Third World ECONOMICS
Trends and Analysis

No. 702 1-15 July 2020 e-ISSN : 2716-5388

COVID-19 worsens bleak poverty scenario

The COVID-19 crisis will push 176 million more people into extreme poverty, exposing the deficiencies of existing social protection systems. This grim projection is highlighted by a UN rights expert in a report which also debunks "triumphalist" pre-pandemic claims that extreme poverty was nearing eradication.

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ECONOMICS
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THIRD WORLD ECONOMICS
is published fortnightly by the Third World Network, an independent non-profit international research and advocacy organization involved in issues relating to development, developing countries and North-South affairs.

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COVID-19 dashing hopes of ending poverty by 2030, says UN expert

Already misleadingly overestimated, progress against poverty will be further undermined by the COVID-19 pandemic, according to a UN rights expert.

by Kanaga Raja

GENEVA: The COVID-19 pandemic will push 176 million more people into extreme poverty and dash hopes of eradicating extreme poverty by 2030.

This is one of the main conclusions highlighted in a report presented by Olivier De Schutter, the new UN Special Rapporteur on extreme poverty and human rights, to the 44th regular session of the UN Human Rights Council on 7 July. The report was prepared by his predecessor Philip Alston.

According to the report, the impact of COVID-19 will be long-lasting, but much-needed structural responses have been sorely lacking.

According to the World Bank, the pandemic will erase all poverty alleviation progress over the past three years, and will push 176 million people into poverty at the $3.20 poverty line.

Far from being the "great leveller," COVID-19 is a pandemic of poverty, exposing the parlous state of social safety nets for those on lower incomes or in poverty around the world, said the report.

"Growth alone, without far more robust redistribution of wealth, would fail to effectively tackle poverty," said De Schutter. "Based on historic growth rates, it would take 200 years to eradicate poverty under a $5 a day line and would require a 173-fold increase in global GDP."

That is "an entirely unrealistic prospect, not least since it does not take into account the environmental degradation associated with the economic growth, or the impacts of climate change on poverty itself," he said.

"I welcome this report, which illustrates that poverty is not a matter only of low incomes," said De Schutter. "It's a matter of disempowerment, of institutional and social abuse, and of discrimination. It is the price we pay for societies that exclude people whose contributions are not recognized. Eradicating poverty means building inclusive societies that shift from a charity approach to a rights-based empowering approach."

According to the report, more than 250 million people are at risk of acute hunger due to COVID-19, and poor people and marginalized communities have been the hardest hit in almost every country, in terms of both vulnerability to the virus and its economic consequences.

Over-optimistic assessments of poverty reduction

The report criticizes what it says is the mainstream pre-pandemic "triumphalist narrative that extreme poverty is nearing eradication." "That claim is unjustified by the facts, generates inappropriate policy conclusions, and fosters complacency," it said.

The claim relies largely on the World Bank's measure of extreme poverty, which has been misappropriated for a purpose for which it was never intended, the report said. More accurate measures show only a slight decline in the number of people living in poverty over the past 30 years.

"The reality is that billions face few opportunities, countless indignities, unnecessary hunger, and preventable death, and remain too poor to enjoy basic human rights," said the report.

Huge progress has been made in improving the quality of life for billions of people over the past two centuries, but it does not follow that "extreme poverty is being eradicated."

According to the report, many world leaders, economists and pundits have enthusiastically promoted a self-congratulatory message, proclaiming progress against poverty to be "one of the greatest human achievements of our time," and characterizing "the decline [in poverty] ... to less than 10 per cent, [as] a huge achievement." Others have paid tribute to the role of economic growth and capitalism in lifting a billion people "out of dire poverty into something approaching a decent standard of living." But these determinedly over-optimistic assessments generate many questions.

Almost all of these celebratory accounts, the report noted, rely one way or another on the World Bank's international poverty line (IPL), under which the number in extreme poverty fell from 1.895 billion in 1990 to 736 million in 2015, and thus from about 36% to 10% of the world's population.

"The United Nations has ensured the IPL's status as the dominant benchmark by enshrining it as the main reference point in both the Millennium Development Goals and the SDGs [Sustainable Development Goals]. In addition, the Bank's financial and intellectual clout ensure that almost all of the most glowing accounts of progress use its IPL statistics."

Certainly, the line is a highly admirable initiative that has likely done more to raise awareness and foster collective intent than any other single effort. However, the picture it provides is far from complete and it is important to recognize its principal limitations, said the report. Many of these have been acknowledged by Bank officials, by a Bank-appointed expert group, and even by the economist responsible for developing the modern IPL.

"Yet the limitations nonetheless represent a strong indictment of the single-minded focus on this particular line and its use by many commentators – and the Bank – to underpin a misleading picture of progress against poverty."

The current line is derived from an average of national poverty lines adopted by some of the world's poorest countries, mostly in Sub-Saharan Africa. Unlike many national lines, it is not based on any direct assessment of the cost of essential needs.

It is an absolute line, constant in value, calculated and expressed using purchasing power parity (PPP) dollars, which are designed to adjust for the costs of goods in different countries in a way that market exchange rates do not (notwithstanding the many challenges to the validity of the PPPs), said the report.

The current line of $1.90 2011 PPP per day represents what that amount could buy in the United States in 2011. Expressed in local currencies for the most recent years available, the line translates to living on 7.49 yuan per day in China, 1.41 euros in Portugal, 22.49 pesos in Mexico, 50.83 rubles in Russia, 355.18 naira in Nigeria, 910.15 pesos in Chile, or 36.27 rupees in India.

"The IPL is of course well below the national poverty lines of most countries, and accordingly generates dramatically lower numbers in poverty," said the report.

"Whatever its merits, the IPL should not be treated as the pre-eminent basis on which to determine whether or not the world community is eradicating extreme poverty, let alone as the benchmark for SDG 1 on poverty," it argued.

It also said much of the progress reflected under the Bank's line is due not to any global trend but to exceptional developments in China, where the number of people below the IPL dropped from more than 750 million to 10 million between 1990 and 2015, accounting for a large proportion of the billion people "lifted" out of poverty during that period.

"Using a more defensible line generates a radically different understanding of progress against poverty."

According to the report, using more realistic measures, the extent of global poverty is vastly higher and the trends discouraging. Rather than one billion people lifted out of poverty and a global decline from 36% to 10%, many lines show only a modest decline in rate and a nearly stagnant headcount. The number living under a $5.50 line held almost steady between 1990 and 2015, declining from 3.5 billion to 3.4 billion, while the rate dropped from 67% to 46%.

While SDG 1 calls for a rate of zero under the IPL by 2030, the Bank does not foresee an end to poverty even under that line. Assuming that every country grows as it did between 2005 and 2015, the Bank projects a poverty rate of 6% in 2030. Under a $5.04 line, projections show 28% of the world, or 2.35 billion people, in poverty in 2030.

These projections will deteriorate immensely as COVID-19 continues to ravage economies and public health, said the report.

Despite vast resources, many high-income countries have failed to seriously reduce poverty rates under national measures, which are often in the double digits, and in some cases, poverty has risen alongside increasing homelessness, hunger and debt. Between 1984 and 2014, poverty rose in countries such as Australia, Ireland, New Zealand and the United Kingdom. One in seven children in OECD countries live in income poverty, and child poverty rates increased in almost two-thirds of those countries in recent years.

Impact of COVID-19

According to the report, the impact of COVID-19 will be long-lasting, but much-needed structural responses have been sorely lacking.

According to the World Bank, the pandemic will erase all poverty alleviation progress over the past three years, and will push 176 million people into poverty at the $3.20 poverty line.

"Rather than resolving to address the inadequacy of their public health and social protection systems in response to the pandemic, many governments have seen COVID-19 as a passing challenge to be endured, ignoring the indispensability of large-scale economic and social restructuring," said the report.

The public health community's mantra for coping with COVID-19 encapsulates the systemic neglect of those living in poverty. The pithy advice to "stay home, socially distance, wash hands, and see a doctor in case of fever" highlights the plight of the vast numbers who can do none of these things. "They have no home in which to shelter, no food stockpiles, live in crowded and unsanitary conditions, and have no access to clean water or affordable medical care," said the report.

