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WTO outcomes on agri subsidies, food stocks up in the air

Prospects for a credible outcome at the forthcoming WTO Ministerial Conference in Buenos Aires on reforming trade-distorting farm subsidies appear to be receding, with several countries seeking to retain the capacity to provide these handouts. At the same time, whether the conference will give the green light to public food stocks in developing countries hangs in the balance, given stark differences over the conditions to be attached to any such decision.

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No credible outcomes likely at MC11 on domestic support

A report by the chair of the WTO agriculture negotiations suggests a dimming outlook for a meaningful outcome at the WTO's upcoming Ministerial Conference in terms of curbing domestic subsidies which distort global farm trade.

by D. Ravi Kanth

GENEVA: The South countries are unlikely to secure any credible outcome for reforming global trade-distorting farm subsidies based on the 2008 revised draft Doha agriculture modalities at the World Trade Organization's eleventh Ministerial Conference (MC11) in Buenos Aires this December.

The chair of the Doha agriculture negotiations, Ambassador Stephen Karau of Kenya, has suggested that "several members are of the view that only a limited outcome on Domestic Support may be attainable at MC11."

"To that end," he said, "they [members are not named] would like to see discussions on the Domestic Support pillar continue after MC11."

The unidentified members put ideas such as the inclusion of Blue Box support in the overall limit to trade-distorting domestic support at a later stage, while some other unidentified members "have proposed a roadmap as a fall-back alternative, should there not be any concrete outcome at MC11", the chair suggested.

In an ambiguously worded document on the "state of play in the agriculture negotiations", issued on 5 September, the chair has merely included all the proposals tabled by members until now, without providing his assessment on what is possible at the Buenos Aires meeting starting on 10 December.

The chair's report did not even mention what is set out on domestic support in the Doha Work Programme of 2001, the mandate under which he is currently operating as chair of the Doha agriculture negotiations.

The chair has nearly buried all the hard work done in the Doha agriculture negotiations, including the most credible 2008 revised draft modalities issued by the former chair of the negotiations, Ambassador Crawford Falconer of New Zealand, said several trade envoys who asked not to be quoted.

The 2008 revised draft modalities suggested what the developed countries are required to do to cut their most trade-distorting domestic support in the Aggregate Measurement of Support (AMS), *de minimis*, Blue Box, product-specific subsidies and other vital issues.

At the failed 2008 ministerial meeting, the US had agreed to an overall AMS of up to $15 billion, but later withdrew the proposal and walked away from the agriculture negotiations, said a trade envoy who is familiar with the meeting.

Subsequently, the then Brazilian ambassador to the WTO, Roberto Azevedo, who is now the WTO's Director-General, said in 2011: "The December 2008 draft modalities are the basis for negotiations and represent the endgame in terms of landing zones of ambition. Any marginal adjustments in the level of ambition of those texts may be assessed only in the context of the overall balance of trade-offs, bearing in mind that agriculture is the engine of the [Doha] Round.

"The draft modalities embody a delicate balance achieved after ten years of negotiations. This equilibrium cannot be ignored or upset, or we will need readjustments of the entire package with horizontal repercussions. Such adjustments cannot entail additional unilateral concessions from developing countries."

Shockingly, the same Azevedo, as Director-General and chair of the WTO Trade Negotiations Committee, has not only altered the dynamic in the Doha agriculture negotiations as per the needs of the US, particularly its February 2014 farm bill, but is now trying hard to postpone all the issues on domestic support to the twelfth Ministerial Conference because Washington is now preparing its new farm bill, said another trade envoy who asked not to be quoted.

Already, the 2014 US farm bill had provided for increased outlays for domestic farm subsidies well beyond what was suggested in the 2008 revised draft modalities; and now the US is in no mood to allow any negotiation to reduce trade-distorting domestic subsidies.

The US has repeatedly shifted the goalposts by insisting that the major developing countries – China, India, Indonesia and South Africa, among others – undertake commensurate commitments along with the developed countries and also agree to the elimination of input and production subsidies allowed for developing countries under Article 6.2 of the WTO Agreement on Agriculture.

Against this backdrop, the agriculture chair's "state of play" document on domestic support is aimed at pushing the negotiations beyond 2017 until there is clarity on what the US is going to do in its new farm bill, said a trade envoy who asked not to be quoted.

Effectively, this means the likes of the Cotton Four countries – Benin, Burkina Faso, Mali and Chad – cannot secure any credible outcome on domestic support at the Buenos Aires meeting.

Vague

To start with, the chair's repeated use of terms like "some", "several", "many" and "a number of" members in the report to indicate the depth of support for various proposals has raised considerable doubts about the integrity of the overall assessment, said a trade envoy who asked not to be quoted.

The chair, for example, said "overall limit on trade-distorting domestic support has been suggested in several submissions and has been a focus of our discussions for a while."

"A key question is whether this limit should be fixed or floating. In the proposal JOB/AG/99 (Brazil, the European Union, Peru, Colombia, and Uruguay), proponents put forward the idea of a floating limit, expressed as a percentage of the VoP (Value of Production)."

"However," he said, "several Members have expressed a strong preference for a fixed limit (Australia, Canada, New Zealand, and Paraguay)."

"It has been suggested that it could be based on existing entitlements (i.e. AMS and *de minimis*), be set in accordance with the latest draft modalities for developed countries or according to a methodology to be defined," the chair said.

But the chair has not clarified what "latest draft modalities" he is referring to, and has not explained why he has shied away from mentioning the 2008 revised draft modalities, said a trade envoy who asked not to be quoted.

"Other Members [who are not specified]," the chair said, "have expressed the view that an overall limit should not be introduced or should be left to a later stage."

Karau said "the other issue that has been discussed is what type of support such a limit should apply to. It is suggested in the proposal JOB/AG/99 that it should apply to the sum of AMS and *de minimis* support, at least initially."

"Many Members [the members are not specified, nor is any numerical figure given for "many"], however, prefer a wider coverage that would also include the Blue Box and/or Article 6.2 support," the chair said.

The chair goes on to say "some Members [without specifying who they are] have expressed strong reservations against the potential inclusion of the Blue Box, *de minimis* and/or Article 6.2."

The EU and Brazil also suggested that "Special treatment in the form of a longer implementation period has also been suggested for Members with trade-distorting domestic support above a certain level."

On the AMS or the most trade-distorting domestic support provided by the major industrialized countries, particularly the US, the document maintained that "a number of Members are of the view that priority should be given to further reducing AMS entitlements."

"For some of them," the chair said, "this should take the form of a complete elimination for developed Members."

China and India have called for the complete elimination of the AMS, and this is supported by a large majority of developing and poorest countries (see the article "South must join China-India to rectify AoA asymmetries before MC11" in this issue).

But the chair's document gives a twist (to the high level of support for the elimination of the AMS) because it is not beneficial for the US, the EU and other industrialized countries, said a trade envoy who asked not to be quoted.

The G10 farm defensive countries led by Switzerland want "the current AMS entitlements [to] remain unchanged."

On *de minimis* support, which is the only entitlement that a large majority of developing countries have from the Uruguay Round, the chair said "many Members have indicated that *de minimis* is a very sensitive issue for them."

The EU, Brazil, Peru, Colombia and Uruguay which are "seeking reduction in trade-distorting domestic support have been considering the idea of an overall limit that would further discipline the use of trade-distorting domestic support in general, rather than seeking a reduction in *de minimis* entitlement per se."

"The views and ideas put forward also include exclusion of *de minimis* entitlement from any additional limitation; exclusion of LDCs [least developed countries], Net Food Importing Developing Countries (NFIDCs), and developing country Members in general from any additional commitment; and curtailing the *de minimis* entitlement notably for the world's largest producers and exporters," the chair said.

As regards the Blue Box, again a major trade-distorting farm subsidy programme availed of by industrialized countries, the chair said "a number of Members [neither the number nor identification of the Members is provided] consider the Blue Box as a sensitive issue for them."

"It is the view of some Members [without specifying who they are] that while the Blue Box is trade-distorting, it is less trade-distorting than the Amber Box" and "they argue that maintaining it is necessary to facilitate reforms aimed at moving away from Amber (Box) support," the chair said.

