

Global employment divide worsens - ILO

A poly-crisis world defined by a range of complex and cascading challenges, including conflict, natural disasters and economic crises that amplify the lingering effects of the COVID-19 pandemic and the ongoing cost-of-living crisis, has contributed to a worsening global employment divide, with the most significant labour market deficits evident in low-income countries, according to the International Labour Organization (ILO).

- **Multiple crises worsening global employment divide, says ILO — p2**

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Bhd (198701004592 (163262-P))
131 Jalan Macalister
10400 Penang, Malaysia
Tel: (60-4) 2266728/2266159
Email: twn@twnnetwork.org
Website: <https://twn.my>

CONTENTS

CURRENT REPORTS

Multiple crises worsening global employment divide, says ILO — *p2*

UK and US raise controversial proposals on dispute settlement reform — *p6*

Developing countries left at receiving end of dispute settlement reform — *p8*

Sharp concerns over lack of transparency & inclusivity in dispute settlement reform — *p10*

African Group calls for fundamental reform of subsidy rules — *p12*

Founding Editors:

Chakravarthi Raghavan (1925-2021)
Martin Khor (1951-2020)

Editor: Kanaga Raja

Typesetter: Jessie Chan

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Multiple crises worsening global employment divide, says ILO

A series of mutually reinforcing crises is worsening the global employment divide, with unemployment rates in Africa and the Arab States in 2023 projected to remain elevated compared to 2019, while other regions have managed to reduce those rates substantially below pre-COVID-19 crisis levels.

by Kanaga Raja

PENANG: Mutually reinforcing crises are disproportionately affecting developing countries, and worsening the global employment divide between high-income and low-income countries, according to the International Labour Organization (ILO).

In its latest ILO Monitor on the World of Work (11th edition), released on 31 May, the ILO projected that low-income countries in Africa and the Arab region are unlikely to recover to pre-pandemic levels of unemployment this year.

While the global unemployment rate is expected to fall below the pandemic level in 2023, this reflects stronger-than-expected resilience in high-income countries rather than a generalized recovery, it said.

The ILO said for North Africa, the unemployment rate in 2023 is projected to be 11.2 per cent (10.9 per cent in 2019); for Sub-Saharan Africa, 6.3 per cent (5.7 in 2019); and for the Arab States, 9.3 per cent (8.7 in 2019).

Other regions have managed to reduce their rates substantially below pre-crisis levels, with 6.7 per cent in Latin America and the Caribbean (8.0 per cent in 2019), 6.3 per cent in Northern, Southern and Western Europe (7.0 per cent in 2019), and 7.8 per cent in central and Western Asia (9.2 per cent in 2019), it added.

Apart from unemployment rates, the ILO said variations in the jobs gap point further to a global employment divide.

A new indicator developed by the ILO - the jobs gap - captures all persons who would like to work but do not have a job.

In 2023, the global jobs gap is projected to stand at 453 million people (or 11.7 per cent), more than double the level of unemployment, said the report.

The report said that low-income countries face the largest jobs gap rate at 21.5 per cent, while the rate in middle-income countries stands slightly above 11 per cent. High-income countries register the lowest rates, at 8.2 per cent.

Low-income countries are the only country income group that has seen a long-term rise in the jobs gap rate, from 19.1 per cent in 2005 to 21.5 per cent in 2023, said the ILO.

“Low-income countries in debt distress face a jobs gap of 25.7 per cent in 2023. In low-income countries that are in debt distress, the jobs gap is significantly higher than in developing countries at low risk of debt distress, at 25.7 per cent compared with 11 per cent.”

This reflects the fact that financial and fiscal constraints are hampering their policy responses, further worsening labour market conditions, said the report.

“The findings of this report are a stark reminder of growing global inequalities. Investing in people through jobs and social protection will help narrow the gap between rich and poor nations and people,” said the ILO Director-General, Gilbert F. Houngbo.

“This is why the ILO is launching a Global Coalition for Social Justice. The Coalition will bring together a wide range of multilateral bodies and stakeholders. It will help to position social justice as the keystone of a global recovery, and make it a priority for national, regional, and global policies and actions,” he added.

Uneven impact of poly-crisis

The ILO report said that precipitated by the war in Ukraine and the lingering effects of the COVID-19 pandemic, the ongoing cost-of-living crisis has

hurt incomes and livelihoods around the world, especially in the developing countries.

“Global GDP growth is expected to decelerate to 2.8 per cent this year, down from 3.4 per cent in 2022. This slowdown masks a significant divergence between advanced and developing economies.”

The report said that in high-income countries, labour markets remain tight despite the series of interest rate rises (though some employment deficits persist even in these economies).

“While some large emerging economies, such as India, have returned to strong economic growth, low-income countries are facing high levels of debt and rising costs of borrowing, which further constrain their efforts to promote decent and productive employment.”

The report said that high inflation and interest rates continue to weigh on many labour markets, while for some countries the situation is expected to ease.

At the same time, it added, “fiscal space in the poorest economies is severely constrained, which limits their policy responses to a poly-crisis world defined by a range of complex and cascading challenges, including conflict, natural disasters and economic crises that amplify the effects of global shocks stemming from the COVID-19 pandemic and the cost-of-living crisis.”

This situation has contributed to a worsening global employment divide with the most significant labour market deficits evident in low-income countries, said the report.

“Persistent inflation has led to aggressive monetary policy tightening. Inflation rates around the world started to rise in 2021, and jumped significantly in 2022, in all country income groups, leading to significant monetary policy tightening.”

At the beginning of 2023, 37 out of 162 countries, almost all low- and middle-income, had central bank interest rates in excess of 10 per cent, said the ILO.

It said continued high inflation expectations are expected to cause further monetary tightening in around half of the countries: while almost all high-income countries are likely to experience further tightening, only a minority of low- and middle-income countries is expected to do so.

It said countries face a trade-off in managing expected inflation, exchange rate movements, debt sustainability and

economic activity.

The report said high interest rates cause problems for debt sustainability and new debt financing, especially since many countries have seen their debt-to-GDP ratios rise significantly during the COVID-19 crisis.

“Exchange rate depreciation in many developing countries has contributed to higher inflation and interest rates, while worsening the external debt burden.”

Indeed, the proportion of countries in debt distress or at high risk of debt distress has doubled to 60 per cent compared with 2015 levels, said the report.

“Enterprises and workers are deeply impacted during a debt crisis. Real interest rates, which are decisive for economic activity, have remained relatively low in advanced economies.”

But continued tightening of monetary policy, along with receding inflation, could raise expected and realized real interest rates to higher levels, which will eventually take a toll on labour markets, it added.

Unemployment and jobs gap

The ILO said its latest estimates project that the global unemployment rate will fall by 0.1 percentage points in 2023, implying a decline in the total number of globally unemployed people of 1 million, which is due to greater-than-anticipated labour market resilience in high-income countries in the face of the economic slowdown.

It said there are signs that further interest rate hikes in high-income countries will be limited as central bankers start to prioritize concerns about the health of the economy, while interest rates in many low- and middle-income countries are expected to remain stable or decline.

