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Differences in WTO talks persist

Member states of the WTO remain at odds over the direction of the negotiations in the multilateral trade body, voicing diverging priorities and positions regarding the content and structure of the talks. These differences were in evidence at meetings of heads of delegation and of the WTO General Council on 9 and 12 May respectively.

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South stress on S&DT, development, SSM, public stockholding

A 12 May meeting of the WTO's governing General Council saw member states outline their priorities for the WTO negotiating agenda.

by Kanaga Raja

GENEVA: A number of developing countries, speaking at the meeting of the General Council of the World Trade Organization (WTO) on 12 May, highlighted the importance of special and differential treatment (S&DT), the development dimension and the need to implement all the Bali and Nairobi decisions.

Highlighting their priorities for the work going forward following the tenth WTO Ministerial Conference (MC10, held in Nairobi in December 2015) and the potential deliverables for MC11 (to be held in 2017), the developing countries also laid stress on the Special Safeguard Mechanism (SSM) and public stockholding for food security purposes, and for these two issues to be delivered at MC11.

The least developed countries (LDCs) called for tangible progress on cotton by MC11.

Several developing countries also said that there is a need to focus on the Doha issues first, before looking at the new issues.

The developing countries put forward these views during the discussion on the first agenda item of the meeting, the report by WTO Director-General (DG) Roberto Azevedo in his capacity as Chairman of the Trade Negotiations Committee (TNC).

Speaking as the TNC Chair, Azevedo said that the chairs of the negotiating groups will be continuing their work, and some will be holding open-ended meetings and further consultations in the coming days and weeks.

"I encourage you to remain engaged in these activities – and to keep talking to each other ... I think it is important now that we step up our interactions, across the full range of formats. In all cases it is important that we move from reflection to action. I look forward to these conversations evolving in the coming weeks," he said.

The DG had made a full report at an informal meeting of heads of delegation (HOD) on 9 May, and at the General Council meeting, he asked for his state-

ment at that HOD meeting to be added to the record of the General Council meeting.

The chairs of the various negotiating groups had also reported on their recent discussions at that HOD meeting. Their reports, in particular on agriculture, non-agricultural market access (NAMA) and services, revealed continued differences among the membership on the key issues (see following two articles).

A number of delegations which had also spoken at that HOD meeting highlighted the importance of agriculture and in particular the issue of domestic support, the development dimension and S&DT, as among their priorities for the work going forward. These statements too were added to the record of the General Council meeting.

Several other delegations that had not spoken at the informal HOD meeting spoke at the General Council.

Unclear way forward

According to trade officials, Saudi Arabia, on behalf of the Arab Group, noted that there had been no concrete progress on agriculture and NAMA, and the way forward seemed unclear. The last two Ministerial Conferences were successes, and it was very important for the WTO to keep showing stakeholders that it was capable of delivering.

There was a need to start working on what could be done for MC11, and the way to do this was to be guided by the ministerial declarations and decisions of previous Ministerial Conferences; time was running out, and members needed to start moving.

Bolivia said it was important to find balance. The multilateral trading system was important to developing countries and it needed to give greater benefit to these countries, particularly the smallest of them. It referred to paragraph 30 of the Nairobi Ministerial Declaration (NMD) which talks about the Doha issues.

It believed that the Doha Round was

the only framework that was still valid, and members should not open up other issues until the Doha issues had been resolved. There was no agreement on the new issues. It was important that the multilateral nature of the WTO be reinforced. It was a concern when the organization was beginning to take on plurilateral discussions.

Benin, on behalf of the LDCs, said there was a need to see reforms to the Agriculture Agreement as the LDCs were dependent on agriculture. The effective implementation of the NMD would be important for the LDCs.

Thirty-six of the LDCs were cotton producers, and there was some progress on cotton in Nairobi. It was very important to have transparency with respect to support for cotton through notifications, Benin said. Between now and MC11, it was very important to have more progress on the cotton issue.

Benin added that S&DT was extremely important, as well as an agreement on fisheries subsidies, which must take into account the special concerns of the LDCs and traditional fishing practices.

Cameroon said that there was a need to support the Sustainable Development Goals (SDGs) and to build on the outcomes of the Nairobi Ministerial Conference. There was a further need to make sure that S&DT and trade-distorting subsidies (in agriculture) were addressed.

Uganda, supporting Benin's statement, said it was problematic that there was still no agreement on trade-distorting support. The Doha modalities must not be reduced. On new issues, Uganda said the WTO must not become a two-tiered organization, and new issues must be explicitly mandated by ministers and agreed to by consensus.

Nigeria said that the period of reflection should not keep going for too long. There was a need to build on the successes of MC9 (held in Bali in 2013) and MC10. Members should be guided by the NMD decisions, particularly in areas where agreement had not been reached.

There was also a need to look at export competition, public stockholding, the SSM, the LDC issues and the Trade Facilitation Agreement (TFA). Nigeria said the development dimension should remain the priority, and highlighted the importance of agriculture, which had long been a distorted sector. There was a need to level the playing field. It stressed on a transparent, inclusive and bottom-up approach.

Centrality of development

Rwanda said that the outcome of MC11 should be viewed as a way of supporting the SDGs. Development must be central to the outcome of MC11. It was very important that the Doha issues, including the three pillars of agriculture, NAMA and services, development, TRIPS issues and rules were addressed. It also highlighted the importance of public stockholding, the SSM and fisheries subsidies. On NAMA, it said that policy space was very important.

Venezuela supported the developing-country G33 grouping on the SSM and public stockholding. It was concerned that little room had been given to policy space for developing countries in the NAMA negotiations.

Ecuador highlighted the importance of S&DT, development, the SSM and public stockholding.

Kenya said that there was no clear path as yet for the post-Nairobi work programme. Members needed to pivot from reflection to action. Agriculture, fisheries subsidies, S&DT, and less than full reciprocity (LTFR) were important. It expressed support for the G33 on the SSM and public stockholding.

Cuba said that it did not want to see a two-tiered negotiation. It supported Bolivia and Venezuela.

Mali, on behalf of the Cotton-4 countries, recognized that real progress had been made in Nairobi. It was tangible progress – it may not have been everything it wanted, but it was a step in the right direction. It renewed its call for addressing trade-distorting domestic support. It was also important to have adequate notification in terms of this discussion.

Qatar said that the organization was in a bit of a predicament with respect to sequencing. It understood the importance of moving forward in those areas where progress could be identified, but said this should not be a standalone process that leaves aside other issues.

Nepal supported the LDCs.

Turkey said that the implementation of the Bali and Nairobi decisions was very important, but new issues should not be ignored. Plurilateral issues like the Environmental Goods Agreement (EGA) were important to support the credibility of the negotiating arm of the WTO. It said agriculture had so far only delivered on export competition and to a certain extent on cotton. But the questions of the SSM and public stockholding were also

important. There should be delivery on these issues at MC11. There should also be an outcome on reduction of tariffs on industrial goods by MC11.

Pakistan said that there had been two Ministerial Conference outcomes which had given real momentum. Every effort should be made to ensure that this continued. There was a need to begin to look at issues such as cotton and trade-distorting domestic support.

Tunisia said that less than full reciprocity was key. It was worried about preference erosion.

Chile said that there was a need to work hard on the implementation of the decisions taken in Nairobi and to make sure that negotiations start on issues that had not been agreed, including agriculture, NAMA, services and fisheries subsidies.

Morocco, on behalf of the African Group, said that the outcomes from the Nairobi Ministerial Conference, particularly for LDCs, were good and must be implemented. Before looking at new issues, there was a need to focus on the Doha issues. In this respect, S&DT and agriculture were very important. These issues needed to be addressed before new issues could be taken on, Morocco said, adding that priority should be given to cotton. Fisheries subsidies were also important.

Australia, on behalf of itself and New Zealand, said that agriculture, NAMA, services and fisheries subsidies were important. It was important to step up the pace of work. The period of reflection needed to be shifted to action, and the importance of continuing to deliver should not be underestimated. The post-Nairobi period needed to be used for making deliverables before MC11, at MC11 and after MC11, it said.

Sierra Leone agreed with the LDCs and the African Group. The SDGs should be central.

Both Tanzania and Lesotho agreed with Rwanda, Benin and Morocco.

Several delegations spoke under the second agenda item on implementation of the Bali and Nairobi outcomes.

Brazil mentioned the importance of reinvigorating the work of the WTO committees to make them more efficient. It also highlighted the critical importance of transparency and the issue of notification. These issues of transparency would be critically important and valuable to the implementation of the Nairobi decisions.

Montenegro said that it had notified

the WTO secretariat about its ratification of the TFA, while Moldova said its government had approved the TFA and expected its parliament to do so soon.

Transparency

The US mentioned notification as a very important transparency obligation of all members. It was very important for all members to hurry up on these transparency obligations.

On the SSM and public stockholding, the US said that it was committed but that it was important to make a distinction between the two. On public stockholding, there was a commitment for members to try and find a solution by MC11. But the SSM was a broader discussion and linked to market access in agriculture.

On export competition, the US said that it was open to scheduling export subsidies. But it would expect that all members who had the right to use export subsidies would also schedule and this should be done jointly in concert.

[In a comment, Chakravarthi Raghavan, Editor Emeritus of the *South-North Development Monitor (SUNS)*, said that while WTO members can implement the Nairobi decisions on export subsidies voluntarily, ongoing research work at the South Centre shows that this cannot become a binding enforceable commitment as there apparently is no provision in GATT 1994 and in the Agreement on Agriculture for members to change their export subsidy commitments which were scheduled, after multilateral scrutiny, under the WTO treaty in 1994. While GATT procedures enable a member to revise its tariff schedule, there is no such provision in respect of the Agreement on Agriculture in terms of export subsidy commitments.

[For any modification of export subsidy schedules to become effective and enforceable, members have to adopt a protocol and, since it has some implications vis-a-vis the WTO's most-favoured-nation (MFN) provisions, such a protocol needs to be accepted by all members before it can be made part of Annex 1A of the WTO treaty to become effective. – *SUNS*]

Benin said that it was very important to implement all the Bali and Nairobi decisions pertaining to the LDCs.

New Zealand supported the Brazilian statement on reinvigorating the committees to make them more effective, and a very good step up on this front would be for all members to notify.

Canada also supported Brazil with regard to reinvigorating the committees. It highlighted the importance of all members notifying.

Japan supported Brazil on the importance of the regular committees. There was a need to understand the current situation and where the actual problems lie, and the only way to do that

was for members to notify, it said.

The EU said that implementation of the Bali and Nairobi outcomes was of the highest priority. The scheduling of export subsidies was also a high priority. Notification was critically important. Many members were far behind in all their notifications and this was a serious concern, it said. (*SUNS8241*) □

US-led efforts to erase development outcomes of DDA shot down

Divisions over the way ahead for the WTO talks came into relief at the informal heads-of-delegation meeting on 9 May, as the following two articles report.

by D. Ravi Kanth

GENEVA: Several developing countries – South Africa, India and China, among others – on 9 May shot down efforts by the United States, the European Union and Japan at the WTO to erase the fundamental goal of the Doha Development Agenda (DDA), a “developmental” outcome based on the special and differential treatment architecture, trade envoys told the *South-North Development Monitor (SUNS)*.

“The divergences are everywhere,” a developing-country trade envoy told *SUNS*, pointing to growing attempts to pursue outstanding issues in agriculture, market access for industrial goods and services without adhering to the DDA architecture.

Significantly, the WTO Director-General, Roberto Azevedo, who had held one-on-one meetings with some 16 countries to persuade them to notify the elimination of export subsidy commitments in their agriculture schedules, changed his stance by calling on members to notify all the major decisions of the Bali and Nairobi outcomes. (See *TWE* No. 615 for a report on the systemic issues raised by the Director-General's efforts for scheduling the Nairobi export subsidy decisions while remaining silent on other issues such as duty-free and quota-free market access for LDCs and cotton.)

At the informal heads-of-delegation (HOD) meeting on 9 May, China rejected a proposal from the United States for concluding the proposed Environmental Goods Agreement (EGA) at the upcoming G20 leaders' meeting in Hangzhou, China, later this year. China said the EGA is neither a multilateral

agreement nor a G20 issue.

The US and China also differed on how to address issues in domestic support for agriculture, development, and special and differential treatment, according to participants present at the meeting.

Differences

The HOD meeting witnessed several differences on how to advance work in different areas, including the approaches to be adopted for addressing the outstanding issues in agriculture, market access for industrial goods and services.

South Africa's trade envoy Ambassador Xavier Carim firmly said, “Most developing country members continue to hold fast to the developmental mandate of the DDA and are not prepared to give it up for approaches that erode its principles and content and, at the same time, risk exposure to new, more onerous demands that could further prejudice their trade and development interests.”

Carim also warned against introducing new issues without resolving the core Doha issues. The South African envoy said that “the situation is not too different when the question of new issues arises.” “While it is still not clear which new issue or issues will be raised for consideration, in our view there will be little chance of agreement to even consider exploring those issues multilaterally, until there is some shared understanding on how we intend to address the remaining Doha issues which we know have been deemed ‘priority’ by Ministers,” he argued.

The South African envoy emphasized that “to have any chance of multi-lateral success, any idea or any approach to negotiations – on any issue – should clearly articulate its developmental content and should specify how the principle of special and differential treatment will be applied in meaningful manner.”

In similar vein, India said “advancing negotiations on the DDA issues, in our view, should remain a matter of priority for the membership.” India warned that moving “the debate to ‘new issues’ without ensuring adequate progress on the remaining DDA issues, would not be in line with the Ministerial mandate.”

“As we continue to assess individually as well as collectively, it would be imperative that we do not lose sight of the centrality of the development dimension,” India maintained.

India poured cold water on the DG’s move to schedule elimination of export subsidy commitments without scheduling other issues from the Bali and Nairobi ministerial meetings. India maintained that “the Bali and Nairobi Ministerials have produced positive outcomes insofar as the negotiating pillar of the WTO is concerned.” India said “going forward, we need to timely implement all the decisions emerging from the Bali and Nairobi Ministerials in the area of agriculture, development, trade facilitation and LDC related issues” so as to avoid raising systemic issues.

China delivered a hard-hitting statement against some members for running away from the DDA and developmental agenda.

China rejected the US proposal on domestic support, maintaining that members should refrain from making proposals that are already rejected. China said it is wrong for one member to forcibly change the positions of other members while refusing to change their own positions.

During the meeting, the US trade envoy spoke of new templates for addressing issues in domestic support and market access for farm products and fisheries subsidies.

Ambassador Michael Punke maintained the US stance for addressing issues based on current realities but not the “Doha era” structure. The US called for addressing fisheries subsidies on a strong footing given the depleting fisheries stocks.

The US mentioned an approach put forward by 28 members at the Nairobi meeting to address fisheries subsidies.

The US suggested that it had circulated a proposal on domestic support involving all major subsidizers.

The US said agriculture market access needs to be addressed on a strong footing.

