contained 72% of the global population. India clarified that despite the relatively faster rates of growth in developing countries, international inequality has not fallen. The above UN report shows that, excluding one large developing country (China), the Gini coefficient of international inequality was higher in 2010 than in 1980. India concluded that these figures attest to the fact of the North-South gap, saying that member states will be doing themselves a disservice if reality is misrepresented.

Alongside the creation of new narratives, the long-existing UN discourse on "South-South cooperation" was sought to be distorted into a mechanism through which developed countries downplay their commitments and shift some of them onto developing countries. Developing countries responded with the argument that South-South and triangular cooperation, while increasingly important in the reform of the architecture of international relations, should not substitute for or downplay the importance of historical responsibilities and agreed commitments of North-South development cooperation.

This crisis of multilateralism exhibited by the recent FfD process does not bode well for the two crucial conferences yet to take place this year, the post-2015 development summit in September and the climate change (COP 21) conference in December.

Implications for post-2015 and climate change

The ways in which key words such as "transformative," "ambitious," "rule of law" and "enabling environment" were used, or misused, by developed-country negotiators in the FFD negotiations have made their developing-country counterparts wary of the gap between actual meaning and rhetorical application. The term "enabling environment", for example, is used by developing countries to refer to an enabling environment for development. This involves development-oriented reforms in the international financial and trade architectures, such as addressing unfair agricultural subsidies in developed countries or procyclical macroeconomic conditions attached to financial loans. However, developed countries also use the term "enabling environment" with equivalent vigour, except that they are referring to an enabling environment for private investment, such as favourable tax policies and labour market deregulation.

The experience in the FfD negotiations suggests that when these terms are tossed about in the post-2015 and COP 21 negotiations, they will be associated with limiting the policy space of developing countries. For the most part, this limitation is linked to facilitating private sector activity through so-called multi-stakeholder or public-private partnerships that involve shared financing between multiple entities even as most decision-making remains in the seat of the private sector. Meanwhile, an implicit ebbing, if not reneging, takes place on the public and international financing obligations of developed countries. Consequently, financing and decision-making are transferred to institutions where developing countries have to compete with representatives of the private sector and private foundations for voice and representation.

As the post-2015 development agenda negotiations leading up to the September summit conclude, the effects of the FfD experience remain to be witnessed. There are some indications that developing countries will unite with renewed strength and determination to bring multilateralism back. However, there are other signs that the retrogression in commitments and actions induced by Addis Ababa will bring the post-2015 outcome down to its lowly

level of ambition. What is increasingly clear is the stark fact that the geopolitical battle in the UN has not abated. If anything, it has become even more pronounced, imbued with a rather perverse irony as the international community embarks on its most ambitious development paradigm over the next 15 years.❐

Addis Ababa Action Agenda adopted amidst widespread disappointment

The FfD outcome document met with a disappointed response from developing countries which lamented its failure to sufficiently address key areas of development financing.

by Ranja Sengupta

NEW DELHI: While the outcome document of the third International Conference on Financing for Development got the official nod on 16 July, the Addis Ababa Action Agenda elicited severe dismay among developing countries and civil society organizations for its failure to offer much in terms of concrete instruments for implementation of development objectives.

While the developed countries and the United Nations secretariat hailed the document, several member states, including the 134-member-strong Group of 77 and China, expressed concerns and reservations during the closing plenary. Venezuela said "this is not a situation where we have cheering and applause. With this document the developed countries are shirking their responsibilities".

The outcome document had already been endorsed by the Main Committee of the conference, tasked with overseeing the actual negotiations and chaired by the Ethiopian Finance Minister, on 15 July evening. The Main Committee met three times during the course of the four-day conference, only to adjourn the first two times after quick process-related discussions and deciding to open up the discussions related only to paragraph 29 on a UN-based global tax body. Negotiations between the G77 and China (represented by South Africa), Ethiopia, Brazil and India, and the like-minded group of non-G77 countries represented by the European Union, Russia and Japan came to a close in the form of a compromise text that gave very little additional concession to the G77's key demand on an intergovernmental tax body.

(The Addis conference was the culmination of intense negotiations that took place at the UN headquarters in New York over the past few months.)

Soon after, the Main Committee met at 8 pm on 15 July, simply to announce the sealing of the deal and to declare the endorsement of the outcome document by the Committee. All that remained was to adopt the document at the closing plenary the next day. Further discussions were not encouraged. According to sources, the Ethiopian host government played a crucial role in ensuring that the Addis talks did not fail at any cost.

The four days of the conference were marked by an intense battle of wills and power between the North and the South, where the US, the EU and Japan allegedly exerted severe pressure on developing countries, including several African countries, to yield to their demand of sealing the document as it was. In the process, actual negotiations were bypassed and hazy bilateral and plurilateral discussions held sway. Several developing-country negotiators expressed the feeling of having come for negotiations but being shut out of actual negotiations with key concerns remaining unaddressed.

According to experts, a Technology Facilitation Mechanism (TFM), a Global Infrastructure Forum, and a dedicated forum for review and monitoring of the FfD process as well as the means of implementation and global partnership for development, are the key positives in an otherwise weak and ineffective document.

An intergovernmental tax body or not

In preceding negotiations in New York, a 7 July version of the draft outcome document had seen critical differences between the developed and the developing countries. However, pressure to adopt the document was stepped up by the EU, the US, Canada and Japan, which threatened to open up the whole document if any part was opened up to negotiations by developing countries in Addis.

But in spite of acquiescence by the G77 and China on many of the thorny issues contained in the July draft outcome document, remaining differences were mainly on a developing-country demand for a tax body under the UN that would see better representation from developing countries.

The demand from developing countries was for the upgrading of the current UN Committee of Experts on International Cooperation in Tax Matters, which is dominated and controlled by the OECD, to a full intergovernmental tax body under the UN's Economic and Social Council (ECOSOC). Given that domestic tax resources have been pushed under the FfD agenda as the main resource for development finance, the developing countries very justifiably wanted to ensure better tax cooperation to stop tax losses due to illicit financial flows and other ways used by transnational corporations to dodge taxes. Losses in tax revenues from illicit financial flows are much higher for the South, on South-to-North financial flows than the reverse. In this context, the G77 and China had argued that developing countries need more representation and voice on global tax matters and had proposed the upgrading of the current expert committee to a full intergovernmental body.

However, the rich nations had decided that OECD "leadership and expertise" was good enough for the developing world, and though the latter had to primarily depend on their own taxes to fund their development, they had to essentially make do with what their rich partners were deciding on their behalf on global tax matters.

Faced with stiff opposition from the developed countries, some compromise texts surfaced on the penultimate day of the negotiations. Some G77 members had apparently suggested a compromise in terms of insertion of some language on regionally proportionate representation in the current tax experts body, with a 2016 deadline to decide on structural changes.

The final text on paragraph 29 saw very little change, excluding mention of an intergovernmental body or a timeline of 2016 to decide on new structures, and making cursory reference to regional representation and selection of experts by the UN Secretary-General in consul-

tation with member states. The G77 and China, in their closing statement, reiterated the "need to fully upgrade the Tax Committee into an intergovernmental body".

The other thorny issues on the 7 July text were related to the mention of "common but differentiated responsibilities" (CBDR) as an underlying principle, the differentiation between climate and development finance, and the follow-up and review mechanisms for the FfD process and the post-2015 development agenda. However, the G77 and China had decided to cut their losses on these issues and persist with their demand only on the tax body.

