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IPRs fail to bring promised benefits – study

The claimed benefits of expanded intellectual property rights (IPRs) have not materialized, according to a research paper published by the South Centre, an intergovernmental think-tank of developing countries. The study finds little evidence that the high standards of intellectual property protection imposed by the WTO and free trade agreements have delivered on the promise of promoting innovation, including in the pharmaceutical sector.

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The unfulfilled promises of intellectual property rights

Stringent standards of intellectual property protection have not delivered increased innovation and other promised benefits, according to a new study.

by Kanaga Raja

GENEVA: The incorporation of intellectual property into trade agreements has not brought about the promised benefits, and the premise that the same standards of intellectual property protection are suitable for countries at different levels of development and that innovation will be boosted through such agreements does not match the reality.

This is one of the key conclusions highlighted by Carlos M. Correa in a South Centre research paper titled "Innovation and the Global Expansion of Intellectual Property Rights: Unfulfilled Promises." Correa is Special Advisor on Trade and Intellectual Property at the South Centre, an intergovernmental think-tank of developing countries.

Another main point in the paper is that the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) has failed to increase innovation and generate benefits equitably distributed among all members of the WTO.

According to Correa, the same can be said with regard to the free trade agreements (FTAs) promoted by the US and the European Union that entail a further expansion of intellectual property protection beyond what is required under the TRIPS Agreement ("TRIPS-plus" standards), such as an extended term of patent protection (in the case of US FTAs); data exclusivity for pharmaceuticals and agrochemicals; linkage between drug registration and patent protection (in the case of US FTAs); and strengthened enforcement measures.

The South Centre research paper noted that the effects of high standards of intellectual property protection – like those mandated under the TRIPS Agreement and further extended under FTAs – have been critically examined in the developed countries themselves. It cites a paper by Giovanni Dosi and Joseph E. Stiglitz as stating: "Intellectual property is ... a social contrivance purportedly designed to increase welfare, by supposedly enhancing innovation (though ... it may actually have exactly the opposite effect)."

If intellectual property does not work in developed countries as generally described by their proponents, the situation can only be worse in developing countries with weak science and technological infrastructures, scarcity of risk capital and unsophisticated production profiles, said Correa.

"These countries are currently paying the price of a system which primarily serves as a platform to extract rents (in the form of royalty payments and high prices) and which does little to promote local innovation and economic development."

Internationalization of intellectual property rights

Providing some background, the paper notes that international intellectual property law developed since the end of the 19th century as an independent normative area. Three international conventions were adopted at the end of that century, two of which became the very foundation of an international system on industrial property and copyright law. Thereafter, it took a long time to develop additional international rules on the subject, as it was only in 1952 that a new convention on copyright was established.

The internationalization of intellectual property gained momentum in the 1960s and 1970s when various negotiations led to the conclusion of new treaties in this field. The governance of the emerging set of international conventions on intellectual property was ensured through specialized bodies established by the same conventions.

The system of rules created by these international instruments operated in isolation from the multilateral trade system established by the General Agreement on Tariffs and Trade (GATT) in 1947. The creation of a linkage between the two systems was the result of an initiative of a group of US-based industries that sought to establish a framework for intellectual property protection of broad geographic coverage and capable of ensuring not only the recognition of rights but also their effective enforcement.

According to the paper, the opposition of developing countries to establishing a comprehensive agreement on intellectual property in the context of GATT led them to refuse the developed countries' interpretation of the ambiguous mandate approved at the GATT Ministerial Conference in Punta del Este (Uruguay) in 1986 for the Uruguay Round talks, and to avoid engaging in negotiations on the subject until 1989.

The change in their position is attributable to many factors, but the primary one is likely to have been the developed countries' confessed strategy to link concessions in the areas of agriculture and textiles – the main targets for developing-country negotiators – in the Uruguay Round to the acceptance of a new set of binding international rules on multiple aspects of intellectual property that would reflect the patterns of protection generally available in developed countries, said Correa.

"Of course, the proponents of such rules articulated a discourse around the advantages that new disciplines on intellectual property would bring about to all participants in the multilateral trading system, including developing countries. Increased innovation, growing flows of foreign direct investment and technology transfer to these countries, and better prospects for economic growth were central components in this rhetoric."

While a number of econometric studies have been conducted correlating intellectual property (or the 'strength' thereof) with these and other variables, none of them conclusively shows that the claimed benefits have actually emerged from the implementation of high intellectual property standards, the paper underlined.

For instance, a literature review concluded, in relation to patents, that "the sheer size and growth of the recent literature might lead one to assume that patents are an extremely important instrument of economic development and growth, which therefore attract a great deal of interest from researchers and policy makers. But this seems at odds with the weak evidence that patents serve as an incentive for innovation and the fact that relatively few firms find them an important means of securing returns to innovation".

One clear outcome of the increased levels of intellectual property protection seems to be the enormous increase in US receipts for the use of intellectual property abroad, which doubled between 1994 and 2014.

Impact on innovation

The South Centre paper pointed out that one of the key arguments underpinning the grant of intellectual property rights and, in fact, the claimed benefits of implementing the standards of the TRIPS Agreement, is the positive role that such rights would play in promoting innovation.

"The global map of research and development (R&D), however, does not show a general improvement of R&D capabilities in developing countries in the last twenty years, with a few exceptions, notably in the case of China."

Although the participation in global R&D may have improved after 2010, the US, China, Japan and Europe together still account for about 78% of the $1.6 trillion total investment in R&D.

R&D investment has increased in India, Brazil and China in the last 20 years, but other developing countries, especially in Africa, undertake low levels of R&D and there are no indications that there will be significant changes in the short term.

The extent to which the increase in R&D investment in those three countries is related to or caused by the introduction of TRIPS-compatible rules on intellectual property is at least questionable. Significantly, none of these countries has entered into free trade or other agreements imposing TRIPS-plus standards. Hence, they would not qualify as granting "stronger" intellectual property rights protection, one of the variables considered in some studies to assess the impact of such rights.

"How much of the increment in R&D that has taken place in the last two decades may be attributed to intellectual property protection? It is not easy to respond to this question. However, if leading economists from the USA are right, it cannot be simply argued that innovation only or mainly occurs because such a protection is conferred," said Correa.

Petra Moser, for instance, concluded a historical analysis indicating that "[o]verall, the weight of the existing historical evidence suggests that patent policies, which grant strong intellectual property rights to early generations of inventors, may discourage innovation".

Other scholars have gone as far as suggesting the abolition of patents: "[I]n general, public policy should aim to decrease patent monopolies gradually but surely, and the ultimate goal should be the abolition of patents. After six decades of further study since Machlup's testimony in 1958 failed to find evidence that patents promote the common good, it is surely time to reassess his conclusion that it would be irresponsible to abolish the patent system" (Michele Boldrin and David K. Levine).

The inappropriateness of a "one-size-fits-all" approach in the area of intellectual property has also been highlighted in various reports and in abundant academic work, noted Correa.

Dosi and Stiglitz, for instance, have warned about the negative consequences of pretending that a system of intellectual property adapted to a developed country could work in the same way in a developing country: "As badly designed as the American IPR [intellectual property right] regime is for the United States, it is even worse suited for developing countries. But even if the American IPR regime were ideal for the United States, that does not mean that it would be ideal for others ... In particular, the IPR regimes of the advanced developed countries are likely to be inappropriate for many developing countries, and this is likely to be especially so in areas like health and agriculture ... Indeed, one-size-fits-all policy prescriptions are rarely a good idea in any field, but this is one area where they may work particularly badly ... There are, for instance, large distributional consequences of different IPR regimes, and developing countries may not have the resources to easily offset those effects."

In summary, said Correa, "while the proponents of the TRIPS Agreement operated on the premise that minimum standards of protection would be equally beneficial for countries with diverse levels of socio-economic and technological development, the dominant view flowing from academic and other analyses seems to strongly reject that premise."

This is particularly the case for pharmaceuticals, he stated.

The pharmaceutical sector

According to the South Centre paper, the case of the pharmaceutical industry illustrates well the disconnect between innovation and the geographically broader and more extensive protection of intellectual property introduced by the TRIPS Agreement.

It is generally accepted that patents are not among the important means to appropriate returns to innovation in most sectors, with the notable exception of pharmaceuticals. The pharmaceutical industry played a major role in the development of the US strategy leading to the adoption of the TRIPS Agreement; this agreement may never have existed in the absence of the effective lobbying made by that industry.