Without mentioning the ongoing

political debates in the United States, Mexico’s trade envoy Ambassador Fernando de Mateo said the talk of building walls is not useful.

Brazil and Canada also drew attention to the growing opposition and political resistance to trade. (SUNS8238) □

WTO chairs’ reports reveal continued differences on key issues

by Kanaga Raja

GENEVA: Reports by the chairs of the various WTO negotiating groups on their recent discussions – in particular on agriculture, non-agricultural market access (NAMA) and services – have revealed continued differences among the membership on the key issues.

At an informal heads-of-delegation (HOD) meeting on 9 May convened by WTO Director-General Roberto Azevedo, the chairs of the negotiating groups reported on the discussions that they had held on the work going forward post-Nairobi.

The DG also reported on his recent consultations, both in Geneva and in his various bilateral visits to capitals in the past weeks.

In their interventions, a number of delegations spoke on their priorities for the work going forward, with several developing countries highlighting the importance of agriculture, in particular the issue of domestic support, the development dimension and special and differential treatment (S&DT).

Chairs’ reports

According to trade officials, the chair of the NAMA negotiating group, Ambassador Remigi Winzap of Switzerland, referred to the recent open-ended meeting of the negotiating group and said that many members are looking for a foothold, and to try and find ways to narrow their differences.

The largest group of members, Winzap said, would like to continue to pursue an agreement on NAMA in the Doha context. Others took either an indifferent or defensive position, usually in support of industrialization policies.

Among the issues raised by members were ways of adjusting the current level of ambition. They did not want sequencing of issues (namely, that NAMA should stand on its own), and there

should be less than full reciprocity for developing countries and S&DT.

Non-tariff barriers (NTBs) should also be addressed, although it was on the tariff side that most members talked about their preferences. Members also mentioned improving predictability by reducing “water” (between bound and applied tariffs). But it is important to get the balance right and an outcome that would help as many countries as possible.

According to the chair, among the NTBs that were mentioned were coherence with regional trade agreements and labelling.

He said many members are looking for ways to advance the negotiations – they are looking at it from different perspectives, but they are also making linkages between NAMA and market access in agriculture.

The challenge is how to build convergence across this diverse group of opposing views, keeping in mind that without an outcome in other areas there can be no outcome in NAMA and vice versa, he said.

The chair of the agriculture negotiations, Ambassador Vangelis Vitalis of New Zealand, said there was a shared understanding among members of the objective, which is that agriculture should be part of any outcome at MC11 (in 2017), and that there is discussion with respect to the negotiating mandates of Nairobi and of Article XX (of the Agreement on Agriculture), which calls for continuance of the agriculture reform process, as part of the built-in agenda of the Uruguay Round.

According to the chair, there was concern expressed by members about rising trade protectionism as well as the impact of preferential trading arrangements on the multilateral negotiations.

A number of references were made to the Sustainable Development Goals,

including Goal 2 which has as an objective the elimination of export subsidies, something which the chair said members have already achieved.

He also pointed to the discussion on the challenge of the biennial Ministerial Conference. There are also the “known knowns” – the domestic political cycles that countries go through that can lead to some concerns about trade among the electorate.

He also highlighted the importance of understanding clearly where members are going in the negotiations, because this will have an impact on domestic policy reform. Many members also spoke of the value that they attach to the multilateral trading system.

There was a discussion on the substance, said the chair. Last September, members spoke about their positions on market access and domestic support and took very hard positions on these. It was the chair’s sense that members are more willing at this stage to try and find pragmatic ways forward.

The Special Safeguard Mechanism (SSM) and public stockholding for food security purposes are very high priority issues for a number of members, Vitalis said, adding that for many others, their positions on these issues have not changed.

He also said that domestic support is a clear priority for the membership and there was a discussion whether this might be a target for MC11. There were many members who said that this would be a good idea.

But in terms of specific ideas on how to move out of the rut on this issue, there are no proposals as yet, said the chair.

According to the chair, one of the biggest problems hurting the domestic support negotiations is that “it is difficult to know where we are” because only 24 members have actually kept their notifications up to date. This was an embarrassing situation.

With respect to market access issues in agriculture, the chair said that members were talking about converting to *ad valorem* duties, as well as concerns about preference erosion in the context of preferential trading agreements.

He said some members do not want to take up export competition again as it would no longer be helpful, while others are making this a high priority. Implementing this and the other Nairobi decisions is very important for many members.

On other issues, the chair said some

members wanted to talk about export restrictions, sanitary and phytosanitary measures, private standards, subsidies for biofuels, and geographical indications of origin (GIs). But these are not issues on which there is a consensus emerging, he added.

The chair of the services negotiations, Ambassador Gabriel Duque of Colombia, said that at the 3 May meeting of the WTO Council for Trade in Services in Special Session, there was a strong show of support for the importance of services to growth and development.

There was discussion about narrowing the difference between what governments commit in the WTO and what their actual regime is, and that there should not be sequencing, which is detrimental to these negotiations.

According to the chair, these are challenges that delegates are still wrestling with. There are a number of delegations that say that the services negotiations are lagging behind other areas, and that it is important to narrow differences between commitments and existing regimes.

There is a willingness to talk about domestic regulation. Members are prepared to do some brainstorming and are prepared to discuss new approaches. S&DT is going to be very important, he said.

There was discussion as well about putting forward new offers, as well as discussions about members perhaps taking a sectoral approach to the services negotiations. Members wanted revised and improved offers with flexibility for developing countries.

Some members called for preserving the DDA architecture, while others said new approaches were needed. Developing- and least-developed-country decisions that came out of Nairobi should be implemented.

According to the chair, members were also talking about services with respect to e-commerce. Some delegations talked about having a services trade facilitation agreement.

There was a lot of discussion across the board and for many delegations there was a sense of urgency and worry about the impact of a further delay.

The chair of the rules negotiating group, Ambassador Wayne McCook of Jamaica, said there was a reflective mood post-Nairobi. There is a collective appreciation of the importance of moving forward and finding solutions.

Many delegates emphasized how important it was to get progress in rules. Some have called for progress in specific areas, while others said that it was important to have balance.

The chair said there was quite a lot of discussion about the importance of getting an agreement on fisheries subsidies, while others called for an agreement on anti-dumping. Yet others called for an agreement on horizontal subsidies.

There was also a discussion on taking a multilateral versus a plurilateral approach, as well as on whether there should be a linkage between rules and other areas.

According to trade officials, the chairs of the Committee on Trade and Development in Special Session, TRIPS Council in Special Session, Committee on Trade and Environment in Special Session, and the new chair of the Dispute Settlement Body in Special Session briefly spoke at the HOD meeting.

On the discussions in the TRIPS Council Special Session on the GI register for wines and spirits, the Council chair said that members are reflecting and there is a lot of watching as to what is going on in the other areas.

The chair of the Committee on Trade and Environment in Special Session said that he has not yet been approached by anyone saying that they have new ideas.

Remarks by the Director-General

According to trade officials, DG Azevedo mentioned his visits to various countries and his meetings with many stakeholders as well as heads of state and government during these visits.

When things start to pick up a little in the second half of the year, he said, he plans to devote his time to working with members on trying to flesh out more concrete positions.

It is extremely important now that members implement the Bali and Nairobi outcomes and this includes export competition, cotton, LDC issues, trade facilitation, and the SSM and public stockholding. Members need to build on these outcomes and advance the negotiations, he said, adding that there has been a significant increase in the level of interest in the work since before Nairobi, particularly in the business community.

The idea is to have small, medium and large companies from developing and developed countries coming to Geneva to discuss among themselves

what they would like to see, and then to discuss it with members. There may be an opportunity to put forward some interesting suggestions, he said.

Azevedo was pleased with the change in tone that he has heard from the members. It is more positive than what he has heard in quite some time. There are a lot of ideas about process and substance, but not too many clear examples of these coming forward as proposals as yet.

There is a need to find ways of overcoming members' differences, he said, adding that with respect to the Doha Round, he has not heard anything that would be characterized as a breakthrough.

According to Azevedo, for two years there was no success on this. The differences are not really about substance, they are much more about politics. He has not heard any ideas at all on how that process can move forward.

The DG said that there are also ideas that are being put forward that many members would like to support. Some of these are inside the DDA, like fisheries subsidies. Others are not, like competition policy, small and medium-sized enterprises, investment, e-commerce, private standards and NTBs.

"We need to get a much greater specificity on this," he said. E-commerce, for example, could cover an entire universe of potential issues, so what exactly do members mean by this?

The DG also mentioned the importance of timing and the process, saying that with respect to timing, if results are to be delivered by MC11, there is a need to begin to establish priorities as soon as possible. It is known that the issue of public stockholding for food security purposes is an issue for MC11. There isn't unlimited time to find other issues, if there are other issues, he said.

It needs to be a proponent-driven process. He also said that he is a proponent of multilateral negotiations. He suggested that any discussions that begin in the non-Doha areas be open and inclusive.

Not everyone will be ready or willing to participate in all the discussions. This needs to be recognized and members will need to take on board the different circumstances of different members.

He said that he is hearing loud and clear from capitals on the need to keep delivering, to build on the success of Bali and Nairobi, and to begin to define the

outlines of what might be achieved by MC11. The period of reflection must soon be over, Azevedo said, adding that members need to be more specific on what they would like to see.

Balance

According to trade officials, Paraguay said that small steps can be helpful to make progress, but there is a need to make sure that things are balanced and done in a useful way. Agriculture is the key and the SDGs could be a good guidance.

On market access in agriculture, Paraguay said tariff peaks, tariff escalation, the SSM and quantitative restrictions should be looked at. Domestic support is extremely important.

South Africa said MC10 had made an important contribution and advanced the DDA on export competition. There is now a need to begin to look for ways forward. What is clear is that some members challenge the DDA model and the notion of S&DT, whereas most developing countries are not prepared to give up the DDA mandate and possibly expose themselves to more onerous demands from other countries.

There is a need to carefully assess how to go forward and more time is required to reflect on the best ways to move ahead, but one idea should clearly articulate the importance of development and S&DT that must be included, South Africa added.

The European Union said that Nairobi was a major success and there is a need to start building on this. The period of reflection has been useful and necessary but there is now a need to move from thinking to acting. There are those who think there should be a focus on an ambitious outcome for MC11 with one or more core areas covered, and there are those who want to try for something small.

The EU said it favours a more ambitious outcome. There is a need to address domestic support in agriculture and public stockholding. Beyond this, there needs to be a discussion on services, fisheries subsidies, as well as good progress in other areas. But the Nairobi Ministerial Declaration also says that other areas of interest to WTO members could be taken up, it said.

Japan said there is a need to move off reflection and into acting. Cutting-edge trade liberalization is happening elsewhere and the world is changing

very fast. Digital trade and global value chains go beyond borders and existing multilateral rules.

There is a need, Japan added, to begin to find areas in which agreement can be reached at MC11. The WTO is a multilateral institution and the goal is always on a multilateral solution. But if multilateral outcomes don't work, plurilateral outcomes like the Information Technology Agreement (ITA) which are on an MFN basis are the second-best option.

According to Japan, while S&DT is important, some developing countries have some of the world's most competitive industries. Should they get S&DT? There should be a needs-based approach to the question of S&DT.

Japan would be interested in talking about e-commerce and fisheries subsidies, which is one of the SDGs.

The United States said that there is a need to consider what the path forward is. The idea of having discussions has been useful. This reflection period has been useful, but a little more engagement needs to be shown.

The US said it is determined to conclude the Environmental Goods Agreement (EGA) by the G20 leaders' meeting to be held in China. A group of members has already started to move towards this outcome.

The US also said that fisheries subsidies is an area that cannot wait. Fish stocks are dangerously depleted and it is an area that cuts across the interests of developing and developed countries. Seeing that a multilateral negotiation was not possible in Nairobi, a group of 28 members put together an approach on fisheries subsidies that they think could make progress.

On the question of S&DT, the US said that there are certain approaches to this issue that it is willing to look at. But there needs to be a better discussion about development issues more generally. In the Doha era, this was difficult to do. But now there is a need to be looking at this.

On agriculture, services, NAMA and development, the US said that these are still very important issues. There is a need to find ways of moving these issues forward and to be creative. The US said that it did put forward an idea on domestic support based on all major subsidizers trying to find ways to contribute.

There is a need to look as well at agricultural market access, the US said, citing the World Bank as saying that 90% of the distortions in agriculture are not

caused by subsidies but by tariffs, and that developing countries collect 70% of their agricultural tariffs from other developing countries. The issue of agricultural market access is not a North-South debate as the SSM differences have made clear, the US claimed.

On MC11, the US said that it is too soon to begin to prepare for an outcome here. It is important to recognize that some ideas may not fit into a two-year cycle.

Member-driven process

India said that the period of reflection has been valuable. It has given members a chance to assess. India has been active and will continue to be active. The efforts to find a way forward must come through a member-driven process. Progress is best made through the submission of written proposals.

The Bali and Nairobi ministerial meetings produced results even though they may not have been optimal. Implementation of these outcomes is important, said India.

On agriculture, India said that there was progress made on export competition, and implementation of this is going to be very important.

On services, it said that this is a new frontier for many developing countries. India said that there is a need to follow up to make progress in each of the four modes of services supply.

India said that even though there are difficulties in the DDA, pursuing things multilaterally is preferable.

Brazil said that it is actively engaging and that it has been talking with capitals. It is prepared to engage with new proposals, if and when that time emerges. It is looking to have more trade.

According to Brazil, there is a linkage being made now between development and S&DT. S&DT is not a problem for development but something which is helpful in staging implementation of reforms. What hinders development is tariff peaks, domestic support and tariff escalation. It is not S&DT, Brazil said, noting that S&DT was a very important component of the Trade Facilitation Agreement.

On agriculture, Brazil said that domestic support and market access are very important. It is ready to engage on NAMA and talk about market access there if market access is being discussed in agriculture.

Argentina called for implementation of the NMD as soon as possible, particu-

larly with respect to export competition. It saw domestic support as the most important issue. It is also committed to fisheries subsidies. It would like to see this as an outcome for MC11.

Benin, on behalf of the LDCs, referred to the retreat that the group had held recently in Montreux. Through this retreat, the LDCs are improving their prospects for putting together some new ideas and new proposals. There needs to be more progress in cotton; agriculture; duty-free, quota-free market access for LDCs; and the services waiver.

Mexico expressed concern that trade is growing slowly. It is now more of an issue in the political discourse. Governments now are finding that trade is politically sensitive, and trade is being seen as something dangerous by some members of the electorate rather than as an engine for growth. It said progress can be made in areas like rules and fisheries subsidies.

China said that reflecting is enlightening, even exciting, but sometimes painstaking. But at the end of this process the truth is that nobody has changed

their negotiating position.

In an apparent reference to the US proposal on domestic support, China spoke of the need to refrain from making proposals that have already been rejected. It is not possible for one member to forcibly change another member's position without changing their own position.