Far from being the "great leveller," COVID-19 is a pandemic of poverty, exposing the parlous state of social safety nets for those on lower incomes or in poverty around the world, it added.

Poor people are more likely to be exposed to, and least likely to be protected from, the virus. They experience the impact of lockdowns, layoffs and closures far more dramatically. The majority of "essential workers" are poorly paid, badly protected and unsupported by emergency assistance. "In the understandable rush to re-open economies, they risk becoming sacrificial lambs," said the report.

It noted that in some of the world's richest nations, healthcare systems have proven grossly inadequate, and race, gender, religious and class discrimination have skewed access to housing, food, education and technology in ways that have yielded radically different outcomes. Gaping North-South disparities have been exposed. And many national and local governments, constrained by austerity policies, lack the will, resources and administrative capacities to step in effectively. "Meanwhile, multilateralism has been gravely wounded, and with a few exceptions, international solidarity has been conspicuously lacking."

If social protection floors had been in place, the hundreds of millions left without medical care, adequate food and housing, and basic security would have been spared some of the worst consequences. "Instead, endless pressures to promote fiscal consolidation, especially over the last decade, have pushed social protection systems closer towards nineteenth century models rather than late twentieth century aspirations."

When combined with the next generation of post-COVID-19 austerity policies, the dramatic transfer of economic and political power to the wealthy elites that has characterized the past 40 years will accelerate, at which point the extent and depth of global poverty will be even more politically unsustainable and explosive, the report argued.

The report further noted that the SDGs and the 2030 Agenda for Sustainable Development aim to provide a "shared blueprint for peace and prosperity." They were adopted in September 2015 with great fanfare and are the dominant framework through which poverty eradication efforts and development policy are structured at the global level. But five years later, it is time to acknowledge that their aspiration to provide a "supremely ambitious and transformational vision" is failing in key respects.

The report recognized that the SDG process has been a "game-changer" in important ways and been used to very good effect in many settings. "The goals have made a very significant contribution to promoting awareness, galvanizing support, and framing the broader debate around poverty reduction. They have been especially valuable in contexts in which they provide the only available entry point for discussions of contentious issues."

Nevertheless, the time has come for a re-evaluation in light of deeply disappointing results to date and a range of new challenges. "The dramatic up-tick in poverty from COVID-19 and the accompanying economic debacle should provide an impetus to revisit the 2030 Agenda."

The SDGs should not be abandoned, nor should the status quo be set in stone. The pressing challenge is to reflect on ways in which the overall package, including targets and indicators, can be reshaped and supplemented in order to achieve the key goals which otherwise look destined to fail. Business-as-usual should not be an option, said the report.

Ending poverty

According to the report, continued large-scale global poverty is incompatible with the human right to an adequate standard of living, and the right to life alongside the right to live in dignity.

"The failure to take the necessary steps to eliminate it is a political choice and one that leaves firmly in place discriminatory practices based on gender, status, race, and religion, designed to privilege certain groups over others."

The report said that in recalibrating the SDGs and launching a sustained campaign to really end poverty in all its forms, the following steps are crucial: reconceive the relationship between growth and poverty elimination; tackle inequality and embrace redistribution; move beyond the aid debate and promote tax justice; implement universal social protection; centre the role of government; embrace participatory governance; and adapt the international poverty measurement.

"In evaluating poverty eradication, the international community should stop hiding behind an international poverty line that uses a standard of miserable subsistence. The UN should have the courage of its convictions and acknowledge that the scale of global poverty is far more accurately reflected in its own indicators and reporting."

Extreme poverty is and must be understood as a violation of human rights. Protestations of inadequate resources are entirely unconvincing given the determined refusal of many governments to adopt just fiscal policies, end tax evasion and stop corruption.

"Poverty is a political choice and will be with us until its elimination is re-conceived as a matter of social justice," said the report.

"Only when the goal of realizing the human right to an adequate standard of living replaces the World Bank's miserable subsistence line will the international community be on track to eliminate extreme poverty," it concluded. *(SUNS9157)*

Third World ECONOMICS No. 702, 1-15 July 2020

Latin America and Caribbean to suffer worst recession in a century

Latin America and the Caribbean, now a COVID-19 hotspot, will also be gravely affected economically and socially, says a report by the UN Secretary-General, which calls for transformation of the region's development model as it recovers from the pandemic.

by Kanaga Raja

GENEVA: The COVID-19 pandemic will result in the worst recession in the Latin America and Caribbean region in a century, causing a 9.1% contraction in regional gross domestic product (GDP) in 2020.

This is one of the main conclusions highlighted by the UN Secretary-General in a Policy Brief on the impact of COVID-19 on Latin America and the Caribbean.

According to the Policy Brief, Latin America and the Caribbean has become a hotspot of the pandemic, exacerbated by weak social protection, fragmented health systems and profound inequalities.

The projected recession could push the number of poor up by 45 million (to a total of 230 million) and the number of extremely poor by 28 million (to 96 million in total), putting them at risk of under-nutrition.

In a video statement, UN Secretary-General Antonio Guterres said that as COVID-19 continues to spread throughout the world, Latin America and the Caribbean has become a hotspot. In a context of already gaping inequalities, high levels of informal labour and fragmented health services, the most vulnerable populations and individuals are once again being hit the hardest, he added.

"Women, who make up the majority of the workforce in economic sectors being most affected, now must also bear the brunt of additional caregiving."

Indigenous peoples and people of African descent, as well as migrants and refugees, are also suffering disproportionately as vulnerability multiplies, said Guterres.

"We must do everything possible to limit the spread of the virus and tackle the health effects of the pandemic. But we must also address the unprecedented social and economic impacts," he added.

"I have called for a rescue and recovery package equivalent to more than 10% of the global economy. Developed countries are doing it themselves with their own resources."

For Latin America and the Caribbean, the international community must provide liquidity, financial assistance and debt relief, said the Secretary-General.

Building back better requires transforming the development model of Latin America and the Caribbean, Guterres said. In a region where inequality has become untenable, it means developing comprehensive welfare systems that are accessible to all. "It means creating a fair taxation system, promoting decent jobs, strengthening environmental sustainability, and reinforcing social protection mechanisms. It means regional economic integration."

"Equality holds the key for the successful control of the pandemic and for a sustainable economic recovery in Latin America and the Caribbean."

According to the Policy Brief, in a region which experienced a significant number of political crises and protests in 2019, increasing inequalities, exclusion and discrimination in the context of COVID-19, if left unaddressed, will affect adversely the enjoyment of human rights and democratic developments, potentially even leading to civil unrest.

Prior to the pandemic, the region's development model was facing severe structural limitations: high inequality, balance-of-payments constraints, and exports concentrated in low-technology sectors resulting in recurrent exchange-rate and debt crises, low growth, high informality and poverty, vulnerability to climate change and natural disasters, and loss of biodiversity. "Negative social indicators were and continue to be aggravated by extremely high rates of homicide and gender-based violence, including femicide."

Recovery from the pandemic should be an occasion to transform the development model of Latin America and the Caribbean while strengthening democracy, safeguarding human rights and sustaining peace, in line with the 2030 Agenda for Sustainable Development, said the report.

"Equality holds the key for the successful control of the pandemic and for a sustainable economic recovery in Latin America and the Caribbean."

Health impacts

According to the Secretary-General's report, several Latin American and Caribbean countries show some of the highest numbers of absolute and per capita COVID-19 cases worldwide. With fragmented and unequal health systems, they are ill-prepared to handle a health and human crisis of this scale.

"Participation in health insurance plans was low. Lack of access to quality health care and information is especially acute in rural and remote areas, affecting particularly indigenous peoples." Another barrier affecting indigenous peoples' access to health is the lack of an inter-cultural approach that encompasses native languages and customs, which is critical, inter alia, for indigenous women's sexual and reproductive health.

Urban transmission of COVID-19 is of special concern to Latin America and the Caribbean as the world's most urbanized developing region, the report said, adding that 80% of its population live in cities and 17% are concentrated in six mega-cities with populations of over 10 million each. Latin American and Caribbean cities are marked by inequality, with one in every five urban residents in the region living in slums, where overcrowding and poor access to water and sanitation raise the risk of contagion.

The region is also reliant on extra-regional imports of medical products essential for treating COVID-19, with less than 4% of imports sourced from within the region itself.