“Nevertheless, the risk of the global economy entering a recession remains sizeable, creating a major downside risk for global labour markets.”

Global estimates of unemployment for the years 2020 through 2022 have been revised substantially in light of new data, said the report.

Consequently, global unemployment in 2022 is now estimated at 192 million, compared to 205 million reported earlier.

“In 2023, global unemployment is projected to fall to 191 million, corresponding to an unemployment rate of 5.3 per cent.”

The global recovery in unemployment rates following the COVID-19 crisis has been remarkably fast compared to previous crises such as the global financial crisis of 2008-09, the report noted.

Yet, unemployment in low-income countries and in the regions of Africa and the Arab States is not expected to recover to pre-pandemic levels in 2023, it said.

“The global picture masks significant heterogeneity at the regional level regarding the speed of recovery from the COVID-19 crisis.”

It said that unemployment rates in Africa and the Arab States in 2023 are projected to remain elevated compared to 2019, while other regions such as Latin America and the Caribbean, Northern, Southern and Western Europe, and Central and Western Asia have managed to reduce those rates substantially below pre-crisis levels.

Low-income countries so far have failed to recover to the rate of unemployment witnessed in 2019, it added.

In 2023, the global jobs gap is projected to stand at 453 million people or 11.7 per cent, more than double the unemployment count, said the report.

“The global jobs gap of 453 million includes both the 191 million unemployed people and an additional 262 million who want employment but do not qualify as unemployed.”

The report said that those without a job but not classified as unemployed include, for instance, people who are discouraged from searching and those currently unable to take up employment at short notice, such as persons with care responsibilities.

There is an unequal jobs gap globally, it said, noting that in 2023, low-income countries are facing the largest jobs gap rate at 21.5 per cent, while the rate in middle-income countries stands slightly above 11 per cent.

In contrast, the report said that high-income countries register the lowest rates, at 8.2 per cent.

“Overall, while only a few countries, mostly high-income, experience relatively low jobs gap rates, the rest of the world continues to face persistent employment deficits.”

These are particularly acute for women, who face a jobs gap rate of 14.5 per cent, compared to 9.8 per cent for

men, said the report.

“Low-income countries exhibit the greatest gender disparity in employment deficits, with women facing a jobs gap rate that is 9 percentage points higher than that of men.”

While the global jobs gap rate is projected to decline in 2023 by 0.2 percentage points to 11.7 per cent, there are considerable variations between country income groups, said the report.

Low-income countries are projected to see little change in 2023; this is also the only income group that has seen a long-term rise in the jobs gap rate from 19.1 per cent in 2005 to 21.5 per cent in 2023, it added.

The persistence of the jobs gap in these poorest countries reflects the fact that, for various reasons, there are not enough new employment opportunities for rapidly growing, youthful populations, the ILO observed.

Lower-middle-income countries are projected to see almost no change in 2023 but have experienced a sizeable long-term decline, while upper-middle-income countries are projected to see the largest decrease (0.5 percentage points) in 2023, said the report.

“High-income countries have seen the largest long-term improvement in the jobs gap rate with a 4 percentage point decline since the aftermath of the 2008-09 global financial crisis and a drop of 0.3 percentage points in 2023 alone.”

Debt-distressed countries face the biggest labour market challenges and have much more constrained policy space, which will hinder further policy responses in the face of ongoing crises and new shocks, said the ILO.

“In the low-income countries that are classified as in debt distress, the jobs gap is significantly higher, estimated to reach 25.7 per cent in 2023, compared with 11.0 per cent in developing countries at low risk of debt distress.”

The jobs gap rate for women in these debt-distressed countries is expected to reach almost 31 per cent in 2023, reflecting a gender disparity that is evident in all countries, it added.

“The correlation between debt distress and the jobs gap rate points to the critical importance of international financial support for debt-distressed countries in promoting both an economic and a job recovery.”

The ILO said some countries are

facing particularly complex and cascading crises, which interact with broader global challenges and exacerbate labour market impacts.

It said they range from natural disasters (e.g. the earthquakes in Türkiye and Syrian Arab Republic) to multiple economic shocks (e.g. in Sri Lanka), which have come on top of the lingering effects of the COVID-19 pandemic and the global cost-of-living crisis.

In Sri Lanka, for example, the report noted that on top of long-running macroeconomic imbalances and structural weaknesses, Sri Lanka has been hit by a series of crises, starting with the Easter bombings in 2019 and followed by the COVID-19 pandemic, which hit the economy and labour market hard, especially the tourism sector.

Output contracted slightly already in 2019 before declining by 4.6 per cent in 2020 during the COVID-19 lock-downs, followed by a partial recovery in 2021 (growth of 3.5 per cent), it said.

The spillover effects of the Ukraine conflict thwarted the nascent recovery and pushed the Sri Lankan economy into a full-blown balance of payments crisis and subsequent debt default in April 2022, it added.

Output declined by 7.8 per cent in 2022 (-12.4 per cent in 2022 Q4), as the country faced severe fuel and other shortages. Inflation reached more than 46 per cent last year, which has damaged real incomes and livelihoods, said the ILO.

The ILO said following the signing of an IMF support programme in March 2023, some stabilization has been achieved though the economy is expected to contract by 3.0 per cent this year.

The report said that in addition to precipitating the surge in inflation and disruption to supply chains starting in 2022, the war in Ukraine continues to impact its own labour market (and neighbouring countries through flows of refugees).

ILO employment projections based on the latest macroeconomic forecasts suggest stagnant activity in 2023 as the hostilities continue to severely constrain the potential of the Ukrainian economy and its labour market, it added.

Based on the assumption that the security situation will remain close to its current state for the entire year, the ILO said it estimates an employment growth rate of just 0.5 per cent in 2023,

corresponding to an increase of only 70,000 jobs.

Social protection

“Policy gaps in developing countries aggravate the consequences of multiple crises. Social protection is one key policy area that is constrained by the overall economic situation, limited fiscal space and the associated lack of investment in such measures,” the report said.

At the same time, there is robust evidence that investing in social protection will bring about broader economic, employment and social benefits, it emphasized.

Highlighting the slow progress in improving access to social protection, the report noted that a decade has passed since the Social Protection Floors Recommendation, 2012 (No. 202), was adopted, yet still more than half of the world’s population lacks access to any form of social protection.

For example, even though old-age pensions are the most prevalent form of social protection (77.5 per cent of older persons are covered), large coverage gaps remain, it said.

While 97.5 per cent of older persons in high-income countries receive a pension, this is only the case for 38.6 per cent and 23.2 per cent of older persons in lower-middle-income and low-income countries, respectively, it said.

It said that ILO estimates show that the expansion of basic old-age pensions has caused family size to decline in countries with initially high fertility rates, the share of non-farm employment to expand, and GDP per capita to increase.

The report said the positive effects of universal old-age pension coverage in the developing world would be large and long-lasting.