"The implementation of global rules ensuring the patenting of pharmaceutical products – which was denied in more than 50 countries at the beginning of the Uruguay Round – and the protection of test data – for which there were no international rules before the TRIPS Agreement – was presented by that industry as an indispensable platform to sustain and increase investment in the development of new drugs."

The paper however pointed out that a study by F.M. Scherer published in 2004 predicted that the increase in the development of new drugs that would result from the implementation of the TRIPS rules in developing countries would be minimal, and that "global welfare is maximized by letting low-income nations free-ride on the patented inventions of first-world nations".

In fact, said Correa, the post-TRIPS Agreement period has been characterized by a continuous decline in pharmaceutical innovation, as measured by the number of new drugs approved for marketing. The average number of new drugs developed after 2000 (when the TRIPS Agreement became enforceable in developing countries) was almost half of the average in the five previous years.

"The extension to developing countries and the strengthening of patents and test data protection for pharmaceuticals have done nothing to prevent the plummeting efficiency of the pharmaceutical industry in developing new drugs."

Thus, the "number of new drugs approved per billion US dollars spent on R&D has halved roughly every 9 years since 1950, falling around 80-fold in inflation-adjusted terms".

Neglected diseases

In addition, the extension of product patent and test data protection has not helped developing countries – the primary target of the whole TRIPS exercise – to address the diseases prevalent in those countries (often referred to as "neglected diseases"), since the lack of interest and, consequently, low investment in R&D by the pharmaceutical industry continues to be an outstanding feature of its business model.

A 2006 report by the World Health Organization (WHO) Commission on Intellectual Property, Innovation and Public Health already noted that "[t]here is no evidence that the implementation of the TRIPS Agreement in developing countries will significantly boost R&D in pharmaceuticals on Type II and particularly Type III diseases. Insufficient market incentives are the decisive factor".

A more recent report confirmed that "patents alone do not drive sufficient investment to counter diseases that predominantly affect poor people, because they do not offer a sufficiently profitable market; as a result, some diseases – or rather, some populations – are neglected".

While only 1.1% of new therapeutic products had been developed for neglected diseases in 1975-99, between 1 January 2000 and 31 December 2011 only four new chemical entities were approved for neglected diseases (three for malaria and one for diarrhoeal disease), accounting for 1% of the 336 new chemical entities approved during this period.

According to the paper, the effects of an expanded protection of intellectual property have been particularly tangible in the case of treatments for HIV/AIDS. Prices of HIV treatments vary greatly between middle-income countries (MICs) depending, inter alia, on the patent landscape, while the price of drugs for third-line treatments remains a major challenge as they are likely to be patented in key countries with manufacturing capacity.

In addition to the low number of new drugs developed after the TRIPS Agreement entered into force, innovation in pharmaceuticals presents other shortcomings. The great majority of the new drugs are "me-toos", that is, drugs that do not perform better than previously existing treatments but which are generally more expensive.

For example, a specialized journal noticed that "a 'new generation' of antipsychotics was systematically prescribed by doctors, yet these drugs proved to be no more effective than the prior generation and were 10 times more expensive". More generally, it has been found that by the 1980s drugs were less than four times better than a placebo; by the 1990s, twice as good; and by the 2000s, just 36% better than a placebo.

Intellectual property is deemed to be necessary to drive private investment in drug research, which is believed to constitute the primary source of new treatments, said Correa. The evidence suggests, however, that a large part of the new medicines with a genuine therapeutic impact emerge from public, not private, R&D laboratories: "[I]nnovation depends on bold entrepreneurship. But the entity that takes the boldest risks and achieves the biggest breakthroughs is not the private sector; it is the much-maligned state."

Innovation in developing countries

A common justification for the standards imposed by the TRIPS Agreement has been that it would effectively lead to more innovation in pharmaceuticals in developing countries, especially those with a significant scientific and technological capacity such as India.

An analysis of pharmaceutical patents in 85 countries from 1978 to 1999 found that "national patent protection did not stimulate domestic innovation activities, except at higher development levels, and that above a certain level of patent protection, innovation activities are actually reduced".

Correa noted that a recent study on the TRIPS Agreement's impact on the pharmaceutical industry in India concluded that the agreement may have accelerated R&D related to improvement of existing medicines, but "in the absence of TRIPS, such activities would still have been undertaken. With larger domestic operations, Indian companies ... would have had access to larger resources and would have been better placed to undertake such research".

The TRIPS Agreement requires a minimum protection for patents of 20 years counted from the date of filing. "This is an arbitrary term, as there is no evidence suggesting that this is the optimum duration, particularly if applied to inventions of very different nature (both major or radical as well as incremental or minor) and the development of which require completely different levels of skill and investment," Correa said.

The TRIPS Agreement, in summary, has done nothing to stop the decline in the innovation of the pharmaceutical industry in developed countries, or to induce R&D on new drugs in developing countries. Despite this, in many of these countries there has been a massive proliferation of patents in this area, based on "evergreening" strategies, that is, the practice of filing for patents, such as on derivatives, crystal forms, formulations or new uses of existing medicines, in order to block the market entry of generic producers.

According to the paper, high prices of pharmaceuticals, based on the exercise of patent rights, severely affect developing countries where the state's purchasing capacity is low and medicines often need to be paid for by the patients themselves, if they can afford them at all.

But high pharmaceutical prices are also shocking patients and creating financial problems to social security systems in developed countries. For instance, 11 of the new drugs approved for cancer in 2012 cost at least $100,000 a year in the US, where a 12-week treatment with a patented drug for hepatitis C costs $84,000.

The declining productivity in pharmaceutical innovation and the unaffordable costs of the patented outcomes of R&D have prompted analyses and proposals for new models of innovation in this field.

Thus, Correa noted, a Consultative Expert Working Group on Research and Development: Financing and Coordination established by WHO's World Health Assembly in 2010 produced a set of recommendations in view of the failure of the present incentive systems, in particular, intellectual property, to generate enough R&D in either the public or private sector in order to meet the health needs of developing countries.

Based on the evaluation of close to 100 proposals for mechanisms to promote better financing and coordination of research, the report concluded that an open approach to R&D should be promoted, with the results of R&D being treated as public goods not subject to the exclusive rights conferred by patents.

It recommended new forms of shared financing, direct subventions, prizes and patent pools (to increase access to health products), including, in particular, a legally binding convention on R&D, said the paper.

The full South Centre research paper (including references) can be found at https://www.southcentre.int/research-paper-70-august-2016. *(SUNS8306)* ❐

G20 affirm DDA on post-Nairobi work but open door to RTA issues

At their recent summit in Hangzhou, the G20 major economies agreed to address the unresolved Doha Development Agenda issues in the WTO, but also left an opening for issues from regional trade arrangements to enter the scope of discussion in the trade body.

by D. Ravi Kanth

GENEVA: Major developing countries led by China have ensured, in the Hangzhou communique issued by G20 leaders, strong language on the WTO's post-Nairobi work programme, "with development at its centre", for addressing the remaining "DDA [Doha Development Agenda] issues" on a priority basis, trade envoys told the *South-North Development Monitor (SUNS)*.

After their 4-5 September meeting in Hangzhou, China, the G20 leaders reiterated their commitment to address the unresolved DDA issues in "agriculture, including all three pillars of agriculture (i.e. market access, domestic support and export competition), non-agricultural market access, services, development, Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and rules."

Despite their sustained efforts to finalize the post-Nairobi work programme based on the remaining DDA issues, developing countries have over the past eight months faced numerous hurdles and roadblocks because of opposition from the US and other industrialized countries.

The US, for example, has vociferously maintained that it will not negotiate the DDA issues because of lack of agreement among member states at the WTO's tenth Ministerial Conference in Nairobi, Kenya, last December to continue with the Doha Round of negotiations, according to trade envoys familiar with the negotiations.

The US has also blocked efforts to negotiate on the remaining DDA issues on the grounds that members will have to agree to "new approaches" before commencing negotiations. The US indicated its plurilateral approaches for issues in the Doha rules dossier, particularly on fisheries subsidies, while setting aside other issues concerning improvements in anti-dumping provisions, trade envoys said.