Concerns and reservations

During the closing plenary of the conference on 16 July, member states put forward their reservations on the adopted text. Below are some highlights.

The G77 and China, in their statement, acknowledged the importance of the FfD process for development as well as the gains made on the Technology Facilitation Mechanism, Global Infrastructure Forum, and the review forum under the ECOSOC. However, the G77 and China went on to stress that "a number of issues of principle that are important to, and fully endorsed by, the Group … have not been adequately addressed in the current text". These included the explicit reaffirmation of the key principle of CBDR in the context of the global partnership for development. The Group put on record that "an unequivocal affirmation of this principle in the Outcome Document of the Post-2015 Development Agenda is a non-negotiable for the Group".

The statement also highlighted the "need to maintain the integrity of the FfD3 and the Post-2015 Agenda process as separate negotiation tracks, while acknowledging the need for stronger synergies between them". The Group also underscored the "need for development partners to meet current commitments and to upscale ODA [official development assistance], with binding timetables, including the reaffirmation that ODA is still the main source of development finance".

The G77 and China also drew attention to the need to make explicit references to countries and people living under foreign occupation, and to explicitly address the issue of lifting and terminating coercive measures, including unilateral economic sanctions. It also spoke against references to fossil fuel subsidies and carbon pricing that could prejudge outcomes of the ongoing negotiations under the UN Framework Convention on Climate Change (UNFCCC). It underlined the need to explicitly address that climate financing is new and additional and cannot be counted as ODA nor mixed with traditional development finance.

The Group described FfD as a process and promised that it will continue to engage constructively on these issues. "Rest assured, the Group is not abandoning its principled positions," stressed the G77 and China.

Benin, speaking on behalf of the least developed countries (LDCs), supported the G77 and China statement and said that while they felt that general concerns of the LDCs were addressed, the document would allow change if applied in good faith.

Maldives, speaking on behalf of the Alliance of Small Island States, aligned their statement to that of the G77. The group said that "SIDS [small island developing states], through the G77, have engaged actively throughout the negotiation process and welcome the recognition of the special case of SIDS in development, and the specific provisions for its implementation that this recognition entails. Though there is much language that can be strengthened throughout this document, to cater to the needs of the world's most vulnerable, let us now look to the remaining processes this year, so that no country is left behind and our successes are fructified on the tree of our endeavours".

Venezuela, in a strong statement, said, "Our acceptance is in no way an acknowledgement of the contents of this document. This is not a situation where we have cheering and applause. With this document the developed countries are shirking their responsibilities." Venezuela also said that CBDR is not a mere buzzword but reflects the various models of development where predatory development has exploited resources of the people.

Venezuela went on to put on record its specific reservations on the Addis outcome document, on paragraph 31 on fossil fuel subsidies, which it said represented intervention in domestic policy and sovereignty matters; reference to low-carbon economies; paragraph 49 on the concept of modern energy for all; the deletion in paragraph 14 of references to new development banks such as the Banco de Sur, Banco de Alba etc; and the deletion of references to unilateral trade barriers. It also reminded the conference that Venezuela is not a party to the UN Convention on the Law of the Sea.

Bolivia supported the G77 and China statement and requested to put on record its reservation on innovative financing mechanisms in paragraphs 60-69. Bolivia added that it was reading the last sentence in paragraph 5, which reaffirms the Rio principles, ending as "particularly CBDR" (thus implying a specific reference to CBDR in the affirmation of the Rio principles).

Nigeria, aligning itself to the statement of the G77 and China, said "the FfD was a concept meant to be different but not opposed to the spirits of Monterrey and Doha, but to supplement and deepen their impacts with provisions for addressing the questions around sustainable development … By adopting the Addis Ababa Accord we have agreed to give LDCs, LLDCs [landlocked developing countries], SIDS and other countries in special or peculiar situations a new lease of life. We are acknowledging that their situations should no longer be hopeless and that vulnerability need not be their constant companion in life".

In conclusion, Nigeria stressed that it was of the "view that the Addis Ababa Action Agenda may be a non-binding document, however, it has moral imperative of being faithfully implemented by all Member States and actors in the United Nations. It should not be a vain endeavour that resulted after months of careful negotiations".

Malawi expressed a strong reservation on paragraph 32 of the outcome document, which it said does not take into account the impact of tobacco control on tobacco-producing countries' economies. "Countries whose economies substantially depend on tobacco production … must be supported and compensated for the loss of revenue within the framework of the UN and other international aid agencies as they diversify out of tobacco."

Nicaragua, after supporting the G77 and China, clarified that CBDR is found

(continued on page 16)

New chapter in Greek tragedy

When a country mismanages its debt, it can lose its sovereignty and dignity – a lesson that is being imposed again on the Greek nation.

by Martin Khor

"Neither a borrower nor a lender be." This famous quote from *Hamlet* makes Shakespeare as relevant as ever. Of course it is quite inconceivable how the modern economy can operate without companies getting loans from banks and investors. But it has also become clear that the mountains of debt owed by families, companies and governments threaten to not only derail but also swallow up whole economies.

The bad management of debt, whether by those who borrow or those who lend, can cause societies to be throttled by recession, job losses and social chaos for years on end. In the worst cases, indebted countries can lose their sovereignty and have their policies subjected to the demands and fancies of creditors, who may have no hesitation in dominating and humiliating those they lent to and who could not repay.

This surely is a major lesson from the current tragedy of Greece that continues to be played out on our TV screens and in daily news reports.

Austerity policies

After years of austerity policies imposed by its creditors, the situation in Greece deteriorated rather than improved. The economy's output had dropped 25%; the unemployment rate had shot up to over 30%; poverty is rampant; and many families can no longer afford healthcare.

Early this year, the people voted in a party that advocated an anti-austerity programme. But five months of negotiations with its creditors [European countries, the European Central Bank (ECB) and the International Monetary Fund (IMF)] did not yield any positive results. Instead there was increasing acrimony between the two sides.

The Greek banks began to run out of cash when the ECB stopped the flow of new cash to them. (Since Greece does not have its own currency, it depends on the ECB for the supply of euros.) When the banks were thus forced to close, and each person was limited to withdrawing only €60 daily from ATMs, there was high pressure on the radical Greek government to give in.

Though he won a vote of "no to the austerity demands" in a referendum, within a few days the Prime Minister Alexis Tsipras had to swallow his pride and negotiate with the other European leaders to get new bailout funds.

His government could have opted for "Grexit", to leave the eurozone and go back to issuing its own currency and thus regain control over its monetary independence and economic policies. But most of the public wanted to stay with the euro, and reverting to its own currency also comes with risks.

Thus, the Greek premier's main aim was to stay in the eurozone, and the price was to accept the demands of the hardliners among the other European countries, especially Germany. In return for €86 billion in new bailout funds, he had to agree to an even tougher policy package than that offered by the same creditors a week before.

Much of the new funds will go to repaying existing debt and thus will not be used to revive economic growth. Instead, growth prospects will be undermined by new austerity measures such as a rise in value-added tax and pension cuts. Proceeds from privatization of state assets up to €50 billion are to be put in a fund to repay debts and recapitalize banks; management of these proceeds will be supervised by creditors, who will also supervise the implementation of agreed policies.

The Greek premier and his finance minister protested for most of the all-night 12 July summit of European leaders, but eventually caved in on almost all points.

The debtor was utterly humiliated. The hardline creditor leaders were extremely cruel. This was the conclusion of some of Europe's main commentators.

"They crucified Tsipras in there," a senior eurozone official who attended the summit was quoted as saying by the *Financial Times*. "Crucified."