It said that when combining this historical evidence with current social protection coverage data (SDG indicator 1.3.1), simulation results show large, beneficial effects of introducing universal old-age pensions in developing countries.

GDP per capita in those countries would be 14.8 per cent higher within ten years, compared to a scenario where current coverage rates remain unchanged, it added.

“The effects would continue to be felt long after the 10-year horizon. In

20 years, the demographic contribution to GDP per capita would increase by an additional 3 percentage points.”

The total population in developing countries would peak by 2072, more than 30 years earlier than in the absence of the pension expansion, said the report.

This would heavily affect the demographic structure: the ratio of the age-dependent population (ages 0-14 and 65+) to the working-age population (ages 15 to 64), would be 5.3 percentage points lower in 2072 - providing an economic tailwind for more than six decades, it added.

Universal coverage of old-age pensions in the developing world would result in a 6 percentage point reduction in the share of the population living below the US\$2.15 PPP poverty line, the ILO

suggested.

“This is a drastic reduction from the current rate of 15.5 per cent. Moreover, the entire income distribution would shift towards greater equality.”

The bottom 40 per cent of the income distribution would see its share of income rise by 2.5 percentage points from the current 15.3 per cent, said the report.

This relative income increase would come at the expense of the top 10 per cent of earners, while the share of income in the middle of the distribution would remain roughly unchanged, it added.

“In the current context of constrained fiscal space, implementing a social protection floor for older persons can seem a daunting task,” the report noted, adding that the challenge of financing social protection should not be

understated, but it is not unattainable.

It said for developing countries, the annual cost of providing basic old-age pensions at the level of national poverty lines is equivalent to 1.6 per cent of GDP (2.3 per cent and 1.5 per cent of GDP for low-income and lower-middle-income countries, respectively).

For sub-Saharan Africa, the cost would be US\$23.3 billion, or 1.4 per cent of GDP and approximately 12.5 per cent of global annual official development assistance, said the report.

“This new evidence provides a strong case, particularly in these times of multiple crises, for national investment as well as global financial support for universal social protection systems,” it added. (SUNS 9795)

Putting the Third World First

A Life of Speaking Out for the Global South

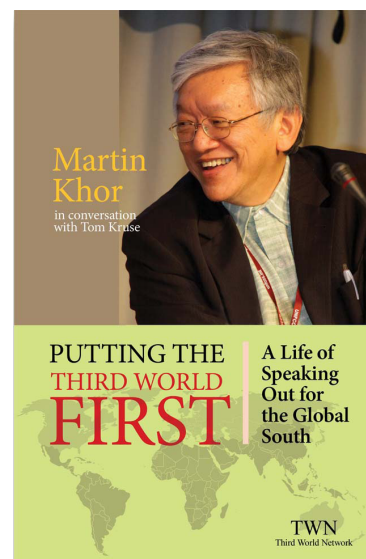
Martin Khor in conversation with Tom Kruse

Martin Khor was one of the foremost advocates of a more equitable international order, ardently championing the cause of the developing world through activism and analysis. In this expansive, wide-ranging conversation with Tom Kruse – his final interview before his passing in 2020 – he looks back on a lifetime of commitment to advancing the interests of the world’s poorer nations and peoples.

Khor recalls his early days working with the Consumers Association of Penang – a consumer rights organization with a difference – and reflects on how he then helped build up the Third World Network to become a leading international NGO and voice of the Global South. Along the way, he shares his thoughts on a gamut of subjects from colonialism to the world trade system, and recounts his involvement in some of the major international civil society campaigns over the years.

From fighting industrial pollution in a remote Malaysian fishing village to addressing government leaders at United Nations conferences, this is Khor’s account – told in his inimitably witty and down-to-earth style – of a life well lived.

Martin Khor (1951-2020) was the Chairman (2019-20) and Director (1990-2009) of the Third World Network.



To buy the book, visit <https://twn.my/title2/books/Putting%20the%20TW%20first.htm> or email twn@twnetwork.org

UK and US raise controversial proposals on dispute settlement reform

Several countries have expressed opposition to the controversial options proposed by the United States in the ongoing informal consultations on reforming the World Trade Organization's dispute settlement system, in particular on a "sunset provision" tabled by the United Kingdom and strongly supported by the US.

by D. Ravi Kanth

GENEVA: Several countries apparently pushed back against the controversial options proposed by the United States in the ongoing informal consultations on reforming the World Trade Organization's dispute settlement system, particularly on the "sunset provision" tabled by the United Kingdom and supported by the US, said people familiar with the discussions.

The facilitator overseeing the informal consultations on reforming the WTO's dispute settlement (DS) system has issued a confidential "yellow table" of proposals, options, and observations in the ongoing informal consultations on reforming the dispute settlement system.

The facilitator, Mr Marco Molina of Guatemala, suggested that the "yellow table" of proposals in cluster three contains more refined and elaborated proposed solutions for the issues identified by members.

In paragraph four of the outcome document of the WTO's 12th ministerial conference (MC12), trade ministers had mandated members to conduct discussions with the view of having "a fully and well-functioning dispute settlement system accessible to all Members by 2024."

The two-tier dispute settlement system, which was negotiated towards the end of the Uruguay Round of trade negotiations from 1986 to 1993, has been paralyzed by one major industrialized country, namely the US, since 2019.

That country had played a central role in creating the Appellate Body whose rulings can only be reversed through the principle of negative consensus.

Despite sustained efforts by former

New Zealand trade envoy Ambassador David Walker to address the concerns raised by the US, which had made the Appellate Body dysfunctional, Washington opposed Ambassador Walker's recommendations, even though the entire membership rallied behind his report.

Against this backdrop, the latest "yellow table" in cluster three highlighted by Mr Molina includes several proposals.

It includes: (1) alternative dispute resolution mechanisms; (2) streamlined panel process; (3) accessibility; (4) accountability; and (5) focus on what is necessary to resolve the dispute.

Among the five, the proposal on sunset provision under "accountability" seems to have raised considerable push-back from members.

The sunset provision proposed by the United Kingdom, which is strongly supported by the US, appears to be the most divisive one.

The UK introduced the proposal with the interests here pivoting around maintaining the integrity of the system, so the system does not shift from its original purpose.

Apparently, it includes two sets of proposals: (1) a mechanism to review the DSS (dispute settlement system) including reforms in order to monitor it on a systemic basis; and (2) it calls for adjudicative provisions to come to an end by "X" number of years.

The proposal on "sunset provision in which the adjudicative provisions of the dispute settlement mechanism would sunset after "X" years unless members agree by consensus to extend", appears to

have raised several observations.

The observations on the sunset provision made by the facilitator include:

1. To consider how to prevent abuse of this provision by any Member.
2. To consider the scope of "adjudicative provisions" to which the sunset would apply.
3. To consider whether the extension would be by (negative) consensus or by reference to another threshold.
4. To consider whether one Member should be able to sunset adjudicative provisions for all Members.
5. Impact on the predictability and security of the rules-based system to be considered.
6. To consider whether transitional provisions are required to apply in the event that the sunset provision is exercised.