The exercise needs to be bound in the NMD. S&DT is extremely important, it said. All the Doha issues should be looked at. It is open as well to exploring non-Doha issues. The EGA is not a multilateral exercise and it is not G20 business, so it should not be brought here or to the G20, underlined China.

Canada said trade is a contributor and can be a multiplier to help domestic policies but is not a solution in and of itself. Issues that have been considered to be outside of the Doha Round can actually help to find solutions to the Doha issues, including in agriculture where satellite technology has helped farmers in developing countries to increase their output manifold if they can access weather data through GPS. (SUNS8238) □

Developing countries stress importance of SSM

At a WTO meeting convened to discuss the question of a Special Safeguard Mechanism in agricultural trade, many developing countries voiced the need for such an instrument to insulate themselves from trade shocks in the sector.

by Kanaga Raja

GENEVA: A large number of developing countries at the WTO have strongly underlined the need for a Special Safeguard Mechanism (SSM) in agriculture in order to protect themselves from sudden import surges and/or price declines.

They also argued that such a mechanism should be simple and effective to use, and that the issue of the SSM should not be linked to other areas of the negotiations, in particular market access.

The views of these developing countries came at the first session of the WTO Committee on Agriculture in Special Session dedicated to discussing the issue of the SSM since the Nairobi Ministerial Conference last December.

The Nairobi Ministerial Decision on the SSM states:

"The Ministerial Conference ... decides as follows:

"1. The developing country Mem-

bers will have the right to have recourse to a special safeguard mechanism (SSM) as envisaged under paragraph 7 of the Hong Kong Ministerial Declaration.

"2. To pursue negotiations on an SSM for developing country Members in dedicated sessions of the Committee on Agriculture in Special Session ('CoASS').

"3. The General Council shall regularly review progress in these negotiations."

Unchanged positions

In his statement at the dedicated session, which was held on 11 May, the Chair of the Agriculture Committee in Special Session, Ambassador Vangelis Vitalis of New Zealand, said that since 8 March, he has had 44 bilateral consultations, and these were supplemented by meetings with many negotiating groups.

Based on these consultations, the chair said, it is clear to him that the basic positions of members on the SSM have not changed from the meetings before and during Nairobi, and that these positions reflect the underlying concerns on both sides that have remained unchanged.

According to the chair, the proponents continue to emphasize the importance that they attach to this issue. Since they consider the SSM to be a standalone issue, they do not see a linkage with market access negotiations. Some members have stressed that an outcome on the SSM is necessary for MC11 (in 2017) and that without an outcome in this area, it would be hard to envisage broader outcomes.

Other members consider that it would be difficult to achieve convergence on the SSM in the absence of outcomes on market access more generally.

"We can't deny these persistent gaps between members' fundamental positions. At the same time, we shouldn't disregard ideas from the past that may hint at pragmatic ways forward to bridge these gaps," said the chair.

He reiterated that there is a clear mandate from the ministers and he intends to make all the necessary efforts to facilitate discussions on the SSM.

According to trade officials, Indonesia, on behalf of the G33 developing-country grouping, said that the WTO Agreement on Safeguards is very cumbersome to apply, hence there is a need for a Special Safeguard Mechanism for agricultural products, specifically for developing countries, which would be easier and faster to apply.

Ministers affirmed in Nairobi that developing countries will have recourse to the SSM, Indonesia said, noting that WTO members had also agreed to work on the SSM in the 2004 July framework agreement and in the 2005 Hong King Ministerial Declaration.

The SSM is of utmost importance to developing-country members as a whole, said Indonesia, which expressed hope that the discussion will further the effort to find solutions on this issue.

It highlighted that the Agreement on Safeguards is not tailored to addressing import surges in an abrupt manner for developing countries. Import surges and price falls need to be addressed immediately as they occur.

Indonesia urged work on an agreement that will be meaningful in establishing such a mechanism. The G33 had

been constructively engaging in the discussion in the lead-up to Nairobi, and had submitted numerous proposals to the Agriculture Committee in Special Session. The G33 has shown flexibility and its proposal has provided special treatment for least developed countries and small and vulnerable economies. It also has limited product coverage and addressed the issue of predictability.

Despite all these efforts, however, some members have rejected the idea and have lingered around a political debate. Trying to link the SSM with other issues will be counterproductive, Indonesia cautioned, adding that there should be no preconditions for negotiations.

India said that it does not have access to the safeguards that are already allowed in the Agriculture Agreement. It cited the example of tapioca production in the country, saying that it used to have tapioca production but the industry got wiped out due to import surges. By the time it could use the safeguards according to the WTO agreement, it was already too late, with tapioca cultivation being wiped out. India used this example to underscore why developing countries would need a Special Safeguard Mechanism.

China, supporting the G33 statement, said that the SSM is a standalone issue. Unlike the special safeguard that is already in the Agriculture Agreement, the SSM is anticipated to be an instrument for developing countries to address import surges. China called upon all members to implement the Nairobi decision to actively respond to the G33 proposals.

Botswana, on behalf of the Africa, Caribbean and Pacific (ACP) Group, said that it supports the affirmation at Nairobi that developing countries should have the right to use the SSM. It appreciated the fact that the negotiations will be undertaken in dedicated sessions. It also emphasized that the SSM must be simple and effective to use.

Great interest

According to trade officials, Turkey, South Africa, Sri Lanka, the Philippines, Bolivia and Korea supported the G33 statement.

South Africa said that as a developing country, it has access to special safeguards under Article V of the Agreement on Agriculture, but is unable to use it as it is too complicated. The SSM is of great

interest to many developing countries and South Africa is ready to work constructively towards such an outcome.

Bolivia said that the G33 has shown considerable flexibility to take into account the concerns of members. The need to have an SSM is on account of the imbalanced outcome of the Uruguay Round. So, the use of the SSM should not be exceptional, it added.

Turkey said that it has read the Nairobi decision very carefully which states that developing-country members have a mandate to have recourse to an SSM. The mandate is not to discuss whether to talk about the SSM – the objective is to design an operational mechanism. The July 2015 paper submitted by the G33 is a good basis for work, it said, adding that it is ready to discuss concrete proposals.

The European Union said that it heard very different views in the meeting. The SSM as designed in the 2008 Rev.4 draft agriculture modalities text was linked to significant tariff cuts. It was an exceptional measure used in exceptional circumstances. The SSM should be designed as a specific instrument, it said.

According to trade officials, Australia submitted two questions on the issue at the meeting:

1. What is the experience of members using safeguards in free trade agreements (FTAs) and in the WTO?

2. What has changed in agriculture market access since the SSM was proposed sometime ago?

Norway said that there is a need to address the issue of FTAs with regard to the SSM. If everyone is excluded, what is the point of it?

According to trade officials, India said that the issue of FTAs keeps coming up. The free trade agreements do not feed into the multilateral system, it pointed out.

Bolivia underlined that FTAs are not a subject in this house.

According to trade officials, several large agricultural exporters including Paraguay, Mexico, Uruguay, Brazil, Argentina, Colombia and Chile expressed concerns over the SSM as it would limit their exports to the markets of developing countries. This mechanism could have a negative impact on South-South trade, they said.

According to trade officials, the United States did not speak on this issue.

According to trade officials, in his concluding remarks, the chair said that it was a good "throat-clearing" session.

There is a clear message from the G33 that there is no link between the SSM and market access, and price decline is a real problem.

He welcomed the fact that no one has opposed the discussion on the SSM. "You are all very faithful to the ministerial decision," he said, adding that many members want to see movement elsewhere in order to calibrate the engagement.

He also said that there is no clear division between developing and devel-

oped countries. Members all seem to have shared concerns on price declines and import surges, but draw different conclusions, said the chair.

Many countries which are for the SSM say that this is a mechanism to counterbalance the fact that rich countries are subsidizing their farmers.

Members also have an interest in the other part of the negotiations, whether it is market access or domestic support. Now, the homework is to follow up, said the chair. (SUNS8240) □

G33 nix EU move to link PSH solution to domestic subsidy cuts

Members of the developing-country G33 grouping which is calling for public food stock schemes to be greenlighted by the WTO have rejected attempts to link this issue with domestic farm subsidy cuts.

by D. Ravi Kanth

GENEVA: Several members of the G33 developing-country coalition dismissed on 10 May an extraneous linkage suggested by the European Union between the negotiations for a permanent solution for public stockholding (PSH) programmes for food security on the one side, and domestic support reduction commitments on the other, agriculture negotiators told the *South-North Development Monitor* (SUNS).

The EU's suggestion came at the WTO in the first dedicated special session for negotiating an agreement on the permanent solution by the eleventh WTO Ministerial Conference, as mandated by trade ministers in Nairobi in December.

The EU maintained that the permanent solution for PSH ought to be discussed along with Doha reduction commitments in the domestic support pillar, according to participants at the meeting.

The WTO's tenth Ministerial Conference in Nairobi had mandated members "to negotiate and make all concerted efforts to agree and adopt a permanent solution on the issue of public stockholding for food security purposes" by the eleventh Ministerial Conference in 2017 as proposed in the Bali ministerial mandate of December 2013.

Trade ministers at Nairobi also proposed that "in order to achieve such permanent solution, the negotiations on this subject shall be held in the Committee on Agriculture in Special Session ... in

dedicated sessions and in an accelerated time-frame, distinct from the agriculture negotiations under the Doha Development Agenda (DDA)" and that "the General Council shall regularly review the progress."

In a sharp response to the EU, India, which is a leading member of the G33 farm group, said categorically that "there is no explicit or implicit link between the two issues."

India cautioned that attempts by some members to sidestep the negotiations by raising extraneous issues should not be repeated this time around, according to an agriculture official who was present at the meeting.

Questions

Ahead of the dedicated session, the Cairns Group of farm exporting countries, led by Australia, circulated two questions on issues concerning PSH. The Cairns Group sought to know:

- How much production procured as part of public stockholding programmes has been exported?
- What, if any, safeguards are in place to comply with the requirement in the interim solution that "stocks procured under such programmes do not distort trade or adversely affect the food security of other members"?

Indonesia, which is the coordinator of the G33 group, told Australia and other Cairns Group members that "lin-

gering philosophical debates and questioning justifiable objectives of the issue had proven to be counterproductive and led us to nowhere, let alone to arrive at permanent solution as mandated by our ministers."

"It is therefore high time now for all members to demonstrate political will and constructively engage in the discussions of PSH, and deliver it in MC11," Indonesia maintained.

Indonesia emphasized that "existing provisions on public stockholding for food security purpose under the current WTO rules will not be able to address the real need of developing members to effectively support their low-income or resource-poor farmers, nor to fight hunger and rural poverty."

"The Agreement on Agriculture as it stands today," said the G33 coordinator, "does not give the policy space needed by developing members to implement their justifiable food security policy."

More important, "the envisaged permanent solution must work for all developing members who are facing food security challenges but are constrained by the current inequitable Uruguay Round disciplines," Indonesia argued.

Indonesia drew attention to several proposals circulated by the G33 group over the past three years. In its last textual proposal for the Nairobi ministerial meeting on 15 November 2015, the G33 proposed amending the WTO Agreement on Agriculture by inserting a new Annex 6 to cover programmes for public stockholding for food security purposes. The G33 said the programmes include:

(a) programmes for the acquisition of foodstuffs at administered prices by the government in developing country members/least developed country members with the objective of supporting low-income or resource-poor producers;

(b) programmes for the acquisition of foodstuffs at administered prices by the government in developing country members/least developed country members and their subsequent distribution at subsidized prices with the objective of meeting food security requirements of urban and rural poor, and of maintaining adequate availability of foodstuff and/or ensuring food price stability.

Significantly, the above programmes "shall be transparent and conducted in accordance with officially published

objective criteria or guidelines" and "shall not be required to be accounted for in the Aggregate Measurement of Support [AMS]."

The main objective, the G33 explained, is that PSH for food security shall not be subjected to AMS disciplines and will form a core part of the Green Box measures.

Indonesia said some members have raised concerns on its proposal, such as possible safeguards to overcome so-called "unintended consequences", and disciplines on notification and transparency in applying the public stockholding programmes. The G33 has clarified these concerns several times and is ready to engage constructively on any other issues, Indonesia said.

India said that the Cairns Group question on the safeguards in the interim solution has no relevance to the negotiations on the permanent solution for PSH.

India asked Australia why it is repeatedly raising the same issue on statistical details when the G33 had already provided in 2013 the details on the exported quantity and exported value, imported quantity and imported value.

"We have gone through all this and when the time will come in September next year before the ministerial then members will say there is no time," India cautioned.

The Cairns Group and other developed countries must not resort to the same stratagem and instead must engage in text-based negotiations, India said.

The African Group and the Africa, Caribbean and Pacific (ACP) Group maintained that the permanent solution for PSH will be such that it works for all the developing countries and it is important for all developing countries.

The United States said it is committed to public stockholding programmes but added that these should not distort markets and must not affect the food security of other members, according to negotiators present at the meeting.

Brazil said PSH programmes should not affect exports, a concern that was shared by Argentina, according to an agriculture negotiator. The exporting countries said they are ready to work for the permanent solution on the condition that it will not lead to exports, negotiators said.

In crux, it is too early to say whether the US, the EU and their allies will deliver on the permanent solution without securing payment in several other areas, a South American negotiator said. (SUNS8239) □

Rules talks on all outstanding issues or only on fisheries subsidies?

The scope of discussion in the WTO rules negotiations remains uncertain, with the US seeking to limit the focus to fisheries subsidies.

by D. Ravi Kanth

GENEVA: Many developing and several industrialized countries on 25 May demanded negotiations to address all the outstanding issues in the Doha rules talks at the WTO, but the United States wants to negotiate only fisheries subsidies, and that too based on controversial "new approaches", trade negotiators told the *South-North Development Monitor (SUNS)*.

Industrialized countries such as Australia, New Zealand and Canada along with the United States are selectively using, for the first time, the United Nations Sustainable Development Goals (SDGs), which were adopted last year, to start the negotiations on fisheries subsidies.

Last year, the US and its Cairns Group allies blocked the permanent solution for public stockholding programmes for food security purposes demanded by developing countries on the basis of the SDGs.

The developed countries terminated their engagement in the Doha Development Agenda (DDA) negotiations even as Lesotho on behalf of African countries and several other developing countries demanded the continuation of the DDA talks based on the SDG priorities, several developing-country negotiators pointed out.

These glaring "hypocritical" positions of the industrialized countries came into full display at an informal meeting of the Doha rules negotiating group on 25 May, an African negotiator told *SUNS*.

The US stance to exclude from the rules talks anti-dumping and horizontal subsidies (and other US practices in this area) and focus only on fisheries subsidies is a clear diversionary tactic, the negotiator suggested.

In contrast to the US position, several developed and developing countries pressed for multilateral solutions to outstanding issues in the Doha rules negotiations covering fisheries subsidies, improvements in anti-dumping and horizontal subsidy provisions, and transparency aspects in regional trade agreements, an Asian negotiator told *SUNS*.