In an article entitled "The euro family has shown it is capable of real cruelty", Suzanne Moore in the *Guardian* wrote: "The euro family has been exposed as a loan-sharking conglomerate that cares nothing for democracy. This family is abusive. This 'bailout', which will be sold as being a cruel-to-be-kind deal, is nothing of the sort. It is simply being cruel to be cruel."

No debt relief

The Greek leaders had been ready to adopt the new austerity measures in exchange for debt relief. Instead, they had to accept even more stringent austerity and privatization policies and did not get debt relief or even debt restructuring due to the objections of Germany and others.

The IMF, one of the creditor institutions, shocked the public by releasing the memo it had presented to the European leaders during the weekend of the fateful 12 July summit. The memo estimated that Greece's debt would go up to 200% of its economic output in the next two years, well above the 127% at the start of the European crisis.

This implies a worsening of Greece's financial situation despite the austerity policies it has to endure, and shows the policies are inappropriate.

The IMF argues that only through large-scale debt relief could Greece's debt be made sustainable. It advocated debt relief measures "that go far beyond what Europe has been willing to consider so far."

These are the same points that the Greek leaders had been arguing, but unsuccessfully. The European leaders also ignored IMF advice.

For years the rich countries have imposed the same austerity measures on indebted developing countries, which depressed their economies and got many of them deeper into debt. After decades, when it was clear the debts could not be repaid, debt relief was finally given to some 20 highly indebted developing countries, but their people had already suffered and their economies still did not fully recover.

It is now the turn of Greece to learn the lesson that creditors can be and usually are cruel almost beyond belief.

The Greek tragedy is still being played out. The drama continues. The people of Greece are very frustrated and angry. Nobody knows what the ending will be. ❐

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

WTO's Nairobi meet must deliver on development, say CSOs

Over 300 civil society groups worldwide have called for trade negotiations in the WTO to prioritize development issues instead of further opening up markets to developed-country corporations.

by Kanaga Raja

GENEVA: Some 341 global civil society organizations (CSOs) underlined on 8 July that if the upcoming 10th Ministerial Conference of the World Trade Organization (WTO), to be held in Nairobi, Kenya, is to be a "success", it must deliver on development and turn around the WTO.

In a letter sent to WTO members, the CSOs – development advocates, trade unions, farmers' organizations, and consumer and environmental groups – from over 100 countries said that the first WTO Ministerial Conference to be held in Africa will not be a success if it furthers policies that are against the interests of African, least developed country (LDC) and other developing-country development.

Among the international organizations and networks that signed on to the letter are the ACP Civil Society Forum, ActionAid International, Arab NGO Network for Development (ANND), the Asia Pacific Research Network (APRN), Asian Peasant Coalition, Development Alternatives with Women for a New Era (DAWN), Friends of the Earth International, Global Call to Action Against Poverty (GCAP), IBON International, International Transport Workers' Federation, LDC Watch, Oxfam International, Pacific Network on Globalization (PANG), Public Services International (PSI), Society for International Development (SID), and Third World Network.

The letter was also signed by a host of national organizations and networks.

Failed trade model

In their letter, the groups said that global trade policy must be evaluated by whether it contributes to global goals such as food security and food sovereignty, sustainable development, environmental conservation, financial stability, expanded access to quality public services, the creation of good jobs, and the reduction of poverty and inequality.

Now after 20 years of experience with the WTO and its corporate-led model of globalization, it is clear that this particular model of trade has failed workers, farmers, the poor and the environment, while facilitating the vast enrichment of a privileged few.

Since its mandate is to further liberalization and increase trade, rather than ensuring that trade can be an engine of development and the other goals stated above, it is the wrong institution for governing the global trade system.

"Unfortunately, some members are seeking to further the failed model and even expand it; thus it is urgent to reverse this direction. The transformation of the system, starting with the amelioration of the worst rules, must be prioritized," said the letter.

It is well known that most developing countries realized that the conclusion of the Uruguay Round negotiations created a set of agreements in the WTO that left them at a disadvantage in the global trade system. Since that time, they have circulated proposals to ameliorate the worst of those imbalances through what came to be known as the "implementation agenda."

According to the letter, developing countries did not want a new round of "market access" negotiations launched, which is a position with which civil society concurs. When developing countries agreed to launch a new round in 2001, it was with the specific promise – and mandate – that the round would focus on development issues, which included correcting the existing problems and imbalances in the WTO, with a particular focus on improving the extremely unbalanced agriculture rules.

Unfortunately, since then, some developed countries have insisted again and again on relegating the development agenda to the background, while insisting that their market access issues rise to the top priority in the negotiations.

"Thus, nearly 14 years after the launch of the Doha Round, the development issues which members agreed to prioritize still remain unresolved within the WTO. At this time, this imbalance in the negotiations can no longer remain status quo," said the letter.

Trade in services and goods

The groups emphasized that negotiations to further liberalize "trade in services" through the expansion of the WTO's General Agreement on Trade in Services (GATS) must be immediately halted.

Strong public oversight over both public and private services is crucial for democracy, public interest and development, as well as for the orderly functioning of the services market. The deregulation of the financial sector which was encouraged in part through 1990s-era rules of GATS led to the recent global financial crisis and the ensuing worldwide wave of recessions.

"In addition, we particularly oppose the inclusion of any public services such as health care and insurance, water and energy provision, postal distribution, education, public transportation, sanitation, and others that must be operated as accessible, quality public services in the public interest."

Before any further services negotiations are discussed, proper assessments of the potential implications for consumers, workers and the public interest must be undertaken, particularly as they relate to the future development of services for developing countries, said the groups.

For these and other reasons, the groups oppose the proposed Trade in Services Agreement (TiSA) as well as the potential expansion of the GATS within the WTO.

For similar reasons, the groups oppose the continuation of WTO negotiations to further liberalize trade in goods through the Non-Agricultural Market Access (NAMA) pillar. In the negotiations, sectors are being targeted which are of particular interest to developed-country corporations, rather than with a focus on export opportunities for developing countries. "This would jeopardize job growth and the fomenting of industrial development, particularly in developing countries," said the letter.

The structural transformation that is required for many African countries and LDCs to create jobs and alleviate poverty – key aspects of the proposed Sustainable Development Goals – requires the protection of infant industries, the promotion of added-value exports, technology transfer, and other tools that were used by every developed country on their path to development.

In addition, the global jobs crisis in which tens of millions of people remain

unemployed cannot be resolved with more liberalization of trade in goods.

The groups underlined that any future negotiations on trade in goods – including the NAMA negotiations but also the proposed plurilaterals including the expansion of the Information Technology Agreement (ITA-II) and the negotiations on environmental goods – must focus on job creation and the Decent Work agenda developed by the International Labour Organization (ILO) working in conjunction with the global labour movement, rather than on the narrow agenda of reducing corporate taxes.

The groups said: "Expansion of the ITA, and the ITA itself, through setting zero tariff targets for industrial products is contradictory to the nature of policy space required to use tariff policy as a tool to advance industrial development and structural transformation of poor economies."

Any discussions in regard to non-agricultural market access should focus on enabling the process of industrial development including through reviewing and enhancing flexibilities available to developing countries and through fulfilling the Special and Differential Treatment principle, such as providing essential flexibilities under the WTO Agreement on Trade-Related Investment Measures (TRIMs) that would allow developing countries to use policy tools important for industrial development.

New issues

The groups are also strenuously opposed to the inclusion of any "new issues" in a fundamentally flawed WTO that has yet to deal with the foundational flaws of the existing rules.