Other major industrialized countries such as the European Union, Australia, Canada, Switzerland and Norway have signalled their intention to continue work on the Doha issues without insisting on any new approaches, trade envoys maintained.

Effectively, work at the WTO on the post-Nairobi work programme with DDA issues at its centre remains nearly paralyzed in the last eight months since the Nairobi Ministerial Conference.

Against this backdrop, the leading developing countries in the G20, such as China, India, Turkey and South Africa, succeeded in bringing back development-centred issues in the DDA in the Hangzhou communique.

The fact that the US had to agree to include the "DDA" issues in the leaders' communique is significant. Whether the US will actually participate in shaping the post-Nairobi work programme based on these issues, however, remains to be seen, said a trade envoy who asked not to be quoted.

Language on DDA ... and RTAs

In paragraph 26 of the Hangzhou communique, the G20 leaders reiterated their commitment "to shape the post-Nairobi work with development at its centre and commit[ted] to advancing negotiations on the remaining DDA issues as a matter of priority, including all three pillars of agriculture (i.e. market access, domestic support and export competition), non-agricultural market access, services, development, Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and rules."

For agreeing to insert language on the DDA issues, according to trade envoys familiar with the negotiations, the US and other industrialized countries forced the developing countries at the Hangzhou summit to agree to include language such as: "We also note that a range of issues may be of common interest and importance to today's economy, and thus may be legitimate issues for discussions in the WTO, including those addressed in regional trade arrangements (RTAs) and by the B20 [the coalition of business associations from the G20 countries]."

Effectively, such language opens the door slightly for bringing the RTA issues into the WTO even though a large majority of WTO members are not part of agreements such as the Trans-Pacific Partnership (TPP) or other major regional agreements, said an envoy of a G20 member country.

More importantly, the Hangzhou communique paves the way for discussing issues such as the electronic commerce work programme when it says, "We will work together with all WTO members with a sense of urgency and solidarity and with a view to achieving positive outcomes of the MC11 [the WTO's eleventh Ministerial Conference, which will take place next year] and beyond and we will work together to further strengthen the WTO."

In short, major industrialized countries led by the US and the EU, along with their developing-country partners such as Singapore, Hong Kong, Costa Rica, Mexico and Korea, will make a sustained effort to either launch or conclude negotiations on e-commerce at the eleventh Ministerial Conference, the envoy maintained.

Overall, the language on global trade issues in the Hangzhou communique is a grand "compromise" between developing countries led by China and the industrialized countries, particularly the US, the envoy argued.

The industrialized countries also succeeded in introducing language on the important role "that bilateral and regional trade agreements can play in liberalizing trade and in the development of trade rules, while recognizing the need to ensure they are consistent with WTO rules."

Effectively, this would be tantamount to bringing disciplines agreed in bilateral and regional agreements, such as the rules on e-commerce in the TPP agreement, into the WTO work programme, a developing-country trade envoy said.

The US, for example, had suggested

15 concepts in the e-commerce work programme at the WTO which were largely based on what was agreed on e-commerce in the TPP agreement, the envoy suggested.

The US proposal called for "prohibiting digital customs duties", "enabling cross-border data flows", "promoting a free and open Internet", "preventing localization barriers", "barring forced technology transfers", "protecting critical source code" and so on.

The concept of "preventing localization barriers", for example, demands that "companies and digital entrepreneurs relying on cloud computing and delivering Internet-based products and services should not need to build physical infrastructure and expensive data centres in every country they seek to serve. Such localization requirements can add unnecessary costs and burdens on providers and consumers alike. Trade rules can help to promote access to networks and efficient data processing."

Leading developing countries such as China, India and South Africa want foreign companies to build physical infrastructure as well as data centres for availing their services instead of depending on cloud computing, in which the US maintains a near-monopoly, the envoy argued.

EGA negotiations

Further, the continued differences between China on one side and the US and its allies on the other in the ongoing negotiations on a plurilateral Environmental Goods Agreement spilled over into the G20 leaders' communique.

The two sides struck a compromise to include language that "seeks to eliminate tariffs on a broad range of environmental goods by the end of 2016".

The Hangzhou communique says: "G20 Environmental Goods Agreement (EGA) participants welcome the landing zone achieved in the WTO EGA negotiations, and reaffirm their aim to redouble efforts to bridge remaining gaps and conclude an ambitious, future-oriented EGA that seeks to eliminate tariffs on a broad range of environmental goods by the end of 2016, after finding effective ways to address the core concerns of participants."

China also agreed to language on excess capacity in steel and other industries as well as on subsidies and other types of government support.

The communique says: "We recognize that the structural problems, including excess capacity in some industries, exacerbated by a weak global economic recovery and depressed market demand, have caused a negative impact on trade and workers. We recognize that excess capacity in steel and other industries is a global issue which requires collective responses. We also recognize that subsidies and other types of support from government or government-sponsored institutions can cause market distortions and contribute to global excess capacity and therefore require attention."

In short, while the developing countries held their ground on the DDA issues as reflected in the Hangzhou communique, they conceded ground on bringing RTA-related issues into the WTO through the backdoor.

"The developing countries must now ensure that negotiations on DDA issues are conducted on the existing Doha work programme before they agree to discuss the new issues," said a trade envoy from a G20 country. *(SUNS8310)* ❐

Talks to finalize EGA intensify but deal remains uncertain

Whether a plurilateral agreement to scrap import tariffs on a range of so-called environmental goods can be secured by December remains up in the air.

by D. Ravi Kanth

GENEVA: Even as efforts to finalize a plurilateral tariff-elimination agreement on environmental goods among 17 countries by early December intensify, prospects for concluding a comprehensive deal remain uncertain due to several imponderables, trade envoys told the *South-North Development Monitor (SUNS)*.

During a meeting of trade envoys from the 17 countries on 30 August, there was a tentative agreement to accelerate negotiations on the basis of the chair's revised draft list of 304 tariff lines.

The chair of the so-called Environmental Goods Agreement (EGA) negotiations, Andrew Martin of Australia, after bilateral consultations, had circulated a revised draft list of 304 tariff lines to the participating countries more than a month ago.

The EGA negotiating countries are Australia, Canada, China, Costa Rica, Chinese Taipei, the European Union, Hong Kong (China), Japan, Korea, New Zealand, Norway, Switzerland, Singapore, the United States, Israel, Turkey and Iceland.

At the 30 August meeting, the envoys directed their negotiators to discuss four issues in the next round of consultations beginning on 16 September. The four issues are:

(i) the final list of products based on the chair's list;

(ii) the staging of products for phasing out tariffs in three, five and seven years;

(iii) the critical mass for bringing the agreement into force;

(iv) the work plan to further discuss environmental services and non-tariff barriers.

Continued differences

Despite agreeing to pursue the four issues, the EGA members continue to differ on each issue, said a developing-country trade envoy who asked not to be quoted.

The envoy suggested that the list of 304 products is not acceptable to some members like China, which wants a realistic outcome for reducing or eliminating tariffs on around 50-odd tariff lines. Although China agreed to discuss on the basis of the chair's revised list, it is not clear how it would engage on so many products during the next three rounds, the envoy suggested.

Also, there is no clarity yet on how many products will be eligible for immediate tariff elimination once the agreement comes into force. Several industrialized countries led by the US, the EU and Japan want to include a large majority of products for immediate tariff elimination, but several developing countries, especially China, might push for a modest list of products for immediate tariff elimination.

There are also differing views among EGA members as regards staging of products. While some members want the issue of the staging periods of three, five and seven years for eliminating tariffs on EGA products to be discussed after there is convergence on the final list of products, major industrialized countries such as the US and the EU want to discuss both the number of products and staging of products simultaneously, the envoy added.

An associated issue is how members would include their preferred products in the categories of three, five and seven years – i.e., whether members will frontload the products in the three-year category or backload them in the seventh year.

Without clarity on the list of products and the staging issue, it would be difficult to decide the issue of critical mass, i.e., when the agreement could be brought into force based on the percentage of products that are going to be covered in the agreement and their share of the global market.

Several industrialized countries led by the EU also want to discuss other issues such as environmental services and non-tariff barriers, but there is skepticism on the part of some countries like Turkey towards bringing environmental services into an agreement concerned with goods, trade envoys said.

Applicability to non-members

Significantly, the EGA members will also have to decide whether the tariff elimination on the final list of products agreed among the 17 countries will be multilateralized or whether there will be exceptions to keep non-participants from availing themselves of the proposed benefits.

