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UNCTAD report assesses economic outlook, role of industrial policy

The global economy is likely to register slower growth this year, according to the United Nations Conference on Trade and Development (UNCTAD) in its annual flagship report, with developing countries facing an external environment clouded by the continued mediocre performance of developed economies. Turning to longer-term prospects for structural transformation, the UNCTAD report calls on the developing countries to pursue active industrial policies to realize the role of manufacturing as an engine of sustainable and inclusive development.

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Global output likely to decelerate moderately this year – UNCTAD

The world economy is expected to record a slower expansion this year, according to projections by a UN economic body, as persistent weak demand conditions in the developed countries, among other factors, continue to stifle global growth.

by Kanaga Raja

GENEVA: Global output is likely to decelerate moderately in 2016 to register a growth rate of around 2.3%, compared with 2.5% in 2015. This will be the sixth year in a row that the global economy repeats a modest expansion, well below that of pre-crisis levels, the UN Conference on Trade and Development (UNCTAD) has said.

In its chapter assessing current trends and challenges in the world economy, UNCTAD's *Trade and Development Report 2016* (*TDR 2016*), released on 21 September, said that this year's performance reflects an expected slowdown in developed countries' growth, from 2.0% to 1.6%; economic stagnation in transition economies, an improvement over their contraction in 2015; and the continuing growth in developing countries of about 4%, resulting from sustained growth in most Asian countries, a deceleration in Africa and recession in Latin America and the Caribbean.

The world economy in 2016, said UNCTAD, is in a fragile state, with growth likely to dip below that registered in both 2014 and 2015. The mediocre performance of developed countries since the 2008-09 economic and financial crisis is set to continue, with the added threat that the loss of momentum in developing countries over the past few years will be greater than previously anticipated.

"Without a change of course in the former, the external environment facing the latter looks set to worsen with potentially damaging consequences for their prosperity and stability in the short to medium run. More widespread contagion from unforeseen shocks cannot be ruled out, knocking global growth back even more sharply. The decision by the United Kingdom electorate to leave the European Union (EU) is such a shock," said *TDR 2016*.

Growth in the United States this year is likely to slow down, as the momentum that was built through the quick detoxification of its banking system and a more aggressive use of monetary policy loses traction. UNCTAD said that while unemployment has dropped steadily to the level registered before the crisis hit and real earnings have begun to pick up, given its weak underlying employment rate, the number of distressed households with high levels of debt and exporters struggling with a strong dollar, there are no guarantees that the economy will enjoy a robust period of growth anytime soon.

Recovery in the euro zone has lagged behind that of the United States, in part because of the more timid use of monetary policy but also very tight fiscal stances in some countries. The tentative pick-up of growth from 2015 seems likely to stall this year, and could even be reversed due to the uncertainty triggered by the announced departure of the United Kingdom from the EU ("Brexit").

"Economic growth continues to be held back by weak domestic demand and only sporadic signs of an improvement in real wages. Efforts to tackle the sharply diverging economic performances of the countries in the euro zone are complicated by political uncertainties, such as the ongoing migration crisis, and doubts about the future pace and direction of European integration."

UNCTAD said that the European economies outside the euro zone have performed better in recent years, mainly because the monetary authorities in many of those countries have been willing and able to orchestrate financial bubbles.

"The economy of the United Kingdom, even without the threat of Brexit, is set for a difficult period ahead given its levels of indebtedness and a persistently high trade deficit. The longer term consequences of the leave vote are still unclear, given the unprecedented nature of the decision and the political uncertainty it has created, though growth will undoubtedly slow in the short term. Just how steep the drop could be, given the highly financialized and flexible markets in the United Kingdom, is difficult to predict."

The continuation of weak demand conditions in the developed economies is stifling growth in the global economy. In this context, neither financial bubbles nor export surpluses offer a sustainable solution to tepid growth and weak labour market conditions.

According to UNCTAD, a more balanced policy response is called for in the developed economies, combining an expansionary fiscal stance resulting from both spending and taxation decisions, supportive monetary and credit policies along with strengthened financial regulations, and redistributive measures through minimum wage legislation, direct taxation and welfare-enhancing social programmes. "The appropriate policy mix will vary across countries, though large public infrastructure spending would seem to be a common thread," it said.

Developing economies will likely register much the same average growth rate as in 2015, 3.8%, but with considerable variation across countries and regions, and with downside risks increasing.

"The reluctance of developed economies to deal effectively with their own high levels of indebtedness (or rather the tendency to do so through bailouts for creditors and austerity for debtors) and their insistence in relying almost entirely on monetary policy to orchestrate recovery highlight the potential dangers facing policymakers in developing countries."

Alarm bells have begun to ring over exploding corporate debt across emerging economies, and it appears that much of the surge of financial inflows into emerging and developing economies has found its way into real estate and financial asset bubbles rather than long-term productive investment projects.

While there is agreement that these weaknesses are closely interconnected, there is no sign of a concerted move towards policy coordination across systemically important economies. The United States has begun to recognize that its economic policy decisions can carry a sizeable impact beyond its own borders, with the Federal Reserve responding with an even more cautious stance on interest rate rises.

"But a more ambitious policy package is needed to address existing imbalances and to ease the constraints on faster growth, whether in large or small countries, surplus or deficit economies, commodity or manufacturing exporters, creditors or debtors. A global new deal will need to move beyond business as usual."

According to UNCTAD, there are signs that international bodies such as the International Monetary Fund (IMF) and the Organization for Economic Cooperation and Development (OECD) are rethinking their approach to macroeconomic adjustment (although this has not yet been sufficiently translated into their policy recommendations or conditionality).

"The necessary next step is for them to move away from a narrow discussion of structural reform that promotes a familiar package of liberalization and deregulation measures, and instead consider the wide range of actions needed to diversify the structure and level of sophistication of economic activity."

Such actions should aim to increase productivity, create more and better jobs, boost household incomes, increase fiscal revenues and investment, and foster technological progress; and all these need to be implemented in the context of a world that is rapidly moving towards a low-carbon future.

Developed-country trends

TDR 2016 said among the developed countries, the United States is expected to continue growing in 2016, albeit with a significant deceleration to less than 2%, and probably closer to 1.5%. Growth is almost exclusively led by private consumption, as unemployment drops to a level close to that registered before the crisis hit and as workers' real earnings have begun to pick up.

After several years lagging well behind the United States, owing to the more timid use of monetary policy and an even greater proclivity for austerity measures in some countries, growth in the euro zone accelerated from 0.9% in 2014 to 1.7% in 2015, although no further acceleration is expected in 2016.

This improvement did not result from an expansion of net exports, despite the depreciation of the euro in 2014-15, but rather from higher domestic consumption and investment levels, with some increase in real wages as a result of rises in the minimum wage and falling energy prices.

Faster growth was also backed by an expansionary monetary policy and a less stringent fiscal stance. These improvements, however, remained below expectations, as monetary expansion by the European Central Bank (ECB) has not translated into a proportionate increase of credit to the real (economy) sectors.

European economies outside the euro zone have performed better in recent years, partly because they faced lower fiscal constraints, but mostly because they had more expansionary monetary stances, which led to asset appreciation. Such policies were applied in particular in the United Kingdom, where high trade deficits and high debt levels could be financed with capital inflows.

The recent vote to exit the European Union could compromise these policy stances by reducing the attractiveness of the United Kingdom economy to foreign investors, leading to asset and currency depreciations, lower domestic consumption and investment, and a deterioration of balance sheets in all sectors, including lending institutions with higher levels of non-performing loans (NPLs).

Developing-country trends

According to *TDR 2016*, Latin America is heading towards a second consecutive year of economic stagnation and a risk of negative growth in 2016. This is due mainly to weak economic performance in South America, where several countries have experienced falling levels of consumption and fixed capital formation.

Tighter external conditions (including losses from the terms of trade) in 2015 led to fiscal retrenchment and exchange rate depreciation. To check the resulting threat of inflation, some countries, such as Brazil and Colombia, responded by raising interest rates, causing further growth deceleration.

Slower growth is forecast for Africa in 2016, due to weaker performance in North Africa and southern Africa. In the former, political instability and insecurity will continue to hinder economic recovery. In southern Africa, activity is expected to decelerate further because of depressed commodity prices, severe droughts and electricity shortages as well as lower dynamism in South Africa, which is an important export destination for neighbouring countries.

East Africa is projected to continue

its growth momentum in 2016, boosted by strong domestic investment including large public investment programmes, and lower oil prices, while most West African countries (Benin, Cote d'Ivoire, Mali, Senegal and Togo) are expected to record high growth rates generally, supported by increases in public investment, improving agricultural productivity and a dynamic private sector.