"We also understand that there is a pernicious desire on behalf of some developed members of the WTO to set aside permanently the entire development mandate of the Doha Round, and to replace it with another agenda of issues that would further the profit interests of their corporations."

The groups noted that these issues, including investment, government procurement and competition (the so-called "Singapore issues"), have been strongly rejected by developing countries in the past. They also include negotiations on e-commerce (which would expand corporate dominance of Internet governance and erode digital privacy and other digital rights); disciplining state-owned industries; and negotiations on environmental goods and services (which simply appropriate the positive connotations of the "environmental" moniker to further liberalization).

"While there are many aspects of the Doha Round to which we are opposed, failing to fulfil the development aspects while replacing that mandate with a new mandate that focuses solely on the wrong issues is the opposite agenda of what needs to be prioritized in global trade."

The groups stressed that development must come before binding commitments on trade facilitation. "We also understand that WTO members are being pressured to file their ratifications of the Protocol of Implementation for the entry into force of the Trade Facilitation Agreement (TFA)."

The groups reiterated their general opposition to the TFA, particularly because the TFA carries significant implications on the regulatory, institutional and legislative fronts, would require short-term and recurring long-term costs, and is likely to increase imports in some sectors while not contributing to building the productive and trade capacities of countries.

"Thus, we continue to urge developing countries to delay ratification, and to file only minimal Category A (binding) commitments."

Pro-development agenda

The civil society letter noted that developing countries and LDCs have instead made concrete proposals regarding the development mandate, including implementation issues, strengthening and operationalizing Special and Differential Treatment (SDT), agricultural reform, and LDC issues. It said that it is these issues which must be reprioritized as the agenda, rather than discussing more market access for developed-country corporations.

Along with the SDT agenda, members must urgently begin negotiations to change the current rules on trade in agriculture, and in particular to address longstanding concerns about the existing trade-distorting agricultural subsidies that developed countries agreed years ago to curtail or eliminate.

"It is outrageous that developed, but not developing, countries are allowed extensive levels of export subsidies as well as trade-distorting domestic support, and these damaging subsidies on exported agricultural [products] must be urgently terminated; countries should not be permitted in the WTO to damage each other's markets."

Likewise, if there are any future negotiations on market access in agriculture, developing countries must be allowed to protect their domestic production; they must have recourse to a full range of self-designated Special Products and an effective and workable Special Safeguard Mechanism, in the event that their markets experience damaging import surges.

On a parallel track, the groups urged members to immediately agree to a permanent solution on food security, by allowing public stockholding programmes for resource-poor farmers to be allowed in the "Green Box." WTO members must move beyond the outrageous blockage by the United States of the proposal to allow the developing countries to engage in public stockholding programmes to support impoverished agricultural producers as well as ensure food security for their hungry populations. "Members must urgently agree to remove this WTO obstacle to the Right to Food."

In conclusion, the groups said that any future trade negotiations must focus on the urgent development needs of countries for global trade rules that facilitate rather than hinder development, including the transformation of existing rules on agriculture (including a permanent solution on food security), and the prioritization of Special and Differential Treatment, implementation proposals and the LDC proposals, and must put aside the "market access" agenda of GATS and NAMA expansion – as well as other developed-country corporate agendas. *(SUNS8059)* ❐

US undermining multilateral WTO system through TiSA talks?

Recently leaked draft negotiating texts of the Trade in Services Agreement (TiSA) highlight the dangers posed by a pact that would not only enshrine a corporate-driven agenda but also stand at odds with the architecture of the multilateral trade regime.

by Chakravarthi Raghavan

The updated draft negotiating texts of the Trade in Services Agreement (TiSA) recently published on WikiLeaks, along with its earlier publication of some secret chapters of the Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (TTIP) agreements, bring out into the open the US attempts to drive a coach and four through the post-war multilateral trade, money and financial systems and establish global corporatism and US hegemony over the world.

News and views on the TPP (a proposed free trade agreement involving the US, Canada, Japan, Australia and some Asian and Pacific region nations) and on the TTIP (involving the US and the EU) have figured from time to time in the media, but TiSA has received much less attention.

Talks on all three agreements, being pushed by the administration of US President Barack Obama, are taking place in much greater secrecy than past and current trade negotiations in the multilateral trading system of the old GATT or the World Trade Organization (WTO) now.

All three so-called "high-quality trade agreements" are being promoted and negotiated in secret by the US, with the Obama administration keen to conclude them on its watch (by end 2016) without too much contemporaneous public or parliamentary scrutiny and debate within the participating countries.

With the US Congress having now ceded its authority in such matters to the administration under the so-called Trade Promotion Authority, the Obama administration can conclude the agreements and send them to Congress for "rubber-stamping", with Congress having the right only to vote "yes" or "no" but not to change any part of the agreements. This last is essentially a US domestic issue, one of democratic governance and legislative scrutiny.

However, without even this amount of scrutiny, the other participating countries will, by signing on to the agreements, be restricting further their development policy options, but be obligated to keep law and order and give free rein to global corporate activities within their countries. Each of these agreements will also have negative effects on non-participants.

"Together, the three treaties (TPP, TTIP and TiSA) form not only a new legal order shaped for transnational corporations, but a new economic 'grand enclosure,' which excludes China and all other BRICS countries," said WikiLeaks publisher Julian Assange in a press statement.

WikiLeaks and Assange deserve a public "thank you" from governments, parliaments and the public around the world for getting hold of and publishing these texts.

Of the three, the TPP and TTIP will be claimed to be free trade agreements (FTAs) permissible under the WTO, subject to WTO multilateral scrutiny as regional trade agreements (RTAs) and other procedural conditions. In both cases, prejudicially affected non-member states may be able to invoke some remedies. The WTO's RTA scrutiny itself may reach no conclusions, since consensus is needed. However, even when the consideration of the RTA remains bottled up in the relevant WTO committee, if current WTO jurisprudence prevails, an aggrieved member can raise a dispute, have a panel set up and the dispute adjudicated. The panel ruling (as modified by the Appellate Body if there is an appeal) will be automatically adopted by the WTO's Dispute Settlement Body, and the aggrieved member can have any ruling in its favour implemented by the RTA participants or, if the ruling is unimplemented, invoke automatic authorized trade retaliation.

Neither the TPP nor the TTIP appears to have a separate mechanism for settling disputes between their member states. According to US trade law academic Simon Lester, the states concerned will have to invoke the WTO and its Dispute Settlement Understanding, but only in relation to their WTO rights and obligations vis-a-vis actions of the other member states, but not where WTO-plus or -minus rights and obligations under the TPP or TTIP are to be invoked (Lester 2015).

Public criticism

Thanks to WikiLeaks' publication of some secret chapters, both the TPP and the TTIP have attracted considerable public disquiet and criticism in the US and in their negotiating partners over their proposed mechanism for dispute settlement between investors and the host state. Even conservative groups and personalities normally supportive of "liberal" or "free trade" principles have voiced their protests.

For example, Ben Goldsmith, a financier and chairman of the Conservative Environment Network in the UK, and supporter of a recently launched group Artists Against TTIP, has said, in an opinion piece in the London *Evening Standard* on 30 June: "TTIP is not a fringe issue but would mean seismic changes for the UK ... It is profoundly hypocritical of our current government to highlight threats to UK sovereignty while also promoting TTIP within Europe. Rather than trying to hide the deal from the British public, ministers should facilitate a fuller debate – and, if such a debate demands it, include the suspension of TTIP in the package of reforms and opt-outs being demanded from the EU."