The "friends of the fish" group led

by New Zealand queered the pitch for an outcome on fisheries subsidies.

The EU, China, India, Norway and Japan, among others, respectively called for improving anti-dumping provisions, addressing horizontal subsidies, and other issues.

At the 25 May informal meeting of the Doha rules negotiating group, many members concurred with the chair of the rules negotiations, Ambassador Wayne McCook of Jamaica, on starting a serious negotiating process to discuss all issues without prioritizing any issue at this juncture.

McCook said members are interested in securing multilateral outcomes on the rules dossier at the WTO's eleventh Ministerial Conference by the end of next year.

In a negotiating process, "you don't end where you begin or begin where you end," McCook told *SUNS*.

In his summing up at the meeting, the chair said that "diktats" and "decrees" must not guide negotiations, suggesting that there is a need for a hard, bottom-up and transparent negotiating process that members have to undergo for arriving at multilateral solutions.

He told the meeting he would reconvene the negotiating group at an appropriate time in order to give members a chance to react to the proposal put forward by New Zealand and other co-sponsors.

Fisheries subsidies

During the meeting, New Zealand, on behalf of the "friends of the fish", had raised the stakes on having outcomes on fisheries subsidies, a demand that was supported by several countries. It circulated a set of questions on fisheries subsidies based on the goals set out by the SDGs.

An outcome on fisheries subsidies based on the SDGs garnered support from both industrialized and developing countries, including the United States.

The co-sponsors of the proposal on fisheries subsidies, said New Zealand, "pose a series of questions with a view

to sharing information on such developments as a background for further discussions on fisheries subsidies disciplines in the Rules Negotiating Group (RNG) to achieve SDG Target 14.6."

The questions include:

1. If you have or have had fisheries subsidies, what are the key developments in your fisheries subsidies in recent years?

2. If you have fisheries subsidies, what are their primary objectives and to what extent are they delivering on these objectives?

3. What are the main drivers for reforming and/or maintaining your fisheries subsidies?

(a) Are they political, economic, environmental, developmental, welfare or a mixture of these?

(b) How do these factors balance with fiscal pressures?

(c) What has been the impact of falling oil prices?

4. Where might the political economy of reform of fisheries subsidies be less challenging or difficult? Which areas might be more challenging and why?

5. How might the RNG process going forward be structured best to establish fisheries subsidies disciplines to achieve SDG Target 14.6?

The demand for an outcome on fisheries subsidies received broad support across all continents. Although members want a multilateral outcome on fisheries subsidies, the US is suggesting a plurilateral solution.

But China cautioned against cherry-picking issues in the rules dossier without addressing the remaining issues such as improvements in anti-dumping and horizontal subsidies.

China along with India and several other developing countries called for a "balanced" outcome in all areas of the rules negotiations based on the Doha mandate and the Hong Kong Ministerial Declaration. The developing countries said the S&DT architecture must guide the rules negotiations towards multilateral outcomes.

The "friends of anti-dumping" group led by Japan, who are yet to come out with concrete proposals unlike the "friends of the fish" group, underscored the need to start with transparency-related issues concerning anti-dumping actions.

The EU made a strong case for addressing horizontal subsidies, while Russia underlined the importance of deal-

ing with improvements in anti-dumping and countervailing measures.

The US stuck to its own position about pursuing new approaches based

on the outcomes in the Nairobi ministerial meeting. However, the US call failed to secure any support during the meeting. (SUNS8249) □

US and G7 allies pressure China on zero-tariff EGA

The US and other industrial countries are seeking to push China to scrap tariffs on a wide array of "environmental goods" under a plurilateral treaty currently being negotiated.

by D. Ravi Kanth

GENEVA: The United States and its allies in the G7 group of leading industrial countries are planning to pile up pressures on China to agree at the forthcoming G20 summit on a trade agreement to eliminate tariffs on a broad range of environmental goods or face international criticism they will engineer for blocking efforts to combat climate change, trade envoys told the *South-North Development Monitor* (SUNS).

At their annual summit gathering (held in Japan this year in May), the G7 leaders said they "aim to conclude an ambitious Environmental Goods Agreement (EGA) that eliminates tariffs on a broad range of environmental products by the G20 Summit in September in Hangzhou, having in mind a future oriented agreement."

The EGA is being projected as an attempt to combat climate change, even as the drivers of the proposed mercantilist-environmental goods agreement at the WTO are creating numerous hurdles in the way of developing countries' efforts to obtain commitments on financing and technology transfer in the UN climate change negotiations.

The G7 have turned their backs on the financing and technology-sharing commitments for complying with the Paris Agreement adopted in the UN climate talks last December. For example, they did not even mention what they intend to do on the \$100 billion financing commitment and proposed technology-sharing disciplines to enable the developing countries to implement the Paris Agreement.

The seven developed countries, however, exhorted the developing countries to agree to bring the Paris Agreement into force by the end of this year and implement the nationally determined contributions. They want the de-

veloping countries to comply with onerous "transparency" provisions in the climate change agreement.

The statement issued by the seven developed countries from their May summit maintained: "The G7, continuing to take a leadership role, commits to taking the necessary steps to secure ratification, acceptance or approval of the Paris Agreement as soon as possible, and calls on all Parties to do so striving for a goal of entry into force in 2016. We commit to take the lead by early, transparent and robust implementation of our nationally determined contributions, and promoting increased ambition over time. We also commit to actively participate in the regular review of global stock-take progress every five years. We commit to formulate and communicate ambitions [sic] mid-century long-term low greenhouse gas (GHG) emission development strategies well ahead of the 2020 deadline."

Move to isolate China

Prior to the summit in Japan, the US had already created a small group of seven countries – the US, the European Union, Japan, Canada, Australia, New Zealand and South Korea – in Geneva to isolate China in the ongoing negotiations for a plurilateral agreement on environmental goods because of Beijing's opposition to complete tariff elimination.

China had stated unambiguously at a meeting of heads of delegation at the WTO that the proposed EGA is not a multilateral agreement and that it cannot be concluded at the G20 summit as demanded by the US, according to trade envoys familiar with the development.

The EGA members include Australia, Canada, China, Chinese Taipei, Costa Rica, the EU, Hong Kong, Iceland, Israel,

Japan, New Zealand, Norway, Singapore, South Korea, Switzerland, Turkey and the US.

In an attempt to isolate China in the group, the US and its coalition of willing allies have now drawn up a list of 150 environmental goods that would be further subjected to negotiations. The seven countries are required to indicate which items among the 150 can be agreed for immediate tariff elimination, which items can be placed in the staging-period list, and which items cannot be negotiated at all, according to trade envoys familiar with the development.

Following intense negotiations among the technical experts and negotiators of the seven countries on 31 May and 1 June, the trade ministers of the US, the EU, Japan, Canada, Australia, New Zealand and South Korea were to meet on 2 June in Paris to issue a ministerial statement. That ministerial statement will emphasize the need to conclude the EGA at the G20 leaders' meeting in September.

Effectively, the US is resorting to divide-and-rule policies in the EGA negotiations because of opposition from China, which is maintaining that countries must have enough policy space before eliminating tariffs.

At the heart of the divide between the US on the one side and China on the other is whether the tariffs have to be fully eliminated or maintained close to 5% as agreed in the Asia-Pacific Economic Cooperation (APEC) forum. The US and its allies have maintained that the EGA requires members to eliminate tariffs on the basis of what was agreed in an APEC agreement.

But the APEC List of Environmental Goods refers to goods that "directly and positively contribute to green growth and sustainable development objectives [and] on which we will reduce applied tariff rates to 5 per cent or less by the end of 2015 taking into account economies' economic circumstances and without prejudice to their positions in the World Trade Organization (WTO), as we committed in 2011."

The 21-member APEC had agreed to cut most-favoured-nation (MFN) applied tariffs to 5% or less by 2015 on environmentally friendly goods grouped under 54 product categories. The APEC list of green goods includes a range of

(continued on page 19)

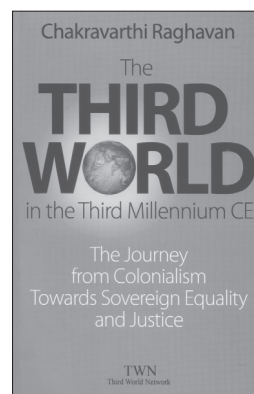
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By *Chakravarthi Raghavan*

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Isolated US still vetoes Chang reappointment to AB

The US has blocked the reappointment of a member of the WTO's Appellate Body adjudicating on trade disputes, despite strong concerns expressed by other countries over the "troubling" and "very inappropriate" move.

by D. Ravi Kanth

GENEVA: The United States on 23 May stood isolated at the WTO for its belligerent opposition to the reappointment of Seung Wha Chang from Korea to the Appellate Body (AB) for a second term of four years.

The US, however, remained adamant and succeeded in vetoing Chang's reappointment, despite a vociferous demand from several countries – the European Union, Switzerland, Korea, Brazil, India, Egypt and Nigeria, among others – for a second term for Mr Chang, whose first four-year term of office was to expire on 31 May, participants present at the 23 May WTO Dispute Settlement Body (DSB) meeting told the *South-North Development Monitor (SUNS)*.

The developed and developing countries denounced the aggressive opposition from the US to the reappointment of Chang. The US charged that Chang had deviated from the covered agreements of the GATT/WTO jurisprudence.

In an extraordinary war of nerves between the US on the one side, and the rest of the membership on the other, at the DSB meeting, countries from the North and the South delivered a stinging rebuke to the US for its "my way or the highway" stance in blocking the reappointment of Chang on baseless grounds.

US statement

To cover up its aggressive stance at the DSB, the US issued an elaborate statement as to why Chang could not be reappointed. The US said Washington did not consider that Chang's service reflected the role assigned to the AB members.

The Korean AB member's failure to adhere to rules in several cases had undermined the WTO's dispute settlement system, the US argued.

Reappointment to the AB, said the US, was not automatic and WTO member states' consensus was needed for

granting a second term.

Washington stuck to the line that the dispute settlement panels and the AB cannot add to or diminish member states' rights and obligations, participants said.

The AB's role, including Chang's positions, in delivering the adjudicative approach lacked substance and raised "systemic" concerns, the US maintained.

The US went on to cite four cases in which Chang was either a presiding member or part of the three-member AB division:

(i) DS453 – Panama's dispute against Argentina on allegedly restrictive measures imposed by Buenos Aires on goods and services. In this case, the AB, presided by Chang, struck down the earlier panel ruling and issued what the US said were *obiter dicta* pronouncements. The US said the AB is not an academic body, nor can it make law.

(ii) DS 430 – the US dispute against India on allegedly restrictive measures imposed by New Delhi on American agricultural products. The US said the AB's ruling contained lengthy discussions that were irrelevant to the points raised by the two sides.

(iii) DS 437 – China's dispute against US countervailing duties, in which the AB delivered a major ruling in favour of Beijing. The US said the AB adopted an approach that involved new standards instead of considering evidence and arguments. The US complained that the AB cannot make a case on its own and behave like an independent investigator.

(iv) DS 449 – China's dispute against the US for allegedly illegal anti-dumping and countervailing duties imposed by the US Commerce Department. The US said that the AB reviewed domestic law, which is not in its domain.

(In a comment, Chakravarthi Raghavan, Editor Emeritus of *SUNS*, points out that among the four disputes cited by the US, three seem to involve anti-dumping issues, where the AB has consistently ruled against the US' use of

the "zeroing" methodology in holding imports as being dumped.

(So far, the US has not implemented the DSB recommendations to change its domestic law and regulations to end this practice. The US is now the only WTO member insisting on its right to use "zeroing". The EU, against which the first AB ruling holding "zeroing" as contrary to the WTO Anti-Dumping Agreement was given, accepted the ruling and eschewed the practice, unlike the US.

(In the Argentina-Panama dispute, the fourth the US has cited, the AB ruling in effect means that WTO members can adopt a similar approach to countries which do not share tax information. While the US ostensibly is fighting such tax-shelter countries in demanding information from other nations that enable bank secrecy about US nationals or enterprises which hold accounts, recent reports have brought out that several states in the US themselves have laws enabling non-disclosure of real owners of firms and their tax status.)

WTO adjudicators, according to the US, overstepped their mandate and contributed complexity to the workload.

The AB invariably ignored the evidence and became a playground for views which are not responsible, the US suggested.

The US indicated that trust in the AB cannot be built in a vacuum. The US emphasized the importance of maintaining trust by holding the AB members accountable. It argued that reappointment is not automatic, emphasizing that the DSB's role cannot be reduced.

The US described as "unfortunate" a letter written by the six remaining AB members on 18 May which raises concerns over the move to reject Chang's reappointment (see following article). By sending the letter directly to members, the AB is setting a precedent and seeking to act outside its role, the US charged, according to participants.

Chilling effects

But the US broadside against Chang and the AB failed to garner any support from its traditional allies or developing countries.

Korea issued the strongest statement yet on how the arbitrary position adopted by one member undermined "trust" in the AB and nearly hollowed out its "independent and impartial authority."

A senior European Union trade offi-

cial told *SUNS* that the US' decision to block the reappointment has "politicized" the AB. It would have chilling effects on the independent and impartial functioning of the AB, the official said, while asking not to be quoted.

In its statement, Korea said the US decision is "very inappropriate" and raises "serious systemic concerns as well."

Korea asked how an AB member can be singled out for criticism when the AB reports are written by the three-member division looking into a particular case. As the AB members confirmed in their letter to the DSB chair on 18 May, "an AB decision cannot be attributed to any particular member, because it is the decision of the 'Appellate Body'", Korea said.

The US opposition, according to Korea, "is an attempt to use reappointment as a tool to rein in AB members for decisions they make on the bench." "Its message is loud and clear: If AB members make decisions that do not conform to US perspectives, they are not going to be reappointed," Korea maintained.

Effectively, if the US message "is allowed to prevail, it would seriously undermine the independence and integrity of the Appellate Body," Korea said. "First-term AB members may have to reflect more on how their rulings will be viewed by major members rather than on the merits of the cases."

"Linking reappointment with decisions made in specific disputes will create a dangerous precedent that other WTO members may be tempted to follow," Korea warned.

Korea agreed with the AB members' letter which had said: "[W]e are concerned about the tying of an Appellate Body reappointment to interpretations in specific cases, and even doing so publicly. The dispute settlement system depends upon WTO Members trusting the independence and impartiality of Appellate Body Members. Linking the reappointment of a Member to specific cases could affect that trust."

Korea emphasized: "For an adjudicator to be truly independent, he or she must have assurance that his or her decisions, made in good conscience, will not result in what is effectively removal from office."

"The US opposition contravenes this most fundamental judicial principle," Korea argued.

Further, the hidden and subtle aspect of the US' opposition to Chang's

reappointment is that "the AB rulings Professor Chang was involved with went beyond the boundary of the AB mandate, which is to adjudicate appeals and clarify existing provisions of the covered agreements without adding to or diminishing the rights and obligations provided in those agreements."