But, "several Members consider that given its trade-distortive nature, it should be further disciplined", the chair said.

Among the disciplines suggested for the Blue Box are "a fixed overall limit; product-specific limits; and its inclusion in an overall Trade-Distorting Domestic Support coverage – immediately or at a later stage."

Product-specific subsidies

On product-specific disciplines, it is well known that the US, the EU and Canada, among others, provide huge subsidies for a range of products.

"Many Members consider product-specific limits or disciplines as a necessary element to limit trade-distorting domestic support", but "doubts have been cast by several Members about the feasibility of an outcome at MC11", the chair said.

Here again it is obvious that the chair and the WTO Director-General do not want to pursue this issue at a time when the US is going to continue with

its product-specific subsidies in its new farm bill.

The views and ideas put forward on product-specific support, according to the chair, "include product-specific numerical limits; product-specific AMS limits; overall limit on product-specific AMS, particularly for products of interest to the LDCs; product-specific Blue Box limits; product-specific limits to trade-distorting domestic support; and linking trade-distorting support and exports."

The chair said "there is also a suggestion to focus on those products which benefit most from Article 6 of the Agreement on Agriculture (AoA) and which are of specific interest to developing country Members, including LDCs, NFIDCs and Small and Vulnerable Economies (SVEs)."

"However, many Members have expressed their opposition to product-specific disciplines, whether in general or for developing country Members," Karau maintained.

He said that "regarding the nature of the potential limits, the ideas include numerical limits; limits expressed in terms of a percentage of the overall trade-distorting domestic support, in terms of the VoP of the products in question, or in per capita terms."

"It has also been suggested to make a link to the importance of the exports of the supported product in the international market," the chair added.

On Article 6.2 special and differential flexibilities for developing countries to support their resource-poor rural farming community, the chair said that "almost all developing country Members consider support under Article 6.2 as a sensitive issue" and "several of them have indicated that they do not have flexibility to accommodate the demands of other Members."

Some other members, notably the US, consider, however, that at least certain types of support under Article 6.2 (such as input subsidies) need to be disciplined and/or its use constrained by an overall limit to trade-distorting domestic support.

As regards the hundreds of billions of dollars of Green Box programmes which are found to be trade-distorting, the chair said ambiguously: "While there is the recognition that Green Box support is non- or minimally trade-distorting, several Members would like it to be disciplined at some point owing to its increasing size and doubts whether certain programmes meet the prescribed criteria."

"In addition, many developing country Members have expressed the view that Green Box disciplines should be better adapted to their needs," the chair said.

But, "many Members [these are not specified] remain opposed to any change in the current disciplines", the chair said.

In reality, only a handful of countries – the US, the EU, Brazil and Australia, among others – remain opposed to granting Green Box support to developing countries, said a trade envoy who asked not to be quoted.

On transparency and notifications, which is another major demand of the US, the chair said "many Members would like to see an enhancement of the relevant disciplines and/or stricter enforcement."

"Many developing country Members have, however, cautioned against onerous requirements, especially considering the difficulties that have been encountered by some of them in fulfilling the current requirements," the chair noted.

"The ideas put forward to enhance the transparency provisions include additional data to be provided annually based on a questionnaire; annual dedicated discussions in the CoA [WTO Committee on Agriculture]; and punitive penalties for Members not fulfilling their transparency obligations, particularly large producers or large exporters of particular products," the chair mentioned.

Towards the end of his assessment, the chair mentioned that "the importance of special and differential treatment (SDT) for developing country Members is recognized by all Members [and] there appears to be a general understanding that no further commitment would be required from LDCs."

In mentioning it, the chair somewhat ambiguously introduced the issue of differentiation in availing of SDT benefits when he said: "While there is a recognition that SDT should be provided to all developing country Members, there are divergences as to the nature of flexibilities to be granted."

Karau said "the views and ideas put forward include higher overall limit (expressed as higher percentage) for developing country Members and longer implementation periods or same limit (expressed in percentage terms) as developed Members but longer implementation period for them; exemption of developing country Members or SVEs and NFIDCs from binding reduction commitments; and technical assistance and capacity building to help the implementation of disciplines."

Limited outcome

In conclusion, the chair said, "several Members are of the view that only a limited outcome on Domestic Support may be attainable at MC11."

"To that end, they would like to see discussions on the Domestic Support pillar continue after MC11. The ideas put forward for MC11 include an agreement to have as an objective the inclusion of Blue Box support in the overall limit to trade-distorting domestic support at a later stage," the chair maintained.

"Some Members have proposed a roadmap as a fall-back alternative, should there not be any concrete outcome at MC11. In addition, it has been suggested to include an agreement on the timeline for implementing decisions adopted at MC11."

On cotton, "most Members support a meaningful and specific outcome on Cotton Domestic Support, but a couple of delegations have cast doubts about the possibility of achieving an outcome at MC11, taking into account the overall negotiating environment", the chair said.

"More generally, several Members highlight the existence of a de facto link between the overall negotiation on Domestic Support and the negotiation on Cotton Domestic Support," the chair maintained.

"As regards post-MC11, some Members have expressed the view that the negotiations should ultimately aim at eliminating all types of domestic support that have distorting effects on the cotton market, while others have suggested the phasing out of trade-distorting domestic support provided only for cotton," the chair said.

In short, the prospects for credible outcomes on domestic support are nearly atrophied for the upcoming ministerial meeting in Buenos Aires because the US does not want any decision in the vital area of global trade-distorting domestic subsidies, said several trade envoys who asked not to be quoted. *(SUNS8529)* ❐

PSH (with several caveats) a priority for MC11, says agri-chair

Securing a decision at the Buenos Aires ministerial meeting to allow developing countries to hold public food stocks remains a priority, says the WTO agriculture chair in his "state of play" report, but the eventual outcome could come laden with restrictive conditions.

by D. Ravi Kanth

GENEVA: The chair of the Doha agriculture negotiations, Ambassador Stephen Karau of Kenya, has said that the permanent solution for public stockholding programmes for food security purposes (PSH) in developing countries remains "a priority issue" for the WTO's eleventh ministerial meeting in Buenos Aires.

However, he listed several caveats such as country coverage, product coverage, programme coverage, safeguards and anti-circumvention provisions, and transparency provisions that need to be resolved before arriving at the "legal shield" for the mandated permanent solution for PSH programmes.

In his 11-page document on the "state of play in the agriculture negotiations" issued on 5 September, Karau – who draws his mandate for overseeing the agriculture negotiations from the 2001 Doha Work Programme – did not even mention the progress made on the three pillars – domestic support, market access and export competition – in the Doha agriculture negotiations, including the 2008 revised draft modalities.

In the section on domestic support, he said "it should also [be] acknowledged [that] several Members would still prefer an outcome in Domestic Support based on the provisions of the latest draft modalities [the 2008 revised draft modalities]."

As regards the outcomes on domestic support, Karau merely listed several proposals made by members with varying levels of ambition, including a proposal by China and India for the elimination of the Aggregate Measurement of Support (AMS) or the most trade-distorting Amber Box subsidies.

He avoided suggesting that an outcome on domestic support will remain a priority issue like the permanent solution for PSH.

Commenting on the special safeguard mechanism (SSM) demanded by the G33 group of developing countries, the chair stated positions of various members, including a demand from a few members who said "the only feasible outcome on SSM at MC11 would be a decision on the continuation of SSM negotiations post MC11."

The chair said his document was "intended to assist members in preparation of future discussions in the lead up to the Eleventh Session of the Ministerial Conference."

The document was "a supporting tool to help Members assess in a structured way what may realistically be expected as possible outcomes at MC11 and what remains to be done to incrementally develop options likely to attract consensus among the Membership".

In short, the chair has prioritized issues even before discussing all the proposals made by members in domestic support, including the elimination by developed countries of the AMS.

Two proposals

As regards the PSH permanent solution, he said there were two proposals – one by the EU and Brazil along with Colombia, Peru, and Uruguay, and the second proposal submitted by the G33 led by Indonesia.