When admitted conservatives and "financiers", and the English "popular press", are getting into this debate and voicing concerns and opposition, it is a warning that the British and European governments cannot ignore or sweep under the carpet.

Nor is it easy to comprehend the reported requirements about five-year secrecy whether the talks succeed or fail. While

member governments involved in the negotiations may try to keep negotiating texts secret, there is no way that negotiated agreements can be kept under wraps for five years. Any agreement would need to be immediately notified to the WTO, or any non-member can notify a purported text. Such notification is also a prerequisite, whether they are to be considered FTAs, RTAs or whatever else.

In addition, how can market operators, the enablers of trade, exploit the new market access opportunities if the agreements were to remain under wraps for as long a period as five years? It sounds absurd on commercial grounds. Moreover, when several governments are involved, nothing can remain secret for some time or all time, more so in this era of digital technology. The era of Bismarcks and Metternichs and secret treaties secretly concluded and implemented is long past.

Likely negative impacts

Unlike the TPP or TTIP, on which there is at least some information at a general level, not too much is known about TiSA among the general public or even the media. It has not attracted the same degree of public attention or controversy; there is discussion and speculation, though, among trade negotiators and officials, and some specialized blogs.

Nevertheless, TiSA is undoubtedly the most important, and likely to have more negative impacts on the economies of both participating and non-participating countries, including India, Brazil, South Africa and China, however big or small their individual or collective trade or economic weight in the world.

While not very much is known or talked about outside, trade negotiators and establishments, and some civil society activists, have been aware for some time both of the US drive to get an accord on TiSA and of second-hand reports on progress in these talks. However, with the exception to some extent of negotiators and parts of governments in participating countries, the public have not had full access to the details. Mainstream media, having become the handmaiden of the establishment (rather than Burke's Fourth Estate, keeping a watchful eye on the other three), occasionally sing hallelujahs but have not provided any critical analysis and information for the public.

The publication by WikiLeaks will thus enable various parts of governments and public interest activists to cite the vast trove of negotiating texts and focus on their likely benefits, if any, and the vastly greater negative effects on their countries. However, the very quantum of information now in the public domain may have the unintended effect of information overload, and one has to guard against the possible consequent effect of turning people's attention off the subject.

The texts now made public by WikiLeaks (https://wikileaks.org/tisa/) are the "core" text of TiSA and its various annexes relating to individual sectors of "trade in services", as well as provisions relating to domestic regulations. Linked to each, on WikiLeaks, are analyses by activists – both academics and civil society groups campaigning on these issues – attempting to present to the general public the implications of each.

Without going into the relative merits of each of the individual analyses or the technicalities, there are some fundamental issues, common to the core text and the annexes, that need to be underscored and brought into the open for public debate. We will attempt to do this and flag some of these issues in what follows.

Systemic questions

Missing in the various analyses and discussions are some basic systemic questions relating to TiSA vis-a-vis the multilateral trading system of rules, rights and obligations of member states as incorporated in the Marrakesh Agreement establishing the World Trade Organization (WTO) and its annexed agreements: the agreements on trade in goods [the General Agreement on Tariffs and Trade (GATT) 1994 and its associated agreements elaborating on several provisions], the General Agreement on Trade in Services (GATS) and its annexes, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Dispute Settlement Understanding (DSU) (as well as four "plurilateral" agreements).

All these are integral parts of the WTO treaty concluded as a "single undertaking" in April 1994 at Marrakesh, and interpreted (perhaps somewhat erroneously) under the DSU also as a single undertaking with cumulative obligations in their application – not only obligating members to abide by all of them (subject to well-known canons of interpretation of public international law, codified in the Vienna Convention on the Law of Treaties) but in fact enabling the DSU's Appellate Body to empower itself to so interpret them as to enable/oblige members to carry out obligations under all of them (Raghavan 2000).

It is worth recalling some recent history of the WTO multilateral trading system for context and better understanding of the implications of TiSA (and the TPP and TTIP).

The US financial services industry, led by American Express, AIG and Citibank (all, incidentally, no longer dominant in the US itself, with some having had to be rescued from the outcome of their follies at the expense of US taxpayers in the aftermath of the 2008 financial crisis), was one of the main drivers behind the US services push, the launching of the Uruguay Round of trade negotiations in 1986 and its conclusion at Marrakesh in 1994. (The US pharmaceutical and motion picture industries were the main drivers behind the TRIPS accord.) However, the US and its financial services industry, which had pushed for higher levels of liberalization in this sector, were dissatisfied with the Marrakesh outcome in this area. They got the negotiations on financial services extended, with each member enabled to substitute the commitments it would accept in the extended negotiations for its original commitments.

After two exercises in negotiations, the Financial Services Agreement, with a set of individual country commitments, was concluded in 1997 and incorporated into the WTO, coming into force from 1999 (Raghavan 2010a and 2010b). In general, most of the developing countries, as also the EU and the US, incorporated in their new schedules of legal commitments, their current, and sometimes lower, levels of applied market access and conditions.

The latest WikiLeaks publication attempts to alert the public to what is being proposed for TiSA in negotiations which would have major consequences for the people and the services they use, and which are being conducted in utter secrecy behind the backs of even their own parliamentarians. However, global corporations, whose interests the draft TiSA accord aims to promote, are fully in the picture and involved.

For the record, there is a similar secretive process at work in relation to the TPP and TTIP. WikiLeaks has managed to get hold of and publish some chapters of secret texts on the TPP and TTIP, including one on investor-state dispute settlement and arbitration panels that can hold secret hearings and deliver awards which can override all domestic regulatory measures (whether on health, environment or any other public policy considerations) as well as domestic courts and their jurisdictions.

If agreed, the outcome of all these US-driven pacts will be to deliver a fatal blow to the WTO multilateral trading system and global rules-based trade order, along with other global systems of world order that had been envisioned by the US itself under the leadership of Franklin Delano Roosevelt (FDR) and that were so carefully constructed during his presidency and that of his successor, Harry Truman (Raghavan 2014a). Since then, some of FDR's successors have been busy seeking to dismantle this entire framework and install in its place a global corporatist order that would effectively establish the global rule of corporations (Raghavan 2014b).

The incongruity and utter disregard of fundamental principles of natural justice and equity in all these were revealed when the European Court of Justice recently upheld the right of the European Commission (as the EU's executive and negotiating arm on external trade relations) in refusing to provide information under relevant right-to-information laws to European civil society groups but upheld the Commission's right to share information with corporate lobbyists and representatives in consultations at Brussels.

Services liberalization under the multilateral trading system

In what follows, this article will confine itself to exploring the implications of TiSA, its effect on the multilateral trading system, and what the public and those governments not involved in the TiSA talks can do to challenge and counter these attempts of the US and its allies.

At the outset, it is worth recalling the evolution of the multilateral trading system in pursuance of the wartime FDR-Churchill talks and accords (Raghavan 2014a) on the entire range of issues in the postwar order on international peace and security (the UN), money and finance (the Bretton Woods institutions), and trade. In the latter area, the Havana conference to set up an International Trade Organization (ITO) was convened by the UN; its Preparatory Committee processes, the GATT 1947, were envisaged as a temporary arrangement till the establishment of the ITO, but ended up remaining "provisional" for nearly five decades.