Developing Asia remains the fastest-growing region, with an expected growth rate similar to that of 2015, around 5%. China grew 6.7% year-on-year in the first half of 2016, a marginal slowdown in relation to 2015 (6.9%) that nevertheless corroborates the shift towards more moderated growth. "This is the result of several factors, including weakness in external demand, efforts to reduce overcapacity in some sectors and a strategic reorientation towards consumption-led growth, with a larger place for services," said UNCTAD.

India's growth rate is projected to remain strong, at 7.5% in 2016, further cementing the rather large terms-of-trade gains of 2015 (over 2% of GDP). Growth is primarily driven by rapidly expanding domestic consumption, supported by the low prices of commodities (particularly fuel), a rise in real incomes (including public sector wages) and lower inflation.

Export demand declined in 2015, and gross fixed capital formation weakened in late 2015 and early 2016; however, investment (private and public) is expected to expand, which would support a solid growth performance through to 2017.

Despite these trends, high public debt and current rates of inflation may limit the room for supportive fiscal policies. The stalled manufacturing share in GDP, as also reflected in the limited capacity of the sector to create jobs with higher wages, will need to be addressed to ensure India's growth in the longer term.

TDR 2016 said South-East Asia is likely to maintain a growth rate above 4% in 2016, largely based on domestic consumption and investment demand.

West Asia is expected to grow at around 2% in 2016, down from 2.9% in 2015. Downward adjustment will hit the major oil exporters of the region including Kuwait, Qatar, Saudi Arabia and the United Arab Emirates, whose export revenues fell on average by 6.1% in 2014 and by 34.1% in 2015.

"Claims of increased tariff protectionism appear exaggerated"

According to *TDR 2016*, the growth of global merchandise trade volume slowed to around 1.5% in 2015, from 2.3% in 2014, and the slow pace has continued through the first half of 2016. This trend, which began in 2012, has been more pronounced than for world output.

To many observers, this prolonged period of sluggish trade – the longest since the early 1980s – is a principal reason for the weakness in global growth since the financial crisis, just as its revival is seen as the best hope for recovery, overcoming other aggregate demand constraints.

Accordingly, measures to increase external competitiveness and facilitate trade have become a policy priority, especially in developed economies. Despite their adoption, the fact that trade has continued to slow down suggests limits to such measures and raises the possibility that they may even be self-defeating.

First, domestic demand, on which trade depends, is not an exogenous outcome for policymakers; many of the measures adopted to boost export market shares tend to weaken aggregate demand. Second, by limiting the role of the public sector and accelerating the pace of financial liberalization, the policy space to manage a sustained recovery is significantly narrowed.

Third, what may appear sensible from the perspective of a single country or group of countries, like aiming at net export gains, runs into a "fallacy of composition" at the global level (not all countries can be net exporters) and can exacerbate a "race to the bottom" that worsens the sustainability of global demand.

Yet, said UNCTAD, despite the fact that the measures to increase competitiveness have contributed to, or at least preceded, the global trade slowdown, policymakers in many countries continue to see them as the only route to the recovery of trade and, by implication, economic growth.

"Indeed, governments in both developed and developing countries have been pursuing mega regional trade and investment agreements, as a more comprehensive and workable approach to boosting trade and advancing economic integration than through discussions at the multilateral level. The prominent place that such agreements have taken in official policy discussions, and even electoral campaigns, calls for full and careful scrutiny."

It has been argued that trade has slowed because of rising protectionism since the global crisis. However, apart from isolated cases concerning a few products (such as some metal products), there is little evidence that tariff changes explain the prolonged sluggishness of global trade.

Average tariff figures have been declining steadily since the establishment of the World Trade Organization (WTO), and are currently at historic lows. Moreover, any partial tariff increases were certainly not on a scale that could explain the sharp slowdown in trade.

"Global averages could, of course, be misleading given the uneven geographical distribution of trade."

UNCTAD cited a detailed analysis of import tariffs by region over the period 2008-12, the period of trade slowdown, showing trade restrictiveness measures from the perspective of importers as well as exporters, and confirming that while the group of developed countries has broadly maintained the same level of tariff restrictions over these years, most developing regions have reduced such restrictions (with the partial exception of South Asia, showing a negligible increase of less than half a percentage point).

In terms of market access defined by the levels of import tariffs faced by exports from different regions, a similar conclusion can be reached: developed countries faced lower tariff restrictions in 2014 than in 2011 or 2008, as did countries in South Asia, West Asia and Africa. Meanwhile, East Asia, Latin America and economies in transition faced similar or higher tariffs for their exports to developed countries than in 2008.

In sum, while the aggregate picture confirms small changes in tariffs since the financial crisis, developing countries overall have made more concessions than developed countries in recent years.

On a bilateral basis, the same indices of restrictiveness suggest that even though many developing countries still have higher levels of applied tariffs than developed countries, these have declined since 2008 in most regions, especially within regions.

"This empirical evidence suggests that neither the current level of average tariffs nor their trend in recent years can be seen as an explanation for the slow growth of global trade or an obstacle to future recovery."

Moreover, given that the level of "applied tariffs" by countries, aggregated at the global level, has remained considerably and consistently below the corresponding level of most favoured nation tariffs, "the claims of increased tariff protectionism would appear to be at least exaggerated", said UNCTAD.

Concerns have also been raised about a possible surge of hidden or "murky" protectionism since the global financial crisis, to the extent that the trade slowdown has been attributed to rising "non-tariff measures" (NTMs) applied, in particular, to specific product lines.

"This is a more nuanced (and more difficult to measure) aspect of trade policy, since NTMs cover a wide array of regulatory issues, standards, technical requirements, environmental and health conditions, etc."

UNCTAD said it has made progress in generating indices of NTMs but the indicators are still quite fragmentary. A proper assessment of these measures requires in most instances a case-by-case analysis and may even involve following up litigation processes in some depth.

Aside from the difficulty of measuring NTMs, what is even more difficult is to quantify their impact on global trade volumes. Needless to say, a number of NTMs, particularly in relation to standards (quality of products, production processes) and also in relation to compliance with patents and other regulations, have historically contributed to constrain market access of developing countries to developed countries. Yet, said UNCTAD, this is not an emergent problem explaining the slowdown in recent years.

Other trade determinants

Beyond issues of trade policy, another possible factor explaining the observed trade deceleration is the changing structure of demand, particularly in systemically important economies. A shift in the composition of demand towards services or away from investment goods might offer an explanation, but neither the timing of the trade surge nor its subsequent decline would seem consistent with such shifts in the structure of global demand.

According to *TDR 2016*, a more compelling explanation is based on the evolution of international production networks. The rise of global value chains, given their heavy reliance on imported parts and components for processing and re-export, and the very high elasticity of trade between the mid-1980s and the early 2000s, can be explained by the establishment of the first stages of these chains.

As developing countries participating in such chains diversify their economies and develop additional skills and technologies, it is possible that a greater proportion of the inputs used in their tradeable sectors could be produced domestically, leading to a reduction of global trade elasticity.

If a sufficiently large trade partner, or a large group, evolves rapidly from one stage to the other (a phenomenon characterized as "shrinking chains"), then there is likely to be an immediate impact on the volume of global trade.

UNCTAD said that this was apparently the case for China, which managed to reduce the import dependence indicator of its manufacturing exports from about 60% in 2002 to 40% in 2008.

TDR 2016 also found that the growth of wages in most developed economies has been weak or stagnant for a considerable time, with the result that the share of wages in national income has been on a downward trend since the 1980s.

A number of factors explain this trend: the general shift in bargaining power away from labour, partly due to the greater mobility of capital; outsourcing and de-industrialization; the lower costs of the consumer basket resulting from the ability of multinational enterprises to import back cheaper goods outsourced elsewhere; and the compensating ability of households to borrow on the back of the holding gains derived from the ownership of equity in a context of asset bubbles.

"The pressures on wage shares in developed countries have not been offset by a trend in the opposite direction in developing countries," said UNCTAD.

In some conclusions, *TDR 2016* said the fast pace of global trade between the mid-1980s and the financial crisis was, in part, encouraged by an increased pace of trade liberalization, but it was also heavily dependent on a series of global macro-imbalances that eventually led to that crisis.

Drastic correction of bank lending in deficit countries which occurred with the global crisis of 2008-09 led to a contraction and subsequent weak recovery of trade despite the rise of public sector deficits.

"The persistence of the most critical of imbalances, that relating to wage shares, however, shows why a recovery in trade is proving difficult. More precisely, as long as the global wage share continues to decline because of efforts to increase competitiveness, including by shifting production from high-cost to low-cost locations, global trade growth will rely on the accumulation of deficits by a subset of economies."

For such patterns of trade growth to continue, however, either fiscal deficits or credit bubbles have to help revive domestic demand, and therefore imports, which otherwise would remain inadequate in the face of the continuing weak growth of household income.

According to *TDR 2016*, a conservative estimate is that during the coming years there will be a deterioration of the global wage share somewhat greater than 1% of the projected global GDP. At the end of the five-year projection the wage share will reach a slightly lower level than in the pre-crisis period.