Karau said "the two proposals on the table suggest exempting the support provided under public stockholding programmes from the Aggregate Measurement of Support (AMS) calculation."

However, he said "the attached conditions [in the two proposals] differ significantly".

The chair mentioned that "several Members have expressed their opposition to the idea of an unlimited exemption."

"There seems to be nevertheless a convergence of views on some key elements to be included in the solution, such as safeguards and transparency requirements," he emphasized. But "the scope and content of these elements are yet to be agreed upon", the chair said, arguing that "many other elements would also require an agreement such as the country coverage, product coverage, and programme coverage."

The chair listed the views expressed by members in respect of the "core provision" of the PSH. The views include:

(i) exempting the support provided under PSH programmes for food security purposes from the AMS calculation (as proposed by the G33);

(ii) exempting this support from both the AMS calculation and a new overall limit to trade-distorting domestic support (as proposed by the EU and Brazil);

(iii) exempting certain programmes from the AMS calculation; and providing a legal shield against challenges under the Agreement on Agriculture. In addition, a few members have suggested updating the reference prices.

Significantly, the chair made no mention of an amendment to be incorporated into the Agreement on Agriculture for creating a new annex as proposed by the G33 in the run-up to the Nairobi Ministerial Conference in 2015.

The chair said there were divergences on country coverage between the two proposals.

Brazil and the EU, for example, suggested three categories of members to be eligible for the coverage: (i) least developed countries (LDCs), (ii) any developing-country member if the value of the stocks procured does not exceed a certain threshold of the average value of production (VoP); and (iii) members with existing programmes (at the time of the Bali Ministerial Decision, BMD) in respect of support provided under these programmes, provided the requirements of the BMD are fulfilled.

The G33 called for "a wider coverage that would include all developing country Members and LDCs."

Without naming the country, the chair said "one Member has suggested limiting the coverage to net importers of relevant products with a volume of production that does not exceed a certain level."

There were also differing views on product coverage "ranging from the BMD to major staple foods or major diet staple crops only (e.g. wheat and rice), and to 'wider' product coverage", the chair said.

On programme coverage, the chair said "views range from programmes existing at the time of the BMD, to new programmes implemented by LDCs and other developing country Members with a low share in international markets and to all programmes ('existing' and 'new')."

Some members suggested that "in

the case of new programmes, the support should be limited", the chair said.

The G33 called for "coverage of programmes for the acquisition of foodstuffs at administered prices by Governments with the objective of supporting low income or resource poor producers, and programmes for the acquisition of foodstuffs at administered prices and their subsequent distribution at subsidized prices with the objective of meeting food security requirements of urban and rural poor, and of maintaining adequate availability of foodstuffs and/or ensuring food price stability."

Additionally, according to the chair, "some Members have suggested that the permanent solution should apply only to non-commercial activities, including ensuring that stocks are constituted for a bona fide food assistance programme only or only to support rural development and for the benefits of resource poor farmers."

Some members suggested that "significant exporters should be excluded and that the eligibility of a Member should be forfeited should exports from stocks take place", the chair said.

Safeguards

Without listing countries that called for safeguards and anti-circumvention provisions, the chair misleadingly said "many Members seem to be of the view that safeguards are needed to ensure that the stocks do not distort trade or adversely affect the food security of other Members."

Except for the US, Australia, Pakistan, Paraguay and a couple of other countries which called for strong safeguard and anti-circumvention provisions, a large majority of developing and least developed countries have said repeatedly that the proposed permanent solution should not be burdened with conditionalities.

The chair admitted that "views differ on how these safeguards should be formulated" as "some Members see the safeguards in the BMD as a necessary minimum, while others have asked for 'strengthened' safeguards." The G33 called for "more functional" safeguards than those contained in the BMD.

"It was also suggested that neither direct exports nor any release from stocks on the condition it should be exported should be allowed," the chair said.

"Several Members have called for a general prohibition on exports – both direct and indirect," Karau added.

"Others have also called for price or volume-based safeguards, and a cap on the support expressed as a percentage of the VoP of the product in question or otherwise," the chair mentioned.

On transparency provisions, the chair said "several Members are of the view that the transparency provisions in the BMD are a necessary minimum."

One proposal, according to the chair, includes transparency provisions as well as "a notification of the VoP and value of acquired stock prior to the implementation of the PSH programme as well as on an annual basis."

The G33 suggested "a narrower set of transparency requirements that include information on the programme and description of its functioning and statistical information on domestic activities, and on exports and imports."

The Cairns Group of countries led by Australia also "suggested including a mandatory notification of the targets, and data demonstrating that PSH programmes are not distorting trade or commercial markets."

"Several Members have called for 'additional information' on the programmes, without however giving details on the information sought," the chair said.

But "many developing country Members have cautioned against cumbersome requirements such as ex ante notification obligations", the chair admitted.

Some members also suggested holding an annual dedicated discussion based on available data and with assistance by the WTO secretariat for examining the PSH programmes, as well as reviewing or assessing the situation by the Committee on Agriculture (CoA), the chair said.

Surprisingly, these stringent transparency provisions are not even remotely suggested for examining over $200 billion in Green Box programmes in the US and the EU that are found to be distorting global trade, note several analysts.

In crux, the proposed permanent solution for PSH programmes is going to contain conditions that would make it almost un-implementable. Also, there is no guarantee that it will involve an amendment to the Agreement on Agriculture like the creation of a brand new agreement on trade facilitation in the WTO's rulebook.

The developing and poorest countries must ensure that they secure a credible and effective legal instrument for PSH programmes at Buenos Aires rather than fall prey to an outcome replete with conditions. *(SUNS8528)* ❒

South must join China-India to rectify AoA asymmetries before MC11

While developed countries' farm support schemes would remain largely untouched under several proposals advanced in the WTO agriculture talks, a joint Chinese-Indian proposal targets those subsidies it considers "the most trade-distorting element" in global agricultural commerce.

by D. Ravi Kanth

GENEVA: The developing and poorest countries must join forces with China and India to rectify the continued "asymmetries" in world farm production and trade ahead of the WTO's eleventh Ministerial Conference in Buenos Aires, trade envoys told the *South-North Development Monitor (SUNS)*.

Among the asymmetries they must work to eliminate are the most trade-distorting Amber Box subsidies of $160 billion in the developed countries.

As the WTO members resume work after their summer break, the European Union along with Brazil and other members of the Cairns Group of farm-exporting countries are stepping up their efforts for modest changes in the current WTO Agreement on Agriculture (AoA) while ensuring their ability to continue with their farm subsidy programmes.

The EU, Brazil, Paraguay, Peru and Colombia want some minimal tweaking of the provisions in the AoA while setting a floor for overall trade-distorting support based on total turnover of value of production with some flexibilities for developing countries, including a higher limit.

Brazil, which has almost sunk the G20 developing-country coalition that it had built over the years since August 2003, remains convinced along with the EU that the best option for the Buenos

Aires meeting is to seek minimal changes that would not require the United States to make any new commitments.

Further, Brazil and the EU want to pursue the unresolved issues in the Doha Development Agenda on agriculture in the post-Buenos Aires work programme.

Brazil, which has turned a blind eye to the revised 2008 draft agriculture modalities that it had previously championed since 2009, is also eager to cap/reduce the *de minimis* support that is availed of by China, India and many other developing countries.

Some members of the Cairns Group – Australia, New Zealand, Canada and Paraguay – have called for "fixed caps" to meaningfully constrain future spending limits. They argued that floating limits, based on a percentage of the value of production (currently growing at over 10% on average for major members), as proposed by the EU and Brazil, would fail to address any meaningful changes.

In their proposal, the four members of the Cairns Group argued that "Introducing fixed caps on trade-distorting domestic support, expressed as numerical/monetary values, would provide global markets, exporters and Members with transparency and certainty on Members' domestic support limits."

Further, the "fixed caps would support the reform process without increasing the transparency burden on Members, as they do not entail any additional notifications."