The Uruguay Round of GATT trade talks ended in 1994 at Marrakesh, and the WTO treaty and its annexed agreements entered into force in 1995 (Raghavan 1990; Third World Network 2001). At Marrakesh, developing countries undertook in advance commitments and obligations, including in the new areas of TRIPS and GATS, accepting in good faith the promises of the US, the EU and other industrialized countries to reverse course and bring all their agricultural trade and the agriculture sector under normal GATT trade rules and disciplines, but with the reforms in agriculture to be phased in over a longer period to give time for those engaged in this sector to adjust. The industrialized countries also agreed to end, within specified time limits, several discriminatory trade restrictions imposed on the developing world – in the form of "voluntary export restraints" and managed trade – in the sectors of textiles and clothing and labour-intensive manufactures (Raghavan 2014b, pp. 102-179).

This last was achieved, with all such restrictions phased out. However, in the agriculture sector, after the initial set of reforms in the Agreement on Agriculture, the US, the EU etc have been resisting further reduction of their levels of protection on import tariffs, domestic support and export subsidies. In fact, according to published OECD data, they have been increasing their support and protection of domestic agriculture, merely shifting around and disguising their support in various categories, even as they demand market entry into the developing world. They have thus demonstrated that their promises are made to be broken.

The General Agreement on Trade in Services, another one of the annexed WTO agreements, was negotiated from scratch during the Uruguay Round. The US had initially sought to apply the same GATT rules for trade in goods to trade in services (merely changing "goods" to "services" in the various provisions), but quickly realized this was not feasible. Thus, the GATS was constructed ab initio on a new architecture of sorts. This necessitated difficult negotiations on various aspects, including the very definition of "trade in services", with supply of services through four modes of delivery (but with "services" itself nowhere defined precisely but only understood as "not goods"); and gradual liberalization in a bottom-up voluntary process of market access commitments, based on the request-offer approach by countries, and subject to specified conditions in each service sector or sub-sector, with core Most Favoured Nation (MFN) principles, subject to stipulated conditions, underpinning the GATS.

During the Uruguay Round negotiations, the US kept constantly changing its position on the GATS. In 1993, with Bill Clinton in the White House and Robert Rubin as his Treasury Secretary (and Larry Summers as Deputy Secretary and Timothy Geithner as Assistant Secretary), the US again tried to reverse course so fundamentally that others disagreed and said either the agreement had to be finalized on texts developed hitherto, or the services component would have to be taken out and negotiated later separately, while all the other accords negotiated in the Uruguay Round would be concluded without the services component.

At first, the US sent to Geneva for the Uruguay Round-GATS talks, its tax law specialist from the Treasury Department, who lectured others on the intricacies of tax laws (national and international), but was politely asked to look at an already agreed footnote in the draft text (footnote 6 to what is now Article XIV(d) of the GATS). The US persisted, sending Deputy Treasury Secretary Summers to the next meeting, but he was told to either agree to finalize the services accord on the existing draft or, if the US wanted to reopen issues, abandon the services component of the Uruguay Round agenda and conclude talks on the rest of the accords. Otherwise, Summers was told, the whole Round may be in jeopardy. An isolated US gave way, and the Marrakesh Agreement was concluded and signed in April 1994, the blow being softened by the agreement to extend the negotiations on financial services (as mentioned above).

Moves for further GATS liberalization have, however, got stuck since the launch of the second round of GATS liberalization talks in 2000, which was rolled into and made part of the Doha Round trade negotiations launched in 2001 as a single undertaking, with the agriculture negotiations under the

Round becoming the yardstick for progress in other negotiating areas.

As mentioned above, at Marrakesh, developing countries undertook in advance commitments on trade in goods and in the new areas of services and intellectual property, accepting in good faith the industrialized countries' promises to continue on the path of further reforms in the agriculture sector, and their commitments to accept the rules and disciplines of the WTO system, including changes to their domestic laws and regulations to comply with the obligations under the various WTO agreements as well as binding rulings of the WTO dispute panels and Appellate Body (Raghavan 2014b).

On this last, the US has been the biggest culprit, not changing its domestic laws or regulations to comply with dispute rulings (as in the area of anti-dumping) and having continuing recourse to coercive negotiating tactics to get trading partners to comply with its demands on behalf of corporations on intellectual property issues – despite the undertaking it gave to a dispute panel which looked at the US Sec. 301 family of laws. That panel recorded the undertaking and said WTO members could accept it, but did not give a ruling that the US law as it stood was WTO non-compliant and needed to be changed.

In this connection, B.K. Zutshi, India's then Ambassador to the GATT who played a key part in the Uruguay Round negotiations, has, in a message to the writer, commented that during talks on the TRIPS Agreement during the Round, developing countries asked for the revocation of the S. 301 family of provisions in the US law. But it was argued by the US (and endorsed by legal experts, including from the then GATT secretariat) that these provisions, not being mandatory but discretionary in nature, would not be inconsistent with the US obligations under the TRIPS Agreement and that a cause of action would arise only if the provisions were to be invoked.

Since then, Zutshi says, these provisions have been invoked several times by the US, without anyone explicitly questioning their legality under the WTO. The US continues to flourish this threat to coerce developing countries to make further concessions. Hence, Zutshi adds, he has been advocating for some time now that developing countries, particularly India, should challenge the US invocation at the time notices are issued for review of members' procedures and practices on intellectual property rights under the so-called "Special 301" watch lists and the like.

It is time for developing countries, in particular the major ones among them, to concert and consider in a cohesive way this entire complex of US non-compliance, and raise the issue collectively, not at separate sectoral meetings but at the WTO General Council and Ministerial Conference, and take some collective strategic and tactical action to exert pressure on the US on these and other issues.

US finance capitalism and plurilateral games at the WTO

As pointed out at the outset, the updated draft negotiating texts of TiSA, TPP and TTIP recently released by WikiLeaks clearly bring out the attempts of the US to dismantle the entire postwar multilateral systems on trade, money and finance, and secure instead global hegemony of US finance capitalism.

TiSA, as a plurilateral trade agreement, is part of this US effort for a new architecture of world order, and integral to its attempt to go back on all past commitments in order to cater to the neo-mercantilist greed of US finance capital leaching the world's real economy.

The idea of plurilateral negotiations on the services sector first surfaced in the WTO at the time of its Hong Kong Ministerial Conference in 2005 in relation to the ongoing Doha Round, where further liberalization of trade in services under the GATS is part of the Round's single undertaking. In Annex C (relating to the services negotiations) of the Hong Kong Ministerial Declaration, the Ministers said that in addition to bilateral negotiations, "we agree that the request-offer negotiations should also be pursued on a plurilateral basis in accordance with the principles of the GATS and the Guidelines and Procedures for the Negotiations on Trade in Services. *The results of such negotiations shall be extended on an MFN basis"* (emphasis added).

The Ministers at Hong Kong also set out the following procedure for organizing such negotiations: (a) any member or group of members may present requests or collective requests to other members in any specific sector or mode of supply, identifying their objectives for the negotiations in that sector or mode of supply; (b) members to whom such requests have been made shall consider such requests in accordance with paragraphs 2 and 4 of Article XIX of the GATS and paragraph 11 of the Guidelines and Procedures for the Negotiations on Trade in Services; and (c) plurilateral negotiations should be organized with a view to facilitating the participation of all members, taking into account the limited capacity of developing countries and smaller delegations to participate in such negotiations.

The Hong Kong Ministerial Declaration set some deadlines: end February 2006, or as soon as thereafter, for submitting plurilateral requests, for countries to which requests are made to consider them, a July 2006 deadline to submit revised offers, and 31 October 2006 for finalizing and filing services annexes by members.