The pace of bank credit expansion and the level of public sector deficits in the major current account deficit countries will remain around the current figures, with perhaps a slow acceleration of bank credit. The combination of these global conditions and patterns of the main current account deficit countries will not help trigger a revival of global trade, which may stay hovering around 2% per annum.

In sum, said UNCTAD, under current structural conditions and policy stances, assuming that no significant changes in the direction of policies are implemented, trade growth will continue to be sluggish as the global wage share will continue to decline. *(SUNS8318)* ❐

South urged to pursue active industrial policies

In *TDR 2016*, UNCTAD highlights the importance to developing countries of industrial policy, underlining the need for them to integrate such policy with macroeconomic, trade and financial policies in order to go down the industrialization path.

by Kanaga Raja

GENEVA: Highlighting the role of industrialization and manufacturing growth as an engine of sustainable and inclusive development, UNCTAD has called on developing countries to pursue active industrial policies, which have long been neglected in these countries.

In its *Trade and Development Report 2016*, UNCTAD also called on developing countries to build up domestic demand, use regulation to protect themselves from the risks of financialization in their domestic contexts and protect their policy and fiscal space in order to manage any unforeseen shocks.

TDR 2016 called for a more sophisticated approach to industrial policy, including the construction of linkages and capabilities to build a production base fit for purpose in a rapidly changing world where sufficient space is available for experimenting and learning, in both the public and private sectors.

According to UNCTAD, standalone industrial policies are unlikely to deliver and instead the key to success lies in the effective integration of macroeconomic, financial, trade and industrial policies.

In an overview, *TDR 2016* said that in order to promote a structural shift towards manufacturing and industrialization, governments need to adopt policies with the objectives of ensuring high levels of aggregate demand, high levels of investment and a stable exchange rate; cultivating the capabilities needed to change the composition and sophistication of production activities and promoting a strong learning environment; and pursuing intermediate input substitution industrialization, particularly in middle-income countries that have entered global value chains (GVCs) but are struggling to upgrade their industrial capacities.

Other objectives include avoiding adopting export strategies that rely on compressing wages; promoting development-oriented competition rules that can offset the global dominance of multinational enterprises; bolstering access to finance for structural transformation, not only in terms of supporting particular lines of investment, but also as a useful vehicle for monitoring and influencing corporate behaviour in support of long-term decision-making; and closing tax loopholes through fiscal and regulatory measures at national, regional and international levels and requiring greater transparency in corporate decision-making.

On the issue of trade, *TDR 2016* said under current structural conditions and policy stances, assuming that no significant changes in the direction of policies are implemented, trade growth will continue to be sluggish as the global wage share will continue to decline.

There are strong connections between the long-term deterioration of global wage shares and both the trade surge in the 1990s and 2000s and the slowdown of trade and economic activity since 2011. If these trends persist or worsen, then the threat of more determined protectionist responses could become real, the report said.

"However, like the boy who cried wolf in Aesop's fable, blaming protectionism for current trends runs the danger of not only distracting policymakers from making inclusive growth the axis of a globally coordinated programme but, as in the 1930s, of being ignored when a real protectionist threat emerges," warned UNCTAD.

"Lopsided reliance on monetary policy"

Speaking at a media briefing on 16 September, ahead of the 21 September release of *TDR 2016*, UNCTAD Secretary-General Mukhisa Kituyi highlighted the state of the world's economy "as we continue through a flat spell" now getting into its sixth year.

Kituyi pointed to political anxiety, which is a reflection of the absence of adequate gainful employment and job insecurity, translating into a political challenge which is partly reflected in an angry electorate in the US and Britain. The absence of a clear explanation and a clear answer to the deficit in gainful employment is resulting in tirades against globalization – "in some cases, even tirades against global trade", he said.

As an institution, UNCTAD has found it necessary for its analytical work to look at the challenges and issues underlying this phenomenon that is giving globalization a bad name, said Kituyi. What UNCTAD's work, published in the *TDR* this year, has done is, first of all, to look at the core issues relating to the continued joblessness. "Why are enterprises not creating enough jobs? Where is the engine of global recovery that in a way will start creating inclusive sustainable prosperity?"

Kituyi said one of the main explanations is the reluctance of major corporations to invest in gainful productive investments. Substantial attention has to be given to the discourse about the impact of the form of use of profits on the potential of enterprises to create gainful employment.

He noted that as financial markets get more and more integrated, the vulnerabilities that come with monetary decisions and policies in one place trigger effects in other areas of the world. Many emerging economies and developing countries have been very substantially subdued by flat commodity prices. The ease of borrowing money over the past decade, as UNCTAD has warned in a number of recent publications, made a lot of these countries more vulnerable to policies undertaken elsewhere.

Also at the media briefing, Richard Kozul-Wright, Director of the UNCTAD Division on Globalization and Development Strategies, and lead author of the *TDR*, said while the audience for the *TDR* is the developing countries, "it is quite clear that much of what we have to say in this report also speaks to the concerns of developed countries."

He said that UNCTAD is worried about the current health of the world economy. "We call it a year of living dangerously. It remains a year of living dangerously."

He highlighted several potential faultlines that could cause serious problems in both developed and developing economies.

As UNCTAD has been insisting, the real problem for the global economy is the failure of the advanced economies to find a sustained recovery from the financial crisis of 2007-08; "we attribute that largely to a lopsided reliance on monetary policy."

In this context he pointed to the continued fixation with, or at least flirting with, austerity fiscal policy and a very limited – although increasingly more sophisticated – willingness to deal with issues of a structural nature in the developed countries themselves. While structural reforms continue largely to be about the liberalization and deregulation of markets, the structural problems that the developed countries face are of a rather more profound nature than that.

In particular, Kozul-Wright said, there is a major distributional imbalance in the advanced economies between wages and profits. Wages as a share of national income have been on a downward trend for many years now and this has not been reversed since the crisis. This imbalance continues to feed into a weak growth performance in many developed economies.

"[I]f there is any structural problem that needs to be addressed urgently in the advanced economies, it is that distributional issue," said Kozul-Wright.

"Trade slowdown due more to weak global demand"

A lot of the tensions that these imbalances have given rise to have recently focused on the issue of trade, and there has been a significant slowdown in global trade over the last four or five years, Kozul-Wright said.

"We expect that to continue this year. Our take on that is that it is very much linked to the problem of insufficient global demand. Although there has been a lot of talk recently about protectionism, we don't actually see very much evidence in the numbers for that right now."

"If you don't deal with your structural imbalances properly, [there] is always the danger that protectionism will come back and make things worse for most people," he said. "It's the knee-jerk reaction that many countries will use as other policies seem to fail in dealing with these kinds of imbalances. But [protectionism] has not been the problem so far … The numbers don't suggest that the slowdown of trade is to do with protectionism. But it is everything to do with a very weak global demand and slow growth in the advanced economies."

Asked about how the WTO keeps repeating that trade protectionism is the source of the current problem, Kituyi said his sense is "not that we are devaluing the significance of protectionism but the statistics are not bearing out" that the current problem is because of a growth in protectionism.

Asked about a statement by WTO Director-General Roberto Azevedo that anti-dumping and countervailing measures (which are legitimate) constitute protectionism, Kituyi remarked in jest that "journalistically of course it would be interesting if you quote Kituyi and Azevedo as disagreeing."

He said his sense was that protectionism "is not a solution but the scale of the issue that we are dealing with is not directly the product of any rise in protectionism." As much as protectionism can be an issue, the challenge is more related to declining aggregate demand.

"Not that it devalues protectionism as a problem, but under the current circumstances it's not as bad a problem as it could be. Looking for solutions by declarations against protectionism is only partially the solution. But it's not addressing the core challenge of flat economic growth and joblessness," Kituyi underlined.

Revisiting industrial policy

According to Kozul-Wright, the danger in the discussions on globalization right now is that a lot of it is focused on the advanced economies and their electoral politics, and there is a tendency to assume that the South is doing extremely well, and that somehow the South doing well is why the North is doing badly.

That, he said, is "a very crude interpretation" of the last 30 years of global economic development. "We want in this report in particular to highlight what we see as some serious weaknesses in the patterns of structural transformation in the developing world which, if not dealt with, could hold back sustainable and inclusive growth moving forward."

In particular, it is around the longstanding question of the role of industrialization and manufacturing growth as an engine of sustainable and inclusive development.

"We believe that manufacturing still has that role," Kozul-Wright said. The problem is that outside of East Asia, manufacturing performance in the South has been very weak even as growth has been strong.

Kozul-Wright highlighted that part of the success of East Asia was that it was a very successful exporting region. Export-led growth was part of the reason why East Asian economies fared so well in the 1970s and 1980s, unlike most of the rest of the developing world.

He said that in the *TDR*, UNCTAD has raised a series of concerns about whether the same kind of performance can be achieved through exports under the current global economic situation. This has to do with the problems of weakness of global growth and global demand and increasing competition amongst developing countries at the lower ends of value chains, and their ability to export more but earning less from those exports.