Economic impacts

According to the report, when the pandemic hit the region, its economies were already experiencing serious difficulties. In the preceding six years (2014-19), economic growth had been the lowest (0.4%) recorded since 1951.

In addition, fiscal space contracted and public debt increased in Latin America, from about 30% of GDP in the period 2009-11 to over 45% in 2019. In the Caribbean, the average debt was 68.5% of GDP in 2019. As a result of a series of external shocks, compounded by structural weaknesses and vulnerabilities and high exposure to natural disasters and the impacts of climate change, some Caribbean small island developing states are among the most indebted economies in the world.

Fiscal capabilities in the region are limited and have very little or no redistributive impact, albeit with variations across countries, said the report. The limited fiscal space is strongly correlated with the low tax burden and regressive tax structure. In 2018, general government tax revenues in the region averaged 23.1% of GDP, well below the average of 34.3% of GDP for OECD countries. Tax evasion and avoidance and illicit flows further limit the fiscal space. Tax non-compliance in Latin America stood at $325 billion in 2018, equivalent to 6.1% of GDP.

The UN Economic Commission for Latin America and the Caribbean (ECLAC) estimates that GDP could fall in Latin America and the Caribbean by 9.1% in 2020.

The external drivers of this are an expected fall in exports (20%), a decline in remittances to the region (of around 20%) and lower demand in the tourism sector (during the first four months of the year, tourist arrivals fell by 35% in Central and South America, and 39% in the Caribbean), which will hit the Caribbean particularly hard. Women will be especially affected, as they are more likely than men to work in accommodation and food services (60% of employees), a proxy measure of employment in the tourism sector.

The external shock is compounded by an internal shock produced by social distancing and lockdown measures, primarily affecting the service sector and especially the informal sector, which represents a significant share of total employment in Latin America and the Caribbean. Many informal workers have relatively limited savings capacity to cope with periods of inactivity, nor do they have access to income substitution mechanisms such as unemployment insurance associated with formal work. In addition, the shock is expected to have a disproportional impact on women, who are over-represented in informal work, self-employment and the service sector (transport, business and social services), which currently employs 78% of women in the labour market, said the report.

Fiscal capabilities in the region are limited and have very little or no redistributive impact, albeit with variations across countries.

Social impacts

Latin America is one of the most unequal regions in the world and the differential impacts of COVID-19 risk making this situation worse, said the report.

The sharp drop in economic activity is expected to lift the unemployment rate from 8.1% in 2019 to 13.5% in 2020. The poverty rate is expected to rise by 7.0 percentage points in 2020, to 37.2%, while extreme poverty is expected to rise by 4.5 percentage points, from 11.0% to 15.5%, which represents an increase of 28 million people.

"The pandemic is exacerbating existing food insecurity caused by environmentally driven food shortages, political turmoil, and dwindling purchasing power." Latin America and the Caribbean has seen an almost threefold rise in the number of people requiring food assistance. The number of people experiencing acute food insecurity could increase by 11.7 million to 16.0 million people in 2020 because of the pandemic, said the report. Haiti and the Central America Dry Corridor are areas of particular concern. The approaching hurricane season in the Caribbean presents an additional risk, it added.

These trends also imply a rise in inequality. The Gini index of inequality is expected to increase with the pandemic by between 1.1% and 7.8% in several countries in the region.

Although the region comprises mainly middle-income countries, middle-income households account for a small and vulnerable share of the total population. In the past decade, the middle-income segments have expanded in Latin America and the Caribbean, changing the region's social and political landscape. However, most of this growth has occurred in the low- and lower-middle-income strata, where households are highly vulnerable to negative shocks and may easily fall back into poverty. In 2019, 77% of the Latin American and Caribbean population belonged to low- or lower-middle-income groups (per capita income of less than three times the poverty line), with no savings to withstand a crisis.

The pandemic is also having asymmetrical health and socioeconomic impacts based on age, gender, sexual orientation, ethnicity and migration and refugee status, among other factors, said the report. Across the region, there is increasing stigma, discrimination and hate speech targeting minorities, health personnel and those suspected of carrying the virus. "Public policies need to address these asymmetries and combat racism, xenophobia and discrimination, based on human rights in the fight against COVID-19."

Older persons are at significant risk of death and severe disease owing to COVID-19 (particularly those aged over 80, about 2% of the region's population). About 13% of the region's population (85 million people) are over the age of 60.

Women and girls are especially hard hit by the pandemic. Women spend thrice the time that men do on unpaid domestic and care work each day – between 22 and 42 hours per week before the crisis. Domestic violence, femicide and other forms of sexual and gender-based violence have increased, the report noted. Calls received by emergency helplines for women in Chile and Mexico, for instance, are reported to have increased by more than 50%. Indigenous peoples and people of African descent (10% and 21% of the region's population, respectively) are also disproportionately affected, owing to worse socioeconomic conditions compared with the rest of the population, limited access to social protection, and high levels of discrimination in the labour market.

Although children and young people have been spared the worst health impacts to date, education has been interrupted across the region, with over 171 million students in Latin America and the Caribbean currently at home.

Since mid-March, governments across the region have announced social protection measures in response to the sudden drop in worker and household incomes, particularly among the most vulnerable populations, said the report. As of 26 June, 29 countries in the region had adopted 194 social protection measures to help households.

The cash and in-kind transfers implemented in 26 countries to support families in situations of poverty and vulnerability during the crisis covered approximately 69 million households (286 million people, or 44% of the population). Projected expenditure over six months will amount to some $69 billion, about 1.4% of GDP for 2020.

The immediate international multilateral response should be extended to the middle-income countries, the report emphasized. This group, which includes most Latin American and Caribbean countries, faces structural constraints, yet has been largely excluded from cooperation in the form of emergency liquidity response, concessional funding, trade exemptions, deferral of debt service payments and humanitarian assistance. These instruments are especially urgent for tackling the rising external public debt of Caribbean small island developing states.

"Debt sustainability should be pursued by fostering sustainable and inclusive growth, not by austerity that halts investment."

International financing should be expanded, including a major allocation of special drawing rights (SDRs), accompanied by initiatives for debt relief or debt standstill and innovative financing mechanisms such as the Debt Relief/Swap for Climate Adaptation for the Caribbean, said the report. *(SUNS9161)*

"Robust" debate over e-commerce duties moratorium

Divisions among the membership over the merits or otherwise of levying customs duties on electronic transmissions were brought into sharp relief at a recent WTO meeting.

by D. Ravi Kanth

GENEVA: Many developing countries have finally succeeded in drawing proponents of a permanent moratorium on customs duties on electronic transmissions into a "robust" debate at the World Trade Organization over the damage caused by the moratorium to digital industrialization prospects as well as efforts to bridge the digital divide.

In 1998, WTO member states agreed not to impose customs duties on electronic transmissions, and this moratorium has since been periodically renewed. Some countries are now calling for it to be made permanent.

At a virtual informal WTO General Council (GC) meeting on 14 July, the developed countries led by the United States and their developing-country allies adopted defensive postures on the need to continue the moratorium, cautioning that customs duties on electronic transmissions could have serious adverse consequences in the global digital ecosystem, said a participant who asked not to be quoted.

In the face of growing opposition from developing countries to the moratorium, a trade official from the United States, speaking remotely from Washington, argued that tariffs (both customs and domestic tariffs) were not a proper mechanism to be used in the global digital economy, according to a person from South America who took part in the meeting. The US maintained that, unlike the use of tariffs to promote infant industries, tariffs were not relevant in the current global digital ecosystem, the person said. The US official suggested that global digital trade was a multi-layered and inter-connected system in which tariffs could have a huge negative impact.

"The way the digital economy is multi-layered, so is the digital divide," said a digital trade analyst who preferred not to be quoted. "There is an ICT [information and communication technology] infrastructure divide, data divide, digital skills divide and digital technology divide," the analyst said, pointing out that "these divides can be bridged only by a comprehensive digital industrial policy."

The analyst said that "tariffs are an important policy tool in the hands of the governments which can provide a level playing field to the domestic digital industry, create jobs and build digital skills."

The US along with several other developed countries have repeatedly called for a permanent moratorium on customs duties on digital goods and services, on grounds that it would provide certainty in global digital trade.