[The "most favoured nation" (MFN) provisions of the WTO and the General Agreement on Tariffs and Trade (GATT) 1994 require that any concessions (tariff or non-tariff) exchanged among members become unconditionally applicable to all other WTO members. Whether the new tariff concessions are bound or merely applied makes no difference.

[The EGA members themselves are obliged to notify the WTO of any concessions exchanged among themselves even if among themselves they have agreed on some conditions. The moment they notify, the concessions are unconditionally applicable to all other WTO members. If an EGA good is exported to an EGA member by a non-EGA member but does not receive the same concessional treatment, this can automatically be raised as the subject of a trade dispute in the WTO.

[There is no provision or exception in GATT 1994 to enable a conditional exchange of trade concessions in such a case. The EGA will not qualify as a customs union or a free trade agreement, restricted as it is to only one sector of goods.

[The tariff concessions under the Information Technology Agreement (ITA-1) became applicable to all non-members unconditionally. – *SUNS*]

Earlier, China had insisted that "free riders" cannot avail themselves of the benefits of the EGA; if Beijing continues to adopt the same stand, then there will be fresh problems, the envoy suggested.

Given these imponderables and differences among members, it remains to be seen whether the US will succeed in its attempts to conclude the agreement before President Barack Obama completes his term in about five months.

Against this backdrop, it is highly unlikely that the 17 countries will conclude the final EGA deal by early December despite optimism on the part of the EU and other industrialized countries. *(SUNS8305)* ❐

US risks "systemic" repercussions, "legal uncertainty" on DSU

India has taken issue with the inconsistent stances adopted by the US with regard to trade disputes in the WTO.

by D. Ravi Kanth

GENEVA: The United States must adopt consistent positions for resolving trade disputes at the WTO or face the risk of causing grave "systemic" repercussions and "legal uncertainty" on the Dispute Settlement Understanding (DSU), India has warned, according to people familiar with the development.

During the WTO's Dispute Settlement Body (DSB) meeting on 5 September, India drew attention to the conflicting positions adopted by Washington in two trade disputes with New Delhi.

One of the disputes centres around countervailing measures imposed by the US on Indian hot-rolled carbon steel products. In the other dispute, the US has requested for imposing trade retaliatory measures to the tune of $450 million on Indian goods, without a DSB determination as to whether India has properly implemented the DSB recommendations for removing avian influenza-related restrictive measures on American poultry and poultry products.

No status report

On the countervailing measures imposed by the US on imports of certain hot-rolled carbon steel flat products from India, the WTO's Appellate Body (AB) delivered a comprehensive ruling in 2014. The AB rejected the US determination of a "public body" in countervailing investigations and measures.

The AB determined that a "public body" must be "an entity that possesses, exercises or is vested with governmental authority", and ruled against section 19 USC 1677(7)(G)(iii) of the American domestic law.

The US had argued that India's National Mineral Development Corporation (NMDC) was a public body under 19 USC 1677(7)(G)(iii) because of the Indian government's 98% shareholding interest in the company. India contested the US claim by pointing out that the NMDC was a "Mini RATNA" Category I company with enhanced autonomy from the government.

The AB had already rejected the US "ownership" test for a "governmental authority" in another trade dispute between the US and China in 2011. Effectively, the US had dismissed arguments about the lack of Indian government control.

After the AB dismissed the US determination of "public body", India said the AB's ruling on public bodies has immense significance in the context of the vital role played by public sector undertakings in the economies of developing countries.

More importantly, the AB verdict required the US to either amend or repeal section 19 USC 1677(7)(G)(iii) of its domestic law so as to bring it into conformity with the WTO Agreement on Subsidies and Countervailing Measures.

But, for inexplicable reasons, the US chose to cock a snook at the AB ruling for the past two years by simply refusing to provide any status report under

Article 21.6 of the DSU about its efforts to amend / repeal the condemned provision, according to legal diplomats familiar with the DSB proceedings.

The US, according to diplomats, had repeatedly maintained that the provisions of the WTO-inconsistent domestic law were never utilized. Therefore, the US refused to even list the item in the DSB agenda, unlike other cases where it is in the process of implementing the WTO rulings. The US, for example, is consistently reporting to the DSB about the ongoing efforts to implement other DSB recommendations in cases concerning US anti-dumping measures on certain hot-rolled steel products and Section 110(5) of the US Copyright Act. However, in the Indian steel case, the US simply disregarded the reporting requirements as set out in Article 21.6.

"This is not a minor procedural issue but a serious systemic issue for the dispute settlement mechanism," India warned at the 5 September DSB meeting. "Ignoring this aspect would render Article 21.6 ineffective and seriously undermine the surveillance mechanism under the DSU."

Further, the US chose to pursue "different legal standards in different disputes which pertain to essentially the same issue – a legislation which is WTO inconsistent", India maintained, according to trade officials familiar with the DSB meeting. The US "must file status reports as it does in other similar disputes", asserted India.

India also flagged concerns on the US compliance with respect to the "as applied" determinations. India emphasized that the sequencing issues in implementing AB rulings need to be resolved bilaterally between the parties or through a compliance panel under Article 21.5 of the DSU instead of resorting to trade retaliatory measures under Article 22.

India said it did not take recourse to Article 22 provisions for the lack of implementation by the US in the steel dispute as "not doing so is the legal, logical and consistent step that ensures predictability of the dispute settlement system."

The US, said India, must adopt "consistent practice in other disputes as well."

Retaliation request

In the second dispute, over India's restrictive measures against the import of poultry and poultry products, the DSB adopted the AB ruling that dismissed New Delhi's avian influenza-related restrictions on 19 June 2015. Subsequently, the two sides – the US and India – entered into what is called a reasonable period of time (RPT) agreement under which India agreed to eliminate the restrictive measures by 19 June 2016.

India amended several provisions for allowing "imports of poultry and poultry products into India from country, zone or compartment free from avian influenza, in accordance with the relevant international standard i.e. the OIE Terrestrial Code" on 21 June 2016.

After taking into consideration all responses to its draft notification, India included the final notification in its Gazette order of 8 July 2016 and subsequently notified to the WTO's Committee on Sanitary and Phytosanitary Measures and the DSB on 19 July 2016.

With the publication of the new notification, India claimed that it had fully implemented the DSB recommendations and also simultaneously entered into bilateral consultations to allay the US concerns on compliance.

The two sides held detailed bilateral consultations since July but the US chose to raise the issue at the DSB. Further, the US went ahead with a request under Article 22.2 of the DSU to impose trade retaliatory measures worth $450 million for the one-month delay in implementation by India.

The US, which had not complied with several rulings in different trade disputes for more than 12 years, resorted to trade sanctions for a delay of one month in the implementation of DSB recommendations by India.

Worse still, the US did not even take recourse to the establishment of a compliance panel under Article 21.5 to determine whether the Indian measures fully complied with the DSB recommendations.

In several trade disputes, including the recent tuna dispute with Mexico, the US had repeatedly maintained that "the DSB cannot grant authorization to suspend concessions in any amount where the Member concerned has come into compliance." But, in the dispute with India, the US proceeded to seek authorization to suspend concessions without recourse to a compliance panel.

India said it was taken aback with the US request for authorization to impose trade retaliatory measures in a dispute without going through the sequencing agreement, as it did in another dispute with the US.

In their comments, Japan and the EU also sided with India that it is important to go through the sequencing procedures.

Against this backdrop, India asked the US to suspend the arbitration proceedings and pose the issue of compliance to a panel.

India urged the US to enter into a sequencing agreement in the dispute, arguing that New Delhi had brought its measures into compliance.

India said the US request for suspension of concessions has no legal basis, and maintained that "not adhering to the sequence disrupts the legal certainty of the Dispute Settlement Understanding."

However, the US stuck to its position that "arbitration is currently in progress." The US said there is no change in its position as "the revised measure appears to retain many of the features of India's prior measure that DSB found to be inconsistent with India's obligations under the SPS [Sanitary and Phytosanitary Measures] Agreement."

The Indian revised measures "appear to be more trade restrictive than a measure based on international guidelines", the US maintained.

In crux, the inconsistent positions adopted by the US in several disputes exposed Washington's consistent approach of "double standards" in international trade disputes, said a legal diplomat from South America.