The request that the AB remain within the boundary of its mandate is itself legitimate, said Korea. Yet, to argue that some AB decisions were not consistent with the AB mandate and oppose reappointment of an AB member who participated on those decisions on that basis conceals one important fact. Given the differing views among WTO members on the role and jurisdiction of the AB, it is difficult or impossible to argue "where the boundary of the AB mandate exactly lies".

"The right way of addressing this situation is to continue the efforts to build a consensus through discussions among the members," Korea maintained. Instead, the US chose to impose "its own perspective on other WTO members, as well as on the Appellate Body, by replacing an AB member who they believe has a different view".

"This approach is of course misguided," Korea said, arguing that "in the absence of an agreement on the clear boundary of AB mandate, replacing AB members will not eliminate differences in views regarding the consistency of specific AB decisions with its mandate."

Korea suggested an alternative to overcome this ugly situation. It proposed that WTO members launch a discussion devoted to the question of the boundary of AB review with the goal of finding a common understanding.

"We believe that this is the right way to address the concerns of many Members, including the United States, while maintaining the integrity and independence of the Appellate Body," Korea maintained.

Instead of settling for an "immediate fix that will in the end cause harm," Korea said, it is important to adopt an appropriate way "that does not ignore the systemic concerns that we expect will be voiced almost in unison today."

Regardless of the good intentions of the US, Korea said it cannot "find justification in the US opposition to reappoint Professor Chang."

"This is why we would like to urge the United States to reconsider and withdraw its opposition," Korea appealed.

"Our first priority is to restore an

environment where the sitting and incoming Appellate Body Members can do their jobs properly without looking over their shoulders," Korea concluded.

Serious consequences

In similar vein, India said "a successful dispute settlement mechanism is grounded on an independent and impartial Appellate Body." The process of reappointment and the basis for opposition to the reappointment, according to India, will "undoubtedly have serious consequences on the independent functioning of the Appellate Body."

India said the issue is not whether the reappointment is automatic but on what "grounds reappointment is opposed." The alleged reasons cited by the US, according to India, are "troubling."

India questioned the underlying rationale and said "attributing a particular adjudicative approach to a particular member of a division is unfathomable." It said the AB functions and hears appeals as a whole as per Rule 3(a) of the Working Procedures for Appellate Review.

Significantly, "if a question is raised on the legal approach of a particular Appellate Body member in a division hearing an appeal, does it imply that all other members of that division are also responsible for that allegedly erroneous approach?" India asked.

Clearly, this line of reasoning deployed by the US "has serious implications for the working of the Appellate Body itself," India suggested.

As per Rule 4(1) of the Working Procedures, according to India, the AB functions as a "collegium" for ensuring "consistency and coherence in decision-making, and to draw on the individual and collective expertise of the members." "Therefore, opposing the reappointment of an Appellate Body member on an approach or legal interpretation followed allegedly by one member constitutes a serious questioning of the functioning of the Appellate Body as a whole," India maintained.

Arguably, the opposition "to the reappointment on the basis of the reasons/approach provided in particular disputes signifies, in our view, a critical threat to an independent, neutral and impartial Appellate Body," India emphasized.

"Suffice it to say that opposition to reappointment on the basis of positions, legal interpretations and approaches Appellate Body takes in specific cases

strikes at the very basis of an independent, rule-based judicial body," India maintained.

India said the AB draws its mandate from the WTO's Dispute Settlement Understanding (DSU) regardless of the diametrically opposing positions adopted by members on whether the mandate has been properly adhered to. But if the differing views of members become the ground for denying reappointment, "then this is a slippery slope that we are entering," India argued.

"What are the contours and limits of the reasons to oppose a reappointment?" India asked. "For example, could a developing country member, in another context, oppose the reappointment of a particular member on the basis that that Appellate Body member's interpretation has consistently not been in accordance with the flexibilities and circumstances of developing countries that the DSU and covered agreements provide?"

"If they become reasons for opposing reappointment, it is a very serious existential question for the functioning of an impartial and independent dispute settlement mechanism," India warned.

India said the underlying message of the US action to block the reappointment of Chang is loud and clear. "By making the adjudicative approach as the basis for reappointment is essentially providing a strong signal that Appellate Body members who do not follow a particular approach or an adjudicative viewpoint, or who do not share the views of particular members in the way they need to approach the covered agreements, may not be considered for reappointment."

In crux, "this could, in the long run, have a chilling effect on the way Appellate Body members decide appeals and undermines the system itself."

India said it supported Korea and other members in expressing support for the reappointment of Chang to the AB.

Threat to independence

The EU said it is seriously concerned about the US veto against Chang's reappointment on the basis of his alleged track record on the AB. "This is unprecedented and poses a very serious threat to the independence and impartiality of current and future Appellate Body members."

In the view of the EU, in order to ensure the AB's independence, reappointments should be more or less auto-

matic if the AB member indicates that they are available for a second term. In particular, the reappointment process needs to be conducted in a way that respects this independence. This implies that AB members cannot be scrutinized on the basis of the positions they may or may not have taken when performing their judicial function.

The EU said that it supported the reappointment of Chang for another term, and hoped that this reappointment could still take place. "This being said, the situation is very serious and arguably the damage has already been done. The events of the past days may taint any future reappointment process."

Therefore, the EU believed that it is of utmost importance that a systemic solution be found to this problem. The AB must remain fully operational and the independence and impartiality of its members must be protected. "In our view, the repetition of the current crisis in future reappointment processes would be untenable," said the EU.

Japan said that the US action is "extraordinary, exceptional in nature, and has no precedent, and any act by a WTO member of this nature and magnitude must be exercised with extreme caution."

On its part, Japan said that it does not have objections to the reappointment of Chang, who has no doubt served faithfully and honourably on the Appellate Body for the last four years.

Japan agrees that as an adjudicative body, the independence and impartiality of the work of the AB must be fully respected because this would ensure the credibility and proper functioning of the WTO dispute settlement system.

Japan cited the first sentence of Article 17.2 of the DSU, which reads: "The DSB shall appoint persons to serve on the Appellate Body for a four-year term, and each person may be reappointed once." According to Japan, nothing in this text suggests that the reappointment is predetermined or a foregone conclusion.

Japan said that the problem is not simply about the propriety of the system of reappointment or the length of the term of office. The heart of the issue lies in divergent views on the proper roles of the AB and its institutional relationship with the WTO membership.

While nobody questions the importance of judicial "independence", the AB is part of the much larger institutional structure of the WTO and in that context there appears to be disagreement as to

the degree and nature of such "independence", whether, how and to what extent the power and authority of the AB should or can be circumscribed, and whether and how the AB can or should discipline itself in exercising its authority.

In other words, there is a tension between the notion of the "separation of powers", on the one hand, and that of "checks and balances" on the other, if such notions ever exist in the WTO institutional framework, and the question is how to strike the right balance.

In short, said Japan, there is no easy fix to the problem because the issue is deeply rooted in the differences in opinion with respect to the place of dispute settlement in the WTO regime at large. As difficult and fundamental as it may be, the issue can only be addressed and solved by WTO members themselves.

Brazil said that the issue is one that goes to the heart of the matter, an item that has to do with one essential pillar of the WTO and the principle on which rests the AB: the independence and impartiality of its members.

"And the underlying question with which we have to deal here is: How can a member of the Appellate Body discharge properly and independently its functions if worried, tempted, or put under pressure to satisfy specific opinions of [WTO] members throughout its mandate, so as to be reappointed?"

Brazil has always believed that if reappointment to a second mandate at the AB is not automatic, in view of Article 17.2 of the DSU, it should be understood as quasi-automatic: only a specific set of objective circumstances could justify non-reappointment, such as health conditions, malfeasance, a member's own desire not to continue, etc.

It is worth remembering that this quasi-automatic nature of the reappointment process has been the rule in the WTO for many years; this important feature was attested to Brazil by several of the original members of the AB.

"The reasons we now hear, however, for the objection to the reappointment of Mr Chang are of an altogether very distinct nature and have nothing to do with the circumstances mentioned before. They are very far from what would be considered acceptable reasons, directed as they are towards the alleged vices, excesses or errors in some Appellate Body reports."

Moreover, these criticisms are attributed to one specific member of a divi-

sion tasked to decide a case, which is composed of three members, and these three members are part of an Appellate Body of seven members. "And as we know, these seven members are collegially responsible for each report," said Brazil.

According to Brazil, what does not seem to be fitting is to object to the reappointment of a member to a second mandate on the grounds that certain legal decisions, by certain individuals in a collegiate body, are wrong or not satisfactory or, worse, because they do not correspond to a WTO member's specific interests or expectations. This runs counter to all canons of independence which are inherent to any decision-making instance, whichever legal nature one may want to assign to it.

"If the alleged reasons for objection are of this calibre, then the integrity of the WTO's main adjudicatory body is clearly jeopardized," said Brazil. "It is evident that if all [WTO] members acted according to the logic and arguments used in the present instance to not reappoint the member of the Appellate Body in question, we would soon transform that body into a tool of our own interests, something that cannot be the universal law we strive for, the general rule which allows for trustworthy and impartial decision-making in an international forum."

Considering that Article 17.2 of the DSU establishes that "each member may be reappointed once", and no clear rules indicate the circumstances that could justify non-reappointment, Brazil said, WTO members could consider amending the DSU to the effect that a single six- or seven-year mandate for AB members be established, so as to close the loophole for undue interference and pressure and to ensure an adequate working environment for AB members.

At the same time, provided that independence and impartiality are thus safeguarded throughout the mandate of AB members, WTO members could weigh the pros and cons of introducing a regular "moment of interaction" between themselves and the AB – disconnected from the moment of reappointment – as a means of allowing for the legitimate interest of WTO members to convey their views on matters of concern regarding dispute settlement. "This could become an opportunity for an exchange of opinions on several issues, as long as the adequate rules of procedure are formulated."

"No reasonable basis"

Chinese Taipei said that WTO members should be extremely cautious and employ a great deal of self-restraint when considering whether or not a reappointment should be blocked. Barring certain exceptional circumstances, such as ethical misconduct or a serious medical condition affecting the candidate's ability to perform the function, the reappointment, in principle, should usually be allowed to take place.

Its understanding is that the AB's decisions on appeal are drafted by a three-person division, with consultations taking place later among all seven members. "We can see no reasonable basis for exclusively attributing a particular legal view, or views, expressed in the Appellate Body's reports to one single Appellate Body member."

It said that it is most concerned that any blockage of a reappointment which is based on the AB's legal views in certain disputes may be an intervention in the core of the authority of the institu-

tion, and that it could also have a chilling effect on the individual AB members and seriously undermine the institution's independence in carrying out its prime responsibility, which is "to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law."

Australia said that non-reappointment should only be exercised in exceptional circumstances.

While recognizing that the reappointment of AB members is not automatic, New Zealand emphasized that consensus should only be blocked in rare and exceptional circumstances.

Despite its complete isolation, the US succeeded on 23 May in vetoing Chang's reappointment. The moot issue is whether the developing countries can veto the US actions which are diametrically opposed to their developmental concerns, trade diplomats said. (SUNS8246) □

Kanaga Raja contributed to this report.

AB members challenge US over Chang reappointment

The US' rejection of a second term in the WTO Appellate Body for Seung Wha Chang has come under fire from current and former members of the body, reports *D. Ravi Kanth* in the two articles below.

GENEVA: The six remaining members of the WTO's adjudicating body, the Appellate Body (AB), on 18 May spoke their mind against the unilateral decision of the United States to block the reappointment of Seung Wha Chang on unjustifiable grounds.

The US decision has generated chilling "risks" for the "trust" placed in the independence and impartiality of AB members on which the dispute settlement system depends, the members said in a letter to the Chairman of the Dispute Settlement Body (DSB), a copy of which was obtained by the *South-North Development Monitor* (SUNS).

In their letter to the DSB chair, Ambassador Xavier Carim of South Africa, on 18 May, the six members of the AB – Thomas R. Graham, chair of the AB, Ujal Singh Bhatia, Ricardo Ramirez Hernandez, Shree Baboo Chekitan Servansing, Peter Van den Bossche and Yuejiao Zhang – challenged the reasons cited by the US for blocking Chang's

reappointment.

Without naming the US, the AB members addressed their letter to the US through the offices of the DSB chair and the WTO Director-General, who was clearly aware of the storm that was building up at the WTO, several trade envoys told SUNS.

"With regard to accuracy, no case is the result of a decision by one Appellate Body Member, nor should interpretations or outcomes be attributed to a single Member," the six AB members maintained.

The main criticism of the US is that Chang deviated from the covered agreements and entered in *obiter dicta* in the rulings.

"Appeals are heard and decided by three Members who are chosen randomly to constitute the Division for each case," the AB members maintained.

"During a Division's consideration of a case, there is always a formal, intensive exchange of views, in person in

Geneva, between the three Division Members and the Appellate Body Members who are not on the Division," the six members argued.

In short, "our reports are reports of the Appellate Body," they asserted.

Effectively, the AB members pointed a finger at the US by asking how it could direct criticism at the doorstep of Chang when decisions in cases were decided by the full AB division after consultations with the rest of the AB members.

Mandate

Further, the AB members said that they are guided by Articles 3.2, 17 and 19.2 of the Dispute Settlement Understanding in adjudicating appeals and clarifying existing provisions of the covered agreements "without adding to or diminishing the rights and obligations provided in those [covered] agreements."

"We strive to adhere to that mandate when deciding complex issues that arise in a variety of circumstances, frequently on matters of first impression," the AB members said.

"Whether we have always succeeded is a subject we leave to the WTO membership to discuss," the six members suggested, maintaining that the WTO members are well within their rights to comment on the AB reports as set out in Article 17.14 of the DSU. The AB members said they are open to "other informed and constructive comments."

As regards the "trust that WTO Members place in the independence and impartiality of AB Members," the six members said, "we are concerned about the tying of an Appellate Body Member's reappointment to interpretations on specific cases and even doing so publicly."

"The dispute settlement system depends upon WTO Members trusting the independence and impartiality of Appellate Body Members," the six members emphasized. "Linking the reappointment of a Member to specific cases could affect that trust."

Commenting on the work done by Chang, the six members said "we have the highest respect for Mr Seung Wha Chang as a person of integrity, independence and impartiality." "He has worked hard together with us to maintain the quality of our reports and to foster constructive improvement of our operations."

"We recognize that there is no right of reappointment," the six members said,

suggesting that they have no role in decisions for reappointment. However, the AB members said that they "felt compelled" to make their reasons known to the DSB chair.

The AB members copied their letter to the WTO Director-General Roberto Azevedo, who is yet to make a public comment on the "lawlessness" created unilaterally by the US in destroying the

adjudicating role of the trade body after severely undermining the negotiating functions of the trade body, several trade envoys told *SUNS*.