In short, the proponents – the EU and Brazil along with their partners, the Cairns Group, and even the G10 members – are seeking reforms in such a way that their current programmes remain intact. They are demanding cosmetic reforms while targeting the *de minimis* programmes in China, India and other developing countries. These proposals will also ensure that the farm programmes in the US based on Aggregate Measurement of Support (AMS) are left almost intact.

Joint proposal

It is against this backdrop that China and India jointly issued their proposal on "Elimination of AMS to reduce distortions in global agricultural trade" on 18 July.

The joint proposal says emphatically that the AMS is "the most trade distorting element in global trade in agriculture."

In the previous Uruguay Round negotiations, "AMS entitlements were made available in the Agreement on Agriculture to developed Members and some developing Members", said China and India. "Developed Members have more than 90% of global AMS entitlements amounting to nearly US$160 bn."

Consequently, developed Members – the US, the EU, Japan, Canada, Norway and Switzerland, among others – "have access to huge amount of AMS beyond their *de minimis*", the joint proposal pointed out. "In contrast most developing Members have access only to *de minimis* resulting in a major asymmetry in the rules on agricultural trade."

Further, "most of the developing Members cannot provide product-specific Amber Box support exceeding 10% of the value of production of the agricultural product concerned," China and India maintained.

Besides, "developed Members and some developing Members are not constrained by the 10% limit" as theoretically speaking, the product-specific support on any product can be as high as the AMS limit, they pointed out.

In short, the current Uruguay Round AMS commitments provide "significant flexibilities to these Members to provide support to their agriculture, thereby distorting production and trade", China and India argued.

The flexibilities availed of by the developed countries include:

(i) providing significantly high amounts of subsidies compared with the value of production of the products concerned;

(ii) concentrating the subsidies in a few products; and

(iii) shifting the products in which the subsidies are concentrated.

Product-specific support

China and India said that, "based on an analysis of Domestic Support notifications of a few WTO Members, it is evident that in many products, the product-specific support is an extremely high proportion of the value of production of the product concerned."

"In certain instances it even exceeded the value of production of the product concerned", and "it is evident that not only are the farmers getting subsidies in excess of their value of production, in certain cases the subsidies are twice the value of production", China and India stated.

They pointed out that "another distortion arises from the fact that Members with AMS limits have the flexibility to concentrate the subsidies in just a few products."

The joint proposal showed how the US, the EU and Canada managed to provide product-specific subsidies and concentrate them for specific products since 1995.

In the US, for example, "in respect of 30 products, the product-specific support was 10%, or more, of the value of production of the concerned product in at least one year during the period 1995-2014", the joint proposal said.

Some of the products with subsidies exceeding 50% of the value of production in the US include: dry peas (57%); rice (82%); canola (61%); flaxseed (69%); sunflower (65%); sugar (66%); cotton (74%); mohair (141%); and wool (215%).

Besides, mohair (11 years), wool (12 years), dairy (15 years) and sugar (20 years) are products that have consistently benefited from a very high level of subsidies as a percentage of value of production in the US, said China and India.

"In respect of mohair and wool in some years the product-support exceeded even the value of production" in the US.

More disturbingly, "in seven out of 20 years more than 50% of the total product-specific support was concentrated in just one product – dairy" – in the US.

Further, "in certain years more than 90% of the total product-specific support was concentrated in just two products – dairy and sugar" – in the US, the two developing countries argued.

As regards the EU, which is now spearheading the small group of countries with Brazil, the continued product-specific subsidies for 43 products were "10%, or more, of the value of production of the concerned product in at least one year during the period 2000-2013".

In the EU, some of the products with subsidies exceeding 50% of the value of production include butter (71%); skimmed milk powder (67%); apples (68%); courgettes (51%); cucumber (86%); lemon (60%); pear for processing (82%); tinned pineapple (108%); tomatoes for processing (61%); rice (66%); olive oil (76%); white sugar (120%); tobacco (155%); and silkworms (167%).

Further, "barley (10 years), common wheat (9 years) and tobacco (9 years) are

products that have consistently benefited from very high level of subsidies as a percentage of value of production" in the EU.

Also, despite losing a trade dispute to Brazil on sugar, the EU continues to subsidize white sugar along with tobacco, cotton and silkworms, and in some years the product support exceeded even the value of production.

For the EU, which is also known for its subsidized butter mountains, the value of production for butter was not provided in its domestic support notifications for recent years. "There is considerable concentration of product-specific support, in the range 38%-40%, in butter during 2010-2013," China and India maintained.

For the EU, during 2010-13, the total product-specific support in the range of 64-68% was accounted for by just two products – butter and common wheat.

Canada, which is also a major farm subsidizer, has provided product-specific support for seven products to the tune of 10% of the value of production or more.

Canada's subsidies are concentrated during 1995-2014 for milk (14 years), sheep meat (nine years) and corn (five years).

In eight years during the period 1995-2013, Canada provided more than 50% of the total product-specific support to just one product – milk. In 1997 it was as high as 73%.

Built-in imbalances

China and India said "it is clear that the imbalance in the existing AoA where only some Members have access to bound AMS allows them much more policy space."

"On the other hand, most developing Members are strictly limited by their *de minimis*," the two developing countries pointed out. "Any overall capping or reduction in their *de minimis* will further reduce their policy space."

China and India issued a clarion call that "in order to achieve the long outstanding reforms in agriculture subsidies the AMS entitlements of developed Members must be eliminated as a pre-requisite for consideration of other reforms in domestic support negotiations."

"Only in this way will it help reduce some of the inequities built into the WTO rules in favour of the developed Members," the two countries maintained.

In short, the battle lines are drawn for the Buenos Aires meeting between China and India on one side, and major industrialized countries and their new-found partners in the developing world on the other.

The meeting offers a historic opportunity to all developing and poorest countries to wage a united battle to ensure that the most trade-distorting AMS is eliminated before any other reform in global farm trade, said a trade envoy who asked not to be quoted. *(SUNS8523)* ❐

South nations insist on reference to DWP in fisheries accord at MC11

The WTO negotiations on regulating fisheries subsidies continue to be dogged by major differences among member states, including over whether to refer to the Doha Work Programme in the outcome text.

by D. Ravi Kanth

GENEVA: A large majority of developing and poorest countries have insisted that any outcome/agreement for prohibiting certain categories of fisheries subsidies must refer explicitly in the preamble to the mandate provided in the Doha Work Programme (DWP) of 2001, trade negotiators told the *South-North Development Monitor (SUNS)*.

But the industrialized countries along with their allies – Argentina, Peru, Colombia and Uruguay – seem determined to erase "Doha" from the proposed fisheries subsidies agreement as well as the Buenos Aires ministerial declaration, according to negotiators who asked not to be quoted.

During two days of intense discussions that ended on 12 September on a matrix of proposals issued by Ambassador Wayne McCook of Jamaica, the chair of the Doha fisheries negotiations, members remained sharply divided on issues such as the preamble, the interpretation of "illegal, unreported and unregulated (IUU) fishing", what would constitute fishing/fishing activity, fishing vessel, operator, overfished stocks, and subsistence/artisanal/small-scale fishing.

The matrix, which has compiled all the proposals from members, had been issued on 28 July to facilitate the discussions. The chair had emphasized in his introduction to the matrix that "it is not a chair text" and that "it is a compilation, topic by topic, of the seven textual proposals now on the table."

The seven textual proposals in the matrix were submitted by: New Zealand, Iceland and Pakistan; the European Union; Indonesia; the Africa, Caribbean and Pacific (ACP) Group; Argentina, Colombia, Costa Rica, Panama, Peru and Uruguay; Norway; and the group of least-developed countries (LDCs).

Proposed preamble

On the proposed language in the preamble, the proposals tabled by the EU and the six Latin American countries did not even mention the DWP. Instead, the two proposals chose to acknowledge Target 14.6 of the United Nations Sustainable Development Goals.