"What is good for the goose is not good for the gander, is a historical approach followed by the US since the Monroe Doctrine in the early 19th century," the diplomat concluded. *(SUNS8309)* ❐

Developing nations seek tax body to curb illicit financial flows

The developing nations are persisting in their efforts, in the face of developed-country opposition, to establish an intergovernmental body to tackle corporate tax dodging and improve international cooperation on tax issues.

by Thalif Deen

NEW YORK: Despite Western opposition, the 134-member Group of 77 is continuing to pursue a longstanding proposal for an intergovernmental UN-affiliated tax body aimed at combating corporate tax dodging and curbing illicit financial flows, including money laundering and offshore banking.

The proposal has already been shot down twice by Western nations, first at the Financing for Development (FfD) conference in Addis Ababa in July 2015, and more recently at the 14th session of the UN Conference on Trade and Development (UNCTAD 14) in Nairobi in July this year.

But a G77 source told Inter Press Service (IPS) the proposal is very much alive – and still on the negotiating table.

The proposal by the G77, the largest single coalition of developing countries, calls for the establishment of a standing intergovernmental group of experts to address tax issues, including international tax issues, and to assist countries in better mobilizing and employing fiscal revenues.

This includes international initiatives to counter tax avoidance and tax evasion, as well as strengthening the capabilities of developing countries to address tax avoidance and tax evasion practices.

In Africa alone, the estimated resources leaving the continent in the form of illicit financial transfers amounted to nearly $530 billion between 2002 and 2012, according to UNCTAD.

The three key causes of illicit financial outflows are largely commercial tax evasion, government corruption and criminal activity, including money laundering.

Bhumika Muchhala, Senior Policy Researcher, Finance and Development Programme, at the Malaysia-based Third World Network, told IPS the key reason the global tax system has failed is that more than half of the world's countries are currently excluded from the decision-making processes on global tax standards.

"We in global civil society hope that the G77 and China, both in New York and Geneva, will continue to persistently raise the need for an intergovernmental tax body, under the auspices of the United Nations, in every relevant conference, negotiation and discussion within the UN, regional commissions, Bretton Woods Institutions and other international institutions, particularly the Organization for Economic Cooperation and Development (OECD) which has a monopoly role in global tax governance by developed country donors," she said.

"We know by examples of history that truly meaningful reforms and establishment of new bodies that break old rigid structures of imperialism, exclusion and unequal power require a long arc of time and need to be pushed through every open crack in the status quo by repeated and persistent demands by a group that takes the leadership to exert collective pressure," she added.

As to whether the G77 and China will bring up the proposal again, Muchhala said the hope is they will continue to persistently bring it up in every possible space, conference and discussion.

Manuel Montes, Senior Advisor on Finance and Development at the Geneva-based South Centre, told IPS the proposal was meant to create an intergovernmental process whose deliberations would bring up issues of interest to developing countries.

Right now, he said, agenda-setting on international tax issues is made in the OECD, which the G20 leading economies commissioned to put out the 15 action items under Base Erosion and Profit Shifting work.

The upgrading of the UN Committee of Experts on International Cooperation in Tax Matters to an intergovernmental level was the last outstanding item that prevented agreement at the FfD conference in Addis Ababa.

"The developed countries, led by the US, blocked the proposal," Montes said.

The OECD dominance in this regard could have been mitigated somewhat if the UN process in tax cooperation had been upgraded to an intergovernmental level as proposed in the Addis Ababa conference.

The OECD secretariat "reports" to its member states, and changes in the agenda have to be first accepted by its member states, even though it has been making a lot of effort to increase the participation of developing-country officials and the UN – but by invitation.

The OECD would still be an important and perhaps a dominant player in a UN process, but it would not be the sole source of the intergovernmental agenda and norm setting, Montes declared.

The G77 proposal did not survive the UNCTAD 14 outcome in Nairobi even though there is text in the outcome document that allows UNCTAD to work on tax issues as a matter of research, including assistance to developing countries to design and implement policies and actions aimed at improving the efficiency of trade transactions as well as the management of transport operations. Additionally, the outcome document also calls on UNCTAD to continue to cooperate with member states in implementing ASYCUDA, the automated system for customs data, and work on taxation as it relates to investment policy.

Martin Khor, Executive Director of the South Centre, told IPS the developing countries under the G77 and China succeeded in defending their development interests and in obtaining a renewed mandate for UNCTAD to continue its work.

"They had to face major developed countries and their groupings that were quite insistent on narrowing the scope of UNCTAD's future work and thus the scope of the UN."

As a result, he said, there was unfortunately no mandate for the UN to set up an intergovernmental group on how to deal with tax issues, as the developed countries prefer to use their group, the OECD, to make decisions on issues like tax evasion and tax havens.

There are other examples in the areas of trade, debt and finance where the outcomes could have been much better but were instead disappointing.

Nevertheless, the renewal of UNCTAD's mandate for its work in the next four years was an achievement of UNCTAD 14, given the shaky state of North-South cooperation on global economic issues, said Khor. *(IPS)* ❐

See also the article "An intergovernmental UN tax body – why we need it and how we can get it" in this issue's Analysis section.

What if the US fails to ratify the TPP?

The United States may or may not ratify the Trans-Pacific Partnership agreement. How should other TPP countries respond when the American political dynamics unfold?

by Martin Khor

A previous article of mine on the Trans-Pacific Partnership being caught up in the United States presidential election dynamics (see *TWE* No. 623) received several responses.

I had raised the possibility that the TPP, already signed by 12 countries, might falter at the last stage of ratification by the US Congress because the TPP has become very unpopular in the country. President Barack Obama must try to get a TPP bill passed during the "lame duck" Congress session between November and January, but there are doubts he will have enough votes.

A good American friend of mine who closely follows Congressional politics read my article and had this response: "I would say the chances of the TPP being rejected are 50 to 60 per cent. However, one can never discount what can happen in a lame duck session, especially if a lot of House incumbents lose their seats and so start thinking about their next job rather than being accountable to voters at home who are against the TPP. But right now they do not have the votes by a good margin."

Another friend, who is Asian, has another view: "My take on the TPP is that eventually it will get passed by the US Congress, if not now then within a couple of years."

Yet another colleague seems to share this view, saying: "It is a mystery why the US President is so keen to have it through against so much opposition. Perhaps the corporate lobby groups are very strong.

"If so, they are likely to prevail upon the dissenting politicians. Thus the US President is likely to have a battery of fighters on his side. Perhaps with some sops thrown here and there, the opposition of the politicians may melt down, particularly after the dust settles post-election."

Obama is certainly going all out to get the TPP ratified. A *New York Times* article on 22 August says the president is preparing one final push for approval and may yet win because of his alliance with Republicans who control Congress.

According to the article, many of Obama's cabinet members, including Secretary of State John Kerry and Defence Secretary Ashton Carter, two former admirals, and many business and farm leaders are geared up to go on road shows throughout the country.

On the other hand, many trade unions and environmental and health organizations are also planning a big nationwide campaign to get candidates for Congress to pledge they will vote against the TPP. It will be a fierce fight.

What next?

The other countries that have signed on to the TPP should prepare to respond to what happens in the US.

Most likely, the US will attempt to persuade some of its TPP partners to take on additional obligations to satisfy the demands of its members of Congress. The US can try to achieve this through introducing new bilateral side-agreements on specific issues with specific countries. It can also make use of the "certification process" in which the US administration has to certify that each of its TPP partners has taken measures to meet its TPP obligations and is thus eligible to enjoy the TPP benefits provided by the US.

In previous free trade agreements (FTAs), the US had put pressure on countries to assume extra obligations beyond what their FTA required. It can again make use of this certification process to obtain some "TPP-plus" commitments from its partners. It can then show Congress members that what they want from the TPP has been effectively achieved, even if these are not inside the TPP text itself.

The other TPP countries have already taken on very heavy obligations under the agreement. It would be very unfair to ask them to undertake even more obligations, which would adversely affect the balance of costs and benefits of the TPP for them.

"It will be a real debacle for the other signatory countries if the US insists on additional commitments through bilateral protocols," says Bhagirath Lal Das, an international trade expert based in India.

"The US has adopted this strategy several times in the past. For example, in its bilateral trade agreement with South Korea, the US Congress insisted on renegotiation of some parts before ratification.