While exporting was key to success in East Asia, it was not exports alone that drove growth in the region, it was the relationship between exports and investment – very fast rates of capital formation leading to strong productivity growth and to technological upgrading.

The profit-investment nexus is a key complement to any sort of investment-export nexus that drives sustainable growth, Kozul-Wright said, noting that *TDR 2016* raises "serious concerns about the weakening of the profit-investment nexus in emerging economies."

"We have seen that weakening already in the advanced economies because of the impact of financialization and unregulated financial markets," he said.

A weakening of the profit-investment nexus in the South combined with a weakening of the potential for export-led growth is a very worrying combination for many developing countries.

He said that there has been a neglect of domestic markets in many developing countries in the belief that they can replicate the East Asian experience.

What UNCTAD has emphasized in its report is the need to revisit, rethink and reengage with the industrial policy discussion.

"[I]ndustrial policy has long been neglected in developing countries. It was kind of identified as the … problem policy in the Washington Consensus, as somehow typifying the problems of developing countries in the 1970s and 80s, and it was unfairly neglected as a consequence," said Kozul-Wright.

Finding ways of combining industrial policy with traditional macroeconomic policy and traditional trade tools is the big challenge for many developing countries moving forward over the next few years. It is a challenge that many developed countries also need to take seriously, he said.

Asked whether there should be a paradigm shift away from export-led economic growth, which has been the thesis of neoliberal economic policies over the past decades that have downgraded import substitution and industrialization, Kozul-Wright said that it is already happening in the case of China.

One of the explanations for why trade has slowed is that China is now starting to essentially substitute for the intermediate goods that it previously imported by producing them itself.

Part of the reason why China has been successful as an industrializing power is precisely because it has engaged – just like the Koreans, Taiwanese and Singaporeans did – in a combination of import substitution and export orientation, Kozul-Wright explained.

"It's the combination that works. Not one or the other," he said. "We believe that is a model that has wider resonance but in a sense we are simply reflecting on the Chinese experience and suggesting that is something that needs to be looked at more generally by other emerging and developing economies."

Industrialization, profit-investment nexus, industrial policy

In some overall conclusions, *TDR 2016* suggests that public sector involvement in the process of industrialization is essential for both productivity growth and linkage creation.

Another argument in favour of state involvement is based on the recognition that domestic infant industries need to be supported and protected from more advanced competitors until they develop their own capacities to compete.

"Since the key to productivity growth and upgrading of manufacturing activities lies in sustained capital accumulation, a favourable macroeconomic policy stance and a well-functioning financial system that provides adequate long-term investment are of the utmost importance for the industrialization process and the realization of productivity gains."

The experiences of successful industrializers demonstrate that the promotion of structural transformation requires attention to different sources of growth, including boosting private and public investment, fostering technological progress, strengthening domestic demand and increasing the capacity of domestic producers to meet the exigencies of international markets.

This implies the need for interaction between several areas of public policy: macroeconomic management, financial policies, trade policies, technology policies and public education.

"The successful implementation of the 2030 Agenda for Sustainable Development in part rests on the full use of the available policy space for developing countries to expand their manufacturing sectors, accelerate productivity growth and actively support the creation of linkages between the most dynamic sub-sectors of manufacturing and the rest of their economies," said *TDR 2016*.

Structural change and higher rates of capital accumulation are impossible without adequate access to sources of finance. This is all the more relevant if, as has increasingly been the case, there is a steady rise in the minimum level of investment required to successfully launch an industrialization drive.

"A functioning profit-investment nexus is as vital for successful catch-up strategies and their continued financing as it was in early industrialization experiences," said UNCTAD.

However, a number of current global trends militate against a strong profit-investment nexus and, in particular, against establishing a strong nexus in developing economies.

Easier access to finance in the wake of capital account liberalization and financial market deregulation has not translated into increased financing for long-term investment for upgrading production capacities, especially in manufacturing.

What is more, an excess supply of credit finance is not generally conducive to improved capital allocation among sectors, and may favour sectors with lower labour productivity, such as services, as well as lending to households.

Moreover, the financialization of corporate strategies and the rise of shareholder primacy in developed economies may have contributed to the worsening of income distribution and a deflationary bias through slower growth of global demand.

A major feature of this trend has been that a growing share of corporate profits, rather than being used for corporate reinvestment, is being used for purposes such as dividend payments and equity repurchases. This ultimately strengthens the role of financial intermediaries in capital allocation, which in turn contributes to economic instability and financial imbalances.

In order to establish and strengthen the profit-investment nexus, it is necessary to find ways of ensuring that private finance is once again used for productive purposes, in developed as well as developing countries.

"Establishing a strong profit-investment nexus requires substantial institutional and policy initiatives and change, including the creation or deepening of the banking system, ensuring it has appropriate capacities for long-term credit provision, along with proactive industrial policies. Developing-country governments should design policies aimed at directly supporting their own process of catching up and structural transformation."

Furthermore, governments can improve the macroeconomic environment through public investment on an appropriate scale to support infrastructural development and rapid economic transformation, thereby helping to increase private sector profitability.

It is therefore vital to counteract current tendencies that diminish the state's investment capacities, including through taxation reforms both at the national and at the international levels. National initiatives in this regard are indispensable for the promotion of industrialization in developing economies.

However, these alone are insufficient. For developing countries to achieve successful structural transformation, much deeper reforms of the international financial and monetary system will also be necessary, aimed at delivering financial stability and reliable sources of development finance, said *TDR 2016*.

The experience over recent decades echoes that of centuries past. No country has been able to achieve successful structural transformation without the visionary nudging and pushing of targeted and selective government policies.

Often called "industrial policies", it would be more accurate to term them "production transformation policies", because their role is equally important in agricultural, industrial and post-industrial transformations.

Despite being out of fashion in some quarters since the 1980s, they have made a strong comeback on the radar screens of governments in all parts of the world, including in the United Kingdom, where the term Industrial Revolution was first coined.

TDR 2016 has sought to glean some of the major lessons that have been learnt over many years with respect to the successful design, implementation and monitoring of industrial policies.

These include the creation of a particular geometry of state-business relations that ensure government support efforts aim at overcoming the right challenges and problems, and that business

(continued on page 16)

Panel for full use of compulsory licensing, TRIPS flexibilities

A UN panel charged with proposing ways to improve access to medicines has recommended that countries make full use of policymaking leeway afforded by WTO intellectual property rules towards this end.

by D. Ravi Kanth

GENEVA: A high-level UN panel has put its weight behind developing and poorest countries and their right to ensure access of their populations to affordable and accessible medicines and health technologies by fully using the flexibilities in the WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

The United Nations High-Level Panel on Access to Medicines (UNHLP) has asked developing and poorest countries not to succumb to political and economic pressure from major industrialized countries and their powerful pharmaceutical companies to refrain from implementing the flexibilities provided in the TRIPS Agreement, particularly the use of compulsory licensing provisions and the freedom to determine patentability criteria based on "genuine innovation."

In a path-breaking report submitted recently to the UN Secretary-General Ban Ki-moon, the Panel reminded the developing and poorest countries that they must strive to introduce and implement "public health-sensitive intellectual property rules and mechanisms" so as to strike a credible balance in "the misalignment between profit-driven innovation models and public health priorities."

The Panel repeatedly emphasized existing TRIPS flexibilities, which include "the freedom to determine patentability criteria" and further define concepts such as "novelty", "inventive step" and "industrial capacity" to ensure that patents are only awarded for "genuine innovation."

In addition, the ability to determine the terms for issuing compulsory licences, according to the Panel, "allows governments to fulfil their human rights obligations by securing the availability and affordability of health technologies."

Undue pressure

The Panel expressed concern that undue "political and economic pressure placed on governments [in the developing and the poorest countries] to forego the use of TRIPS flexibilities violates the integrity and legitimacy of the system of legal rights and duties created by the TRIPS Agreement, as reaffirmed by the Doha Declaration [on the TRIPS Agreement and Public Health]."

The Panel said that pressure by the major industrialized countries on developing and poorest countries to forego TRIPS flexibilities "undermines the efforts of states to meet their human rights and public health obligations."

The unprecedented pressure exerted on countries like South Africa, Thailand, India and Brazil not to invoke compulsory licence provisions in the TRIPS Agreement is well documented.

There are several studies and reports that the United States on behalf of its powerful pharmaceutical giants such as Pfizer, Merck and Bristol-Myers Squibb; Switzerland on behalf of Novartis and Roche among others; and the United Kingdom on behalf of GlaxoSmithKline among others, have exerted such pressures.

The world's leading pharmaceutical giants treat the use of compulsory licences to address grave public health challenges as a weapon of mass destruction, according to analysts familiar with the arm-twisting and coercive tactics deployed by governments of major industrialized countries.