This plurilateral approach was a highly controversial issue at Hong Kong and was resisted by many developing countries, which reluctantly yielded ground only at the end, but with at least two developing countries (Cuba and Venezuela) entering reservations at the Ministerial Conference. At a meeting of the WTO Council for Trade in Services in February 2006, when this issue came up, Brazil and several others made clear their understanding that participation in this approach would be voluntary.

Collective requests in some 14 services sectors were made, among others, by Australia, Canada, the EU and the US, as also some developing countries (Singapore, Hong Kong, Chinese Taipei and South Korea) in particular sectors. Each collective request, making demands for response on about 20-25 members, listed the names of the demandeurs and the coordinator for that demand (mostly from the developed countries); however, the members to whom it was addressed were not revealed although they were known to be the larger or "more prosperous" developing countries.

From information that became available informally, it would appear that the requests covered such sectors as finance, telecommunications, construction, energy, environment services, computer and related services, maritime transport and architectural and engineering services. For some of the sectors like computer and related services, a few developing countries (including India, Pakistan, Chile and Peru) joined in. The demands related to various modes of supply: Mode 1 on cross-border supply of services; Mode 2 on consumption abroad of services; Mode 3 on commercial presence; and Mode 4 on

movement of natural persons (Khor 2006).

All the plurilateral collective requests typically made extreme demands relating to the first three modes of supply, calling for maximum freedom to be provided to foreign firms and operators to engage in trade and investment. Under Mode 3, there were demands for no restrictions on foreign enterprises and investors in their right to establish, share of ownership, form of legal entity and hiring of foreign personnel, with firms to be accorded "national treatment", i.e., treated at least as well as local firms.

Like the other areas of the Doha Round, however, the entire services negotiations – and with them, the plurilateral approach – have since got stuck on agriculture, due to the unwillingness of the US and EU to cut their support programmes in agriculture and to carry out their commitments made at Marrakesh on further agricultural reforms.

Plurilateral TiSA talks

It is in this context that the US has now attempted, with the help of its willing associates among the industrialized countries, an approach for plurilateral negotiations on services and a conditional plurilateral accord outside the Doha Round talks and the WTO – the current TiSA negotiations.

It needs to be made clear that the proposed TiSA is completely different from the plurilateral services negotiations envisaged at the Hong Kong Ministerial Conference (see Raghavan 2014b, pp. 367-372, on this issue as of 2012).

The aim in the TiSA negotiations was to reach a plurilateral conditional agreement (initially, it was tentatively called the ISA or International Services Agreement) for maximum liberalization of services. Conducted outside the WTO, with plurilateral meetings organized among participants in key developed-country WTO missions in Geneva, the negotiations have gone into several rounds of meetings, with the latest one held in mid-July.

However, according to information from some of the participants, it is highly unlikely for the TiSA negotiations to be concluded by the time of the Nairobi Ministerial Conference of the WTO this December, since the same set of negotiators from missions will be engaged after the summer break in negotiations to try and reach an accord on the post-Bali package of the Doha Round, aiming to conclude these talks in time for the Nairobi meet.

The WikiLeaks disclosures of the latest draft TiSA texts show that the core text, which provides the framework of TiSA, and its financial services annex (both filled with square brackets around provisions where there is lack of agreement) are on the same lines as an earlier version.

The core text is almost a word-for-word reproduction of the multilateral GATS provisions, including those relating to the definition of trade in services, other definitions (with changes in some of the definitions), market access, national treatment, scheduling of commitments etc. A significant omission, however, is the notion of "progressive liberalization" as reflected in Article XIX of the GATS.

This suggests that the participants are taking this course with a view to either facilitating the entry of new members to the agreement or fully multilateralizing it. It may also be that through selectively leaked information, an attempt is being made to entice or panic some of the major developing countries to join in. This seems to be confirmed by placeholders in the draft for provisions for others to come on board at some stage.

As for the financial services annex, it is an attempt to seek greater liberalization of this sector, although the core provisions of the annex are more or less along the lines of the GATS financial services annex.

As outlined in some detail elsewhere by this writer in a technical working paper for the Group of 24 (Raghavan 2010b), whether intended or not, this US-driven approach will enable the US Federal Reserve and central banks in Europe, and private US, Swiss and EU financial services providers, to dump on the markets of the developing world their "toxic" assets from the 2008 financial crisis, when treasuries and central banks adopted unorthodox measures to shift the costs of rescuing financial firms onto taxpayers.

From the large number of square brackets in the leaked negotiating texts, it seems that there is still a lot of disagreement among the participants on some key provisions.

Compliance with multilateral rules

The TiSA talks also raise basic questions on issues fundamental to the future of the WTO-based multilateral trading system. The WTO is a rules-based international organization set up under an international treaty, with rights and obligations for all members, a binding dispute settlement process, and specific provisions for any amendments to the treaty and agreements annexed to it, and for their entry into force after acceptance by members.

Under Articles II:1 and III:2 of the Marrakesh Agreement, any negotiations for a trade accord on any of the agreements in Annex 1 (1A on goods trade, 1B on services trade and 1C on TRIPS) are to be conducted with the WTO as "*the forum* for negotiations" (emphasis added).

Also, Article II:1 of the GATS on MFN treatment, relevant to the TiSA issue, stipulates: "With respect to any measure covered by this Agreement, each member shall accord immediately and unconditionally to services and services suppliers of any other Member, treatment no less favourable than it accords to services and services suppliers of any other country."

The wording is unambiguous and, as stipulated by public international law (and codified in the Vienna Convention on the Law of Treaties), the words are to be read and given their "ordinary meaning". Besides, there is more than 50 years of jurisprudence on the interpretation of the MFN provision in the GATT agreement, of which the GATS provision on MFN is a mirror image.

Paragraphs 2 and 3 of Article II of the GATS have set out some exceptions and limitations: they provide for derogation from MFN treatment if it is listed in a particular way in a member's GATS schedule, as also for the ability of two adjacent countries to confer advantages to services locally produced and consumed in contiguous frontier zones. These exceptions/limitations are not relevant to the consideration of the TiSA issue.

Thus, under the WTO rules, the parties to the planned TiSA cannot make liberalization of their services markets applicable only to other TiSA parties. Nor can they extend it to other WTO members on any conditional basis. Liberalization has to be unconditionally extended to all other WTO members, whether or not they are TiSA parties.

Since TiSA is intended to cover "service transactions" across sectors and modes of supply and involve non-MFN treatment to those not parties, for such an amendment to be adopted and come into effect, it needs the acceptance of all WTO members.

There have been suggestions floated that TiSA can be added to Annex 4 of the Marrakesh Agreement, i.e., the annex titled "Plurilateral Trade Agreements".

All the four agreements listed in that annex were negotiated as "codes" during the Tokyo Round. While several Tokyo Round codes were further negotiated during the Uruguay Round and became binding WTO agreements signed on to by all participants, there was no appetite among the general membership in translating the codes in these four areas into WTO agreements. The Annex 4 approach was thus adopted as a compromise. The four agreements listed in this annex at Marrakesh are the Agreement on Trade in Civil Aircraft, Agreement on Government Procurement, International Dairy Trade Agreement and International Bovine Meat Agreement. (The last two were terminated by their members in 1998.)

However, it is a mind-boggling legal conundrum, and a massive legal stretch, for an issue like services, already covered by an existing WTO agreement (namely the GATS), to be considered a separate subject, an issue of interest to a minority of WTO members, and thus included in Annex 4 as a plurilateral agreement. Any attempt to use such an approach to TiSA will strain credulity.