The DG was aware of the US action well before it became public but he maintained a deafening silence until it blew up into a grave systemic crisis, said a trade envoy who is familiar with the development. (*SUNS8244*) □

Former AB members censure US on Chang veto

by D. Ravi Kanth

GENEVA: Former WTO Appellate Body members have censured the United States for its decision to block the reappointment of Seung Wha Chang for a second term, on grounds that it would raise the possibility of "inappropriate pressures by participants in the WTO trading system."

"There must be no opening whatsoever to the prospect of political interference in what must remain impartial legal judgements in the WTO's rule-based system of adjudication," the 13 living former members of the AB said in a letter dated 31 May to the chair of the Dispute Settlement Body, Ambassador Xavier Carim of South Africa, accessed by the *South-North Development Monitor* (*SUNS*).

The US decision to not grant a second term to a sitting AB member on grounds that he was part of the three-member division delivering rulings in certain appeals could "threaten to politicize WTO dispute settlement and imperil the impartial independence of every member of the Appellate Body that is required by the WTO Rules of Conduct," the former AB members argued.

The 13 former AB members who signed the three-page letter to the DSB chair are Georges Abi-Saab, James Bacchus, Luiz Olavo Baptista, Lilia R. Bautista, Claus-Dieter Ehlermann, A.V. Ganesan, Jennifer Hillman, Merit E. Janow, Mitsuo Matsushita, Shotaro Oshima, Giorgio Sacredoti, Yasuhei Taniguchi and David Unterhalter.

"The continued impartial independence of the WTO Appellate Body is essential to upholding the rule of law in international trade," they maintained. "Moreover, we see it as a prerequisite to providing security and predictability for

the rule-based multilateral trading system for the benefit of all of the Members of the WTO."

Without naming the US in their letter, they said that "the concerns raised for us by the current reappointment process are wholly institutional."

"One Member of the Appellate Body has been singled out for criticism by one Member of the WTO by reference to rulings in certain appeals in which he was a Member of the division concerned," the former AB members said.

On 23 May, the US had severely criticized the rulings in which Chang was involved either as a sitting member of the three-member division or as a presiding member of the division. The US cited four rulings in which Chang had allegedly deviated from the DSU jurisprudence and erred.

Commenting on these criticisms which were directed towards Chang, the former AB members said these "could just as easily have been directed toward any of the six other Appellate Body Members."

"As the six other Members of the Appellate Body have explained in a recent letter to the Members of the WTO, the rulings and the recommendations of the Appellate Body cannot be attributed solely to any one Appellate Body Member, because 'our reports are reports of the Appellate Body'," the former AB members maintained.

Throughout the first 20 years of the WTO and the AB, they said, the AB owned all the decisions "as one" to mutually reinforce "the strength of their individual commitment to impartiality and independence."

"But if, now, the fact that a Member of the Appellate Body joined in the con-

sensus on the outcome on a particular legal issue or on a particular dispute becomes for the first time a factor in a decision on that Member's reappointment, all of the accomplishments of the past generation in establishing the credibility of the WTO dispute settlement system can be put in jeopardy," the 13 ex-AB members argued.

In short, the US decision "raises the possibility of inappropriate pressures by participants in the WTO trading system."

Therefore, "there must be no opening whatsoever to the prospect of political interference in what must remain impartial legal judgements in the WTO's rule-based system of adjudication," the former members cautioned.

They cited their late colleague Julio Lacarte who once said of any action that might call into question the impartiality and the independence of the AB, "This is a Rubicon that must not be crossed."

Further, "the unquestioned impartiality and independence of the Members of the Appellate Body has been central to the success of the WTO dispute settlement system, which has in turn been central to the overall success of the WTO."

Against this backdrop, "undermining the impartial independence of the Appellate Body now would not only call into question for the first time the integrity of the Appellate Body; it would also put the very future of the entire WTO trading system at risk," they warned.

WTO members are entitled to "differ with a decision reached by the Appellate Body, but this does not necessarily mean that the Appellate Body has acted outside its mandate in reaching that decision," the former AB members argued.

Indeed, "differences [over Appellate Body rulings] are unavoidable in a rule-based system that seeks to resolve international disputes between disputing parties that maintain conflicting views of the meaning of the rules." If anything, differences over the AB verdicts "are intrinsic to the very process of legal interpretation – the core competency of the Appellate Body."

Standard for reappointment

A decision on the reappointment of a sitting member "should not be made on the basis of the decisions in which that Member has participated as a part of the divisions in particular appeals, lest the impartiality, the independence, and the integrity of that one Member, and, by

implication, of the entire Appellate Body, be called into question."

"Nor should either appointment or reappointment to the Appellate Body be determined on the basis of doctrinal preference, lest the Appellate Body become a creature of political favour, and be reduced to a mere political instrument."

"As provided in Article 17.3 of the WTO Dispute Settlement Understanding, the standard for both appointment and reappointment should be whether the person in question is 'of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally'," the 13 former members maintained.

They said if WTO members conclude that the AB has erred when clarifying a WTO obligation in WTO dispute settlement, then members must change the covered agreements through a ministerial or General Council decision by a three-fourths majority of the members under Article IX:2 of the Marrakesh Agreement. And the amended provisions following the ministerial decision or General Council recommendation are binding on the WTO dispute settlement.

To ensure the impartial independence of the AB, WTO members should abolish the current system of reappointment for a second term of a sitting mem-

ber and offer "a single, longer term" for all AB members, the 13 former members concluded.

In crux, the US crossed the "Rubicon" and has irreparably undermined the "impartiality and independence of the Appellate Body members." It has ensured "political interference" in the so-called rule-based system of adjudication.

Ironically, the US action against Chang, whose term expired on 31 May, coincided with the vehement attack launched on the same day by the presumptive presidential candidate of the US Republican Party, Donald Trump, against a US district court judge Gonzalo Curiel presiding over a lawsuit against Trump University.

"The judge has been very unfair, has not done a good job, has been a very bad judge, and he knows he is unfair," said Trump.

Some legal experts in the US have reportedly said that Trump's comments on the judge verged on criminal contempt.

Between the US charges against Chang on 23 May, and Trump's broadside against the US district court judge Curiel on 31 May, there is very little to choose in terms of the US attitude to rule of law whether domestically or internationally. (SUNS8253) □

(continued from page 13)

products from wind turbines and solar panels to water filtering machinery and oceanographic, hydrological or meteorological surveying equipment.

Out of 350 environmental goods outlined by the chair of the EGA negotiations, Andrew Martin of Australia, negotiators from over a dozen EGA countries agreed to submit their list of products based on national, commercial and environmentally justifiable criteria.

In all probability, the landing zone for the final list of products would be in the vicinity of around 200 products, including products for immediate tariff elimination and those with a transition period for bringing the tariffs to zero. The transition period would include different staging periods for sensitive environmental products.

But China has not submitted its list of products until now because of the pronounced differences with the US.

"We hope China becomes more open

to the concerns raised during the consultations and members need to cover a lot of ground," a European trade envoy told SUNS.

Privately, several countries in the EGA talks have expressed sharp concern over attempts by the US and a few other allies to create a small group for pressing ahead with an ambitious zero-for-zero tariff elimination of over 200 environmental goods, another trade envoy told SUNS.

The US wants China to agree to zero duties on the APEC List of Environmental Goods. But China maintained firmly that the APEC commitments do not require members to bring tariffs to zero.

In short, the erstwhile colonial strategies of divide-and-rule, double standards and shifting the goalposts are on full display as the seven countries ratchet up pressure on developing countries to agree on a mercantilist market-capturing environmental goods agreement under the guise of combating climate change, trade envoys said. (SUNS8252) □

Nearly \$10 trillion needed to end poverty by 2030, says ILO

Describing progress in combating poverty thus far as uneven and fragile, the International Labour Organization has stated that almost \$600 billion is needed a year to eradicate poverty by 2030, and that sustainable poverty reduction demands the availability of decent work.

by Kanaga Raja

GENEVA: Some \$600 billion a year, or nearly \$10 trillion over a period of 15 years, is needed to eradicate extreme and moderate poverty globally by 2030, a new International Labour Organization (ILO) report has said.

In its *World Employment and Social Outlook 2016* report, the ILO said that it will not be possible to reduce poverty in a lasting manner without decent work. In other words, decent work is a necessary (though not sufficient) condition for eradicating poverty.

"Clearly, the Sustainable Development Goal of ending poverty in all its forms everywhere by 2030 is at risk," said ILO Director-General Guy Ryder, in an ILO news release. "If we are serious about the 2030 Agenda [for Sustainable Development] and want to finally put an end to the scourge of poverty perpetuating across generations, then we must focus on the quality of jobs in all nations."

"Right now, while 30% of the world is poor, they only hold 2% of the world's income," said Raymond Torres, ILO Special Advisor on Social and Economic Issues. "Only through deliberately improving the quality of employment for those who have jobs and creating new decent work will we provide a durable exit from precarious living conditions and improve livelihoods for the working poor and their families."

Decline in poverty

The ILO report uses the poverty lines as recently revised by the World Bank – \$1.90 PPP (purchasing power parity) per capita per day to measure extreme poverty, \$3.10 for moderate poverty and \$5.00 as complementary poverty measures in Latin America and the Caribbean and Europe and Central Asia.

According to the report, the incidence of poverty in emerging and developing countries, regardless of the threshold, has declined considerably over the

past two decades.

Among 107 emerging and developing countries in 2012 – the latest year for which data are available for the vast majority of countries – the share of the total population in extreme poverty was just under 15%. This was down significantly from 46.9% in 1990 – when the initial international commitments to reduce poverty were undertaken – and 25.2% in 2005, yet it still translates into the fact that close to 1 billion (i.e., 940 million) people were living in extreme poverty globally in 2012.

Moreover, if the poverty line is raised to include the moderate poor, i.e., people with income or consumption below \$3.10 PPP per day, the number is more than doubled, reaching 2 billion people, or 36.2% of the emerging and developing world's population, in 2012 (although this was significantly down from the 67.2% recorded in 1990).

Middle-income countries accounted for much of the decline in extreme and moderate poverty. The pace of poverty reduction was slower among low-income countries and, as a result, the shares of those on less than \$1.90 PPP per day and less than \$3.10 PPP per day remained high in 2012, at 47.2% and 73.6%, respectively (compared with 69.0% and 86.8% in 1990).

"The marginal improvements in extreme and moderate poverty are likely to be an indication that some individuals moved from extreme poverty to moderate poverty," said the report.

Progress, however, has been uneven, said the ILO. While improvements have been significant in a number of countries, notably China and much of Latin America, the incidence of poverty remains stubbornly high in Africa and parts of Asia.

Moreover, in developed countries, an increase in poverty has been recorded, especially in Europe. It is estimated that, in 2012, over 300 million people in de-

veloped countries were living in poverty (defined in relative terms on the basis of incomes representing less than 60% of the median income).

The report said looking at poverty trends across broad geographical regions, excluding developed countries, reveals that improvements in Asia and the Pacific have been exceptional. For instance, the share of people in extreme poverty dropped by over 46 percentage points between 1990 and 2012, to reach 12.2% in 2012. This was driven in particular by China and, to a lesser extent, India.

Similarly, countries in Latin America and the Caribbean made significant progress towards the eradication of extreme poverty, with the share of people living in extreme poverty falling from 21.2% in 1990 to 5.9% in 2012.

In both instances, however, the shares of the population living on less than \$3.10 PPP per day – 36.2% and 13%, respectively – indicate that challenges remain.

Progress among African countries was less pronounced, as more than 40% of the African population continued to live in extreme poverty and some 64% in extreme or moderate poverty.

Poverty by population group

The ILO said that the gains have also been uneven across population groups.

Poverty affects women disproportionately, and children to an even greater extent. In emerging and developing countries, more than half of all children under the age of 15 live in extreme or moderate poverty. In developed countries, 36% of all children live below the relative poverty line.

Even where progress has been made, gains remain fragile. A significant proportion of those who moved out of poverty continue to live on just a few dollars per day, often with limited access to essential services and social protection which would allow them to exit precarious living conditions on a more permanent basis.

Also, in those developed countries where quality jobs are scarce, there is growing anxiety among middle-class families about their ability to sustain their income position.

A significant portion of the poor are outside the scope of the labour market, i.e., they are either children or above the

age of 65. In fact, among emerging and developing countries, 43% of the extreme poor were below the age of 15 or above the age of 65 in 2012, compared with 30% of the non-poor. Children constituted the largest portion of those of non-working age in extreme poverty, making up 38% of the extreme poor, compared with 24% of the non-poor.

The situation was particularly critical in low-income countries: 45% of all children lived in extreme poverty and nearly 77% in extreme or moderate poverty in 2012. In middle-income countries, the incidence of poverty among children was lower, but still close to one in four (22%) children lived in extreme poverty and nearly one in two (just under 50%) lived in extreme or moderate poverty.

In developed countries, similar trends have prevailed: 37% of the poor were either children or aged 65 or above (compared with 32% among the non-poor), with children accounting for the vast majority among this group. With respect to rates of poverty, in developed countries one-third of all children lived in poverty (measured as less than 60% of national median income per capita).

Across the range of country groupings, in 2012, the majority of the poor were of working age, i.e., between the ages of 15 and 64. Among them, those who were active, i.e., either employed or looking for work, made up a slightly higher share of the poor.

In emerging and developing countries, 57% of the extreme poor and 61% of the moderate and extreme poor were aged 15-64 (compared with 70% and nearly 73%, respectively, among the non-poor). However, the incidence of poverty in these countries was lower among people of working age (14% were extreme poor and 36% were extreme or moderate poor) than among children or elderly.

In developed countries, the majority of the poor were of working age (63%) and, in contrast to emerging and developing countries, the poor were more likely to be inactive than the non-poor. Moreover, said the ILO, the poverty rate for the inactive in this group of countries (30%) was significantly higher than for those who were either employed or looking for work (17%).

Working poverty

In emerging and developing coun-

tries, in 2012, 13.7% of workers were in extreme poverty, representing some 367 million people living on less than \$1.90 PPP per capita per day. The share of employed people living on less than \$3.10 PPP per day remained comparably higher, accounting for over one-third (34.9%) of the employed population across emerging and developing countries (more than a quarter across middle-income countries and almost 70% among low-income countries). "Overall, this means that in emerging and developing countries, over 1.2 billion workers were in extreme or moderate poverty in 2012."

In developed countries, the incidence of relative working poverty (on a per capita basis) among 37 developed countries stood at around 15.0% of the employed population in 2012, affecting over 70 million workers. Figures for European countries only based on an adult equivalent scale show that working poverty in the EU increased from 11.9% in 2005 to over 13.3% in 2012.

Unlike in emerging and developing countries, the incidence of unemployment is relatively high among the poor in developed countries. In 2012, this translated into relatively high poverty rates of 42.7% among the unemployed compared with a total average poverty rate of 22% when determined on a per capita basis. Wage and salaried workers were less affected by relative poverty than the self-employed. Among the self-employed, the poverty incidence ranges from 16.8% among employers to 25.8% among contributing family workers.