Against this backdrop, the Panel exposed the lie that pharmaceutical research and development (R&D) is mostly funded by private companies. The Panel suggests that much of the funding for R&D is provided by public sources. "Public funding agencies should strongly encourage patenting and licensing practices that benefit public health, including the use of non-exclusive licences, the donation of intellectual property rights, participation in public sector patent pools and other mechanisms that maximize innovation while promoting access," the Panel recommended.

Over the course of the UNHLP's proceedings that began last year, powerful US industry and business lobbies had launched a campaign to undermine its work. In a letter addressed to Senator Orrin Hatch, the chair of the US Senate Committee on Finance, in February, six leading American industry and business lobbies demanded the extension of an "effective inter-agency approach" – such as was adopted by the US delegation in the Paris UN climate talks last December – to other UN initiatives, particularly the UNHLP.

The six American lobbies that mounted pressure on the US Congress were the Biotechnology Innovation Organization (BIO), National Association of Manufacturers (NAM), National Foreign Trade Council (NFTC), Pharmaceutical Research and Manufacturers of America (PhRMA), US Chamber of Commerce, and US Council for International Business (USCIB).

They cited the "effective inter-agency approach" under the leadership of the US State Department to "secure a final UNFCCC [UN Framework Convention on Climate Change] text [in Paris] that does not mention IP [intellectual property] and thus removes uncertainty that could have discouraged continued investments by US companies in clean technology."

The pharma and business lobbies mounted pressure on the US Senate, maintaining that IP protection is facing many challenges, particularly from the UNHLP.

Challenging mandate

The UNHLP was established by the UN Secretary-General to "remedy the policy incoherence between justifiable rights of inventors, international human rights law, trade rules and public health in the context of health technologies." Faced with an ever-expanding disease burden because of new pathogens and epidemics all over the world, particularly in developing and poorest countries, the UNHLP embarked on a challenging project to help remove the distortions caused by monopoly patent provisions and burdensome IP rules.

The Panel is co-chaired by former Swiss President Ruth Dreifuss and former President of Botswana Festus Gontebanye Mogae. Dreifuss is respected all over the world for her sustained campaign against pharmaceutical giant Novartis, which refused to accept

India's compulsory licence for the Glivec cancer drug issued on public health grounds. Mogae provided leadership in tackling the HIV problem by ensuring antiretroviral treatment to the citizens of Botswana.

Other members of the Panel include Andrew Witty, former chief executive officer of GlaxoSmithKline; Sakiko Fukuda-Parr, a development economist; Awn Al-Khasawneh, former prime minister of Jordan; Celso Amorim, former foreign minister of Brazil; Winnie Byanyima, executive director of Oxfam; Shiba Phurailatpam, an HIV patient and treatment activist; Malebona Precious Matsoso, director-general of the South African National Health Department; Yusuf Hamied, executive chairman of leading generic drug company Cipla; Michael Kiry, a retired Australian judge; Ruth Okediji, a law professor at Minnesota University Law School; Jorge Bermudez, former head of UNITAID; Kinga Goncz, a law professor from Hungary; Maria C. Freire, executive director of the US Foundation for the National Institutes of Health; and Stephen Lewis, an official of the advocacy organization AIDS-Free World.

Panel recommendations

In its 70-page report, the Panel touched on several issues such as "new incentives for research and development of health technologies" based on identifying "global health priorities" for distributing scarce health resources; and "governance, accountability and transparency" mechanisms to address the incoherence between human rights, trade, intellectual property and public health.

The Panel's major recommendations cover "intellectual property laws and access to health technologies", in which it urged WTO member states to "commit themselves, at the highest political levels, to respect the letter and the spirit of the Doha Declaration on TRIPS and Public Health", and to refrain from any action that will limit their implementation and use in order to promote access to health technologies.

Specific policy guidelines suggested by the Panel include:

(a) WTO members must make full use of the TRIPS Agreement flexibilities as confirmed by the Doha Declaration to promote access to health technologies when necessary.

(b) WTO members should make full use of policy space available in Article 27 of the TRIPS Agreement by adopting and applying rigorous definitions of invention and patentability that are in the best interests of the public health of the country and its inhabitants.

(c) Governments should adopt and implement legislation that facilitates the issuance of compulsory licences for legitimate public health needs, particularly with regard to essential medicines.

(d) WTO members should revise the paragraph 6 decision in order to find a solution that enables a swift and expedient export of pharmaceutical products produced under compulsory licence.

(e) Governments and the private sector must refrain from explicit or implicit threats, tactics or strategies that undermine the right of WTO members to use TRIPS flexibilities.

(f) Instances of undue political and commercial pressure should be reported by the WTO secretariat during the Trade Policy Review of members. Further, punitive measures must be taken against countries exerting undue political and economic pressure.

(g) Public-funded research in the pharmaceutical sector must ensure that knowledge generated from such research must be made freely available.

(h) Governments must provide new incentives for research of health technologies by increasing their current levels of investment in health technology innovation to address unmet needs.

(i) Governments must review access to health technologies in the respective countries in light of human rights principles and states' obligations to fulfil them.

(j) The UN Secretary-General should establish an independent review body tasked with assessing progress on health technology innovation and access under the ambit of the 2030 Agenda for Sustainable Development.

(k) Biomedical private sector companies involved in health technology innovation and access should report, as part of their annual reporting cycle, on actions they have taken that promote access to health technologies.

(l) "Governments should require manufacturers and distributors of health technologies to disclose to drug regulatory and procurement authorities information pertaining to: (i) the costs of R&D, production, marketing and distribution of health technology being procured or given marketing approval with each expense category separated; and (ii) any public funding received in the development of the health technology…"

(m) Governments should require that the unidentified data on all completed and discontinued clinical trails be made publicly available in an easily searchable public register established and operated by existing mechanisms such as the WHO Clinical Trials Registry Platform.

(n) Governments should establish and maintain publicly accessible databases with patent information status and data on medicines and vaccines.

The credible recommendations set out in the Panel report can only be implemented if the major pharmaceutical companies and their home governments do not resort to predatory practices, including mud-slinging and smear campaigns, according to analysts familiar with the recommendations.

"It is a ringing endorsement of TRIPS flexibilities from the report and now the public debate must force the governments to implement the recommendations," said an analyst who asked not to be quoted. *(SUNS8313)* ❐

Mainstream human rights into all activities, WTO told

A UN rights expert has called on the WTO to uphold human rights in its operations and to "place people before profits" while promoting trade.

by Kanaga Raja

GENEVA: The World Trade Organization (WTO) should mainstream human rights into all of its activities and issue directives to its dispute settlement panels so that human rights treaty violations are not adversely affected.

This is one of the main recommendations highlighted by the UN Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas (United States), in his report to the UN Human Rights Council.

"It is high time to mainstream human rights into all trade agreements and World Trade Organization (WTO) rules and regulations, so that trade representatives and dispute-settlers know that trade is neither a 'stand-alone' regime nor an end in itself," the rights expert said in presenting his report to the Council on 13 September.

The Council held its regular thirty-third session here on 13-30 September.

In his report, de Zayas said WTO dispute panels should interpret the exceptions in the General Agreement on Tariffs and Trade (GATT) 1994 to support initiatives on food security, health and the environment and facilitate solutions to climate change.

"WTO should harmonize policies with the Food and Agriculture Organization of the United Nations (FAO) and OHCHR [Office of the UN High Commissioner for Human Rights]," he added.

"The tenth WTO Ministerial Conference, held in Nairobi in December 2015, could have delivered good results had it been true to the commitments made under the Doha Development Agenda, but it was seriously marred by the intransigence of some States that attempted to bury the Agenda and prevented progress on food security and environmental protection," de Zayas underlined.

He called on states to implement the Doha Development Agenda (DDA) as envisaged in Sustainable Development Goal 17.10. (Goal 17.10 states: "Promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the World Trade Organization, including through the conclusion of negotiations under its Doha Development Agenda.")

The WTO Trade Facilitation Agreement must not become operative until the Doha Development Agenda commitments have been met, the rights expert stressed.

He also called on states to refrain from entering into new bilateral investment treaties and free trade agreements, including the Trans-Pacific Partnership Agreement, the Transatlantic Trade and Investment Partnership, the Comprehensive Economic and Trade Agreement (negotiated between the EU and Canada) and the Trade in Services Agreement, unless human rights, health and environmental impact assessments have been conducted and there is full disclosure and consultation with stakeholders and public participation. Where possible, referendums should be conducted, de Zayas said.

"States should test the legality of provisions of bilateral investment treaties and free trade agreements, investor-State dispute settlement and investment court system mechanisms, as well as WTO rules and practice, for compatibility with their own Constitutions and with their human rights treaty obligations."

WTO rules and practice

In his report, the rights expert, amongst others, addressed the human rights impacts of the GATT and WTO law and practice, in particular the dispute settlement mechanism.