The EU proposal, for example, stated in the preamble: "Acknowledging the commitments established under the 2030 Agenda for Sustainable Development and notably UN Sustainable Development Goal 14 on the conservation and sustainable use of oceans, seas and marine resources for sustainable development,

"Acknowledging UN Sustainable Development Goal 14 target 6 which sets out that the signatories of the 2030 Agenda for Sustainable Development should by 2020 prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies,

"Acknowledging UN Sustainable Development Goal 14 target 4 which sets out that the signatories of the 2030 Agenda for Sustainable Development should by 2020 effectively regulate harvesting and end overfishing, illegal, unreported and unregulated fishing and destructive fishing practices and implement science-based management plans, in order to restore fish stocks in the shortest time feasible, at least to levels that can produce maximum sustainable yield as determined by their biological characteristics,

"Recognizing that appropriate and effective special and differential treatment for developing counties should be

an integral part of the World Trade Organization's fisheries subsidies negotiation,

"Recognizing that overcapacity contribution to overfishing constitutes a serious threat to the conservation and sustainable exploitation of living marine resources,

"Recognizing that the share of overfished stocks increased from 10% in 1974 to over 31% in 2013 and that this share is to be decreased,"

The six Latin American countries also made no mention of Doha in their proposed preamble to the agreement. They proposed: "Considering a growing consensus within the international community has been emerging on the need to act to prevent the harmful impacts of certain fisheries subsidies on sustainability of marine resources. That understanding was reflected in Paragraph 173 of the outcome document of the United Nations Conference on Sustainable Development, 'The future we want' and in the recent multilateral mandate of the 2030 Agenda for Sustainable Development of the United Nations, in which Heads of State and Government agreed on the Sustainable Development Goals (SDGs) 14.6;

"Recognizing the urgent need to eliminate illegal, unreported and unregulated fishing and prohibit certain forms of subsidies that contribute to overfishing and overcapacity;

"Acknowledging that appropriate and effective special and differential treatment for developing and least-developed country Members should be an integral part of the World Trade Organization fisheries subsidies negotiation;

"Recalling that the Food and Agricultural Organization (FAO) has developed relevant international plans of actions to address Illegal, Unreported and Unregulated (IUU) fishing, and overcapacity, as well as technical guidelines for responsible fisheries;

"Fulfilling the fisheries subsidies' goals will be the most relevant WTO contribution to trade and environment, representing at the same time an important contribution to food security and development;

"agree to establish effective disciplines on fisheries subsidies as follows:"

In sharp opposition, the ACP Group said in their proposed text: "Recalling the mandate contained in the 2001 Doha Declaration, where Ministers agreed to clarify and improve WTO rules that apply to fisheries subsidies,

"Acknowledging the importance of the sector to development priorities, poverty reduction, livelihood, sustainable development of fisheries capacity throughout the value chain, and food security concerns of developing countries,

"Reaffirming our commitment under the 2030 Development Agenda to prohibit, by 2020, certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the WTO fisheries subsidies negotiation."

During the meeting, several members – India, Ecuador, Guatemala and the Philippines, for example – said that the preamble must refer to the DWP and the WTO's Hong Kong Ministerial Declaration of 2005 as well as the UN Sustainable Development Goal 14.6.

Members also sharply differed during the meeting on the definitional issues pertaining to what would constitute IUU subsidies, including the issues of territorial jurisdiction, and other provisions, negotiators said.

Ambiguous

The US, which had all along taken a backseat during the negotiations, suddenly sprang up like Rip Van Winkle to issue an ambiguous message about the outcome it wants to see at Buenos Aires, said an African negotiator who asked not to be quoted.

The US remains fiercely opposed to any mention of Doha either in the fisheries subsidies agreement or in the Buenos Aires ministerial declaration, the negotiator said.

In response to overwhelming demand for sourcing the fisheries subsidies agreement to the DWP, the US asked members not to let potential stumbling blocks in the preamble get in the way of discussions on disciplines, said a trade negotiator who asked not to be quoted.

While remaining skeptical about a substantive agreement on fisheries subsidies at the Buenos Aires meeting, the US said members must aim for an agreement on transparency notifications.

The US said it remained open to members' efforts for an agreement while raising concerns on the language on subsidies for disaster relief and territorial jurisdiction. The US also raised concerns on definitional issues concerning small-scale and artisanal fishing, according to another negotiator.

In sharp contrast, China, which had all along demanded a balanced outcome in the Doha rules negotiations covering fisheries subsidies and improvements in transparency and due process in anti-dumping and countervailing measures, expressed doubt as to whether any substantive agreement on fisheries subsidies is possible without a text.

China said that it welcomed text while cautioning that it would not be possible to stitch one during the next three months (before the Buenos Aires conference).

China suggested that the proponents had the responsibility for generating the text but the issue was who was going to table a text at this juncture, said another negotiator who asked not to be quoted.

Privately, the chair has conveyed to some members that he is not going to table any text on his own.

He said members must finalize the draft text. "We should make every hour count and keep our eyes forward, that way we could get to a text that looks like a chair's text but properly owned by members," McCook said. "That is the expectation."

He urged members to accelerate discussions, saying "we need your inputs at this stage." "There is less than three months to the completion of preparation for MC11 ... Time is going to be at a premium."

Despite these reservations and differences, the proponents – New Zealand, the EU, Peru, Argentina and the ACP Group, among others – pressed for a substantive outcome for prohibiting subsidies for IUU fishing at the Buenos Aires meeting in December.

Korea and Japan suggested that the issues set out in the matrix are linked, such as special and differential treatment and assessments for fishing.

Members have a long, long way to go through all the proposals in the matrix and the next round of meetings towards the end of September will decide whether a draft text is possible by the time trade ministers from select countries gather for a so-called "mini-ministerial" meeting in Marrakesh on 9 October, said a negotiator from South America.

In crux, the developing countries have one last chance for ensuring the survival of the DWP, and if they fail to mention "Doha" in the face of opposition from the US and the EU, then Doha will be buried once and for all at Buenos Aires, said negotiators who asked not to be quoted. *(SUNS8531)* ❒

Quantitative easing for wealth redistribution

The monetary policy of quantitative easing resorted to following the Great Recession has not only failed to revive economic growth, it is also responsible for transferring wealth in favour of the rich.

by Jomo Kwame Sundaram

Following the 2007-08 global financial crisis and the Great Recession in its wake, the "new normal" in monetary policy has been abnormal.

At the heart of the unconventional monetary policies adopted have been "asset purchase" or "quantitative easing" (QE) programmes.

Ostensibly needed for economic revival, QE has redistributed wealth – regressively, in favour of the rich.

As its failure to revive most economies becomes apparent, and opposition to growing inequality rises, QE may soon end, judging by recent announcements of some major central banks.

Already, the US Federal Reserve and the Bank of England have been phasing out purchases of financial assets, while the European Central Bank (ECB) is publicly considering how quickly to do so from December.

Meanwhile, these monetary authorities are considering raising interest rates again.

Evaluated by its own declared objectives, QE has been a failure. *Forbes* magazine, the self-avowed "capitalist tool", has acknowledged that QE has "largely failed in reviving economic growth".

By "injecting" money into the economy, QE was supposed to induce banks to lend more, thus boosting investment and growth. But in fact, overall bank lending fell after QE was introduced in the UK, with lending to small and medium-sized enterprises (SMEs) – responsible for most employment – falling sharply.

Bank failure to finance productive investments was not because corporations were short of cash as they have considerable reserves. Instead, the problem is due to under-consumption or overproduction, exacerbated by protracted stagnation and worsening inequality. After all, producing more when demand is soft or shrinking only leads to excess supply or gluts.

QE's regressive wealth distribution

But QE has transferred wealth and income to the rich in the guise of reviving the world economy. New money created by QE was not invested in new productive activities, but instead mainly flowed into stock markets and real estate, pushing up share and property prices, without generating jobs or prosperity.

QE has enriched asset owners, increasing the wealth of the rich, while not generating real wealth. By effectively devaluing currency, QE has diminished money's buying power, thus reducing real incomes.

However, first-time or new asset purchasers lose, having to spend more to buy more expensive assets such as shares or real property. While increased asset prices have to be paid by purchasers, the additional cost to existing asset owners is partially compensated for by higher prices received for assets sold.

Thus, the claim that QE would encourage investment as well as boost growth and employment has disguised the massive redistribution or wealth transfer to the rich.