In 2012, 88% of the extreme working poor in emerging and developing countries were in rural areas. In fact, extreme poverty rates were four times higher in rural areas than in urban areas. And the rural/urban divide becomes even more apparent when considering poverty rates for people in employment. Nearly 20% of people employed in rural areas were living in extreme poverty, compared with just over 4% in urban areas (rising to 48.5% and 13.9%, respectively, when considering extreme and moderate poverty).

In developed countries, said the ILO, the majority of the working-age population live in urban areas. However, the incidence of poverty across inactive, unemployed and employed was slightly higher in rural areas than in urban areas.

According to estimates based on 43

emerging and developing countries, nearly two-thirds of all the working extreme poor were employed in agriculture – the figure declined somewhat (to nearly 60%) when considering moderate and extreme poverty together.

In terms of rates of poverty, a quarter of those employed in agriculture were in extreme poverty, compared with just 12% of those employed in industry, and only 7% of those employed in services. The strong incidence of poverty in agriculture is a common feature of all developing regions.

Based on a smaller set of countries (due to limitations in data availability), the evidence shows that the working poor tend to hold jobs that require low skills. In fact, in 2012, in the 17 emerging and developing countries for which detailed estimates were available, 43% of workers in extreme working poverty were employed in occupations that typically require low skills, i.e., equivalent to primary education or less. In contrast, among the non-poor, only 18% worked in occupations that required low skills.

"Not surprisingly, the rate of extreme poverty among the low skilled, at 26.2%, was more than double and nearly ten times the rates for medium and high-skilled workers, respectively," said the report.

Income gap

Estimates suggest that, in 2012, \$120 billion would have been needed to eliminate extreme poverty in the world. The income gap for eliminating extreme poverty represents 0.16% of total income available in the world and 0.31% of total income available in emerging and developing countries, but over 5% in developing countries alone.

To eliminate both extreme poverty and moderate poverty (defined as incomes or consumption expenditure below \$3.10 PPP per day), nearly \$600 billion would be needed. According to the report, this represents 0.8% of global income, 1.7% of the income available in emerging and developing countries, 1.4% in emerging countries and 21% of gross domestic product (GDP) in developing countries alone.

The amount of income needed to eliminate poverty (defined at \$5 PPP per day) is in excess of \$2 trillion.

In developed countries, the income needed to bring all the poor above the

relative poverty line (defined as 60% of median household income) is estimated at \$850 billion, or 1.7% of the total income of developed countries in 2012. This amount represents 4.2% of total government expenditure and 7.8% of public social protection expenditure.

"A continuation of the uneven and fragile progress in reducing poverty may compromise the achievement of the Sustainable Development Goals (SDGs) adopted by the United Nations in September 2015, including both SDG 1 – to end poverty in all its forms and everywhere by 2030 – and many of the other SDGs," the report warned.

Already, although they represent 30% of the world's population, the poor receive less than 2% of the world's income. So, unless action is taken, poverty will tend to perpetuate itself across generations. This may exacerbate socioeconomic instability and erode support for pro-growth policies.

Decent work

The ILO said it will not be possible to reduce poverty in a lasting manner without decent work. In other words, decent work is a necessary (though not sufficient) condition for eradicating poverty. Its estimates suggest that nearly \$10 trillion is needed to eradicate extreme and moderate poverty by 2030.

However, said the ILO, this cannot realistically be achieved by income transfers alone. The solution requires more than simply the availability of resources. Indeed, the ability of people to sustain themselves through good jobs will need to be enhanced.

Almost one-third of the extreme and moderate poor in emerging and developing countries actually have a job. However, these jobs are vulnerable in nature: they are sometimes unpaid, concentrated in low-skilled occupations and, in the absence of social protection, the poor rely almost exclusively on labour income. In addition, two-thirds of the jobs are in typically low-productivity agricultural activities.

Among developed countries, said the ILO, a greater number of workers have wage and salaried employment, but that does not prevent them from falling into poverty. In fact, more than 80% of the working poor in developed countries are in wage and salaried employment.

(continued on page 28)

The Third World in the Third Millennium CE

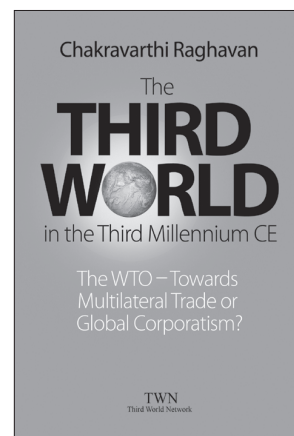
The WTO – Towards Multilateral Trade or Global Corporatism?

By Chakravarthi Raghavan

THE second volume of *The Third World in the Third Millennium CE* looks at how the countries of the South have fared amidst the evolution of the multilateral trading system over the years. Even at the General Agreement on Tariffs and Trade (GATT) gave way to the World Trade Organization (WTO) as the institution governing international trade, this book reveals, the Third World nations have continued to see their developmental concerns sidelined in favour of the commercial interests of the industrial countries.

From the landmark Uruguay Round of talks which resulted in the WTO's establishment to the ongoing Doha Round and its tortuous progress, the scenario facing the developing countries on the multilateral trade front has been

one of broken promises, onerous obligations and manipulative manoeuvrings. In such a context, the need is for the countries of the Third World to push back by working together to bring about a more equitable trade order. All this is painstakingly documented by Chakravarthi Raghavan in the articles collected in this volume, which capture the complex and contentious dynamics of the trading system as seen through the eyes of a leading international affairs commentator.



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Free trade in rhetoric, protection in practice

Western countries are fond of preaching “free trade” to developing countries, but their own practice is often protectionist instead.

by Martin Khor

The Western countries commonly proclaim the great benefits of free trade and the evils of protectionism. In reality, however, many developed countries practise double standards, insisting on free trade in areas where they are strong whilst using protectionist measures in sectors where they are weak.

In the worst case, within the same sector they have designed rules that impose liberalization on developing countries but allow themselves to maintain high protectionism.

An outstanding example is in agriculture, a sector in which the rich countries are not competitive but have succeeded in protecting their turf.

If “free trade” were to be practised, a large part of global agricultural trade would be dominated by the more efficient developing countries. But until today, agricultural trade is dominated instead by the major developed countries.

For many decades the developed countries got an exemption for agriculture from the trade liberalization rules of the General Agreement on Tariffs and Trade (GATT). This exemption ended when the World Trade Organization (WTO) replaced GATT in 1995, and the rich countries were expected to open their agriculture to global competition. But in reality, the WTO’s agriculture agreement allowed the rich countries to have both high tariffs and high subsidies.

The subsidies have enabled farmers to sell their products at low prices, often below production cost, and still get adequate revenues (which include the subsidies) that keep them in business.

This has four negative effects on developing countries. Firstly, those countries that are agriculturally competitive cannot penetrate the rich countries’ markets either because of the high tariffs or due to the high subsidies that enable the latter to have artificially low prices.

Secondly, the developing countries are also deprived of other markets because the US and Europe can export the

same farm products at artificially low prices. This is a complaint of African cotton-producing countries.

Thirdly, by exporting one of its products cheaply, the developed country reduces the demand for a substitute product from developing countries. If the US did not subsidize its soybean, enabling soybean oil to be cheaper, Malaysian or Indonesian palm oil would have a bigger market.

Fourthly, these cheap products (such as chicken from the US and Europe) have entered many developing countries, damaging the livelihoods and incomes of their local farmers.

Continued protectionism

In 2001, the WTO launched a Doha Development Agenda whose chief goal was to liberalize the agriculture of developed countries by substantially reducing their subsidies and tariffs, which would give a developmental boost to the developing countries. A great deal of time and energy was subsequently spent over many years to devise methods and formulae to liberalize agricultural trade, and a high degree of consensus was reached.

However, the United States, backed by Europe, has now made it clear they do not intend to conclude the Doha Round. If negotiations are to continue in the WTO, they would have to be on a new basis, and not on existing principles and texts that had almost been agreed to.

An article by Chris Horseman in the *Agra Europe* bulletin (12 May) analyzed why the US now cannot accept the existing text. A reduction in the maximum limit of one type of allowed farm subsidies (called *de minimis*) would have pushed the US to increase by 58% another type of disallowed subsidies (known as AMS). This partly explains “why the US is keen to move away from the formulae on the table and to negotiate a fresh approach,” said the article.

Due to its powerful farm lobbies, the US will not change its domestic policies (embodied in its 2014 Farm Bill) to meet the Doha agenda’s new limits on the allowed amounts of domestic subsidies.

The same article also shows how the European Union has meanwhile changed the types of subsidies it provides, in order to comply with the WTO definitions of what is “trade-distorting” (and must be reduced) and what is “minimally trade distorting” (and is allowed to continue at any level). This allowed the EU countries to maintain their total domestic subsidies at around €80 billion annually (from 2004 to 2013) although there have been changes in the types of subsidies given.

Two decades after the WTO was set up, the rich countries have continued the high level of their agricultural protection. There is little prospect that they will agree to changes in the trading system that will effectively eliminate or reduce the massive subsidies that keep their farming systems afloat.

They thus have little moral authority to preach “free trade” to developing countries, since they are practising protectionism themselves.

The poorer countries simply do not have the money to match the subsidies of the rich. If they want to defend their farmers and their food security, they can only raise tariffs to levels that keep out the cheap subsidized products.

But those developing countries that sign free trade agreements (FTAs) with the US and the EU have to cut their agriculture tariffs to zero or very low levels. At the same time, at the insistence of the developed countries, agricultural subsidies are kept off the FTA agenda. Thus, the rich countries can keep their subsidies and swamp developing countries with their farm products.

The US and the EU are also taking protectionist measures in other areas against developing countries.

For example, the US successfully filed a case against India at the WTO charging that the latter’s National Solar Mission favours local firms through its domestic-content requirements for solar cells and modules. This kind of objection makes it extra-difficult for India or other developing countries to take action against climate change.

The European Parliament recently voted to refuse giving China the status of a market economy in the WTO, al-

though WTO members are obliged to recognize China as a market economy by December 2016, 15 years after it joined the WTO in 2001. By denying China this status, it is easier for other countries to succeed when taking anti-dumping cases against China, and thus to place extra tariffs on Chinese exports.

China and India are fighting back. India has announced it will file 16 cases against the US for violating WTO rules when providing subsidies under its renewable energy programmes. China won a case against the US in the WTO for wrongly imposing countervailing duties against 15 Chinese products including solar panels, steel sinks and ther-

mal paper. However, the US has not complied with the panel decision to withdraw the duties, and China is now starting action at the WTO to get the US to comply.

It seems impossible to prevent or reduce the rich countries' high protection of their agriculture. And it also seems they will continue using protectionist measures against products or policies of developing countries. There is indeed a big gap between the rhetoric and practice of free trade. □

Martin Khor is Executive Director of the South Centre, an intergovernmental think-tank of developing countries, and former Director of the Third World Network. This article was first published in The Star (Malaysia) (24 May 2016).

Increasing economic inequality not inevitable

Vladimir Popov and Jomo Kwame Sundaram trace the trajectory of economic inequality up to the present day, with yawning income and wealth gaps once again opening up.

Since the 1980s, the world has been moving once again to the greatest degree of national-level income inequalities observed in recorded human history.

A study by the Credit Suisse Research Institute suggested that the income share of the rich has increased at the expense of the "middle class" in most of the world.

Although economic inequality within societies has been with us for a very long time, inequalities among regions are more recent.

According to the late economic historian Angus Maddison, such inequalities increased from about half a millennium ago, before accelerating greatly about two centuries ago with the Industrial Revolution.

With colonialism abroad, new forms of economic hegemony accelerated wealth and income inequalities among and within many societies.

In England, Holland and Spain in the 18th century, the Gini measure of income inequality was around 50-60% – much higher than today.

Traditional communal, cooperative and collectivist institutions in Europe were eroded during the 16th to 19th centuries, e.g., by the "enclosure movement" in England. Economic inequality in the United States at the time of American independence in the late 18th century (excluding slaves) was initially lower

than in Europe due to the absence of large inherited fortunes and the availability of abundant land at low cost in the New World.

But inequalities increased greatly after the mid-19th century despite the end of slavery, peaking during the Gilded Age in the 1920s.

In the US, the ratio of the largest fortunes to the median wealth of households increased from about 1,000 in 1790 to 1,250,000 in 1912 (John D. Rockefeller's fortune of \$1 billion), falling to 60,000 in 1982, before rising again to 1,416,000 in 1999 (Bill Gates' \$85 billion fortune).

Comparison of the wealth of the richest men in various countries in different epochs gives different numbers, but points to a similar conclusion: compared to the average income in the US, Bill Gates was relatively richer than Carnegie and Rockefeller. However, Russian tycoon Mikhail Khodorkovsky was relatively richer in 2003 – compared to Russian average income – than all of them, including Gates!

National inequalities peaked in Western societies in the early 20th century, before declining from the 1920s to the 1970s, during historian Eric Hobsbawm's "short 20th century", before rising again since.

This reversal was probably due to the greater egalitarianism of the socialist countries, with Gini inequality mea-

sures averaging 25-30%, following the Bolshevik Revolution, the checks to increasing inequalities with the rise of labour, socialist and other egalitarian movements, as well as the growth of the welfare state, wealth and income taxation as well as other reforms and changes discussed by Karl Polanyi.

Counter-revolution

But as Soviet "socialism" lost its dynamism from the 1970s and posed less of a threat, a conservative "counter-revolution" ensued – first in the Anglophone West, led by Margaret Thatcher and Ronald Reagan in the 1980s – weakening workers' movements, undermining state capacities and legitimacy, and strengthening the rich and powerful's claims to more and new types of income.

The income shares accruing to capital and property increased, at the expense of labour, with rentier incomes, including those accruing to finance or "intellectual property", growing much more than the real economy.

The collapse of the Berlin Wall in 1989 and the USSR in 1991 were among the high points of this counter-revolution, also resulting in the delegitimization of Keynesian and development economics.

Government expenditure, especially social spending, stopped growing, with many social programmes cut, as unemployment rose to levels not seen since the 1930s. Meanwhile, trade unions were defeated in critical industrial actions (coal miners in the UK, air traffic controllers in the US), causing union strength and membership to decline in the aftermath.

The top income tax rates, higher than 50% in the US, the UK, Germany and France during 1940-80, have dropped significantly since.

Generally, high-profit periods enabled some income and other transfers, lowering earlier inequalities during the 1950s and 1960s. However, the increase in the share of profits in national income since the 1980s has contributed to the rising inequality of recent decades.

The conservative Thatcher-Reagan counter-revolution was undoubtedly successful on a global scale. Today, capitalism is "the only show in town", with communist parties involved in managing capitalism to gain national advantage. The main choice for national regimes today is among varieties of capitalism, with the nature of state involve-

ment being the subject of fierce debates. (IPS) □

Vladimir Popov was Senior Economic Affairs Officer in the United Nations Department of Economic and Social Affairs. Jomo Kwame Sundaram was an Assistant Secretary-General for Economic Development in the UN system during 2005-15 and

received the 2007 Wassily Leontief Prize for Advancing the Frontiers of Economic Thought.