At the meeting, the US is understood to have said that the idea of a sunset review is interesting, suggesting that there could be certain divergences, as all would like to agree on something that would help avoid the abuse of the system.

But several members such as Russia, South Africa, Canada, Pakistan, the European Union, Australia, Norway, India, Thailand, Japan, and China apparently expressed opposition to the sunset provision for terminating the adjudication process after "X" number of years.

Russia said that it cannot support the sunset provision proposal, while South Africa maintained its opposition on the ground that the provision will not help in creating accountability.

Instead, it will create more uncertainty and slowly kill the Dispute Settlement Understanding (DSU), South Africa appears to have observed, according to negotiators who took part in the consultations.

Canada seems to have said that it is not in favour of the sunset clause, while Pakistan also indicated its opposition to the provision.

Pakistan also said that the provision will bring unwanted political disadvantages to the process and disfavour the developing and least-developed countries.

The EU apparently said that it strongly objects to the sunset provision, a stand shared by Australia, said negotiators who took part in the meeting.

India asked the proponents to

explain the intention and purpose of the sunset clause proposal as, according to India, it will put the system at risk instead of strengthening it.

India said that the US could better elaborate on the sunset clause in more detail.

Japan apparently said the sunset clause is like offering a veto to all members, while China opposed the proposal somewhat vehemently, said negotiators, who asked not to be quoted.

China also said that the sunset provision is a dangerous idea.

In response to the sharp criticisms of the sunset provision, the US apparently defended the proposal by adding additional language suggesting that, "THE PURPOSE IS TO PROVIDE MEMBERS THE ABILITY TO UNDERTAKE A MEANINGFUL CHECK ON THE SYSTEM ADHERENCE TO THE AGREED RULES AND FUNDAMENTAL REFORMS," said negotiators, who asked not to be identified.

Alternative dispute resolution mechanisms

Under Alternative Dispute Resolution Mechanisms (ADRs), the facilitator has clubbed two proposals under the headline of "definition of rules, procedures, and guidelines for ADRs" and "rules for specific uses of ADRs."

The proposed options to address the two proposals under ADRs include general/additional rules + model rules of procedure. Format to be decided later (e.g. DSB decision, practice document, etc.).

The observations made by members include the following:

- * Members may institutionalize a set of overarching rules to facilitate the use of ADRs, which may be complemented by rules tailored to specific stages of disputes.
- * There is a general understanding that the use of ADRs will remain voluntary, with some proposals to make them mandatory in certain instances.
- * Due consideration is being given to the fact that not all disputes are suitable for resolution through ADRs.
- * Need to consider the need of keeping the dispute settlement mechanism streamlined and avoiding the additional unnecessary phases to the

process.

- * Need to further explore the sequences and interaction between existing DSU mechanisms, such as DSU Article 4 and Article 5. (Article 4 of the DSU is about consultation, while Article 5 deals with good offices, conciliation, and mediation).

As regards the second proposal concerning the rules for specific uses of ADRs, the facilitator's "yellow table" provides options such as deciding the format (e.g. DSB decision, practice document).

Members' observations on this proposal are the following:

- * The use of a facilitator in consultations might be encouraged through different means. Still under consideration whether the use of a Facilitator in consultations would be voluntary or mandatory.
- * There is an interest to give more "visibility" to the concept of a Facilitator.
- * Recognition that not all disputes are suitable to be resolved with the assistance of a Facilitator.
- * The use of ADRs is being discussed also under Cluster 2.

Streamlined panel process

The proposals under this heading relate to: (1) the panel establishment at the first DSB meeting; (2) page/word limits for written submissions and time limits for meeting with the panel; (3) a single meeting with the panel; (4) advance written questions in advance of meetings; (5) adherence to time-frames; and (6) power for the panel to invite parties to focus on certain claims or exclude certain claims.

The option for panel establishment, according to the facilitator, is to ensure that the panel is established at the first DSB meeting where it is requested.

Surprisingly, members did not express any reservations about this option, as per the "yellow table."

On the issue of page/word limits for written submissions and time limits for meeting with the panel, the options suggested are: (1) indicative page/word limits; (2) mandatory page/word limits; and (3) time limits for oral submissions.

Members made the following observations:

- * With respect to both options 1 and 2, the possibility of defining

two (standard, complex) or three (standard, complex, exceptionally complex) categories with associated page/word limits.

- * Factors to be provided to the panel to guide decision (e.g. legal or factual complexity of the dispute, including the complexity of measures at issue and of analysis required to determine whether there is a violation or defence or justification).
- * Page/word limits should also be applied to parties' comments on the interim report and to requests for preliminary rulings (e.g. under DSU, Article 6.2 dealing with the establishment of a panel).

As regards the third proposal on a single meeting with the panel, the options include (i) standard Appendix 3 process (two meetings) with the possibility of only one meeting, between two sets of written submissions, and (ii) two sets of sequentially written submissions, followed by a single meeting.

Apparently, members observed that it is "worth examining differences and gains in efficiency under each model for parties and panel."

On the fourth proposal on advance written questions in advance of the meeting, the option suggested is "mandatory written questions in advance of the meeting, with the possibility for a panel to ask post-meeting questions."

Members did not raise any reservations and also observed that there is "no requirement for the panel to ask post-meeting questions tracking those asked at the meeting."

On the issue of "adherence to time-frames", the option suggested in the "yellow table" is "mandatory time limits for issuance of panel report (e.g. 9 months with possibility of extension to 12 months), bearing in mind the considerations in the observations."

The facilitator listed the following observations on this issue:

- * Starting point would be panel composition and the endpoint of the issuance of the report to parties as this is part of the proceedings over which parties and panels have control.
- * Useful to have a discussion with the secretariat about translation to inform possible guidelines.
- * Relationship between time-frame and page/word limits for written submissions.

- * Possibility to extend the time-frames by agreement of the parties.
 - * Panel can extend in exceptional circumstances beyond the control of parties or panel (e.g. pandemic, accident).
 - * Explanation to be provided for delays.
- As regards the power for the panel to

invite parties to focus on certain claims or exclude certain claims, the option offered in the “yellow table” is “give power to a panel to invite parties to focus on certain claims or exclude certain claims.”

The observation made by members is that “there would be no consequences for the parties of not accepting the invitation of the panel.”

In short, the reform of the dispute settlement system seems to be pushed into a maze of controversial proposals such as the sunset provision, which may raise further issues about the intentions of the proponents, said negotiators familiar with the discussions. (SUNS 9795)

Developing countries left at receiving end of dispute settlement reform

The developing countries appear to be left at the receiving end of the proposed reforms of the World Trade Organization’s dispute settlement system.

by D. Ravi Kanth

GENEVA: The developing countries appear to be left at the receiving end of the proposed reforms of the World Trade Organization’s dispute settlement (DS) system, which includes several provisions such as what is necessary to resolve a trade dispute, on transparency, and even “accessibility” in the “yellow table” circulated by the facilitator overseeing the informal consultations, said people familiar with the development.