"Thus often we have seen that negotiating with the US is in two layers: once with the negotiators from the Administration and then indirectly with the US Congress. This is unfair."

Finally, all the TPP countries are already preparing changes to their domestic laws, regulations and policies in order to comply with the agreement. Malaysia, for example, will have to make almost 30 changes to its laws.

In many cases, these changes are to the detriment of these countries, especially in the area of intellectual property, which will affect access to affordable medicines, access to information, and the ability of farmers to save seeds. The TPP countries agreed to these changes in return for the perceived benefits they will obtain from other parts of the TPP, especially more market access for their exports.

However, if the TPP does not come into force because of the failure of the US to ratify, it would not make sense to introduce those new policies and laws that are not beneficial.

Therefore the countries should protect their interests by having these measures come into force only after the TPP itself comes into force, and not before. Even if legislation has been prepared and introduced in order to prepare for compliance with the TPP, these laws could contain the provision that they will come into force only if and when the TPP itself comes into force, or upon completion of the implementation period of the TPP.

Adopting this strategy is only being pragmatic. Once a country adopts laws to implement its TPP commitments, it may be difficult to roll them back. Thus, the country may suffer the adverse effects of the TPP even if the agreement does not come into force, and meanwhile it does not get to enjoy the benefits of more market access. ❒

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Nigeria, Tanzania and the EU: Free trade discord

Nigeria and Tanzania are rejecting new free trade pacts with the EU – and for good reason, contends *Rick Rowden*.

From the African Union and the United Nations Economic Commission for Africa (UNECA) to the European Union and African countries' trade and development ministers, nearly everyone agrees that African economies must industrialize.

Yet despite this broad consensus, when it comes down to the specific policies needed, there remains widespread disagreement. The recent refusals of Nigeria and Tanzania to sign on to the EU's proposed free trade deals, or Economic Partnership Agreements (EPAs), are the starkest manifestation of diverging agendas.

Nigeria has consistently opposed the EPA for West Africa. However, Tanzania's last-minute decision in July to back away from the EPA for the East African Community region stunned European negotiators.

Most African countries currently have duty-free access to the EU single market for their goods under several iterations of the Lomé Convention. The new EPAs would, within a decade, give similar tariff-free access for about 80% of EU exports into African markets.

Europe has warned that African economies could lose Lomé preferences if EPA deals are not concluded. So why the reticence?

Part of the answer links back to the drive for industrialization. Both Nigeria and Tanzania recently adopted ambitious industrialization plans, and new governments in both countries appear more genuine in their desire to implement them. And in both, policymakers claim the rules and restrictions in the proposed EPAs would undermine these strategies.

The popularity of free trade over the last 30 years has made it standard for donor agencies and trade negotiators from rich countries to press developing countries to adopt free trade. The EPAs follow on these assumptions.

Nigeria and Tanzania appear to be questioning the prevailing wisdom. Instead, they are looking to the historical record.

Contrary to today's free-trade ethos, many economic historians point to a basic rule of thumb. In cases as diverse as the UK, Europe, the US, Japan, South Korea and China, today's rich countries only lowered their trade barriers once domestic manufacturing had become competitive in world markets – not before.

Contrary to the current popularity of the notion of comparative advantage for development – the idea that under free trade, countries will benefit by specializing in producing goods they can offer at a lower cost than competitors – historical best practices from today's rich countries show that it is not a good idea to only focus on agricultural and extractive industries. These tend to suffer from diminishing returns over time.

Diversifying into manufacturing and services can provide increasing returns. To do so successfully, many industrialized nations intervened aggressively in their economies and trade relations using a variety of industrial policy tools.

Many of these have since been discouraged or forbidden by today's free-trade consensus. Today, industrial policy is still, in many circles, a dirty word. But industrial intervention cannot be fully written off as a failed concept. Industrial policies in Africa and Latin America in the 1960s and 1970s typically failed because they were applied inappropriately, driven by corruption or too inwardly focused on small domestic markets, neglecting the need to develop international competitiveness.

By contrast, East Asian countries developed strong institutions that enforced strict rules for industry subsidies and trade protection. These got cut off from the industries when they failed to meet performance targets. These countries' industrialization strategies were internationally oriented.

These examples should tell global policymakers more about *how* industrial policies should be implemented – not *if* they should be implemented at all.

To get industrial policy right, Nigeria and Tanzania need to build new institutions with more independent actors empowered to play an enforcement role – as was done successfully in East Asia.

Of course, the world has changed dramatically since the UK, Europe and the US industrialized in the 19th century. But evolving the policies that worked for the 21st century seems more beneficial than phasing them out altogether.

Protecting new industries

The main reason cited by Tanzanian and Nigerian officials for rejecting the EPAs – that they would block industrialization – is consistent with these historical lessons.

Not only do officials worry that the EPA's proposed tariff reductions would pose a drain on vital revenues needed for annual budgets, but both countries are concerned that dropping tariffs would destroy local industries – a view supported by research by think-tanks such as the Wilson Centre.

"Our experts have established that the way it has been crafted, the EPA will not benefit local industries in east Africa. Instead it will lead to their destruction as developed countries are likely to dominate the market," Tanzania's foreign affairs permanent secretary Aziz Mlim stated.

Tanzania also points to a rule in the proposed EPA that would outlaw its use of export taxes on raw materials. This would deny it a standard industrial policy that was used by all of the rich countries to keep raw materials at home and available for use by domestic manufacturers.

For example, Tanzania banned exports of mineral sands from gold mining on 1 August. This is permitted under World Trade Organization (WTO) rules but would not be allowed under the EPA. Rather than exporting the sands – to be processed into tin, copper and silver abroad – Tanzanian President John Magufuli called for processing plants to be built in Tanzania and to further develop markets for copper and silver.

Indeed, a number of EU trade policies are quite clear in their intent to use trade deals such as the EPAs to open up access to raw materials for use by European high-tech manufacturers.

There is also the issue of African regional economic integration. While the EU claims the EPAs would support the region's integration, others disagree, including former Tanzanian President Benjamin Mkapa. He fears that locking in old

North-South trade flows under the EPAs would undermine recent efforts at building new South-South regional trade ties.

Drawing on data that shows African countries buy more manufactured goods from one another than do others (most of the East African Community's exports to the EU are primary commodities), Mkapa says that inter-African trade is far more important for the region's aspirations to industrialize. "The EU market plays almost no role in this," he concludes.

Nigeria's concerns are similar. President Muhammadu Buhari recently reiterated his belief that EPA rules work against the national industrialization strategy during a special session of the European Parliament in February.

Nigeria does not need an EPA "until it has been adequately industrialized and [is] able to trade industrial goods competitively", Frank Jacobs, president of the Manufacturers Association of Nigeria, emphasized in a recent interview.

For now, it appears that the impasse is set to continue. Tanzania and Nigeria are determined to take a different approach – using trade protection first, then adopting free trade later. Their next moves will be watched closely. ❒

Rick Rowden is a doctoral candidate in economics at Jawaharlal Nehru University in New Delhi. Previously he worked as an inter-regional adviser for the United Nations Conference on Trade and Development (UNCTAD) in Geneva and as a senior policy analyst for ActionAid. The above article first appeared on ThisIsAfricaOnline.com.

The myth of expansionary fiscal consolidation

Contrary to claims by fiscal hawks, sharp cuts in public debts and deficits do not boost economic growth, write *Anis Chowdhury* and *Jomo Kwame Sundaram*.

The debt crisis in Europe continues to drag on. Drastic measures to cut government debts and deficits, including by replacing democratically elected governments with 'technocrats', have only made things worse.

The more recent drastic expenditure cuts in Europe to quickly reduce public finance deficits have not only adversely impacted the lives of millions as unemployment soared. The actions also seem to have killed the goose that laid the golden egg of economic growth, resulting in a "low growth" debt trap.

Government debt in the eurozone reached nearly 92% of gross domestic product (GDP) at the end of 2014, the highest level since the single currency was introduced in 1999. It dropped marginally to 90 .7% at the end of 2015, but is still about 50% higher than the maximum allowed level of 60% set by the Stability and Growth Pact rules designed to make sure EU members "pursue sound public finances and coordinate their fiscal policies". The debt-GDP ratio was 66% in 2007 before the crisis.