Revenue loss

At the GC meeting, while Switzerland and several industrialized and some developing countries acknowledged that the moratorium would have a revenue impact for developing and least developed countries, they argued that the revenue loss would be insignificant if it were measured on the basis of applied instead of bound duties.

They claimed that a recent research paper published by the United Nations Conference on Trade and Development (UNCTAD) was not correct about the revenue losses as it did not estimate the loss of tariff revenue on the basis of applied tariffs.

However, the argument is "false" as the UNCTAD study showed the losses arising from both applied and bound duties.

"All WTO negotiations take place at the bound levels and bound duties show how much cuts each country is asked to take," another participant said, adding that "the tariff 'water' is much higher for developing countries than developed countries who are currently having duties well below 5%".

"With bound duties of less than 1%, developed countries are not taking any substantial cuts because of the moratorium, unlike developing countries," the person said.

"Further, bound duties show how much potential tariff revenue countries can generate while being compliant with WTO rules," the person argued.

"The UNCTAD study estimates that $5 billion could be generated by the developing countries in 2017. By the end of 2020, developing countries have lost at least $20 billion and using bound duties, $40 billion," the person said. "So, every year, developing countries are losing tariff revenue due to the moratorium."

Switzerland also said the removal of the moratorium could undermine micro, small and medium-sized enterprises (MSMEs) which are inter-connected and depend on digital services, the person added.

Unlevel playing field

Many developing countries – India, South Africa, Sri Lanka, Turkey, the African Group, Jamaica on behalf of the African, Caribbean and Pacific (ACP) Group, St Lucia on behalf of the Caribbean countries, and the least developed countries (LDCs) – defended UNCTAD's findings.

"The current moratorium on customs duties on [electronic transmissions] will not only negatively impact the efforts of many developing countries to industrialize digitally but could also undermine their existing industries," South Africa said, suggesting that "the benefits go to digitized products in which many developing countries are net importers, thus creating an unlevel playing field."

South Africa argued that "the growing share of online trade undercuts government ability to pull in revenues ... the revenue losses are particularly problematic if countries cannot make up for the lost revenue by imposing other taxes."

"Indeed, countries with a higher value of online trade share are associated with a decline in trade tax revenue and an increase in government debt," South Africa said.

"If governments decided to tax trade in certain goods, they should be able to do so even if the form in which those goods are traded has changed," South Africa said, arguing that "tariffs play an important role in protecting infant domestic industries from more established overseas competitors until they have attained competitiveness and economies of scale."

Worse still, "a moratorium in the WTO forecloses any policy choices in this regard and disproportionately benefits the net exporters in an area where there is great potential for economic growth," South Africa said.

South Africa also underscored the need for data governance frameworks and an appropriate development-oriented trade policy in an increasingly digital-driven economy.

"The dismissal of legitimate concerns of the disruptive effects of e-commerce is counter-productive," South Africa argued, suggesting that "no one can ignore that digital trade is beneficial but is evolving in an imbalanced manner."

South Africa called for "global cooperation that ensures that the opportunities from emerging technologies enable inclusive growth, development and economic resilience while managing its disruptive effects."

In response to a Swiss question on the need to raise the issue of taxation in relation to electronic platforms, South Africa said "bricks-and-mortar companies pay tax while the electronic platforms do not contribute to government revenue of countries in which they derive the most benefit, whether through value-added taxes, income tax or corporate taxation."

The exporters operating from electronic platforms "have significant economic presence but no physical presence, as a result they escape internal taxes." "Developing countries also do not have the capacity to levy taxes on their incomes and profits," said South Africa.

In response to the claim that digitally deliverable services enhance export competitiveness of all firms, including small and medium-sized enterprises (SMEs), South Africa said that "this is when there is no consensus that digitally delivered services are electronic transmissions and this therefore expands the scope of the moratorium."

Speaking on the 3D printing market, which is set to double in size every three years with annual growth forecasted at between 18.2-27.2%, South Africa cautioned that "if the moratorium is maintained or made permanent, developing countries would be giving duty-free, quota-free access to an increasing number of products, which has the potential to wipe out their manufacturing capacity."

South Africa suggested the following implications for the ongoing work programme on e-commerce at the WTO:

- There is no agreed definition and scope of e-commerce. It is critical that this be concluded before the next WTO Ministerial Conference to enable WTO members to assess the implications and take an informed decision in the Ministerial Conference. Understanding the scope will facilitate a better understanding of the implications, especially for developing countries.

- The commitments made by members under the General Agreement on Tariffs and Trade (GATT) and General Agreement on Trade in Services (GATS) remain important legal frameworks from which the rights and obligations of members should be preserved. South Africa said it disagreed with attempts to redefine Computer and Related Services (CRS) and promote technological neutrality.

- The relevant WTO bodies should work on issues assigned to them and report to the GC, including issues of classifications of e-commerce as entailed in the work programme.

- The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is also highly relevant to digital commerce as e-commerce transactions can involve digital products with copyright-protected content, like e-books.

- COVID-19 has emphasized the importance of the developmental aspects of the work programme and highlighted the urgent need to address the digital divide.

It is therefore important, said South Africa, to examine the development implications of e-commerce, including the effects on the trade and economic prospects of developing countries, SMEs, the traditional means of distribution of physical goods, and revenues.

The African Group referred to its July 2017 submission to the WTO which had stated the following:

- The digital divide is not getting smaller and is in fact likely to persist.

- Policy space is paramount for members which want to develop their digital industrial policy.

- A thorough assessment is required, particularly for developing countries, to assess the opportunities and threats that digital transformation will bring.

- The asymmetrical nature of the global digital economy points to a need to focus on equity and not only efficiency if inclusive and sustainable growth is to be achieved.

- The implications of the Fourth Industrial Revolution will be far-reaching, and it is critical to consider all policy options for countries that are striving to industrialize.

The African Group said that much of the above statement remains true today, emphasizing the need to draw out the developmental dimension of e-commerce with an emphasis on "building an inclusive digital economy where developing countries are able to capture a greater part of digital value chains in the production of digital goods and services."

"Addressing the digital divide remains a paramount concern to enable the realization of the 2030 Sustainable Development Goals and Agenda 2063: The Africa We Want," the African Group said.

In its intervention, the ACP Group said that "while we recognize that there is a dilemma over whether we could ever see benefits to collect tariffs on goods that are no longer traded physically, we do not want to be left behind in terms of advancements in technology."

The ACP Group argued that "data is a key component of digital inclusion as data is at the centre of the digital economy. Data ownership, access to technologies to analyze and utilize data for digital industrialization is at the core of effective participation in the digital economy. "

"Multilateral cooperation to promote technology transfer is therefore critical," the ACP Group emphasized.

"The work of the WTO on the cross-cutting issues, on e-commerce under the auspices of the General Council in this regard must be to identify areas of cooperation that will result in inclusive digital industrialization," the ACP Group said.

It underlined the need to "level the playing field, particularly in areas where we are manufacturing traditional physical goods".

While acknowledging the importance

of e-commerce, Indonesia said it is also important to take into consideration that the COVID-19 pandemic has underscored the need for developing countries to exercise their policy space in order to save their people's lives and stabilize the economy.

Indonesia said it does not support a permanent moratorium on customs duties on electronic transmissions.

China said it attaches considerable importance to global digital trade but emphasized that the moratorium must remain in place for two years to be renewed at the biennial Ministerial Conference.

At the informal GC meeting, according to participants who asked not to be quoted, there was no consensus on what would constitute the scope of electronic transmissions – whether they would cover all digitized goods and services as argued by the US and Canada, merely services as argued by the European Union in the past, or only intangible goods that can be checked in their HS codes as suggested by UNCTAD. Members also differed on the growing 3D printing market and its impact on GATT tariff commitments and the GATS.

The proponents of the moratorium on customs duties on electronic transmissions supported the use of domestic tariffs such as value-added taxes, but developing countries said that domestic taxes cannot be a substitute to customs duties, said participants. *(SUNS9161)*

Chair of fisheries subsidies talks issues draft consolidated text

The chair of the fisheries subsidies negotiations in the WTO has put forward a draft text aimed at guiding efforts to reach an agreement on regulating these subsidies.

by D. Ravi Kanth

GENEVA: The chair of the Doha rules negotiations has issued a draft consolidated text for expediting the negotiations on disciplines on illegal, unreported and unregulated (IUU) fishing, overfished stocks, and overfishing and overcapacity.