Reference: Jomo Kwame Sundaram and Vladimir Popov. *Income Inequalities in Perspective. ESS Document No. 46. Initiative for Policy Dialogue (IPD), Columbia University and International Labour Office, Geneva. April 2015.*

Policymakers, listen to your hired help

Our global economy will never become more productive, the developed world's official economic research agency suggests, if we continue to let wealth concentrate.

by Sam Pizzigati

The world's most high-profile "advanced" corporations are manipulating their market power to extract unearned "rents" from the rest of us.

The "better-off everywhere" are exploiting their advantages in everything from income and wealth to health and education – and locking their family privilege in place for generations to come.

Those who assure us that we can count on high-tech "innovation" and "economic growth" to bring economic security to the world's most hard-pressed are blowing smoke.

These bold claims all emerged in May in an important new report. Who made them? Some left-leaning think-tank full of malcontents? Radical lawmakers in some obscure European parliament?

Hardly. These claims all appear in a new paper from the Organization for Economic Cooperation and Development, the Paris-based research and policy agency that's funded by the 34 nations that make up the core of the "developed world."

OECD analysts don't carry pitchforks. They typically express themselves in rather ponderous bureaucratic prose. But in their just-published new report, "The Productivity-Inclusiveness Nexus", these analysts have issued a fairly powerful heads-up to the world's political movers and shakers.

Stay on your current economic course, their basic message goes, and we'll find ourselves trapped in a "vicious cycle" that leaves true innovation stalled and well-being worldwide stagnant and sinking.

This latest OECD paper continues the steady drumbeat of warnings that have come over recent years from analysts at the world's most significant eco-

nomics institutions. The challenge the international economic order faces today, the new OECD analysis argues, involves much more than undoing the Great Recession.

The developed world, the analysis notes, faces a "worrying slowdown in productivity growth," a trend now evident in 90% of the OECD's member nations.

Accompanying this slowdown in productivity growth: an equally worrying increase in inequality. In all 18 OECD nations with comparable data, the most affluent 10% now hold at least half of all household wealth. All these nations have also seen a three-decade "surge in income at the top, especially the top 1 percent."

The world faces other challenges as well, the OECD analysis acknowledges. But few of these "pose greater obstacles to better economic performance than the productivity slowdown and the rise in inequalities."

And these two unfolding trends, the OECD suggests, reinforce each other.

One example: The corporate giants the OECD labels "frontier firms" appear to be leveraging their dominant market monopoly position to slow the diffusion of new know-how. That's limiting productivity gains, in the process "entrenching inequalities of income, not least by trapping workers in unproductive activities and low-quality jobs and producing 'winner takes all' dynamics in the economy."

The "growing weight" of big banks in the global economy, meanwhile, has "diverted investment away from productive activities," a move that has nurtured a still "higher concentration of wealth at the top of the income distribution."

The more income concentrates at the

top, the more those below "accumulate disadvantages." A "policy environment that yields the outcome where some people have few resources," as the new OECD study puts it, will see fewer people saving and investing "in their own skills." In this environment, productivity growth will almost always be "sub-optimal."

Also "sub-optimal" for greater productivity, in this OECD analysis: austerity budgets that dismantle safety nets for the vulnerable, the "regulatory capture" of government watchdogs by powerful industries, and the lavish government subsidies that go to fossil-fuel corporations. And don't forget patent rules that "may unduly" favour corporate giants at the expense of innovative new competitors.

What do we do about all this? How can we meaningfully confront the great economic challenges of our times? At times, this new OECD report offers up suggestions sure to make our global corporate power suits squirm.

We could limit the "unproductive concentration of profits," the OECD analysts note at one point, if we levelled the playing field and let state-owned enterprises really compete with private-sector firms.

But this new OECD analysis mostly shies away from any specifics that would directly discomfort the rich and powerful. Our "overarching objective," the analysts pronounce, must be "to identify win-win policies that could deliver both improved inclusiveness and productivity growth."

But no insistence on "win-win policies" will ever get us to where we need to be. No deeply unequal society will ever become meaningfully more equal unless those who benefit the most from inequality lose some appreciable part of their privilege and power.

Making that happen typically takes pitchforks, a willingness to confront grand private fortune and those politicians who serve it.

We can't, of course, expect an official agency like the OECD to egg that confronting on. But we can at least thank the OECD for helping delegitimize our staggeringly unequal economic status quo – and those who pimp for it. □

*Sam Pizzigati is an associate fellow with the Washington-based Institute for Policy Studies and co-edits inequality.org, from which this article is reproduced under a Creative Commons licence. His most recent book is *The Rich Don't Always Win: The Forgotten Triumph over Plutocracy that Created the American Middle Class, 1900-1970* (Seven Stories Press).*

After the “battle of the century”, what next for debt crisis management?

Argentina’s costly recent settlement with vulture fund creditors has further strengthened the latter’s predatory business model, writes *Bodo Ellmers*, but options for fair and effective management of sovereign debt problems remain available.

In late April, the “battle of the century” between the government of Argentina and a group of vulture funds reached an inglorious end. The Argentine government finally surrendered and paid the vulture funds in full, at a price tag of more than \$10 billion.

The consequences are severe: Argentina started a new cycle of indebtedness; the vulture funds’ predatory business model has been further strengthened and threatens to affect more and more nations; and future debt crisis management in general is in a mess.

Now that this battle has been lost, the question remains: what next for debt crisis management?

Argentina: back to the markets or back to debt crisis?

Argentina had to borrow the money it needed to pay the vultures; thus it returned to the financial markets after more than a decade of absence. To the surprise of many financial market observers, the bond issue of the former pariah state was hugely oversubscribed. In the largest emerging-market issuance ever, Argentina managed to raise \$16.5 billion in three different bond series that yielded on average 7.2%.

This successful return has the caveat that it starts a new cycle of indebtedness. While the government of Argentina hopes that the ‘normalization’ of financial relations will attract foreign investment, none of these borrowed dollars will be invested productively. The lion’s share of more than \$10 billion went to pay the vulture funds; a smaller share replenished Argentina’s depleted currency reserves, i.e., mainly to refinance capital flight.

The issuance was a perfect deal for investors. It soon turned out that Argentina had sold the bonds too cheaply. Prices surged in the first few days, allowing the banks that were the bookrunners to make quick profits. JP Morgan celebrated: “These yields don’t exist anywhere else in the world in countries with such low levels of debt.”

Argentina’s citizens are paying the price for their government’s strategy of pleasing foreign investors. The recent removal of exchange restrictions has resulted in a 40% currency devaluation and a spike in inflation. Subsidies on essential services have been removed and, by March 2016, 32,000 public service workers had been laid off.

Vulture funds: a menace to debt restructurings and to democracy

Argentina’s payments to the vulture funds have repercussions far beyond this case. They have replenished the funds’ war chests by an additional \$10 billion, enabling them to attack more nations. Puerto Rico and Belgium have become the first countries to fall prey to their new aggressions.

Vulture funds, in particular Aurelius Capital, have purchased Puerto Rican bonds, which have junk-bond status and are traded far below nominal value on secondary markets. The vultures’ financial firepower not only allows them to prepare for litigation; they have also started a public relations campaign to influence public opinion in their favour. For instance, they hired some retired International Monetary Fund (IMF) officials to draft a ‘research’ paper which argues that Puerto Rico, which is a US territory, would be able to fully service its huge debt burden if the government just imposed ever harsher austerity measures on the population. Quite obviously, their campaign targets not only the Puerto Rico case, but also relevant bankruptcy legislation processes going on in the US Congress and US opinion in general.

Belgium is another example where vulture funds are attacking democratic legislative processes. The small European country passed the world’s most comprehensive vulture fund legislation in 2015. Belgian law determines that a vulture fund can never make more money through litigation than it paid for the particular debt instruments in the first place, if there is a large discrepancy

between the nominal value at issuance and the price it paid for it. This law renders the vultures’ business model unattractive. Investors can still recover their money, but they can no longer use the litigation strategy to make exorbitant profits.

Not surprisingly, the Belgian law, which has inspired the United Nations to call for similar legislation in other countries, has disgusted the vulture funds. So they filed a lawsuit at the Belgian Constitutional Court, claiming that the law infringed the country’s constitution.

Another consequence of the vulture funds’ Argentina victory is that thousands of responsible investors have been fooled. Until recently, Argentina had been a country with low levels of debt, as JP Morgan correctly analyzed. But this was because, after the Argentine debt crisis of 2001-02, the vast majority of investors holding Argentine debt participated in debt restructurings and agreed to write off a substantial share of their investment. Now the vulture funds have shown that if you hold out and manage to procure the help of New York judges, profit rates of more than 1,000% on your investments are possible.

That means those who cooperated in good faith are the ‘fools’ who helped to restore Argentina’s solvency, but who also enabled Argentina to borrow again and pay the vultures. Following this experience, debt crisis management can no longer count on voluntary creditor participation.

What next for debt crisis management?

So the question remains: what can indebted countries in particular – and the international community in general – do to counter the surging vulture fund plague? The answer is: there are a number of options.

1) An international insolvency regime for sovereign debtors

A vulture fund lawsuit against sovereign debtors is possible because there is no bankruptcy protection for this kind of debt. This is in contrast to corporate debt, where specialized insolvency courts are mandated to make binding decisions and codified insolvency law guides their decision making. That this governance gap exists is not news – lots of conceptual work has been done at the IMF as well as at the UN to fill it.

The multilateral solution is certainly

the best and most effective one. The dilemma, however, is that it depends on multilateral consensus, including by those nations that host financial centres and in which vulture funds fuel the political system with party donations. The IMF and UN attempts have been blocked by US and UK resistance primarily.

The processes at both institutions must nevertheless be kept alive, as windows of opportunity can open up at any time. For instance, many decision-makers in Washington have learnt through the Puerto Rico case that better bankruptcy protection for sovereigns is not so bad after all, even if it is just to avoid creditor bailouts funded by taxpayers' money. Both institutions, the UN and the IMF, have mandates to pursue further reforms.

2) National vulture fund legislation

The Belgian law has been a remarkable innovation. It complemented a British law that was passed when it became clear that vulture funds' lawsuits against heavily indebted poor countries (HIPC) imply that UK aid funds are de facto used to feed the vultures instead of meeting their stated purpose of fighting poverty. Thus, two countries have vulture fund legislation in place, although the UK law covers only a small group of HIPC countries.

The UN, in paragraph 100 of its recent Addis Ababa Action Agenda on Financing for Development, encourages all governments to take similar action. Moving towards national vulture fund legislation could be a way forward for countries that host important financial centres but have a certain aversion to multilateral solutions – such as the UK and, particularly, the US.

3) Sidelineing uncooperative financial centres

Action can also be taken by the issuers of foreign bonds. It is mostly the governments of emerging and developing countries that are issuing bonds in foreign currency and under foreign legislation. These are the ones that vulture funds are particularly targeting. Many were surprised by how badly the New York court treated Argentina and how it bent the *pari passu* clause to please the vulture funds.

Argentina is traditionally one of the largest emerging-market bond issuers, an important client for Wall Street banks. But it made (as it eventually turned out) the terrible mistake of issuing bonds under New York law. Of course, in globalized financial markets there are many

The Management of Capital Flows in Asia

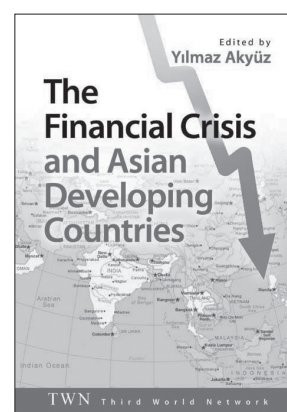
Edited by *Yilmaz Akyüz*

THE 1997 Asian financial crisis brought home to the region's economies the importance of managing capital flows in order to avert financial shocks. This book looks into whether and how this lesson was taken on board by policy makers in Asia, and, accordingly, how capital account regimes in the region evolved in the post-crisis period.

The early years of the new millennium saw a strong surge of capital flows into Asian emerging markets amid conditions of ample global liquidity. In response to the influx of funds, these countries generally chose to keep their capital accounts open to inflows, dealing with the attendant impacts by liberalizing

resident outflows and accumulating foreign exchange reserves. While this approach enabled them to avoid unsustainable currency appreciations and external deficits, it did not prevent the emergence of asset, credit and investment bubbles and domestic market vulnerability to external financial shocks – as the events following the 2007 subprime crisis would prove.

This book – a compilation of papers written in 2008 for the first phase of a Third World Network research project on financial policies in Asia – examines the above developments in relation to the region in general and to four major Asian developing economies: China, India, Malaysia and Thailand.



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alternatives to the financial centre of New York. Even countries that strive to issue dollar-denominated bonds can easily do so in European or Asian financial centres. Or in some cases even under domestic legislation, which should be the preferred option. Thus they can avoid a location which, from the perspective of effective debt crisis management, must nowadays be considered an uncooperative financial centre.

Moving forward

Debt sustainability indicators in many countries are currently deteriorating rapidly. The latest Global Sovereign Indebtedness Monitor by Jubilee Germany found debt problems in 108 emerging and developing countries. The IMF also warned at its recent spring meetings that financial stability risks are growing. More debt crises will come and more debt restructurings will be needed. Urgent action by policymakers is therefore indispensable in order to create a regime that makes fair, speedy and effective debt crisis management possible, and options to move forward do exist. □

Bodo Ellmers is Policy and Advocacy Manager at the European Network on Debt and Development (Eurodad), from the website of which (eurodad.org) this article is reproduced.

(continued from page 22)

"Without an adequate supply of decent work opportunities, it will be difficult for the working poor to improve their working conditions, acquire a career and thus lift themselves and their families out of poverty."

The ILO highlighted a number of key structural obstacles that it said are impeding quality employment creation and poverty reduction: a narrow economic base; widening income inequality resulting from a number of factors; and a weak institutional set-up that marginalizes the vulnerable groups.

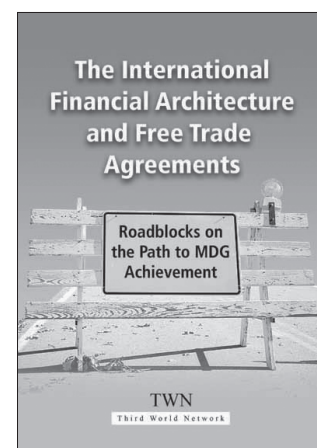
The report said that each of these three obstacles can be addressed through decent work and by enhancing the ability of enterprises to create quality jobs.

In this context, it recommends, amongst others, broadening the productive base through the promotion of sustainable enterprises, strengthening rights at work as well as labour market institutions, and enhancing the effectiveness of employment and social policies and extending their reach. (SUNS8244) □

The International Financial Architecture and Free Trade Agreements

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