QE, especially in the US and the UK, has seen real wages fall as profits rose. While output may have recovered, real wages have been generally lower.

QE has had similar effects in the Global South, enriching asset owners at the expense of the "asset-poor", while making their economies more vulnerable.

QE also caused housing, stock market and commodity price bubbles as speculators rushed to buy up such assets.

Until petrol prices fell in late 2014, oil-exporting countries enjoyed cash windfalls, at the expense of oil-importing countries, sometimes with devastating consequences, even if only temporary.

QE triggered huge capital flows into the developing world. Around 40% of the US Fed's first QE credit expansion and a third from QE2 went abroad, mostly to "emerging markets". Much of this went into buying existing assets, rather than into productive new investments. And if their currencies strengthened, their exports were undermined.

On the other hand, QE also exacerbated competitive currency devaluations. By reducing the value of their own currencies, "reserve currency" monetary authorities effectively caused other currencies to appreciate, damaging their exports and trade balances.

Unlike productive long-term investments, "hot money" inflows of speculative capital worsen currency volatility. Rising interest rates in the West are likely to trigger a mass exodus of capital from emerging markets, potentially triggering currency collapses in emerging markets again, as in mid-1997.

With various recent developments conspiring to reverse the last several years of unconventional monetary policies in the North, emerging markets and other developing economies are generally poorly prepared for the forthcoming change in circumstances.

While policy options in different scenarios are already being publicly considered in the Western reserve currency economies, an ostrich-like approach of not discussing and preparing for such changes is much more widespread in other economies, with potentially catastrophic consequences. *(IPS)* ❐

Jomo Kwame Sundaram, a former economics professor, was United Nations Assistant Secretary-General for Economic Development, and received the Wassily Leontief Prize for Advancing the Frontiers of Economic Thought in 2007.

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In the quest to meet the SDGs, there's a danger that some may be left behind

Tom Moultrie **points to gaps in efforts to realize the Sustainable Development Goals that may undermine equitable implementation of this global agenda.**

The United Nations' Sustainable Development Goals (SDGs) that countries have committed themselves to striving to reach by 2030 are a watershed in the global development agenda.

Vast resources will be allocated internationally and at all levels of government to ensure that the effects of the 17 goals are maximized. These range from ending poverty and hunger to mitigating the effects of climate change.

The SDG agenda and the efforts that will be expended to meet these goals must be welcomed. But the global development community should not be blinded to aspects of the agenda that appear to be neglected. These aspects may hamper efforts to achieve those goals.

The first relates to a core guiding principle of the SDG framework that "no one should be left behind". The second relates to the risk that in the rush to measure, monitor and track the progress towards meeting the SDGs, countries in the Global South may find themselves disempowered.

Unless steps are taken to address these two gaps, efforts and resources may be misdirected, and the benefits of the 2030 development agenda may not be shared equitably.

Leaving no one behind

This mantra in the SDG framework shows the clear intention that the fruits of achieving the SDGs should be shared equitably. Meeting the goals means meeting them for everyone, not just on average. Expressed like that, it is certainly a laudable ambition.

Certain dimensions of "no one left behind" are laid out in the framework. These include income, sex, age, race, ethnicity, migratory status, disability and geographic location, in accordance with the UN's Fundamental Principles of Official Statistics. The principles lay out the framework for the collection, analysis and dissemination of official statistics.

But this masks a conceptual problem. As theorists of official statistics have noted, the classifications and categories employed in official statistics are themselves "named into existence". The act of not classifying or categorizing certain groups can render them invisible in official statistics.

The use of simple binaries, such as sex for example, does not provide the space for transgender or intersex communities to be counted. Equally, not all minority populations – particularly those that fear, or experience, state-based discrimination or harassment – will want to be able to be identified in bureaucratic data. The question of who is to be counted so as to not be left behind is, fundamentally, political.

Disempowering the Global South

The concept of leaving no one behind has further, more distal ramifications in the global development agenda.

It is readily acknowledged that the monitoring, measuring and tracking of the more than 200 indicators associated with the SDGs will require data of a far finer granularity and precision than is currently routinely collected in the Global South. Doing so will pose formidable challenges to national statistical systems in the Global South. These will be felt by country particularly around budgets and finances and building and sustaining the required capacity.

There are two ancillary risks associated with these challenges.

First, the centre of gravity to design interventions and strategies to meet the challenge lies in the Global North. Internationally leading universities, corporations and think-tanks lead the way. These organizations have larger budgets and greater capacity than their counterparts in the Global South.

With this comes the risk of solutions being designed in the North and piloted and implemented on a one-size-fits-all basis in the South. Local specificities, dynamics and politics may be ignored. And the consequence is that methods and solutions shown to have some efficacy in one setting may be assumed to be as efficacious elsewhere.

Equally, without solid buy-in from local partners, these interventions may come to be seen as being heavy-handed and removed from local realities. This was the case with the Structural Adjustment Programmes pursued by the World Bank in the 1980s.

The second risk, in the absence (or failure) of sustained efforts to rebuild and recapacitate the national statistical systems of the Global South, is that the data for measuring, monitoring and tracking the progress towards the SDGs will increasingly be drawn from complex statistical and econometric models built and designed in the Global North.

Already, the Institute for Health Metrics and Evaluation (IHME) produces model-based estimates of child mortality for all countries in the world. New versions of the model are capable of producing estimates at a sub-national level. Similarly, the spectrum suite of demographic and epidemiological projection models is often used in the Global South to produce estimates of population, HIV prevalence or numbers of people in a country requiring antiretroviral therapy.

While there is undoubtedly a need for such models, it would be a grave error to conflate the model results with the reality of what is happening. No model is perfect, and the results should – at best – be regarded as providing an approximation to the measure in the absence of empirically observed and derived estimates.

But the risks extend beyond that of model-based error. Models of this kind are frequently "black boxes" – with their inner working fully understood only by a very few. One should ask how many health researchers, epidemiologists, statisticians and demographers there are in countries in the Global South who are capable of interrogating and questioning the results of such models based on their own observations and experience.

Where this knowledge is either not drawn upon or absent, the risk is that countries in the Global South may become increasingly dependent on the results of those models to provide the data required for monitoring progress towards meeting the SDGs.

Beyond a catchphrase

Leaving no one behind is a catchphrase that ensures that all people benefit from the global development agenda. But the power to name those categories of people that should be monitored to ensure they are not left behind is neither neutral nor necessarily benign. States should be engaging positively with domestic institutions and civil society organizations to determine for themselves the delineations of those at risk of being left behind.

At the same time, states in the Global South should also guard against interventions for data collection and management, or model-based substitutes for those data, that may work to disempower local data communities. If not, these communities as a whole may find themselves "left behind". ❐

Tom Moultrie is Professor of Demography at the University of Cape Town in South Africa. The above – reproduced from The Conversation (theconversation.com) under a Creative Commons licence – is an edited version of a column written for the UN SDSN Thematic Research Network on Data and Statistics (UN SDSN-TReNDS).

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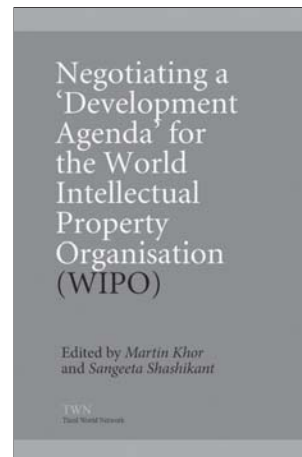
Negotiating a 'Development Agenda' for the World Intellectual Property Organisation (WIPO)

Edited by Martin Khor and Sangeeta Shashikant



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The World Intellectual Property Organisation (WIPO), a UN agency that deals with issues of intellectual property rights, has been undergoing an interesting change in recent years. In 2004, many developing countries initiated a process of reform to make WIPO development-oriented, which they consider to be important for a UN agency. The initiative, which is known as the 'Development Agenda', has since snowballed into a movement to review the role of intellectual property rights in the process of development.

According to developing countries, NGOs and experts, WIPO has been too much oriented towards promoting IP at the expense of the wider development concerns and public interest. Whether the Development Agenda movement succeeds in reorienting WIPO remains to be seen especially since this initiative has been resisted by developed countries, that want to cling on to the status quo.