High debt is, of course, of concern. But as the experiences of the eurozone countries clearly demonstrate, countries cannot come out of debt through drastic cuts in spending, especially when global economic growth remains tepid and there is no scope for the rapid rise of export demand.

Instead, drastic public expenditure cuts are jeopardizing growth, creating a vicious circle of low growth and high debt, as noted by the International Monetary Fund (IMF) in its October 2015 *World Economic Outlook*.

Deficits, debt and fiscal consolidation

Using historical data, a number of cross-country studies claimed that fiscal consolidation promotes growth and generates employment. Three have been the most influential among policymakers dealing with the economic crisis unleashed by the 2008-09 global financial meltdown.

First, using data from advanced and emerging economies for 1970-2007, the IMF's May 2010 *Fiscal Monitor* claimed a negative relationship between initial government debt and subsequent per capita GDP growth as a stylized fact.

On average, a 10-percentage-point increase in the initial debt-GDP ratio was associated with a drop in annual real per capita GDP growth of around 0.2 percentage point per year. By implication, a reduction in the debt-GDP ratio should enhance growth.

Released just before the 2010 G20 Toronto Summit, it provided the ammunition for fiscal hawks urging immediate fiscal consolidation.

The IMF has since admitted that its fiscal consolidation advice in 2010 was based on an ad hoc exercise.

Using a different methodology, the IMF's 2010 *World Economic Outlook* reported that reducing fiscal deficits by 1% of GDP "typically reduces GDP by about 0.5% within two years and raises the unemployment rate by about 0.3 percentage point". "Domestic demand – consumption and investment – falls by about 1%."

Similarly, a 2015 IMF research paper concluded that "Empirical evidence suggests that the level at which the debt-to-GDP ratio starts to harm long-run growth is likely to vary with the level of economic development and to depend on other factors, such as the investor base".

The second study, of 107 episodes of fiscal consolidation in all OECD countries during 1970-2007, by Alberto Alesina and Silvia Ardagna, which found 26 cases (out of 107) of fiscal consolidation associated with resumed growth, probably influenced policymakers most.

This happened despite the actual finding that "sometimes, not always, some fiscal adjustments based upon spending cuts are not associated with economic downturns." Yet, in Harvard professor Alesina's public statement, "several" became "many" and "sometimes" became "frequently", and mere "association" implied "causation".

In April 2010, Alesina told European Union economic and finance ministers that "large, credible and decisive" spending cuts to rescue budget deficits have frequently been followed by economic growth. Alesina was even cited in the official communique of an EU finance ministers' meeting.

Jonathan Portes of the UK Treasury has acknowledged that Alesina was particularly influential when the UK Treasury argued in its 2010 "Emergency Budget" that the wider effects of fiscal consolidation "will tend to boost demand growth, could improve the underlying performance of the economy and could even be sufficiently strong to outweigh the negative effects".

Christina Romer, then Chair of the US President's Council of Economic Advisors, also acknowledged that the paper became "very influential", noting exasperatedly that "everyone has been citing it".

Researchers have found serious methodological and data errors in this work. Historical experience, including that of current eurozone economies, sug-

(continued on page 16)

An intergovernmental UN tax body – why we need it and how we can get it

The absence of a coherent global tax system has seen countries lose billions of dollars to tax-dodging corporations and wealthy individuals. In a briefing paper reproduced below, *Eurodad (European Network on Debt and Development)* makes the case for an intergovernmental UN body that would work to plug the leakage.

The Group of 77, representing more than 130 developing countries, have repeatedly proposed the establishment of an intergovernmental body under the United Nations to fix the broken global tax system. Here's why this proposal would benefit everyone – and how it can be done.

Why do we need it?

1. A coherent global system. Despite the fact that tax dodging by multinational corporations and wealthy individuals is a global problem, we do not yet have a coherent global solution. The international tax system consists of a diverse set of approaches, guidelines and standards, which have resulted in a complicated web of thousands of bilateral tax treaties and different national and regional regulations.

Negotiation of a globally agreed system is the only way to remove the complexity, confusion, inconsistency and mismatches that exist today. An intergovernmental UN tax body is a crucial first step towards this goal.

2. Stronger cooperation between tax administrations. In order to stop transboundary tax dodging, tax administrations need access to information about shell companies, hidden bank accounts and economic activities of their citizens and the multinational corporations operating in their country. A coherent global system will make it easier for tax administrations to communicate and cooperate.

3. Less unilateral action. Blacklisting and special restrictions on transfer pricing, financial transfers, corporate reporting and documentation are only some of the measures individual governments are currently introducing to protect their tax base. If the crisis in the global tax system continues to be unresolved, we are likely to see many more of these kinds of self-protective measures. Only truly global cooperation can ensure that all governments have a real alternative to unilateral action.

4. Ending the race to the bottom. The fear of losing investments is currently driving governments to introduce tax incentives, loopholes and harmful tax practices in a tragic "race to the bottom", which is costing countries billions of dollars in lost tax income. Through truly global cooperation, we can turn this sad development around.

5. Better business environment. Clear, consistent, global and stable rules are good for business. Operating across diverse, inconsistent national tax systems creates heavy administrative burdens, legal uncertainty and high risks for international business.

6. A level playing field. Today, governments who commit to increasing transparency and closing loopholes fear that being a "first mover" will result in businesses and wealthy individuals registering themselves in other jurisdictions. This has resulted in special rules and loopholes that allow the richest and most powerful multinational corporations and individuals to dodge taxes, while national companies, small and medium enterprises and ordinary citizens, who are not taking advantage of these transboundary mechanisms, have to pay their taxes. Through truly global negotiations, governments can agree on coordinated global action and ensure a level playing field.

7. Stronger implementation. No government will feel obliged to implement tax standards and norms that were adopted in closed rooms where it was not welcome. The UN is the only global institution where all governments participate as equals, and therefore the only place to achieve a global commitment to action.

8. Less double taxation and double non-taxation. The wide variety of mismatches between national tax systems is the core reason why some get taxed twice on the same income while others don't get taxed at all. Only truly global cooperation can put an end to these problems. A global approach can also ensure that those governments which refuse to cooperate and, for example, insist on being tax havens are faced with global pressure to comply.

9. More financing for development. Currently, the world's poorest countries are excluded from decision making on global tax standards, and international systems often don't take into account their realities and interests. This means lower tax income and thereby less available financing for development in these countries. If the world's poorest countries get a seat at the table, they will be able to ensure that the global tax rules also work for their countries. However, while the impacts of tax dodging are felt hardest in the world's poorest countries, rich nations are losing billions of dollars too.[1] A global solution to the problem could generate large amounts of new financial resources in both developed and developing countries, and thereby help to achieve global development and environmental protection.

10. Fair and consistent global action against tax havens. Many governments are currently trying to protect their tax base through national or regional "blacklists" based on criteria that are often both unclear and inconsistently applied. For example, the European Union member states are exempted[2] from the EU blacklist, despite the fact that several member states have a multitude of harmful tax practices[3] and others have very high levels of financial secrecy[4] which can be abused to conceal transboundary tax dodging by corporations and wealthy individuals.

In today's globalized economy, financial assets can quickly be moved from one tax haven to another. Therefore, while random blacklisting can be burdensome for impacted countries, it will not solve the tax haven problem. Action against tax havens must be fair, consistent and globally coordinated in order to be effective.

What's wrong with the current system?

A club of rich countries as 'rule makers' …

The first problem with the current system is that there is no truly global decision-making body on tax and transparency issues. For the last 50 years, the Organization for Economic Cooperation and Development (OECD) – also known as the "rich countries' club" – has been making decisions on what it calls "global" tax and transparency standards. These decisions have been taken behind closed doors. While the G20 and a few other selected developing countries have been invited to join some of the meetings, more than 100 countries – which means over half of the world's countries – remain excluded from the process. Although these countries are excluded, they are still expected to follow the decisions.

Secondly, the OECD's track record shows that the interests of developing countries will not be taken into account. Consider, for example, the case of the arm's-length approach and the OECD's Transfer Pricing manual, which require data and capacity that poorer developing countries don't have [even developed countries have great difficulties preventing multinational corporations (MNCs) from avoiding taxes when using this model].