De Zayas noted that since the third WTO Ministerial Conference, held in Seattle in 1999, and the civil society outcry against the adverse human rights impacts of commerce, the WTO has become increasingly aware of the human rights dimensions of trade.

Since 2001, the WTO has conducted a yearly Public Forum in which as many as 1,500 representatives from civil society, academia, business, media, governments, parliamentarians and intergovernmental organizations share their knowledge and make recommendations on how to tap the potential for multilateral cooperation and growth and how best to implement the commitments of the Doha Development Agenda.

According to the Independent Expert, while the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) may allow some policy space to member states, allowing them to exclude from patentability those inventions that, if commercially exploited, might adversely impact human, animal, plant life or the environment – which could potentially be invoked to exclude genetically modified crops – the state's policy space is far from being ensured, and the regulatory chill may still prevent states from adopting precautionary measures.

"The priority of human rights, health and environmental protection must be spelled out," said de Zayas.

He pointed out that a majority of states at the WTO's tenth Ministerial Conference in Nairobi favoured reaffirmation of the Doha framework, yet the opposition of some developed countries blocked consensus. "Pressure on developing countries aimed at the introduction of new issues that would undermine the promotion of the right to development [was] reported."

De Zayas cited Saudi Arabia as indicating in a response to a questionnaire sent by him: "The WTO top priority should be concluding the DDA issues. The majority of WTO members are developing countries. A successful conclusion of the Doha Round would address developing country needs and contribute significantly to their economic growth and their integration into the global economy. Furthermore, concluding the Doha Development Round would address the trade distortions and imbalances in the WTO's various agreements, and preserve the Special [and] Differential Treatment flexibilities granted to the developing countries ... The preamble of [the] Marrakesh agreement establishing the WTO explicitly sets the objective to 'raise standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand'."

"While promoting trade, WTO should place people before profits, and development before the expansion of monopolies," the rights expert underscored.

He cited Deborah James of the

Washington-based Center for Economic and Policy Research as observing in 2015: "Despite the global consensus, the rules in the WTO remain unchanged from decades past. WTO rules do not allow developing countries that were not subsidizing in 1994 to subsidize beyond the *de minimis* ... amount allowed to all WTO members. Meanwhile, the United States and Europe are allowed tens of billions a year in overtly trade-distorting subsidies for exported products, and have yet to implement the abolition of those subsidies to which they agreed nearly 10 years ago."

"Implementation of those commitments would be facilitated if WTO were incorporated into the United Nations system and subordinated to the purposes and principles of the United Nations. Incorporation pursuant to articles 57 and 63 of the [UN] Charter would ensure that WTO not only actively contributes to the work of the [UN] Economic and Social Council, as it can proudly claim, but also gives proper weight to human rights as part of its own constitutional law," said de Zayas.

He noted that the Nairobi Ministerial Conference reached some agreements on agricultural export subsidies, food aid and other issues. However, the Information Technology Agreement, covering products like Global Positioning System (GPS) navigation systems and medical products such as magnetic resonance imaging machines, was primarily drafted by high-income countries. "None of the countries from the Group of Least Developed Countries was represented and only one of the lower-middle-income countries was represented," he pointed out.

"It would have been desirable and in keeping with commitments to reduce poverty to adopt a clear statement on the legitimacy of public stockholding for food security that would allow countries to hold food stocks and enable them to deal with food shortages and fluctuations in global market prices."

While some developing countries were successful in securing concessions on cotton, an important issue for West African states, the rich countries won the deal on agricultural export subsidies, which did not abolish general subsidy schemes like the European Union's Common Agricultural Policy.

Observers noted that "the uneven WTO playing field, whereby rich countries' subsidy schemes are categorized as being 'allowable' while poorer countries are prevented from subsidizing their farmers, will continue".

Barely three months after agreement on the Sustainable Development Goals, the Nairobi Ministerial Conference failed to implement target 17.10, pursuant to which states would "promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the World Trade Organization, including through the conclusion of negotiations under its Doha Development Agenda".

Skewed approach

According to the rights expert, that paradox highlights the need to rethink the global trading system and the skewed ideological approach taken by some negotiators.

One problem with the WTO, beyond Doha and Nairobi, is the prevalent vision that equates "progress" with the growth of trade volumes and exports or with a higher gross domestic product. "The Charter of the United Nations advocates another vision of progress as development, solidarity and human rights in a progressively more democratic and equitable international order," said de Zayas.

Notwithstanding press comments in the United States and the European Union declaring the Doha Development Agenda "dead", paragraphs 30, 31 and 34 of the Nairobi Declaration give reason for hope, he added. While acknowledging the stalemate, they indicate that the Doha Work Programme is a single undertaking, meaning that Western countries cannot cherry-pick which parts to prioritize.

"It appears relevant for the developing countries to continue the struggle on the negotiating agenda of the single undertaking of that Programme. Under no conditions can any conditional plurilateral agreements, as envisaged by the United States and the European Union, be incorporated into the WTO treaty framework, except when there is a consensus on them at a ministerial conference."

Yet, at the Bali Ministerial Conference, held in 2013, the developing countries surrendered their most powerful leverage when they conceded the Trade Facilitation Agreement as a separate accord. De Zayas said that bearing in mind that that Agreement has not entered into force, one may suggest that the developing countries withhold deposit of their instruments of ratification until they secure their own demands, including Nairobi decisions on "deliverables", in a single protocol incorporating the results of the Doha Work Programme.

The Independent Expert also drew attention to a dispute settlement case at the WTO involving India's renewable energy programmes.

He noted that on 24 February 2016, a WTO dispute panel adopted a decision against the efforts of India to create renewable energy through the extended use of solar panels.

"One would think that, after the Conference of the Parties to the United Nations Framework Convention on Climate Change, everyone would support such initiatives, but WTO dispute panels seem to be caught in their own mantras and incapable of showing flexibility in accommodating the new priorities imposed by climate change," de Zayas underlined.

Despite some interesting initiatives in that field, such as the WTO Committee on Trade and Environment, there is still unwillingness to interpret broadly the general exceptions provided under GATT 1994.

According to the rights expert, the National Solar Mission of India, which aims at increasing the country's renewable energy in line with Sustainable Development Goal 7 on ensuring access to affordable, reliable, sustainable and modern energy for all, is a reasonable plan. It would create local jobs and bring clean energy to millions by generating 100 gigawatts of solar power annually, consistent with the goals of the UN Framework Convention on Climate Change.

"The WTO case was brought by the United States, which challenged the domestic content clause of India, which would require part of the solar cells to be produced nationally. India unsuccessfully tried to reach a settlement with the United States and now may have to adjust its solar programme to avoid WTO sanctions," he said.

De Zayas cited Friends of the Earth as commenting on the case: "The WTO ruling against India's National Solar Mission shows how arcane trade rules can be used to undermine governments that support clean energy and local jobs. The ink is barely dry on the Paris climate agreement, but clearly trade still trumps real action on climate change."

"That is paradigmatic of what is wrong with the pro-business approach to the regulatory space of States and with the so-called ‘Washington consensus’ that consistently opposes industrial policy-making by States. A United Nations campaign is needed to mainstream human rights into the work of WTO and to establish clear guidelines for dispute settlement panels giving due weight to human rights, health and environmental concerns,” said the rights expert.

The UN is the pre-eminent international organization and states should ensure it has the power to coordinate the work of all other international organizations, or at least to prevent them from frustrating the purposes and principles of its Charter.

“It is an anomaly that other organizations like WTO, the World Bank and the International Monetary Fund (IMF), as well as non-State actors, including transnational corporations, are competing with the United Nations in setting the world agenda and have a negative impact on the enjoyment of human rights by billions of women, men, children and elderly persons,” the rights expert observed.

“Instead of such institutional competition, greater coordination is necessary. The twenty-first century cannot afford multiple world organizations taking the international order in different and often opposite directions.”

Human rights are too important to be subordinated to mercantilism. In case of conflict, only the highest public courts can decide in the light of the totality of international law.

Until amended by member states, the UN Charter remains the principal treaty that determines the structure and functioning of the international order.

Article 103 of the Charter stipulates that all treaties must be compatible with the Charter. “To the extent that aspects of trade agreements and WTO directives hinder the achievement of the purposes and principles of the Charter, including human rights and development, they must be revised. That requires the recognition that human rights are not a barrier to trade, but that trade can be a significant obstacle to the realization of human rights,” said de Zayas.

“Saying ‘no’ to the Trans-Pacific Partnership Agreement, the Transatlantic Trade and Investment Partnership, the Comprehensive Economic and Trade Agreement and the Trade in Services Agreement will not have apocalyptic consequences, bring world trade to a grinding halt or make FDI [foreign direct investment] stop flowing.”