At a meeting of heads of delegation on 25 June, conducted in both physical and virtual formats, the chair, Ambassador Santiago Wills of Colombia, said he wanted to conclude an agreement by the end of this year on the proposed disciplines on IUU fishing, overfished stocks, and overfishing and overcapacity, as set out in his consolidated draft text, trade envoys told the *South-North Development Monitor* (*SUNS*).

The chair said that the draft text had been prepared under his own responsibility.

Wills however appears not to have factored in the rising wave of COVID-19 cases in the Americas, Africa and South Asia, where lockdowns are being implemented. The current resurgence of COVID-19 could make it almost impossible for capital-based officials to participate in the negotiations, said trade envoys who asked not to be quoted.

Preliminary remarks

In his preliminary remarks about the draft consolidated text, the chair said that "this draft, as with our discussions generally in this room, is confidential and I would appreciate it if everyone would respect this."

"To be clear though," the chair said, it "does not mean that this draft is a simple copy-and-paste of different texts."

"In putting together the different drafts into a single text, there were areas that needed to be adjusted in order to make the draft as consistent and coherent as possible," he said.

The chair introduced "differentiation" among developing countries for availing of special and differential treatment (SDT) in the disciplines on overcapacity and overfishing, said one trade envoy.

However, the chair has not mentioned the term "special and differential treatment" in the draft consolidated text even though it was clearly spelt out in the United Nations Sustainable Development Goal 14.6, said another trade envoy.

(SDG 14.6 reads: "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, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation.")

The chair's draft text seems to be tilted in favour of countries such as China, the United States, the European Union, Japan and Korea among others, whose industrial-scale fishing had caused the global depletion of fish stocks, the trade envoy said.

The chair highlighted the "main [issues] of adjustment that was done from the facilitators' draft texts and members' proposals":

- The chair said his draft "leaves open the question of whether the fisheries subsidies disciplines should be a standalone Agreement or an Annex to the SCM Agreement [Agreement on Subsidies and Countervailing Measures]." He acknowledged that there is no consensus on this issue yet. "For this reason, this draft refers generically to the 'Instrument', in brackets throughout, as a reminder to insert the precise term once this issue is resolved."

- The chair said he wants to be clear that his draft is without prejudice to any member's positions or views on any issue, whether reflected in the draft or not. "As I mentioned before, what I have tried to do is to present a basic consolidation of legal drafting that has been under discussion for some time, and around some – although not all – of which a degree of convergence has been expressed. The idea is that this draft can be the jumping off point for the text-based negotiations phase."

- The chair asked members to consider "this draft text and everything in it as being in square brackets, as I am fully aware that nothing here is agreed. That said, there are degrees of disagreement", acknowledging that "in some cases, there may be emerging consensus."

- "In other areas, there are binary choices between proposed alternatives, or between having something in the text to address an issue versus not addressing that issue," he said.

- Further, the chair said "in some areas we have several members that favour one concept for disciplines, but these members have different ideas how to apply the concept."

Wills further clarified that he has "used many square brackets within the text; please note that these serve different purposes in different areas."

"In some cases, such as around the word 'Instrument', the brackets highlight a phrase or word that will need to be changed depending on the final outcome."

There are also "two or more clear alternatives each within its own set of brackets," the chair said, suggesting that "in other areas brackets highlight a text which could be deleted, amended or replaced but at this stage it was not clear to me what are the alternatives. In some ways these could be treated as elaborated placeholders for future work."

"Finally, the bracketing of some provisions signifies that those provisions come from a specific proposal and have not yet been thoroughly discussed, either in plenary meetings or in a facilitator's process; or the bracketing reflects a previously-reached understanding to place certain text in brackets about which there was a diversity of views for a decision at a later stage in the negotiations."

"Again, please treat the entire document and every phrase in it as though it were bracketed and could be changed," the chair said.

Outlining the elements contained in the draft text, the chair said it consists of five parts.

"In the first, we have the scope and definitions, which are cross-cutting elements that give meaning to the disciplines." (However, some members have said the definitions and scope in several disciplines are vague and cannot be accepted.)

"The next three parts are the three core pillars – IUU fishing, overfished stocks, and overcapacity and overfishing – including pillar-specific draft provisions on special and differential treatment (SDT)." (There is no actual mention of SDT in the draft text.)

"The last part consists of other cross-cutting elements, such as notifications and dispute settlement, although they are for the most part simple placeholders for the moment."

After making his preliminary remarks, the chair closed the meeting, even though members came prepared to make some initial comments, said a trade envoy who asked not to be quoted.

Commenting on the draft consolidated text, trade envoys said that the language on overfishing and overcapacity is basically the same as that in the chair's earlier draft in February that was rejected by members.

The chair behaved like a "kingmaker" in choosing some proposals from members and discarding others depending on his overall scheme of things, said one trade envoy.

According to the envoy, there are many problems on the scope and definitions in the draft text, as there is no clarity on whether members define subsidies as specific subsidies or horizontal subsidies.

The text also does not include any language on several institutional issues, particularly the mechanism for settling disputes that are likely to arise from these disciplines, added the envoy. *(SUNS9148)*

US refuses to negotiate improvements in SDT provisions

In the face of developed-country opposition, developing countries have reiterated the need to strengthen provisions providing "special and differential treatment" under the WTO rules in order to enhance their policymaking flexibility and resilience to crises.

by D. Ravi Kanth

GENEVA: The United States has refused to negotiate improvements in 10 agreement-specific provisions on special and differential treatment (SDT) being sought by the Group of 90 (G90) countries at the World Trade Organization.

The largest coalition of developing countries and least-developed countries (LDCs) in the WTO said that the changes in the 10 provisions are a sine qua non for pursuing their legitimate developmental priorities to overcome the fiscal and economic crisis caused by the COVID-19 pandemic.

In a 15-page restricted document seen by the *South-North Development Monitor* (*SUNS*), the G90 provided answers to questions raised by the US and other major developed countries which have seemingly adopted obstructive and stonewalling tactics.

The G90 are pressing for making the 10 provisions more "precise, effective and operational" so as to enable them to pursue their developmental agenda.

"Legitimate needs"

South Africa, on behalf of the G90, explained the importance and the underlying rationale of the 10 proposals, which include improvements in the Agreements on Trade-Related Investment Measures (TRIMs), Subsidies and Countervailing Measures (SCM) and Technical Barriers to Trade (TBT), safeguard measures, balance-of-payments provisions, and sanitary and phytosanitary measures.

"The G90 took into consideration the views of members on the G90 SDT proposal," reiterating that "the current proposal is just a starting point in the collective work that lies ahead of us in order to move negotiations forward."

South Africa emphasized that the G90 proposals "reflect the legitimate needs of developing countries and LDCs because of their development priorities and concerns, especially in dealing with various financial crises and pandemics."

"The COVID-19 pandemic has had a more severe economic impact than previous crises, and eclipses the 2008 economic crisis in various respects," said South Africa. While the developed countries are better cushioned with resources to overcome the severe economic consequences of COVID-19 and address any social or economic impacts sooner and more effectively, the developing countries and especially LDCs "will encounter more obstacles to reactivate their economies and to address any new potential waves of the coronavirus, as many of our [G90] members were already in crisis before the pandemic".

Therefore, "SDT in the WTO must serve to provide developing countries and least-developed countries with better tools to overcome any crisis and enable them to build resilience," South Africa said, underscoring the need for WTO members to be aware that "it is to everyone's benefit to avoid to the extent possible that the current inequality gap widens any further".

"SDT should not be regarded as a compromise but as a necessity to address the challenges faced by developing countries," South Africa stressed.

"It is on the basis of this understanding that the WTO membership resolved to strengthen SDT provisions and make them more precise, effective and operational," South Africa said.

Noting that there are 155 SDT provisions in the WTO agreements, South Africa said the current G90 proposal "only tackles ten agreement-specific provisions to increase the trade opportunities of developing country members and LDCs, achieving the flexibility of commitments, of action, use of policy instruments, access to effective transitional time-periods, and to help to achieve our developmental goals."