The facilitator, Mr Marco Molina of Guatemala, recently circulated a “yellow table” of proposals that contain more refined and elaborated proposed solutions for the issues identified by members.

The informal consultations are being held to fulfill the mandate set out in paragraph four of the outcome document agreed by trade ministers at the WTO’s 12th ministerial conference (MC12) in June 2022.

The WTO members are mandated to “conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024.”

More importantly, it is public knowledge that the United States, which

had paralyzed the WTO’s two-tier dispute settlement system by making the Appellate Body dysfunctional since December 2019, is one of the prime movers of the informal consultations.

The former facilitator Ambassador David Walker of New Zealand tried hard to address as well as accommodate all the concerns raised by the US on the functioning of the Appellate Body, the highest adjudicating body at the WTO.

While almost all WTO members agreed to adopt the draft General Council decision prepared by Ambassador Walker, the US blocked the decision on grounds that it failed to address Washington’s core concerns.

Against this backdrop, the ongoing informal consultations based on the MC12 mandate appear to pry open as many issues as possible in the Dispute Settlement Understanding (DSU), apparently without any clarity as to what would be the end product, said several negotiators, who asked not to be quoted.

Many members, including the developing countries, seem somewhat at a loss about whether the two-tier system, with the Appellate Body being the final

arm of the Dispute Settlement Body (DSB), will prevail or whether there will be a paradigmatic change that will make the WTO’s enforcement pillar ineffectual, negotiators said.

While it remains to be seen how the informal consultations will succeed in establishing fundamental changes, the “yellow table” of proposals circulated by the facilitator comprises several topics.

As reported in SUNS #9795 dated 2 June 2023, issues such as the sunset provision, the alternative dispute resolution mechanisms (ADRs), and the streamlined panel process in the “yellow table” were covered.

Some of the remaining issues in the “yellow table” such as transparency, and what is necessary to resolve the dispute, are taken up below.

Transparency provisions

Several developing countries like Indonesia, South Africa, and Pakistan among others raised concerns over the transparency proposals as set out by the facilitator in the “yellow table”.

To start with, the facilitator has included three proposals - “publication of submissions on WTO Docs Online,” “publication of adjudicator timetables on WTO Docs Online,” and “access to panel meetings for the general public” - which has been pushed by major industrialized countries like the US for some time now.

The facilitator has provided two options for “publication of submissions on WTO Docs Online.”

The options include (1) the default is publication, and (2) publication at the discretion of the parties, including the possibility of the agreement of the

disputing parties to publish (as currently provided for under the DSU).

In response to these two options, members apparently made several observations. They include: (1) “timing - possible undue impact on the panel”; (2) “confidentiality (both in relation to disclosing BCI (business confidential information), and disclosing non-BCI that stakeholders would not like to be disclosed)”; and (3) “scope of submissions that fall under this proposal to be discussed further.”

As regards the second proposal concerning “the publication of adjudicator timetables on WTO Docs Online,” the facilitator has suggested two options: (1) timetables published at the beginning of the dispute, and (2) updates to timetables published, if applicable.

The observation of members is “to clarify whose obligation this would be.”

Access to panel meetings for general public

On the controversial third proposal concerning “access to panel meetings for the general public,” the facilitator has offered three options.

They include: default is access for the general public to the entire hearing; (a) disputing parties can agree to opt out, and (b) disputing parties cannot opt-out.

Apparently, the observations made by members on the above option is that it be considered whether this access should be through in-person attendance or via audio recordings.

Linked to that is the question of whether access should be in all of the official languages of the WTO.

The second option in the “yellow table” on the issue of access to panel proceedings is, default is access for the general public to be part of the hearing with sub-options such as (a) disputing parties can agree to opt-out, (b) disputing parties each have the discretion to opt-out, and (c) default is no access for the general public unless the parties agree otherwise (as currently provided for under the DSU).

The general observation on the second option is that members should assess “the impact of access on resources, including on budget, resources, and staffing.”

Apparently, during the discussion

on the above proposals, there was more consensus than differences. Nevertheless, several reservations were also expressed during the consultations.

Costa Rica expressed reservations on the issue of publications, suggesting that it would need more clarity on the timing of the default publication, said negotiators who took part in the consultations.

The US is understood to have said that the initial idea was to have publications at the time of the circulation of the report. So, the report and members’ perspectives can be published together, the US apparently said.

Three options offered on public access to panel meetings.

The US also said that it is open to the idea of delayed submissions, adding that it sees value in having a timetable for publications on the ground that it would bring more accountability, said negotiators familiar with the discussions.

Interestingly, the facilitator concurred with the responses from the US, saying that publications will bring more accountability. Mr Molina said the US response will add more to knowledge-sharing and indirect learning.

Russia said the rationale and purpose of this proposal is not clear.

South Africa proposed some additional language that “some countries raised concerns about undue influence (of access to the general public), live and real-time public access to proceedings and documents under observation.”

Indonesia said that it is concerned with all three proposals concerning transparency. It argued that it doesn’t see the need for publications to be made with such urgency.

Indonesia also said that it is concerned with stakeholders having access to hearings. It asked what is the point of adding stakeholders, and why invite undue pressure on governments, especially when there is no input expected from them.

The proposal in the “yellow table” on what is necessary to resolve the dispute says, “adjudicators to address only what is necessary to resolve the dispute, including by exercising judicial economy.”

The second proposal is on clarifying that adjudicators should not issue “advisory opinions/interpretation.”

The options suggested to address the issue include the need to clarify that adjudicators should address only those issues that are necessary for the resolution of the dispute.

Under this option, two sub-options are (a) allow adjudicators to decide how to apply this in specific cases; and/or (b) provide guidance to adjudicators on how to apply this, which could include: (i) the underpinning objectives, and (ii) examples of the correct and incorrect application of the principle. This could include clarification that adjudicators may not make a finding if the finding is not necessary for the finding of a breach and recommendation.

Apparently, in response to the above options, the delegations said that they would consider whether to require adjudicators to address only what is necessary to resolve the dispute, including by exercising judicial economy, or to focus on what is necessary to resolve the dispute, including by exercising judicial economy.

Several members sought more consultations on the above options.

Expressing concern over the two proposals, Indonesia said that it feels that judicial economy in practice can be done but members need to be mindful of false judicial economy.

Indonesia said members’ focus should be on justice and not merely on judicial economy.

In short, the proposals on transparency and what needs to be done to resolve the dispute seem to be an attempt to bring some fundamental changes that could benefit some powerful countries, said negotiators who asked not to be quoted. (SUNS 9796)

Sharp concerns over lack of transparency & inclusivity in dispute settlement reform

Several developing countries on 30 May expressed sharp concerns over the manner in which the informal discussions on dispute settlement reforms are being conducted at the World Trade Organization, citing a lack of transparency and inclusivity as well as the seemingly fast pace of the discussions.

by D. Ravi Kanth

GENEVA: Several developing countries on 30 May apparently expressed sharp concerns over the manner in which the informal discussions on dispute settlement (DS) reforms are being conducted at a seemingly furious speed at the World Trade Organization, citing a lack of transparency and inclusivity as well as the pace of the discussions, said people familiar with the discussions.