Moreover, for TiSA to co-exist with the GATS and for its lodgement for this purpose in Annex 4, it needs to conform to Article X:9 of the Marrakesh Agreement, which says: "The Ministerial Conference, upon the request of the Members parties to a trade agreement, may decide *exclusively by consensus* to add that agreement to Annex 4" (emphasis added).

Procedurally, if normal procedures are followed, for this to be on the agenda of a Ministerial Conference, the General Council has to consider and recommend it, a process requiring consensus. If WTO members, particularly developing countries not involved in the TiSA talks, agree to go on this route, it is equivalent to committing *hara kiri*.

At one stage, there was also a suggestion, from media reflecting US thinking, that TiSA could be fitted into the WTO framework as a GATS Article V integration agreement among its members. However, for any agreement to be viewed as an Article V one (an FTA in services trades of its members, or an integration agreement in services among its members), the agreement must satisfy the terms of Article V of the GATS.

Among others, Article V:1(a) requires that TiSA, as an FTA, have "substantial sectoral coverage"; a footnote explains that "This condition is understood in terms of number of sectors, volume of trade affected, and modes of supply. In order to meet this requirement, agreements should not provide for the a priori exclusion of any mode of supply."

Article V of the GATS provides for negotiations when the services integration accord involves modification of scheduled commitments of its members. Irrespective of any working party consideration and recommendation (as per WTO procedures) or decisions by the WTO Council for Trade in Services, any non-TiSA WTO member can raise a dispute via the Dispute Settlement Understanding on grounds of impairment of its rights and obligations.

Such a grievance could arise for a WTO member if TiSA does not comply with Article V:1(a) or if the member finds its existing access to the services markets of the TiSA members reduced as a result of infringement of the provisions of Article V:4. The latter provides that any Article V:1 agreement, in respect of a non-member, "shall not ... raise the overall level of barriers to trade in services within the respective sectors or subsectors compared to the level applicable prior to such an agreement."

Thus, all the current noise about the planned TiSA can be understood only as a big bluff and an attempt to panic the major emerging economies (and/or their particular service sectors or sub-sectors) into joining the TiSA negotiations for fear of loss of markets or loss of competitiveness vis-a-vis other trading partners.

It can thus be deduced, and this is a view also shared by some of those who had negotiated the GATS, that the TiSA negotiations are an attempt at pressurizing the developing countries for greater liberalization in sectors of interest to the US and other industrialized countries, without the latter having to pay any price for it. (There is nothing in the draft TiSA framework to indicate any possibility of greater liberalization under Mode 4, which would be of interest to developing countries.)

A WTO secretariat "staff working paper" written in November 2013 by Juan A. Marchetti and Martin Roy, two staff members of the secretariat's Trade in Services Division, and published in 2014 by the secretariat's Economic Research and Statistics Division, addresses "The TISA Initiative: An Overview of Market Access Issues." The paper comes with the following disclaimer: "This is a working paper, and hence it represents research in progress ... represents the personal opinions of individual staff members and is not meant to represent the position or opinions of the WTO or its Members, nor the official position of any staff members."

The 33-page paper explores options for implementation of TiSA, including as a "plurilateral agreement" in Annex 4, and notes that this can only be done by consensus by the Ministerial Conference. It completely avoids, however, the core issue of how the WTO can have two trade agreements on the same subject: an agreement on "trade in services", the GATS, with an MFN principle; and a separate conditional one, also on "trade in services", in Annex 4. This, as already pointed out earlier, is infeasible.

Raising the issue

We now turn to ways in which this issue can be brought into the open and raised as a systemic issue at the WTO.

The large majority of developing countries have raised their voices and made clear they will not agree to abandon the Doha Round as a single undertaking. They are opposed to allowing the US and the industrialized world to resile from their obligations, in particular on agriculture, and do not agree to what is known as a "recalibrated" Doha Round agenda (which has become code for abandoning existing mandates) that would see the negotiations concluded at Nairobi in order to enable the US and its friends, as well as the secretariat, to move on to new agendas.

With the Doha Round – which includes the services negotiations at the Council for Trade in Services – on the agenda, but totally stalemated, the non-participants in the TiSA talks, armed with the leaked TiSA texts, can and ought to raise the issue collectively at the next scheduled Council for Trade in Services meeting. They should demand responses from TiSA proponents and participants on their activities, as well as on the disregard of the requirement for the WTO to be the forum for any such talks on GATS issues.

The Legal Affairs Division of the secretariat should be asked to give an opinion on the legality of the simultaneous existence of a plurilateral and a multilateral agreement on services within the WTO legal framework. Caveats must be entered on this, against any attempt by the secretariat to use such

request for a legal opinion to promote its own agenda for concluding the Doha Round on terms acceptable to the US and dominant trading partners. As a side-issue, the WTO Director-General and the secretariat may be asked to disclose whether any kind of informal support is being provided by the staff to the TiSA talks outside the WTO forum and, if so, under what authority.

If no meeting of the Council for Trade in Services is due to be held soon, non-participants in the TiSA exercise should demand a special session of the Council to specifically address this issue. The non-participants should collectively prepare and table an official document or paper bringing into WTO records the WikiLeaks texts. Such a paper should also raise in a prominent way the systemic implications and the irrevocable damage that will ensue for the WTO.

Raising the issue and holding media briefings of their own at the WTO and elsewhere will help create public awareness too. ❐

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An earlier version of this article was in the Indian webnewsdaily The Wire on 17 July, http://thewire.in/2015/07/17/how-the-us-is-using-a-secret-agreement-on-services-to-wriggle-out-of-its-wto-obligations-6459.

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in Article 7 of the Rio principles, and since those are in paragraph 5, "we have effectively incorporated CBDR as an integral part of this document". The statement went on to talk about ODA and the gap in ODA commitments made by developed countries. It also reminded the conference of its reservation on review on energy policy; that the fund for climate change is additional and not part of ODA; that countries should maintain political space on measures and standards; and that countries should lift coercive measures that violate international law, e.g., the embargo on Cuba. Nicaragua expressed solidarity with Palestine and wanted its points to be put on record.

Ecuador said very clearly that any monitoring and review of national energy policy would not be acceptable to it. It also expressed reservation on the first sentence of paragraph 103, and on paragraph 79 related to the meeting of the UN on financial crisis and development. Ecuador had additional reservations on several paragraphs in the document which it wanted to be put on record.

Interestingly, the US repeated in its statement the deleted paragraph 134 from the 25 June draft text that had been opposed vehemently by developing countries. That sentence said, "We affirm that the present Accord is not intended to create rights and obligations under international law." The US went on to add that it had "longstanding concerns regarding the topic of the right to development. The right to development continues to lack any kind of an agreed international understanding". It is important to note that developing countries have for long drawn attention to the need to address their right to development which includes the necessary policy space for development supported by a global framework that enables rather than impedes the ability of developing countries to achieve their development objective as a key right.

The US, probably expressing wariness of the Technology Facilitation Mechanism, spoke in favour of "strong protection and enforcement of intellectual property rights, also as part of any international technology cooperation effort … through the facilitation of access to, and dissemination of, such technologies". It said that references to technology transfer were to voluntary transfer on mutually agreed terms and conditions. The US went on to say that "the language in the document on technology transfer and on traditional knowledge does not, from the USA perspective, serve as a precedent for future negotiated documents, including any documents related to the SDGs [Sustainable Development Goals], or the UNFCCC, or any other negotiation in or outside of the UN system, including bilateral and multilateral agreements." ❐