On the 'Development Agenda' initiative, this book is an eyewitnesses account of the twists and turns of the Development Agenda movement. It is indispensable for those who want to understand the origins, rationale and history of the Development Agenda at WIPO.

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The attack on Dodd-Frank

Rick Rowden **lays out how Trump, Wall Street and the Republicans in Congress are committed to dismantling financial regulation in the US.**

While much of the Trump administration's political agenda has met with disarray, confusion and failure, the one area where the Trump team has managed to work effectively with the US Congress and Wall Street is financial sector reform. Specifically, this means a full-frontal assault on the so-called Dodd-Frank financial reform legislation passed in the wake of the 2008 global financial crisis.

Drafted by co-authors US Senator Christopher Dodd and US Representative Barney Frank, the Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law by President Barack Obama in 2010. Ostensibly, the new rules were to regulate the US financial sector better and limit the risky behaviour on Wall Street that was widely perceived as a trigger of the 2008 crisis.

Considered the most far-reaching overhaul of the US financial sector since the Great Depression, the reforms were intended to strengthen the country's financial system, prevent any further financial crises and attendant bank bailouts by taxpayers, and protect consumers from the kinds of predatory lending and investment practices that had made the American economy so unstable.

While many of Dodd-Frank's progressive critics say the reforms did not go far enough, its conservative critics complain it has gone too far. And now their guy is in power.

President Trump had made a campaign promise to repeal the Dodd-Frank reforms, and appears intent on fulfilling it. His Treasury Department under Steven Mnuchin has put forward an ambitious set of proposals to repeal Dodd-Frank and push for even further deregulation of the financial sector. Trump will also rely on his key appointments to head major US financial regulatory agencies such as the Federal Reserve's regulatory wing, the Office of the Comptroller of the Currency (OCC), and the Securities and Exchange Commission (SEC).

In Congress, Wall Street lobbyists and congressional Republicans are promoting new legislation called the Financial Choice Act that will repeal most of Dodd-Frank or at least seriously water it down. The bill already passed in the US House of Representatives in June, and the legislation now awaits action in the Senate.

The Dodd-Frank reforms

The 2008 global financial crisis unfolded because of a badly regulated financial system that allowed millions of junk mortgages to be issued which were never expected to be repaid. These bad mortgages were packaged inside mortgage-backed securities and more complex instruments and then passed on to trusting buyers all over the world. On top of such investments, there were companies like AIG issuing hundreds of billions of dollars in credit default swaps – insurance on the investments – that they knew really had no ability to pay when the underlying mortgages went unpaid. Then other companies, with insider knowledge of the ticking time-bombs hidden within these investments, actually shorted the bad mortgages (bet against their ever being repaid). Arguably, this is the type of regulatory world that President Trump, the Republicans and Wall Street lobbyists would like to bring the US back to as they seek to repeal the Dodd-Frank reforms.

The chief reforms under Dodd-Frank were the introductions of:

- increased capital requirements;
- a bar on excessive risk-taking (the Volcker Rule);
- the Orderly Liquidation Authority;
- stress tests;
- the Consumer Financial Protection Bureau.

Increased capital requirements

The Dodd-Frank reforms sought to address the problem of financial fragility by raising the capital requirements and liquidity ratios at banks – this is money that cannot be lent out and must be kept on hand as emergency reserves in a financial crisis. The biggest banks which are designated as systemically important financial institutions (Sifis), or those considered to be "too big to fail", trigger stricter oversight and greater capital requirements. In the US, the government has designated only two institutions as too big to fail – American International Group (AIG) and Prudential Insurance. The idea is that, in theory, such reserves could be used to prevent governments from having to use taxpayers' money to bail out troubled banks in a crisis.

Dodd-Frank requires banks doing basic banking activities to keep a minimum risk-based capital ratio of 8% and a minimum leverage ratio of 4%. But banks engaged in more complex activities like securities trading need a minimum risk-based capital ratio of 10% and a minimum leverage ratio of 5%. But the financial services industry claims there is real confusion about what is considered as capital these days. The ambiguity is especially strong with many new hybrid instruments in use. For example, it is not clear whether a preferred stock, which is a kind of hybrid between a stock and a bond, is counted as part of the bank's capital or not.

The proposed Financial Choice Act to repeal Dodd-Frank is seeking to remove these higher capital requirements for many banks, while keeping only a 10% leverage ratio on some banks.

The Volcker Rule

The Dodd-Frank reforms created the Volcker Rule, named after former Federal Reserve chairman Paul Volcker, which was intended to rein in excessive risk-taking. It bars banks from trading unless on their customers' behalf and restricts their investments in hedge and private-equity funds.

But bankers and some regulators have argued that in practice the rule hasn't worked because it is difficult to draw a

clear line between a speculative trade and a transaction legitimately intended to serve clients. The industry claims that the rule effectively hurts the profitability of financial institutions. The Republicans' Financial Choice Act bill would repeal the Volcker Rule completely.

Orderly Liquidation Authority

Dodd-Frank established the Orderly Liquidation Authority (OLA) to oversee the development of "living wills" by all of the major banks. These would enable firms to show regulators that they have sufficient capital reserves and adequate plans in place to carry out a resolution of debts and ensure an orderly unwinding of their investments during a financial crisis.

During the financial crisis in 2008, regulators had only two stark options for dealing with Lehman Brothers when it was facing collapse – either bankruptcy or government bailout. The OLA gives regulators a new third option for managing a slow and orderly unwinding for banks if they are hit with a crisis.

However, over the past few years, many of the biggest companies got failing grades on their tests from the Federal Deposit Insurance Corporation (FDIC), and many have failed to show they could unwind in a crisis without relying again on government intervention. There are serious doubts as to whether living wills will ever work in practice, especially given the fact that they are based on estimates of the value of assets and liabilities in normal times when those valuations may well turn out to be incorrect in times of financial crisis.

Because Republican critics inaccurately view the OLA as a means for providing "more government bailouts", the Financial Choice Act seeks to eliminate the OLA.

Stress tests

Dodd-Frank established the requirement that the biggest banks needed to pass computer-simulated stress tests once a year. When the tests began in 2011, many institutions failed them. However, in the latest round in 2017, they all basically passed, although Capital One was given a conditional clearance. The good grades mean all the big banks have been judged to have sufficient capital reserves and equity to soak up losses – and a strong enough understanding of the risks they face – to keep trading even through the worst downturn imaginable. The positive test scores also provide fodder for Trump and Wall Street in their quest to get the test requirements watered down.

Consumer Financial Protection Bureau

Dodd-Frank established the Consumer Financial Protection Bureau (CFPB), which is widely perceived among consumer advocates as an important improvement in the regulatory oversight of the financial services industry. The CFPB has secured $10 billion in relief for 17 million consumers victimized by everything from predatory lending to mortgage fraud since beginning operations in 2011.

Most recently, the CFPB has proposed a new set of reforms that will make it easier for consumers to sue the large banks for any bad behaviour in the future. At issue is the question of the prevalence of "mandatory arbitration clauses" buried deep in the fine print of millions of contracts with consumers, covering products ranging from credit cards to home loans. The clauses have been used in recent years to block class-action lawsuits and instead require wronged customers to go through mediated arbitration as their only recourse. The new CFPB proposal includes rules to prevent financial institutions from requiring customers to give up the right to band together and sue over alleged wrongdoing. All new contracts will be required to explicitly state that any arbitration clauses cannot be used to block group lawsuits. Not surprisingly, the banks hate the proposal and, indeed, the whole CFPB.

Progressive criticisms of Dodd-Frank

Many progressive critics believe that Dodd-Frank was not bold enough, and that today's financial system is still far too vulnerable to the possibility of future market crashes. Many wanted much stronger reforms in the wake of the 2008 crisis, such as requiring the "too big to fail" banks to be broken apart. But Dodd-Frank did not seek to do this; instead, several of the largest megabanks such as Bank of America, Citigroup, Goldman Sachs, JPMorgan Chase and Wells Fargo have actually grown larger today than they were before the 2008 crisis, as measured by their share of financial assets.