The G90 proposal would ensure "resilience and policy flexibility needed by developing countries to overcome the ensuing crisis," as "developing countries are disproportionately affected by the health and economic calamity that accompanies the pandemic," South Africa argued.

Citing a recent United Nations Conference on Trade and Development (UNCTAD) report, South Africa said "whereas many developed countries have introduced large financial stimulus packages to support their domestic industries, most developing countries do not have access to such financial resources."

"UNCTAD has estimated that developing countries will need at least $2.5 trillion over the next two years to meet their external financing needs, for example," South Africa said.

South Africa pointed to "the views of some [developed country] members who question the very existence of SDT," and said the G90's responses "will not only address concerns of the delegations but open up an inclusive dialogue on the substance of our proposals."

In response to the G90's proposal on the 10 agreement-specific provisions, the US said "we do not support the proposal, nor do we see any need to discuss them."

Responding to the US, the G90 said that they have been "consistently arguing for more policy space to enable economic development in order to build capacity and resilience through infant industry development and further flexibilities through domestic content and local value addition."

"This request was roundly rejected not only by the US but by many other developed members of the WTO," the G90 noted.

However, the US opposition appears to be contrary to the recent pronouncements of the US Trade Representative (USTR) Robert Lighthizer in an op-ed article he wrote in the *New York Times* on 11 May. He had argued in the op-ed "for re-shoring on the basis of so-called strategic vulnerabilities and the risks presented by unmitigated globalization."

"This post-coronavirus pandemic industrial policy hinges on the ability of the US to manufacture at home all things that are needed covering medicines, PPEs (personal protective equipment) as well as low and high-tech goods," Lighthizer wrote.

"The USTR further emphasized the need for industrial policy at the Economics Club of New York on 4 June 2020," the G90 said, suggesting that it stands ready to "engage the US on these statements to ensure that all WTO members have the same opportunity to develop domestic production capacity."

"The G90 agreement-specific proposals form a good basis for this discussion," it argued, asking the US whether it thinks that "it is an opportune time to consider flexibilities to address strategic autonomy concerns raised by various members to promote industrial development and domestic manufacturing capacity."

Response to Australia

In response to Australia's remarks that it is "difficult" to negotiate in the absence of new or revised proposals from the G90, the G90 said that "the ability of developed countries to provide financial stimulus packages places them in a better position than most developing countries to address the impacts of the COVID-19 pandemic and demonstrates the special vulnerabilities that developing countries face."

"However, such financial stimulus packages also distort trade and may impact recovery strategies of developing countries and other members of the WTO," the G90 said, noting that "many of our [G90] members have debt-to-GDP ratios that are extraordinarily high; during this time provisions that deal with BOP [balance of payments] could be invoked to temporarily deal with liquidity concerns of our members and to divert such resource to mitigate the impacts of COVID-19 and to shore up their economies."

The G90 posed several questions to Australia in order to understand its response:

- The WTO has the obligation to ensure that all its members achieve their highest possible economic and development goals in line with the UN Sustainable Development Goals, and the WTO can and should facilitate these goals by supporting approaches that allow developing countries the necessary policy space to do so. The G90 asked whether Australia agreed with this statement; if not, why not?

- The COVID-19 pandemic makes a compelling case for policy space that allows members to address constraints that they face. Could measures to deal with liquidity constraints, infant-industry development, TRIMs and local-content requirements, and intellectual property flexibilities for access to medicine and medical technology be considered "appropriate policy responses"? If so, given the vast differences in capacity between developed and developing countries, why are the G90 agreement-specific proposals considered not to be "appropriate policy responses"?

The G90 also asked Australia to clarify on "strategic vulnerability and strategic autonomy", particularly on the pronouncements of various developed countries' intention to address what they call "strategic vulnerabilities" and the need to amend the TRIMs Agreement to facilitate re-shoring and the use of domestic-content rules.

"Developing countries have been asking for such flexibilities for the longest time; the emergence of discussions on open strategic autonomy suggests a need for an objective discussion on how multilateral rules can promote production-led growth and job creation," the G90 told Australia.

Canada, the European Union, Japan, Switzerland and Singapore also appeared to stick to their obstructive positions to the G90 proposals, persisting with their reluctance to negotiate on the 10 agreement-specific provisions.

In short, the developed countries, which are seeking reforms at the WTO to address "21st century issues", remain opposed to negotiating longstanding unresolved issues concerning the effective use of SDT provisions in various WTO agreements.

Despite the huge costs imposed by COVID-19 on developing countries and the consequent need for policy space by developing countries and LDCs, the developed countries appear not to be concerned about the problems faced by the G90 members, thus exposing their "double standards," said trade envoys who asked not to be quoted. *(SUNS9151)*

WTO DG selection process extended by two months

The process to pick the next chief of the WTO from among eight candidates has been extended by two months until 7 November.

by D. Ravi Kanth

GENEVA: The selection process for the post of Director-General of the World Trade Organization is being extended by two months until 7 November, after members called for a "transparent and inclusive process".

In an email sent to heads of delegation on 9 July and seen by the *South-North Development Monitor* (*SUNS*), the chair of the WTO General Council, Ambassador David Walker of New Zealand, said he had held consultations with members "in various configurations over a period of three weeks". According to the chair, "all delegations that came forward to consult with me noted the importance they attached to transparency and inclusiveness in this [selection] process."

"Given the urgency of the situation, delegations supported the need to establish expedited deadlines for this process," Walker said in his email.

"Following this process of consultations, and having reflected on the views expressed, it is my considered view that the duration of Phase 2 [in which the candidates for the DG's post make themselves known to members] can be of two months," said Walker.

"On this basis, Phase 3 of the process, which is the period of consultations to narrow the field of candidates and ultimately to arrive at a consensus on the appointment of a new Director-General, will start on 7 September 2020," and "according to the Procedures, this Phase should last no longer than 2 months," ending around 7 November.

It remains to be seen whether an acting DG will now be appointed for the period between 1 September and 7 November.

"In order to provide clarity for both the candidates and the membership regarding these timelines, we will therefore proceed with Phase 2 and Phase 3 of the appointment process following the above-mentioned expedited deadlines," the chair said.

"I will be engaging with members on the modalities of Phase 3," he added.

But he did not clarify who will head the WTO when the current DG Roberto Azevedo steps down on 31 August.

According to the December 2002 Procedures for the Appointment of Directors-General, an acting DG appointed from one of the existing Deputy Directors-General will conduct the regular work in the absence of a DG, while a three-member panel – comprising the General Council chair, the chair of the WTO Dispute Settlement Body and the chair of the WTO Trade Policy Review Body – will oversee the DG selection process.

In 1998-99, the selection process had dragged on for many months, during which an acting DG had conducted the regular work.

It remains to be seen whether an acting DG will now be appointed for the period between 1 September and 7 November.

Following the nomination process that ended on 8 July, eight candidates emerged in the DG selection race: Jesus Seade Kuri, Mexico's Under-Secretary for North America; Egypt's Abdulhameed Mamdouh, a former WTO official; former Nigerian finance minister Ngozi Okonjo-Iweala, who is currently chairing the board of Gavi, the global alliance for vaccines; Tudor Ulianovschi, former foreign minister of Moldova; Yoo Myung-hee, South Korean trade minister; former Kenyan foreign minister Amina Mohamed; Mohammad Maziad Al-Tuwaijri, Saudi Arabia's economy and planning minister; and Liam Fox, former trade secretary of Britain.

Interestingly, also on 8 July, the US-Kenya bilateral trade agreement negotiations started in Washington, which could pave the way for more bilateral agreements in Africa, said an analyst who asked not to be quoted.

US priorities

Even before they present to members their views on the global trading system, rejuvenation of the much-weakened WTO, and how they intend to proceed with their priorities, the DG candidates have already been threatened by Washington not to issue any anti-American pronouncements.

The US Trade Representative (USTR) Robert Lighthizer "has already said that 'any whiff' of anti-Americanism could lead him to use his veto," according to *The Economist* magazine in its 11-17 July issue.

During a Chatham House interview on 9 July, the USTR said that Washington "will be looking for a DG who understands the need for fundamental reforms of the WTO and is willing to take on the issue of how to deal with China," according to a report in *Washington Trade Daily*.