Henceforth trade must be made to benefit all in society, not only transnational corporations. Objectively there is no need for more free trade agreements, which hitherto have engendered advantages for few and disadvantages for many. A corporate takeover of state functions subverts states’ constitutional order and renders the fulfilment of human rights treaty obligations impossible.

“The world economy before free trade agreements and investor-State dispute settlement was certainly not business-unfriendly and it prospered through a healthy level of trade,” he said.

“Binding obligations on investors and corporations must be incorporated into trade and investment agreements, and public courts must have jurisdiction to examine violations and impose sanctions on violators.”

Investor-state dispute settlement

The Independent Expert’s report also addresses the aggravation of the “regulatory chill” generated by investor-state dispute settlement (ISDS), and highlights that the newly mooted investment court system (proposed by EU Trade Commissioner Cecilia Malmstrom in September 2015 to replace the ISDS system) suffers from the same fundamental flaws as ISDS.

Essentially, said de Zayas, the investment court system lacks the fundamental safeguards to ensure an independent legal system in line with the requirements of due process. Despite some improvements, including the introduction of an appeal mechanism and the appointment of judges, the investment court system fails to address the fundamental investor-state dispute settlement problems and aggravates the situation by multiplying the number of potential claims by a factor of 10, thus increasing the regulatory chill.

“Under the investment court system, States would remain vulnerable to the same kind of frivolous and vexatious claims that have characterized the hugely expensive, slow and unpredictable investor-State dispute settlement litigation. Important issues of constitutionality and the rule of law arise when non-State actors exercise ‘prerogative powers’ beyond public control and judicial scrutiny.”

Globally, 696 investor-state dispute settlement cases concerning 107 countries had been counted as at January 2016. Owing to the opacity of the system and the non-publication of many settlements, the actual figure could be higher, said the rights expert.

Some 72% of known cases were filed against developing and transition economies. However, the number of cases against developed countries is growing as foreign investors, arbitrators and new treaties bring investor-state dispute settlement into new domains. From a total of three such known cases in 1995, 70 new cases were registered during 2015.

According to the United Nations Conference on Trade and Development (UNCTAD), investors triumphed in 60% of admissible cases. In principle, states never “win”; all they can hope for is to be “acquitted”, and even then, they recover only a portion, if any, of their legal costs, which commonly reach millions of dollars.

In Yukos Universal Limited (Isle of Man) v. the Russian Federation, the lawyers billed $74 million and the tribunal’s three arbitrators took home $7.4 million. The award amounted to $50 billion.

The regulatory chill caused by the mere existence of investor-state dispute settlement has effectively dissuaded many states from adopting much-needed health and environmental protection measures.

Several mega-regional treaties involving close to 90 states are currently under negotiation, mostly in secret. They include the Trans-Pacific Partnership Agreement, the Transatlantic Trade and Investment Partnership, the Comprehensive Economic and Trade Agreement, and the Trade in Services Agreement. “If they enter into force with their investment chapters, the arbitration bonanza will massively expand,” de Zayas warned.

States should impose a moratorium on the execution of investor-state dispute settlement awards until the entire system is tested by the International Court of Justice.

A new multilateral treaty should be elaborated stipulating that courts may not execute such awards without verifying their compatibility with human rights treaty obligations and *ordre public*.

“UNCTAD should convene a world conference to revise existing bilateral investment treaties and free trade agreements, abolish investor-State dispute settlement and declare the investment court system incompatible with United Nations constitutional law,” the rights expert said. *(SUNS8312)* ❐

G20 Hangzhou agreement unlikely to heal global economy's malaise

Measures agreed by the G20 countries at their recent Hangzhou summit appear ill suited to the task of reviving a listless global economy.

by Aldo Caliari

The world economy is in a malaise, and judging by their final communique and the accompanying 100 documents, including some 30 action plans, the annual summit meeting of the Group of 20 major economies (4-5 September) at Hangzhou, China seems unlikely to heal the malaise.

Ever since the G20 started meeting at the level of heads of state in November 2008, the economic policymaking community has had its sights set on the grouping. At that time it revealed itself as an effective actor taking forceful steps to coordinate action to stop what could otherwise have been a global meltdown (even though some observers hold that such steps had already been agreed individually by each country, so the grouping as such was not the force propelling them).

However, subsequent G20 actions in successive yearly gatherings have so far failed to bring about a strong recovery of the global economy.

This is in spite of the ever-growing volume of activities by the Group: at Hangzhou, the communique was accompanied by over 100 documents, more than 30 of them being initiatives or action plans endorsed by the Group.

Speaking at the summit, International Monetary Fund (IMF) Managing Director Christine Lagarde summed up the situation by stating that growth had been "too slow, for too long and for too few."

The G20 communique recognized that "growth is still weaker than desirable. Downside risks remain due to potential volatility in the financial markets, fluctuations of commodity prices, sluggish trade and investment, and slow productivity and employment growth in some countries."

Will the Hangzhou agreements help surmount the global economic challenges? Unlikely. On three areas of reform that should be central to efforts to reinvigorate the speed and inclusivity of growth, the unveiled G20 agenda was troublingly misguided. These areas were: structural reform, financial regulation, and trade and investment. This article examines the outcomes for each of them in turn.

Structural reform

One of the salient features of the Hangzhou outcome is the prominence it gives to structural reforms, which, in the way the G20 is going about them, is quite problematic.

The justification for focusing on structural reforms is, ostensibly, a certain sense of desperation about the ineffectiveness of demand support interventions to lift the global economy. But this is a self-serving statement, much truer of monetary policies than of fiscal policies, which are kept on restraint across a growing number of countries.

The G20 skipped revisiting the extent to which different demand interventions are being deployed, in favour of looking at the supply side, with the potential consequence that negative employment and wage effects of such reforms may only worsen the demand gap.

Last year, the IMF had delivered a carefully crafted paper on the matter that some analysts found a bit overreaching. Yet, comparing that paper with the current G20 approach, it is regrettable that the G20 decided to dispense with even the degree of caution present in that paper.

Firstly, the IMF paper judiciously recognized that structural reforms are very country-specific and need to be cognizant of each country's circumstances and needs. For its part, the G20 makes a nod to national specificity, for instance, stating that the "choice and design of specific structural reforms must necessarily be informed by a country's macroeconomic environment and national preferences." But the adoption of a "common set of indicators" shows a uniform direction of travel that is not to be questioned.

Secondly, the Fund was very emphatic about structural reforms being "inherently" difficult to measure as they involve "issues that are not easy to quantify." The G20 forgets about this "small" detail, and adopts quantitative indicators whose comprehensiveness, it announces, is set to increase – making, along the way, some very questionable calls.

Strikingly, labour productivity becomes the main outcome to measure as a result of five of the six priority areas for reforms. This approach neglects the difficulties in disentangling labour productivity from that of the other factors of production. Success in increasing labour productivity could also lead to lower employment or happen in the absence of real wage growth, thus putting a further dent on demand. Such variables could have been selected for measurement on their own, but were not.

Thirdly, the IMF should be credited with encompassing as the potential subject of structural reforms – at least at general policy statement level – actions that would need to address market failures as well as government failures. This set the Fund's approach apart from the widely discredited "structural adjustment programmes" that became a hallmark of the institution in the 1980s and 90s and that were heavily focused on "getting the government out of the way," being biased towards the latter category of failures.

But a reading of what the G20 means by structural reforms shows it going back to the worst biases of structural adjustment.

One priority reform area is unambiguously called "Promoting trade and investment openness." While a growing body of literature advises on the risks of corruption and wasteful spending in public-private partnerships, the infrastructure area of the document raises eyebrows by calling for "cost-benefit and value-for-money analysis, possibly supplemented by multi-criteria analysis, for *public* infrastructure projects" (emphasis added).

Market failures are not even to be found under "Enhancing environmental sustainability," which calls for extending "the use of market-based mechanisms to mitigate pollution and increase resource efficiency."

Fourthly, the IMF was careful to demarcate its engagement on structural reforms with the need to be guided by its mandate and Articles of Agreement. It is true that if one looks long enough, every economic policy area can potentially have a macroeconomic implication and thus fall under the purview of the Fund. But the Fund knew better than to fall prey to this temptation – an approach that so ill served it in the past – and even said that "many structural issues will likely remain outside the Fund's areas of expertise."

It then becomes hard to understand why the G20 insisted on pushing the Fund to carry out analysis on what each G20 country should prioritize across all reform areas, without relying on any of the other institutions whose expertise is more suitable to specific portions of the task.

Financial regulation and green finance

Referring to the financial regulation agenda, the G20 leaders in Hangzhou said they remained "committed to finalizing remaining critical elements of the regulatory framework and to the timely, full and consistent implementation of the agreed financial sector reform agenda."

Seen in the light of the significance of financial regulation for a body created to respond to the greatest financial crisis since the Great Depression, the statement betrays a certain sense of complacency.