The debate about being too big to fail was shifted from one about size – when is a bank too big – to one about scope – how broad a range of various activities banks should engage in and with what degree of regulation. But progressive critics of Dodd-Frank claimed the focus on greater scope was a misnomer, while the reforms neglected to address the problem of size. Simon Johnson of the Massachusetts Institute of Technology (MIT) has argued that banks' size should be limited to 2% of gross domestic product, yet calling for such was too bold for Dodd-Frank. He has also suggested that any bank that is too big to fail is probably "too big to exist."

Many progressive critics of Dodd-Frank also wanted the post-crisis reforms to reinstate earlier rules. An example is the Glass-Steagall legislation, which for 50 years had worked effectively in firmly separating investment and commercial banking activities to prohibit banks from using customers' deposits to engage in risky proprietary investments or hedge-fund-type activity. Many trace the increase in the banking sector's risky behaviour to the 1990s, when the Glass-Steagall rule was repealed under President Bill Clinton. Yet, critics were dismayed that the Dodd-Frank legislation failed to reinstate the Glass-Steagall law or any type of firm separation of investment and commercial banking.

Others noted that the Dodd-Frank reforms did little to undo the perverse incentives of modern executive compensation on Wall Street that contributed to the recklessness in finance that prevailed in 2008. For example, many Wall Street firms are continuing to finance their businesses primarily with debt rather than equity. Many are still using credit default swaps – basically insurance on securities – which in 2008 were considered directly responsible for turning a bursting housing market bubble into a full-blown global financial crisis.

According to Bill Black, a professor of economics and law at the University of Missouri, the Dodd-Frank reforms were designed to fail because the political leadership refused to

meaningfully address the dysfunctional conflicts of interest afflicting the US financial sector. For example, chief executives create perverse compensation systems that put them at odds with the stability of their firms, but they also create conflicts of interest through combining investment and commercial banking. Then, as they grow into "systemically dangerous institutions" (too big to fail), they create more conflicts of interest with politicians dependent on their contributions and weak regulators treating them as untouchable.

It was bad enough that Wall Street chief executives were able to rig structures to institutionalize such perverse incentives. It's worse when the political leadership – President Obama and Congress – refused to change those structures even after such a major economic catastrophe, and then failed politically to engage in a rigorous, honest investigation of those structural defects, let alone take any steps to fix them. According to Black: "Refusing to change those structures after a catastrophe was, of course, significantly insane … Astonishingly, Obama and Congress refused to fix any of these three primary conflicts of interest that drive our recurrent crises."

Conservative criticisms of Dodd-Frank

Those leading the attack on Dodd-Frank have made many arguments claiming that the reforms have been harmful to the US economy by making it more difficult for businesses to get credit. However, there is much evidence to suggest otherwise, including:

- commercial and industrial (C&I) loans are now higher as a percentage of economic output than they've been since the 1980s;
- credit card and auto lending is at or near record highs; and
- mortgage loans outstanding are back close to their pre-crisis high.

Another argument by conservative critics is that the hundreds of new rules are too complicated and burdensome for small banks. But small banks are already exempted, so it's only the big banks which must comply. For smaller businesses, according to the Federal Reserve Board's data, banks made an average of more than $230 billion in new loans in the past three years, up from an average of just over $200 billion in the three years before the crash. Additionally, companies can easily raise money in the stock market and bond market, where very low interest rates prevail.

Conservative critics from Wall Street, such as Jamie Dimon, chief executive of America's biggest bank, JPMorgan Chase, claimed that Dodd-Frank requirements force banks to keep too much capital on hand and that the new high levels of reserves had solved the too-big-to-fail problem. But Neel Kashkari, President of the Federal Reserve Bank of Minneapolis, responded that Dimon's argument assumes that, in a crisis, after equity holders have been wiped out by losses at a bank, regulators will get bondholders to bear losses. "But we know that this seldom happens," Kashkari explained. "When bondholders at a bank are forced to take losses, bondholders at other banks take flight, at the very least they will not roll over the bonds on maturity. The failure of any bank would thus result in contagion."

Consequently, he argued, the only capital that really matters when it comes to absorbing losses at a bank in a crisis is equity capital. Yet the leverage ratios (the ratio of equity to assets) for banks set by the internationally agreed Basel III norms (at 3%) and at the top six US banks today (6.6%) are both far too low, suggesting there is not enough equity capital in the system at the moment if we hit a new financial crisis. What all this basically means is that the problem of too big to fail has not been resolved, and in a next crisis, taxpayers will still be expected to pay for the bailouts.

Everything will not be OK

To his credit, Stanley Fischer, the vice-chairman of the Federal Reserve's board of governors, cautioned that, 10 years after the crisis, "There are troubling signs of a drive to return to the status quo that preceded it." He called the political pressure in Washington to reverse the post-crisis drive for tougher regulation and to loosen constraints on banks "dangerous and extremely short-sighted".

In some ways, however, whatever ultimately happens with Dodd-Frank is not the main point. It is the political attack on Dodd-Frank which reflects a deeper malaise afflicting America today, one that has been building for several decades: its political inability to adequately regulate its financial sector.

On the face of it, today the US financial sector appears far more stable: the number of bank failures has declined dramatically, recently US financial stocks closed at the highest level in nearly 10 years, and the S&P 500 financial index was up to 419.54 – a level not seen since before the 2008 crisis. And all of the major banks passed their latest stress tests given by the Federal Reserve. So everything looks great, right?

However, in fact, Frank Partnoy, professor at the University of San Diego Law School, cautioned in the *Financial Times* that today in 2017, just like in 2006 and 2007, we are again seeing financiers buying up billions of dollars of risky loans and repackaging them into complex investments with multiple layers of debt. Credit rating agencies are classifying the top layers as "triple A". Institutional investors, including pension funds and charitable organizations, are rushing to buy these apparently risk-free yet high-yielding investments.

According to Partnoy, the unfortunate reality is that regulators have been flouting Dodd-Frank rules for years, thanks in particular to the green light of lax enforcement given by the SEC, which has basically been allowing the credit rating agencies to dodge the rules. While Dodd-Frank imposed liability on the agencies for making false ratings, the SEC exempted them. Likewise, when Congress barred the agencies from getting inside information about issuers they rate, the SEC permitted that, too.

Now, as a result, the shadow financial markets are buzzing. Only this time around the central culprit is likely to be the collateralized loan obligation (CLO). Like its earlier cousin, the collateralized debt obligation (CDO), a CLO bundles risky, low-grade loans into attractive packages and high credit ratings. Partnoy notes that if any of this sounds familiar, it should: "CLOs are just CDOs in new wrapping."

Many critics from across the political spectrum have noted that no one has gone to jail for the practices that led to the 2008 financial crash – a fact that has political salience. More recently, ProPublica reporter Jesse Eisinger made the case that since the turn of the century, changes in the political landscape,

the defence bar, the courts and, most importantly, the US Justice Department have undermined the ability and the resolve of America's top prosecutors to go after corporations or their executives.

According to Eisinger, "Democrats as well as Republicans cozied up to big business, outsourcing the Treasury Department to Wall Street and the Justice Department to corporate law firms. Even after the financial system collapsed, the Obama administration's priority was to bail out the megabanks." The use of petty fines and arbitrated settlements proliferated as the numbers of prison convictions decreased.

The attack on Dodd-Frank is a barometer of this sad state of affairs. A more comprehensive view of the deeper problem was presented by MIT's Johnson, who explained in a chilling 2009 post-crisis piece in *The Atlantic* called "The quiet coup" that the financial crash had laid bare many unpleasant truths about the US, with one of the most alarming being that "the finance industry has effectively captured our government – a state of affairs that more typically describes emerging markets" and is at the centre of many emerging-market crises.

The former International Monetary Fund (IMF) official added, "If the IMF's staff could speak freely about the US, it would tell us what it tells all countries in this situation: recovery will fail unless we break the financial oligarchy that is blocking essential reform. And if we are to prevent a true depression, we're running out of time." ❐

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