At a meeting of the WTO's Dispute Settlement Body (DSB) on 30 May, several developing countries including India, South Africa, Indonesia, Malaysia, and Nigeria, on behalf of the African Group, apparently expressed their concerns over the informal discussions on DS reforms being chaired by Guatemala's deputy trade envoy, Mr Marco Molina.

The discussions exposed the difficulties being faced by the developing countries that currently possess limited negotiating resources to participate in negotiations on the various deliverables being targeted for the WTO's 13th ministerial conference (MC13), to be held in Abu Dhabi in February next year.

In varying levels of concern expressed at the meeting, the developing countries seem to have highlighted the difficulties arising from the frequency and fast pace of the discussions.

They cited, for example, that members with small delegations - unlike the overly staffed negotiators in developed country missions like the United States, the European Union, Japan, Canada, and Australia among others - have to participate effectively in all the ongoing meetings at the same time.

However, the major industrialized countries, including the US and the EU,

as well as Brazil and Chinese Taipei, expressed their appreciation of what they viewed as the facilitator's transparent and inclusive process.

They also endorsed the pace of the discussions, suggesting that the priorities attached to DS reform remain key to the success of MC13, said negotiators, who asked not to be quoted.

Even China concurred with the facilitator over the urgency of arriving at proper solutions in the next couple of months.

China underscored the need for frank and solution-oriented discussions, and the narrowing down of options, said negotiators familiar with the discussions.

The facilitator apparently acknowledged the overlapping meetings with the "Fish Week" and the difficulties involved in covering meetings simultaneously on the major deliverables, said an Asian negotiator, who asked not to be quoted.

"Upbeat" report by facilitator

The facilitator overseeing the informal discussions on DS reforms presented a somewhat upbeat report on 30 May on the progress of his consultations.

However, several developing countries expressed sharp concerns over the lack of transparency and inclusivity as well as the pace of the discussions, said people familiar with the discussions.

At the DSB meeting, the facilitator, Mr Molina of Guatemala, apparently presented a positive report about the progress being made in his informal consultations with the members.

The facilitator's report suggests

that the consultations are being held in fulfilling the objective set out by trade ministers at the WTO's 12th ministerial conference (MC12) in June last year.

That mandate states: "We acknowledge the challenges and concerns with respect to the dispute settlement system including those related to the Appellate Body, recognize the importance and urgency of addressing those challenges and concerns, and commit to conducting discussions with the view to having a full and well-functioning dispute settlement system accessible to all Members by 2024."

Although the facilitator's process was not formally agreed upon by members, it has assumed enormous importance over the past several months.

Apparently, the informal consultations are being driven by one powerful member from behind the scenes, said a negotiator, who asked not to be identified.

Mr Molina claimed that there has been rapid progress during the last two months, saying that there were multiple meetings that focused on substantive as well as technical issues.

These issues are based on the specific concerns and interests identified by members, with the US appearing to be a major driver.

The facilitator informed that he had held 57 meetings during the months of March and May, including 12 plenary sessions, six follow-up thematic meetings, six small group meetings, two information sessions, and 31 bilateral meetings with individual delegations and regional groups.

Mr Molina also suggested that members had submitted 70 initial proposals, which were earlier placed in a "red box."

He indicated that all these 70 proposals are now elevated to the "yellow box", suggesting that these proposals in the "yellow box" underline refined and elaborated proposed solutions. In a way, the proposals contain options for further consideration.

According to the facilitator, everyone has changed their views/mind-sets and do not consider any more red lines but an attempt to grasp the underlying rationale.

The confidential document issued by Mr Molina on the so-called "yellow box" proposals, seen by the SUNS, lists out the proposals, options, and observations.

The proposals include (1) alternative dispute resolution mechanisms, (2) streamlining the panel process, (3) accessibility, (4) accountability, and (5) what is necessary to resolve the dispute.

As previously reported in the SUNS on the US proposals, it is clear that Washington seems to prefer a single-tier dispute settlement system, while acknowledging that it can consider a two-tiered system in some bilateral disputes, said a negotiator, who preferred not to be quoted.

Apparently, when Pakistan, supported by India and Indonesia, sought to know if the US is in a position to suggest a template for the single-tier dispute settlement system during one of the recent meetings, the US apparently kept silent, said a South American negotiator, who asked not to be quoted.

As regards the next steps, Mr Molina said that members were making progress at a steady pace and are starting to identify practical solutions that could be good candidates to include in the forthcoming “green tables”, which will be the basis for the drafting exercise that will take place after the WTO’s summer break (in August).

He urged members not to be complacent and to keep up the pace, with the intensive work program continuing in June and July.

Mr Molina also suggested that members need to focus on certain issues that require further work and where they are running out of time.

The deputy trade envoy of Guatemala also indicated that he would convene a series of bilateral meetings with individual delegations and regional groups in addition to the meetings already scheduled for June and July.

He underscored the need for fully-agreed decisions at MC13.

Mr Molina concluded by saying that he is confident that members have the necessary ingredients to deliver an outcome that is satisfactory to all.

He said it will not be easy, but he is confident that with the right approach, members can deliver.

The facilitator’s report came under intense scrutiny at the meeting, as more than two dozen members apparently voiced their differing assessments.

Appellate Body appointments blocked

For the 66th time at the meeting, the US blocked a proposal from 129 members for expeditiously filling the vacancies on the Appellate Body, stating its allegedly intransigent position that Washington’s longstanding concerns over the Appellate Body remain unaddressed, said participants present at the meeting.

Even the facilitator from Guatemala, who is currently overseeing the DS reform discussions, said on behalf of the 129 members that he regrets that for the 66th occasion, members have not been able to launch the selection processes to fill the vacancies on the Appellate Body.

Without naming the US, the sole member that is blocking the Appellate Body appointment process, the facilitator apparently said the ongoing conversations about reform of the dispute settlement system should not prevent the Appellate Body from continuing to operate fully.

He said that members should comply with their obligation under the Dispute Settlement Understanding to fill the vacancies as they arise.

The US, while blocking somewhat unilaterally the Appellate Body appointments for the past five and a half years, underscored the need for fundamental reform of the WTO’s dispute settlement system to ensure a well-functioning system.

Such a reformed system, in the eyes and ears of the US, must support WTO members in the resolution of their disputes in an efficient and transparent manner, and in doing so limits the needless complexity and interpretive overreach that has characterized dispute settlement in recent years.

Also at the meeting, Russia’s war against Ukraine came under criticism/condemnation from eleven members, who expressed their support and solidarity with Ukraine and its people.

Russia, however, hit back by saying that none of the political issues raised by the eleven members were within the competence of the DSB and that the WTO was not a political organization.

At the meeting, Indonesia pressed ahead with its second request for a WTO dispute panel to adjudicate on

the countervailing and anti-dumping measures imposed by the EU on imports of stainless steel cold-rolled flat products from Indonesia.