The "fundamental reforms" being proposed by the US include:

1. Differentiation/graduation among developing countries in availing of special and differential treatment;

2. Punitive notification requirements;

3. New tariff negotiations or the "reset" of global tariff rates;

4. New disciplines on industrial subsidies;

5. Doing away with the WTO Appellate Body;

6. US withdrawal from the WTO if the trade body cannot deal with China and other state-run economies.

Although Lighthizer has declined to come out in favour of any of the candidates, he said that Britain's Fox is "certainly one of the favourites".

With these seemingly threatening pronouncements, the US has subtly informed the eight candidates that they cannot criticize the anti-multilateral US trade policies and that they must embrace the US agenda.

"Now this is the test as to who among the eight candidates will best serve the US priorities," suggested a former trade envoy who asked not to be identified. *(SUNS9158/9159)*

Director of Appellate Body division moved to new "division"

The WTO Director-General has transferred out the head of the WTO secretariat division servicing the Appellate Body, raising further questions about the fate of the now-dysfunctional judicial organ.

by D. Ravi Kanth

GENEVA: WTO Director-General Roberto Azevedo has shifted the director of the Appellate Body (AB) Division to lead from 1 July a new "division" responsible for "Knowledge and Information Management, Academic Outreach and the WTO Chair's Programme".

The move to shift Werner Zdouc to an innocuous new "division" is being interpreted as a clear signal that the AB, the highest adjudicating body for global trade disputes, will continue to remain dysfunctional, said trade envoys who asked not to be quoted.

Zdouc has been specifically targeted by the United States for the past three years, with American former AB member Thomas Graham having voiced serious criticism of him last year, said a trade official who asked not to be quoted.

New division

In a one-page letter sent to trade envoys on 26 June and seen by the *South-North Development Monitor* (*SUNS*), Azevedo wrote that "as of 1 July, the WTO Secretariat will establish a Division responsible for Knowledge and Information Management, Academic Outreach and the WTO Chair's Programme."

"This move will see the WTO joining other institutions in making knowledge management an important feature of their organizational structure and practice while streamlining and updating related fields of information management and having an organized focal point for academic collaboration and outreach," he claimed.

Azevedo said that the new division "will be established with no impact on the headcount and will draw on the resources readily available in the Secretariat by transferring staff members already carrying out the related tasks."

The DG, however, did not indicate from which divisions the staff will be deployed to the new division.

He did announce, in the second paragraph, that "Mr Werner Zdouc (who is currently the director of the AB Division) is being reassigned to head this Division."

Azevedo, however, remained silent on what will happen to the AB in the absence of Zdouc.

Azevedo said the creation of the new division will not have any budgetary impact on the Organization, knowing that there will be no increase in next year's budget, said trade envoys.

The DG added that "the management of knowledge and information is of utmost importance for individuals, businesses and international institutions alike." "It is important for the WTO to adopt a strategic approach to gathering, consolidating and preserving knowledge to be used, passed on and made accessible."

But he did not indicate how this knowledge will be useful for an Organization without a two-stage dispute settlement mechanism. The WTO's enforcement mechanism has been made dysfunctional after the US repeatedly blocked the filling of the six vacancies in the AB.

Azevedo said that "in its 25th year, the WTO has generated valuable information, knowledge and practices which are important for the work and advancement of the rules-based system." "It is important that this is managed in a systematic way in a structured framework," he said, adding that "to this end, the new Division is being created through the amalgamation of units engaged in information management and collaboration with academia and the establishment of a unit dedicated to knowledge management."

The DG further stated that "the new Division will incorporate the Library and the Information Management Section from the Languages, Documentation and Information Management Division, and the Chair's Programme from the Institute for Training and Technical

Cooperation and will establish the Knowledge Management Section building upon expertise drawn from the Economic Research and Statistics Division."

With his appointment of Zdouc as director of the new division, Azevedo seems to be signalling that the AB is unlikely to be resurrected anytime soon and even if it is brought back to life, Zdouc will not be heading that refurbished AB, said one trade envoy.

The AB has become dysfunctional on Azevedo's watch, and now this move "seals the casket of the AB very tight," said another envoy.

Zdouc was severely criticized by former AB member Graham last year, but other AB members openly praised Zdouc as a man of unimpeachable integrity and credibility.

Without naming Graham, who had been cited in a Bloomberg news story for raising opposition to working with a WTO official at the AB Division, China had said last year that an "Appellate Body member by taking oath on the first day of his or her office is expected to preserve the professional ethics, independence and impartiality. He or she shall fully comply with rules, including the Working Procedures, be unaffiliated with any government and abstain from any involvement in political matters which may compromise the integrity and authority of the Appellate Body."

On 3 December 2019, two serving and one retired AB member – Ujal Singh Bhatia, Hong Zhao and Shree B.C. Servansing – wrote a letter to the WTO Director-General saying that "regarding recent media articles, we have deep concerns about the breach of confidentiality and the misrepresentations disseminated about meetings between Appellate Body members and the Director-General."

"We reject any insinuations about the competence and neutrality of the Director of the Appellate Body Secretariat [Zdouc] and we have full confidence in his professional qualities," the three said, adding that "we disagree completely with these media reports and hope that measures will be taken to refute this misinformation." *(SUNS9149)*

Third World ECONOMICS No. 702, 1-15 July 2020

Financialization – tackling the other virus

With the ascendancy of financial markets spreading globally, *Jomo Kwame Sundaram* and *Michael Lim Mah Hui* outline measures to stem the threats it poses to the long-term health of developing economies.

The 1971 Bretton Woods system collapse opened the way for financial globalization and transnational financialization. Before the 1980s, most economies had similar shares of trade and financial openness, but cross-border financial transactions have been increasingly unrelated to trade since then.

Although COVID-19 recessions have rather different causes and manifestations from the financially driven crises of recent decades, financialization continues to constrain, shape and thus stunt government responses with deep short-, medium- and long-term consequences.

It is thus necessary to revisit and contain the virus of financialization wreaking long-term havoc in developing, especially emerging market economies. No one is financing work on a vaccine, while all too many with influence seek to infect us all as the virus is touted as the miracle cure to contemporary society's deep malaise, rather than exposed for the threats it actually poses.

Global financialization has spread, deepened and morphed with a changing cast of banks, institutional investors, asset managers, investment funds and other shadow banks. Trans-border financialization has thus been transforming national finance and economies.

The changing preferences of financial market investors have been reshaping the uneven spread of market finance across assets, borders, currencies and regulatory regimes. To preserve and enhance their value, new financial asset classes and relationships have been created.

Within borders, banks and shadow banks are lending to households, companies and one another, while national frontiers do not matter for securities and derivative markets, often financed via wholesale money markets.

Over the last four decades, the scope, size and concentration of finance have grown and changed as mainly national regulatory authorities try to keep up with recent financial innovations and their typically transnational consequences.

Managing discontents

Financialization has involved reorganizing finance, the economy, and even aspects of society, to enable investors to get more from financial market investments, effectively undermining sustainable growth, full employment and fairer wealth distribution.

The following measures should help slow financialization and limit some of its adverse effects:

● *Strengthen international financial regulation*

While financialization has become transnational, financial regulation remains largely national, albeit with some trans-border effects of the most powerful, e.g., US tax rules and Federal Reserve requirements. Transnational finance has often successfully taken advantage of loopholes and "arbitrage" to great profit.

Multilateral cooperation to strengthen effective and equitable regulation will be difficult to secure as voting power in the only multilateral institution, the International Monetary Fund (IMF), remains heavily biased against developing countries.

● *Strengthen national capital account management*

Transnational financialization has made developing countries more vulnerable to transnational finance and its rent-gouging practices, while also causing greater instability and limiting policy space for development.

Although Article VI of the IMF's Articles of Agreement guarantees the national right to capital account management, all too many national authorities in developing countries, especially emerging markets, have been deterred from exercising their rights effectively.

● *Improve national regulation of finance*

Improving effective, equitable and progressive national regulation of finance, particularly market-based finance, remains challenging, especially in emerging market economies where typically divergent, if not contradictory, banking and capital market interests seek to influence reforms differently in their own specific interests.