It assumes the agreed reforms are enough to prevent a crisis and the worst consequences of its aftermath, a proposition that, at the moment, belongs more in the realm of faith than science. But perhaps the most problematic (and least scientific) aspect of such complacency is that it seems to see finance as disconnected from all the other problems the communique rightly recognizes (slowing trade, weak demand, limited growth, deindustrialization and so on).

In fact, if one reads this together with the growing structural reform agenda, the message is quite clear: "Everybody else has to adjust, just not finance."

For instance, as reported by an observer, financial inclusion did not seem to be prioritized in this G20 summit.

If one looks only at implementation of the agreed reforms, the picture is not so good, either.

A report by the Financial Stability Board on the matter said, in the diplomatic language in which an intergovernmental body typically addresses the G20: "Implementation progress remains steady but uneven across the four core areas of the reform programme." (These areas are building resilient financial institutions; ending too-big-to-fail; making derivatives markets safer; and transforming shadow banking into resilient market-based finance.)

The same report alludes to a number of unintended consequences of the reforms that it keeps under observation. Here, one can find some justifiable ones, such as the impact on emerging markets and developing economies' access to finance. But others, such as "effects of reforms on financial openness and integration", are an alarming reflection of the pushback by the financial industry, which, past the post-crisis reform momentum, is trying to return to some of its pre-crisis practices.

Thinking of the long-term planetary limits to conceiving growth as usual, the summit's endorsement of a report issued by the Green Finance Study Group set up under the Chinese presidency of the G20 represented an important step.

The G20 recognized the challenges to the development of green finance, such as "difficulties in internalizing environmental externalities, maturity mismatch, lack of clarity in green definitions, information asymmetry and inadequate analytical capacity."

Given the enormous obstacles China faced in its pioneering effort to install this concept within the G20 finance track (that was staffed by finance ministers and central bankers), the mere inclusion of a paragraph in the declaration could be regarded as a triumph.

However, the fact that the communique only welcomed the "voluntary options developed by the [Green Finance Study Group] to enhance the ability of the financial system to mobilize private capital for green investment" gives some cause for concern.

If the concept of green finance is to sustain credibility, it will have to show its capacity to move companies beyond where they would have been by pursuing "business as usual." For this it will have to show a proper balance between voluntary and mandatory actions, including regulatory ones.

Trade and investment

One of the symptoms of stagnation of the global economy as shown by recent reports is the continuation of the slowdown in the global volume of trade, which is forecast to be almost unchanged this year from 2015.

It is understandable that the G20 felt compelled to show resolve on this front. But the "Global Strategy for Trade Growth" endorsed in Hangzhou seems to assume, as its unambiguous title suggests, that somehow growing global trade will solve all ills and that its benefits will automatically be spread (trickle-down?) more fairly among and within countries.

For instance, the strategy says: "G20 members recognize that facilitating trade and investment will enhance the ability of developing countries and SMEs [small and medium-sized enterprises] to participate in and move up the value chain in GVCs [global value chains]" – something not borne out by experience.

In fact, the summit declaration does call for "policies that encourage firms of all sizes ... to take full advantage of global value chains and that encourage greater participation, value addition and upward mobility in GVCs by developing countries, particularly low-income countries."

But all experiences of countries that have managed to do that in real life show them precisely relying on active use of trade and investment policies, not on some expectation that the automatic effect of expanding trade would lead them in that direction.

In fact, to some extent in open contradiction with such an objective, the G20 also adopted the Guiding Principles on Investment Policymaking that had been endorsed earlier in the year by its trade ministers. The principles recognize the right of governments to regulate investment, but also profess an intention to move towards "open, non-discriminatory" conditions for investment.

While at the moment these are principles that the G20 have adopted for themselves and should not necessarily apply to other countries, the United States reportedly tried to introduce them in the 14th session of the UN Conference on Trade and Development (UNCTAD) – a universal membership organization – last July.

Salutary lessons can be drawn from the field of tax cooperation – where developing countries are expected to follow OECD-crafted rules "on an equal footing" – and one cannot rule out the prospect of non-G20 countries being asked to join "on an equal footing" the implementation of such investment principles in future. Embedding such principles into multilateral rules on investment – a position rejected by more than 70 countries at the Cancun WTO Ministerial Conference in 2003 – is, furthermore, an explicit demand by the Business 20 (the coalition of business associations from the G20 countries).

Along these lines, the G20 members extended "their commitments to standstill and rollback of protectionist measures till the end of 2018." One might object to the bluntness of the methodology used in such a survey, but the fact that the latest report by UNCTAD, the WTO and the OECD shows the monthly average of trade restrictions at the highest level registered since the G20 asked them to undertake the survey for the first time (in 2009), raises questions beyond that, about the general value of such a pledge.

Industrialization is perhaps the single most important item in achieving a fairer distribution of the gains from trade. Thus, the Hangzhou communique's decision to launch a New Industrial Revolution Action Plan was well-placed. With the commodity price shock revealing again how little has changed in the structure of developing countries' economies – undiversified and largely commodity-dependent – focusing energies on how they can industrialize was long overdue.

Unfortunately, the components of this agenda are far from what developing countries need. This was probably to be expected, given the composition of the G20, which, in providing the background on the Action Plan, mentioned the efforts of individual countries, most of which are developed ones.

Still, this is not the major objection one could make to the agenda. Sustainable development will require a transformation of industry, even in already industrialized countries. The problem is the assumption that seems to permeate this plan, that everybody, no matter their level of development, has to do the same thing.

The New Industrial Revolution Action Plan, together with an Innovation Action Plan, were part of a "Blueprint on Innovative Growth" launched by the G20 leaders. The Action Plan prioritizes dimensions that are clearly not the ones that developing countries would care about.

A conspicuous example is intellectual property rights. One of the main obstacles poor countries face in trying to industrialize is the lack of technology and the extremely high prices attached to accessing it from the companies – mostly oligopolies in developed countries – that have it. While developing countries' repeated demand has therefore been for facilitation of technology transfer, existing rules on intellectual property rights such as the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) have acted as an obstacle in this regard.

But the Action Plan is geared to further strengthening protection of intellectual property rights. At one point, it makes the seemingly contradictory call for "effective protection and *enforcement of ... voluntary* technology transfer" (emphasis added).

It also recognizes that "enterprises are free to base technology transfer decisions on business and market considerations, and are free to independently negotiate and decide whether and under what circumstances to assign or license intellectual property rights to affiliated or unaffiliated enterprises". This prompts the question of whether it is the best use of the forum of the most powerful economies in the world to restate what companies already do in any case.

Similar doubts apply to the priority attached to "cooperation in development of standards", which, if it is to be carried out in the G20, may easily become one more barrier for developing countries. These countries already spend significant time and resources trying to catch up to the many standards set by countries and companies that, as a result of having created the standard initially, get to enjoy insurmountable "first-mover" advantages.

There are, however, other aspects in the Action Plan that are more in sync with developing countries' needs, for instance, skills and adaptability of the workforce to the requirements of industrialization and SMEs' lack of "resources and information to help them implement and benefit from new technologies." It will be important to follow what tangible action the G20 is ready to take on these fronts.

In relation to multilateral trade negotiations at the WTO, a key political development to underscore was the G20 leaders' commitment "to shape the post-Nairobi work with development at its centre and commit[ment] to advancing negotiations on the remaining [Doha Development Agenda] issues as a matter of priority ..."

At the end of the WTO Ministerial Conference in Nairobi last December, a group of developed countries had insisted on not recognizing the currency of the Doha Development Agenda anymore unless developing countries were ready to commit to including new issues on the agenda.

Unfortunately, the G20 breakthrough on the Doha Development Agenda was not necessarily a net gain. As reported by the *South-North Development Monitor (SUNS)*, the cost to pay for such agreement was the mention in the Hangzhou communique 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 Business 20."

The influence and access of the business community – completely out of sync with that of civil society – in trade negotiations is no secret. However, the direct, explicit and, in this case, open-ended reference to the agenda of a specific group of large businesses in political commitments on trade is an unprecedented development of alarming proportions. *(SUNS8316)* ❐

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is only supported when it produces the right actions.

They also include the establishment of an integrated and coherent framework of interlinking policies that complement each other and serve the overall vision. Such policies include, for example, macroeconomic policies that aim to create a pro-growth and stable environment alongside targeted industrial policies, fiscal policies that provide incentives to encourage long-term productive investment, and income and wage policies that promote skills, learning, and production and consumption goals.

"Getting these basics right is more important now than ever before, owing to the greater challenge of industrialization. It is not just the adverse impact of continued secular stagnation and the diminished prospects for international trade that are forcing further reflection; it is also because many of the policies that propelled earlier generations of catch-up growth are now proscribed under various international, regional and bilateral agreements."

Nonetheless, significant policy space remains, and new products and product markets can offer various opportunities for countries that have yet to embark on the path to industrialization, as well as for others that have already made some progress but have reached an impasse and need to change direction, said UNCTAD. *(SUNS8317)* ❐