The DSB agreed to the establishment of the panel, with the EU expressing its disapproval.

The EU said it regretted Indonesia’s decision to submit its second request for a panel and that it is confident that it will prevail in the dispute and that its measures will be declared to be in line with the WTO rules.

India, the US, the United Kingdom, Türkiye, Japan, the Republic of Korea, Brazil, Canada, Argentina, Ukraine, Singapore, Thailand, Russia, and China reserved their third party rights to the dispute.

On another dispute concerning India’s decision to appeal against a recent panel report before the Appellate Body on its tariff treatment on certain goods, several members including Japan, Chinese Taipei, the US, and China seemed concerned with India’s decision to take the issue to the Appellate Body.

According to these countries, India’s decision effectively pushes the dispute “into the void” despite the clear and reasoned assessment by the panel.

The panel had found that India’s raising of its customs duties on certain products in the information and communications technology sector in excess of its bound rates is inconsistent with its WTO commitments.

New Delhi said that in its notification of appeal, it made detailed arguments on the errors of law and legal interpretations made by the panel in its report.

India expressed hope that the early restoration of the Appellate Body will soon enable the review and correction of these errors and the expeditious resolution of this dispute.

India reiterated its willingness to engage in bilateral discussions with Japan on a mutually acceptable way forward.

Japan indicated that India indeed proposed bilateral discussions on the matter but that India has never provided any concrete proposal to address the WTO-inconsistency of its measures. (SUNS 9794)

African Group calls for fundamental reform of subsidy rules

The African Group has proposed major changes in the World Trade Organization's Agreement on Subsidies and Countervailing Measures (ASCM) so as to enable the developing countries to implement their industrialization programs.

by D. Ravi Kanth

GENEVA: The African Group has called for major reforms in the World Trade Organization's rules governing subsidies and countervailing measures so as to enable the developing countries to re-balance the "trade rules to promote industrialization and to address emerging challenges such as climate change, the concentration of production and digital industrialization."

It is common knowledge that the United States and the European Union along with other developed countries are immersed in a new wave of industrialization by providing subsidies worth hundreds of billions of dollars to address climate change and the semiconductor sector, despite allegedly violating the provisions in the WTO's Agreement on Subsidies and Countervailing Measures (ASCM).

As part of the WTO reforms as agreed at the WTO's 12th ministerial conference (MC12) on 17 June 2022, the African Group has proposed changes in the ASCM to enable the developing countries to implement their industrialization programs.

The proposal (WT/GC/W/880) from the African Group, titled "A Case for Re-balancing the Agreement on Subsidies and Countervailing Measures (ASCM) - Policy Space to Promote Industrialization in Developing Countries", was circulated on 26 May.

"It is a contribution to the discussions and negotiations towards the reform of the WTO agreed by (Trade) Ministers at MC12," the African Group emphasized.

Unlike the seemingly "hegemonic" positions adopted by the US and other developed countries to pursue their industrialization programs in alleged violation of the WTO rules, the African

Group seems to have adopted a legitimate route by raising the issue at the WTO as a multilateral concern for developing countries.

Acknowledging that subsidies are a "critical instrument in the toolbox that national governments use to address market failures and achieve a variety of policy goals," it noted that the ASCM "contains multilateral rules that discipline the type and scope of allowable subsidies or limits within which subsidies may be provided by a Member."

It said the ASCM also regulates the actions that members can take to counter the effects of (actionable) subsidies which can be enforced either through the WTO dispute settlement mechanism or through the imposition of countervailing duties or measures.

Further, it said under Article 27 of the ASCM, which recognizes the central role of subsidies in the economic development of developing countries, special and differential treatment (S&DT) provisions are provided for developing countries.

At a time when the world is mired in poly-crises or multiple crises ranging from the ongoing effects of the COVID-19 pandemic, the existential climate change crisis, the economic consequences of geopolitical tensions, to the global food and energy crises, the developing countries are caught in the maelstrom of a cost-of-living and simultaneously debt crisis due to the high-interest rate policies implemented by the US and other developed countries.

Against this backdrop, the African Group has argued persuasively that "it is important to consider how flexibilities, not only in the context of S&D as provided for in Article 27, can be availed

to developing countries to provide them with the requisite tools to respond to the poly-crisis."

According to the African Group, subsidies in developing countries aimed at "achieving 'legitimate development goals', including support for regional growth, technology research and development, production diversification, and development and implementation of environmentally sound methods of production should not have to face countervailing measures or other actions from other governments."

Equity in MTS

"Yet, it is instructive in this regard that developing countries have been the main targets of countervailing measures by developed economies," the African Group argued, exposing the alleged double standards being adopted by the developed countries that are currently providing massive subsidies to promote industrialization.

Seeking a level playing field, the African Group called for "flexibilities to be granted to developing countries so as to provide requisite flexibilities to developing countries to respond to the poly-crisis and to drive their structural transformation, industrial development, and diversification."

It said the time has come for the ASCM disciplines to be re-calibrated and re-balanced "to infuse certainty and equity in the multilateral trading system [MTS]."

The African Group's proposal aims to provide "a non-exhaustive list of issues that can be considered by Members to re-balance trade rules to enable industrialization within the framework of the ASCM to enable sustainable economic transformation in developing countries and in particular Africa."

Given the magnitude of the multiple crises "confronting the global economy, inequality and disparities in levels of development of countries and regions, highly concentrated patterns of production, and the lack of sufficiently diversified economies in developing countries," the African Group's proposal calls for urgent action at a multilateral level to devise rules that are fit for purpose.

The industrialized countries, according to the African Group, are currently implementing "industrial

policies as a viable option for accelerating sustainable economic growth as a means of advancing national economic priorities, including the de-risking of supply chains.”

Instead of de-coupling from the supply-chain network dominated by China, the EU last month proposed a new strategy of “de-risking” to confront the challenges posed by China.

Recently, the leaders of the G7 industrialized countries adopted “de-risking” as their strategy for confronting China.

In its proposal, the African Group emphasized the importance of “industrialization” as an indispensable factor in the development process and is critical in the process of the enhancement and expansion of productive capacities to achieve economic diversification.

However, “many developing countries struggle to diversify their economies”, it said, adding that it is therefore important to explore how WTO rules can facilitate the industrialization efforts of Members.

It said “Africa’s growth trajectory is limited by its dependence on production and exports of agricultural and extractive primary commodities which leaves it vulnerable to global shocks.”

While countries in North and South America, Europe, and several nations in Asia seem to have achieved a greater degree of export diversification, the same is not the case with the African countries, which over the last three decades, “recorded only a slight improvement in export diversification, that is, a 0.03 points decrease in the export diversification index.”

Forced to implement their nationally determined contributions as negotiated under the Paris Agreement, “with ambitious carbon reduction and mitigation targets,” the African Group said that “the increasing adoption of decarbonization targets with extraterritorial application imposed through trade measures by their main export markets also underscores the urgency to diversify their economies and integrate into environmentally-friendly and high-value manufacturing value chains as key producers and suppliers of products in the green economy, e.g. electric vehicles and their components such as energy storage systems, domestic solar and wind energy products, etc.”