● *Strengthen bank regulation*

There were few banking crises from the 1930s to the 1970s after banking was strictly regulated following the 1929 Crash. With financial deregulation from the 1980s, major financial and currency crises have become more frequent.

More effective regulation and supervision are urgently needed, not only of banks, but also of "shadow banks", which account for a large and growing share of transnational finance.

● *Make finance accountable*

Instead of improving regulations to achieve these objectives, the growth and greater influence of finance have led to regulatory capture, with reforms enabling, not hindering, financialization, including its adverse consequences. Political financing reforms are also urgently needed to limit the influence of finance in politics.

● *Promote collective, not asset-based, welfare*

Financialization has been enabled by the reduced role of government. Nationalizing or re-nationalizing pension funds and improved government "social provisioning" of health, education and infrastructure would reduce the power and influence of institutional investors and asset managers.

● *Ensure finance serves the real economy*

The original and primary role of finance – to provide credit to accelerate productive investments and to finance trade – has been increasingly eclipsed by financial institutions, including banks, engaging in securities and derivatives trading and other types of financial speculation.

Such trading and speculative activities must be subjected to much higher and more appropriate regulatory and capital requirements, with commercial or retail banking insulated from investment or merchant banking activities, e.g., insulating Main Street from Wall Street, or High Street from the City of London, instead of the recent trend towards "universal" banking.

● ***Promote patient banking, not short-termist profiteering***

National financial authorities should introduce appropriate incentives and disincentives to encourage banks to finance productive investments and trading activities, and deter them from pursuing higher short-term profits, especially from daily changes in securities and derivatives prices. This can be achieved with appropriate regulations and deterrent taxes on securities and derivatives financing transactions.

An alternative framework for banking and finance should promote long-term investment over short-term speculation, e.g., by introducing an incremental capital gains tax where the rate is higher the shorter the holding period.

● ***Ensure equitable financial inclusion***

While financial exclusion has deprived many of the needy of affordable credit, new modes of financial inclusion which truly enhance their welfare must be enabled and promoted. Ostensible financial inclusion could extend exploitative and abusive financial services to those previously excluded. In some emerging market economies, for example, levels of personal and household debt have risen rapidly, largely due to inclusive finance initiatives.

● ***New financial technologies***

Financial houses are profitably using new digital technologies to capture higher rents. While technological innovations can advance financial inclusion and other progressive development and welfare goals, thus far, they have largely served financial rent-gouging and other such exploitive and regressive purposes. For example, while big data has been used to track, anticipate and stop the spread of infectious diseases, it has also been more commonly abused for commercial and political purposes.

National regulators must be vigilant that ostensibly philanthropic foundations and businesses are actively promoting "fintech" in developing countries without sufficient transparency, let alone consideration of its mixed purposes, implications and potential.

● ***Minimize tax avoidance***

Besides curtailing and penalizing tax avoidance practices at the national level, tax accountants, lawyers and others who greatly enable and facilitate tax evasion and related abuses should be much more effectively deterred.

● ***Strengthen multilateral cooperation to equitably enhance national fiscal capacities***

Governments must cooperate better multilaterally to more effectively and equitably tax transnational corporations and high-net-worth individuals. Such cooperation should effectively check illicit financial flows with strict regulations to deter private banking, banking secrecy, tax havens and other international facilitation of tax evasion.

Existing initiatives need to be far more inclusive of, sensitive to and supportive of developing-country governments. OECD-led initiatives previously excluded developing countries, but their recent inclusion, while an advance, remains biased against them. *(IPS)*

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The best law capital can buy

Jomo Kwame Sundaram shares insights from a law professor's book which explores how the law enables the creation of capital and perpetuates its primacy.

Katharina Pistor's recent book *The Code of Capital: How the Law Creates Wealth and Inequality* shows how law has been crucial to the creation of capital, and how capital continues to survive, evolve and enhance its ability to "make money", or secure wealth legally, i.e., through the law.

In her magnum opus, the Columbia Law School professor explains how legal systems create capital and how law enables wealth creation through what she terms "legal coding". Notions of property and property rights have changed over the ages, reflecting and redefining social and economic relations more generally. Pistor sees "legal coding" – e.g., via collateral, trust, corporate governance, bankruptcy, contracts and other property laws – as means for assets to become capital, creating wealth for their holders. When "coded in law", even "dirt" can become a valuable asset, capable of enriching its owners.

For her, institutions of private law privilege those with capital by ensuring: priority, against competing claims; durability, enabling capital to grow in value; convertibility, "locking in" earlier gains; and universality, ensuring that such privileges extend transnationally.

With the emergence and growing significance of new financial products and services, intellectual property and data access in the early 21st century, the evolution of capital increasingly involves new, especially intangible assets, including debt. New combinations and prioritization of property rights and contracts have created complex debt products, including collateralized debt obligations and credit debt swaps, the bases for much contemporary "financialization".

Private interests' flexible use of such legal institutions has been crucial to capital accumulation, but Pistor notes that the increasing private use of law also undermines its role and legitimacy as a public good, and hence, the very "rule of law" itself.

Legal coding is therefore not only about how assets become capital, but also about how capital creates wealth, and laws enable such transformations involving property, ownership and entitlements. As "capital is created behind closed doors in the offices of private attorneys", codifying capital in law worsens inequality between capital and others, especially labour.

State-sanctioned judicial processes transform assets into capital. Legal coding thus "owes its power to law ... backed and enforced by a state". The state has thus been crucial to legally coding assets as capital, using existing as well as new laws and judicial precedents so crucial to common law.

States and other relevant legal institutions also redefine the law – e.g., through the legislative process, catering to the evolving nature and needs of capital, especially its most successful lobbyists – by amending existing laws and creating new laws.

The state and other social institutions ensure the legitimacy of the "rule of law" by mitigating and managing its adverse effects, as well as by resolving problematic ambiguities and uncertainties.

The legal profession has been the main agency of legal coding, "making" the law. Lawyers contribute to its evolution – by drafting and thus determining the nature, scope and impact of law – and defend the law by legitimizing it, even when challenging, criticizing and reforming the law. Despite relying on the authority of law, common or legislated, many lawyers go to great lengths to avoid taking disputes to courts, the traditional guardians of the law, instead preferring or even insisting on private settlements or arbitration.

Crossing borders

The accumulation of capital has long been transnational, closely interlinked with the globalization of recent decades. However, legal coding is primarily national, within the realms of particular states.

Hence, the legal reach of capital does not extend to other jurisdictions except when provided for by imperial or colonial jurisdiction, and by international treaty, convention and coercion, including the use of military force, in the post-colonial era.

With globalization, private interests can increasingly choose legal systems to suit their needs, i.e., engage in jurisdiction or "forum shopping". Limiting the ability to opt in and out of legal systems is hence vital for state legitimacy and societal capacity for collective self-governance.

Inter-state collaboration, among "independent" central banks not beholden to national governments, or through multilateral institutions – such as the World Trade Organization, trade agreements, and investment and other treaties – has thus become crucial means for extending legal coding beyond national jurisdictions.

As national judicial decisions are not typically considered extraterritorial in scope, the legal community has extended arbitration transnationally while trying to ensure – through convention as much as legislation – that national laws and courts recognize, uphold and enforce the outcomes of such private arrangements.

With new technology, capital is trying to protect and extend its privileges without conventional legal coding, e.g., new blockchain applications suggest that some digital innovations can provide attributes required by capital. Pistor observes that "digital coders" – those who develop digital code – have set their own rules, transcending national boundaries, without recourse to the law. Until now, however, digital code is still far from an adequate substitute for legal code, with digital ownership, rights and conflict resolution still based on existing laws.

Pistor's own academic background in comparative law appears crucial to her appreciation of how various societies have coped with different challenges, including the normative or ethical choices involved. Her legal history of capital considers different perspectives and influences. While legal coding has been misused by asset owners, lawyers and states, it can also help address such abuses.

The future of capital rests on evolving complex relations and interlinkages among laws, the stakeholders involved as well as related ideologies and perspectives.

Professor Pistor has greatly advanced our shared dialectical understanding of how legal codes – essentially ideological constructs – consolidate, define and transform social relations in order to advance, extend and accelerate capital accumulation, in other words, make history. *(IPS)*

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