In other cases, OECD decisions have direct negative financial impacts on developing countries. This is the case, for example, with the OECD's model tax treaty, which argues in favour of allocating taxing rights to the countries where MNCs have their headquarters – mainly OECD countries – at the expense of countries where these companies have their economic activity. In reality, this means that taxing rights, and thereby income, is transferred from developing countries to developed countries.

This is why some people have started using the following expression to describe the global tax negotiations: "If you're not at the table, you're on the menu."

… while developing countries are 'rule takers'

While more than 100 developing countries are excluded from the decision making, they are still expected to follow the OECD's rules "on an equal footing". To ensure that this happens, the OECD has dedicated forums called the Inclusive Framework and the Global Forum. These forums are not the same as a global negotiating forum on tax and transparency matters, but rather are 'implementation forums'.

The Inclusive Framework was established in early 2016, less than six months after the OECD and G20 had adopted almost 2,000 pages of decisions on taxation of multinational corporations (known as "base erosion and profit shifting" – BEPS).

Since the Framework will also be tasked with addressing gaps in the BEPS framework, the OECD claimed that the Framework would give developing countries a chance to participate on an equal footing in decision making. However, the fact is that:

- Developing countries will not be allowed to participate unless they commit to complying with the nearly 2,000 pages of decisions on BEPS which have already been taken.
- The agenda, as well as the terms and conditions for participation, have already been determined by the OECD. So while developing countries can participate in the meetings of the framework on an "equal footing", they do not have equal powers when it comes to setting the agenda and agreeing the modalities for the work of the group.
- The new Inclusive Framework is still under the OECD, and therefore at the end of the day the OECD members will have the power to decide whether the forum should continue to exist and how the forum should work.
- The OECD secretariat is ultimately accountable to the OECD's Secretary-General, and is bound to defend the interests of the OECD. The OECD's convention clearly states that the OECD aims to promote the interests of its members, including to "achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy."

At best, the new Inclusive Framework provides for a restricted influence of developing countries on a predetermined and very limited agenda.

A similar process played out around the negotiations on information exchange, where the "global standard" was adopted by the G20 and the OECD in an exclusive forum. After the adoption, the so-called Global Forum was established by the OECD, and all countries were invited to join and implement the standard and fill in the gaps.

This kind of process is highly undemocratic, and it is unfortunate that it seems to have become the standard approach of the OECD and G20.

So what do we need?

Governments must decide to establish an intergovernmental tax body under the auspices of the United Nations.

The decision could, for example, be as follows: "We decide to establish an intergovernmental body on tax matters under the auspices of the United Nations, with universal membership and adequate resources, in time for the body to convene its first meeting in 2017."

The new UN tax body should:

- Be intergovernmental: It should consist of representatives negotiating on behalf of governments, as opposed to, for example, an expert body where members speak in their personal capacity and where the outcomes are not intergovernmental decisions.
- Have universal membership: All countries should be able to participate on an equal footing.
- Be adequately resourced: It must have the secretariat capacity and resources to operate effectively.
- It could also be supported by a subsidiary technical body: The technical work could form the basis of the political decisions, which should be taken by the intergovernmental body. This expert body could, for example, be a strengthened version of the existing UN Committee of Experts on International Cooperation in Tax Matters.
- The overall purpose of the intergovernmental UN tax body should be to stop international tax dodging by ensuring that governments commit to not eroding each other's tax bases and create an international tax system that is transparent and coherent and supports equality and development.
- In order to do this, the body would have to address a number of different issues, including base erosion and profit shifting, tax and investment treaties, tax incentives, progressive taxation, taxation of extractive industries, harmful tax practices, beneficial ownership transparency, public country-by-country reporting, automatic exchange of information for tax purposes, and alternatives to the arm's-length principle. It is important to ensure that the mandate of the tax body is broad

enough to tackle all these issues – as well as new issues that might emerge – and not be too narrow and specific.

● In the longer run, and with a view to ensuring implementation of the decisions of the tax body, we should have a legally binding UN Tax Convention. Developing such an agreement should therefore be one of the key tasks of the intergovernmental body.

● To fulfil its mandate, the body would likely need to meet two weeks per year and furthermore be able to establish subcommittees. Unless the body has a technical expert subcommittee, the secretariat should also have the resources and the option to consult and engage national legal experts and tax administrations as needed.

The way ahead

The proposal to establish an intergovernmental UN tax body has already gained the support of more than 130 countries worldwide, but until now it has been blocked by OECD countries.

However, global tax scandals such as LuxLeaks, SwissLeaks and the Panama Papers have repeatedly exposed the fact that all countries are losing billions of dollars due to the incoherent global system.

It is time to break the deadlock. In the event that a small group of OECD countries insist on blocking progress, the rest of the world's governments must form a coalition of the willing which moves forward and starts cooperating on tax and transparency matters under the auspices of the UN.

This is the crucial first step towards solving the global tax crisis, putting an end to international tax dodging, and reclaiming the billions in lost tax income to support global development and the protection of our environment. ❐

The above is the text of a Eurodad Briefing Paper (August 2016, eurodad.org). Eurodad is a network of 47 civil society organizations from 20 European countries which works for transformative yet specific changes to global and European policies, institutions, rules and structures to ensure a democratically controlled, environmentally sustainable financial and economic system that works to eradicate poverty and ensure human rights for all.

Endnotes

1. The UN Conference on Trade and Development (UNCTAD) has estimated that one type of corporate tax avoidance alone is costing developing countries between $70 and $120 billion per year (UNCTAD. 2015. World Investment Report. http://unctad.org/en/PublicationsLibrary/wir2015_en.pdf). Meanwhile, another (conservative) estimate says that the EU is losing €50-70 billion per year due to corporate tax avoidance (Robert Dover, Benjamin Ferrett, Daniel Gravino, Erik Jones and Silvia Merler. 2015. Bringing transparency, coordination and convergence to corporate tax policies in the European Union. Research paper, published by the European Parliament).

2. The EU blacklist will only include "third countries", i.e., non-EU member states. Furthermore, countries that are found to be cooperative with the EU will be exempted, despite the fact that these countries might still be acting as tax havens towards, for example, developing countries. (European Commission. 2016. Communication from the Commission to the European Parliament and the Council on an External Strategy for Effective Taxation. http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1454056581340&uri=COM:2016:24:FIN)

3. For an overview of harmful tax practices, see Ramboll Management Consulting and Corit Advisory. 2015. Study on Structures of Aggressive Tax Planning and Indicators. Commissioned by the European Commission. http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_61.pdf

4. See Tax Justice Network. 2015. Financial Secrecy Index. http://www.financialsecrecyindex.com

(continued from page 13)

gests that the probability of successful fiscal consolidation is low. The successes depended on factors such as global business cycles, monetary policy, exchange rate policy and structural reforms.

Drawing on the IMF's critique of Alesina and his associates, even the influential *The Economist* (30 September 2010) dismissed the view that fiscal consolidation today would be "painless" as "wishful thinking".

Nevertheless, the IMF's policy advice remained primarily in favour of fiscal consolidation regardless of a country's economic circumstances or development level. There seems to be a clear disconnect between the IMF's research and its operations.

The third study, by Harvard professors Carmen Reinhart and Kenneth Rogoff on the history of financial crises and their aftermaths, claimed that rising government debt levels are associated with much weaker economic growth, indeed negative rates.

According to them, once the debt-GDP ratio exceeds the threshold of 90%, average growth dropped from around 3% to -0.1% in the post-World War II sample period.

Since then, however, significant data omissions, questionable weighting methods and elementary coding errors in their original work have been uncovered. Nevertheless, the Reinhart-Rogoff findings were seized upon by the media and politicians around the world to justify austerity policies and drastic public spending cuts.

Bill Clinton, fiscal hawk?

Supporters of austerity-based fiscal consolidation often cite US President Bill Clinton's second term in the late 1990s. However, the data shows that fiscal consolidation was achieved through growth, contrary to the claim that austerity produced growth.

Clinton broke with the traditional policy of using the exchange rate to address current account or trade imbalances, opting for a strong dollar. Thus, the US dollar rose against major currencies from less than 80 in January 1995 to over 100 by January 2000. The strong dollar lowered imported inflation, allowing the US Federal Reserve to maintain low interest rates even though unemployment fell markedly.

The low interest rate policy not only boosted growth but also helped keep bond yields close to nominal GDP growth rates. Thus, the interest burden was kept under control, with primary balances stable at close to zero. *(IPS)* ❐

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