According to the United Nations Conference on Trade and Development (UNCTAD) Technology and Innovation

Report 2023, “developing countries now have opportunities to catch up, reduce poverty, and at the same time help tackle climate change and set the world on a more sustainable course.”

The report also highlights “the critical role of WTO trade rules towards this ideal, such as the disciplines under the ASCM, including local content requirements and public procurement and the need for their review to bring them in sync with the Paris Agreement.”

Besides, said the African Group, R&D (research and development) “is critical to industrialization, including promoting green mobility and, with that, renewable energy solutions, as well as structural transformation into new, or more sustainable industrial activities.”

Unlike the fact that the successes of public-private cooperation in R&D to enhance research activities and translate research outcomes into a production plan for commercial use are well-documented, the story of PPP (public-private partnerships) in developing countries is different.

In developing countries, the public sector is invariably forced to undertake much of the burden in R&D with the near-absence of the private sector in R&D.

“The constraints imposed by disciplines in the ASCM can hamper public sector support for R&D purposes that is necessary for developing countries to develop their nascent industries, keep up with the pace of technological advances at competitive levels, and undermine efforts to harness or benefit from their natural resources to move up production value chains or decarbonize existing and future production capacities,” the African Group argued in its proposal.

It said with the “expiry of the carve-outs contained in Article 8 of the ASCM which allowed for non-actionable subsidies of up to 75 percent of industrial research or no more than 20 percent of costs of adaptation to new environmental requirements or regulations,” the chances of industrialization are further stifled.

Subsequently, with the expiry of the carve-outs, existing exports from developing countries face the risk of non-compliance with increasingly stringent sustainability standards, it added.

Also, the thresholds in the expired carve-outs are too conservative for the climate change response necessary to decarbonize.

In addition, the African Group

said that the “prohibitions contained in Article 3 of the ASCM on local content requirements presents a further constraint to the ability for developing countries to structurally transform and diversify their productive sectors.”

Notwithstanding the flexibilities provided for in Article 27.3 of the ASCM, which have since lapsed on 31 December 1999 and 31 December 2002, the African Group argued that “the uncertainties with respect to this provision in view of the restriction in the Agreement on Trade-Related Investment Measures (TRIMS) on the domestic content requirement created ambiguity and uncertainty on its practical applicability.”

Due to the capital required to achieve “economies of scale in production which are often impossible to realize through domestic markets alone,” it said there is an urgent need for more flexibilities for the development of domestic capacities along a value chain and promoting sustainable regional value chains.

Development dimension in ASCM

In view of the “poly-crisis and the need for Governments to respond in the interests of all,” the African Group wants WTO members to consider the need to “extend flexibilities required within the context of the ASCM to enable developing countries to grant subsidies, including complimentary localization initiatives to promote regional growth, industrial development and structural transformation, production diversification and development, technology research and development funding, and the promotion of environmentally sound methods of production (i.e. green industrialization) and green industries to confront climate change, including freight rebates to mitigate against high transport costs.”

It identified the relevant provisions in the ASCM for pursuing industrialization in developing countries.

The provisions, aimed at pursuing “legitimate sustained and sustainable development goals”, are:

- * The criteria of determining prohibition of paragraph 1(a) of Article 3 under the terms of paragraph 2(a) of Article 27 shall be revised with a view to, among others:
 - i. updating the threshold of GNP per capita of \$1,000 per annum, and ensuring re-inclusion of a Member

- when its GNP per capita falls back below the agreed threshold,
- ii. incorporating additional objective criteria to expand reach of the provision such as the level of export diversification, the global share of exports, etc., and
 - iii. taking account of regional investment needs to promote regional integration and achieving desired economies of scale.
- * The prohibition of paragraph 1(b) of Article 3 shall not apply to developing country Members and least developed country Members provided the use of domestic goods does not exceed the threshold to be agreed by Members.
- * In the case of actionable subsidies, the threshold for the termination of countervailing duty investigation of a product originating in a developing country Member shall be increased to x percent of its value calculated on a per unit basis;

The standard for negligibility should also be revised to be based on a market penetration test, rather than on imports as a percentage of total imports-test, i.e. if exports from an individual developing country are less than x% of the market where goods are being exported to, there should be no cumulation with imports from other countries.

* The expiry in 2000 of Article 8 of the ASCM that used to provide some policy space for Members to address technological, poverty, and environmental challenges - all crucial issues for sustainable development is an issue that Members need to reconsider in view of emerging global challenges. Article 8 of the ASCM provided cover for non-actionable (green-light) subsidies toward research and development, regional development, and environmental protection. Some nations took advantage of these provisions, but their full potential had not yet been realized when Article 8 expired in 2000. It is proposed that Article 8 of the ASCM be reinstated to enable developing countries to grant subsidies, including through complimentary localization initiatives, for industrial development and structural transformation, including technology research and development funding, production diversification and development and to allow measures to promote green industrialization to confront climate change and freight rebates to mitigate high transport costs. In hindsight, the scale of the climate change crisis and subsequently ambitious multilateral commitments to urgently respond to this global challenge seem to have been underestimated when Article 8 reforms were adopted. Its reinstatement must be coupled with an increase in

applicable thresholds respectively in relation to R&D, and the cost of adaptation to new environmental requirements imposed by law and/or regulations.

* Article 27 of the ASCM on Special and Differential Treatment of Developing Country Members is further proposed for consideration on the following elements:

- i. remedies to be considered by developing countries,
- ii. increasing the de minimis margins,
- iii. revising the standard for negligibility and cumulative assessment of the effects of imports to be based on market penetration,
- iv. increasing the volume of negligible volume of imports.

According to the African Group, "the applicability of the flexibilities and subsidies envisaged above, including their duration, shall be contingent on criteria and procedures to be agreed, taking due regard of the objective of fostering resilient and sustained development."

In conclusion, the African Group called for "focused discussions by Members to address the constraints inherent in certain WTO agreements which limit the policy space to drive industrialization, economic diversification and structural transformation programmes, including the ability to respond to emerging challenges such as climate change." (SUN 9792)

Gendered Austerity in the COVID-19 Era: A Survey of Fiscal Consolidation in Ecuador and Pakistan

by *Bhumika Muchhala, Vanessa Daza Castillo and Andrea Guillem*

Austerity is gendered in that the power relations that shape the distribution of resources and wealth as well as the labour of care and reproduction turn women and girls into involuntary "shock absorbers" of fiscal consolidation measures. The effects of austerity measures, such as public expenditure contraction, regressive taxation, labour flexibilization and privatization, on women's human rights, poverty and inequality occur through multiple channels. These include diminished access to essential services, loss of livelihoods, and increased unpaid work and time poverty. This report examines the dynamics and implications of gendered austerity in Ecuador and Pakistan in the context of the fiscal consolidation framework recommended by International Monetary Fund (IMF) loan programmes.

Available at <https://twm.my/title2/books/pdf/GenderedAusterity.pdf>

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