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WTO members split over Nairobi outcome, post-Nairobi programme

Stark differences persist among the WTO membership over the content of the outcome to emerge from the trade body's Ministerial Conference that will take place in Nairobi this December. On top of this, the future course of talks in the WTO after the Nairobi meeting remains a major bone of contention, throwing the very fate of the Doha Round negotiations into uncertainty.

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General Council meet shows WTO members sharply divided

Ahead of the WTO's 10th Ministerial Conference, to be held in Nairobi in December, member states remain far apart on what is to be decided at the meeting as well as what will happen to the Doha Round negotiations after Nairobi.

by D. Ravi Kanth

GENEVA: Trade envoys remained sharply divided at the WTO's General Council meeting on 8 October after the developed countries led by the United States and the European Union fiercely opposed demands of developing and least developed countries for "credible", "balanced" and "developmental" outcomes at the Nairobi ministerial meeting, several trade envoys told the *South-North Development Monitor* (SUNS).

The divisions between the two sides came into the open on the package of deliverables for the WTO's 10th Ministerial Conference, which will be held in Nairobi on 15-18 December, as well as on the post-Nairobi roadmap for unresolved issues in the Doha Development Agenda.

The battle lines on the substantive as well as process-related issues seemed more like a North-South divide as the US and the EU appeared in no mood to continue with the Doha Development Agenda (DDA) negotiations regardless of their failure to address the agreed mandates, particularly in agriculture, since 2001, several trade envoys maintained.

The EU, the US, Japan and Norway, among others, emphasized leaving behind the Doha architecture in the post-Nairobi process because of the repeated failures to provide the anticipated outcomes.

The EU and the US had been prime movers behind the launch of the Doha Round immediately after the September 2001 attacks in New York, promising the developing and least developed countries that they would be integrated into the global trading system through a developmental reform of agriculture and other areas.

Despite their decision to now walk away from the Doha architecture, the trans-Atlantic trade elephants maintained somewhat disingenuously at the 8 October General Council meeting that they are still ready to address the out-

standing issues in agriculture and other areas while pursuing new issues.

In sharp contrast, coordinators for different developing-country coalitions such as Saudi Arabia (on behalf of the Arab Group), Lesotho (coordinating the African Group), Barbados [for the Africa, Caribbean and Pacific (ACP) Group], Indonesia (leading the G33 coalition) and Guatemala (for the small and vulnerable economies) pressed for a credible package of developmental deliverables based on the mandates of the Doha Development Agenda.

Several major developing and least developed countries such as China, India, Kenya, Egypt, Brazil, South Africa, Morocco, Ghana, Venezuela, Cuba, Bolivia, Korea and Ecuador issued nuanced messages for preparing "developmental" outcomes for the Nairobi meeting and also for ensuring a clear roadmap for addressing the remaining Doha issues.

Divergent views

In his intervention at the beginning of the General Council meeting, WTO Director-General (DG) Roberto Azevedo said that at the G20 trade ministers' meeting in Istanbul on 6 October, there had been "a willingness to proceed on the basis of a package of specific issues which is DDA-minus" and to commence work on a final Nairobi document. He claimed a small package of deliverables – export competition, "development issues with a particular focus on LDCs [least developed countries]", and a set of possible outcomes to improve transparency in a number of areas – may gather convergence at Nairobi. But Azevedo has not indicated till now the proponents of the small package of deliverables.

Azevedo said that "ministers also gave their backing to a parallel discussion on the path of future work on unresolved Doha issues after Nairobi."

Nonetheless, "whatever we deliver

in Nairobi, it will not be viable or credible to announce it as an agreed conclusion of the DDA single undertaking," Azevedo said.

The DG admitted candidly that "at this point, there are divergent views on what happens after Nairobi." "Many say that if there is no consensus to end the Doha Round then it will simply continue ... and that we should state this clearly. Others say that if we do not deliver Doha by Nairobi then that will be it – even without a formal statement affirming its demise," he argued. "Clearly these views will be extremely difficult to reconcile."

Azevedo said the divide continues to persist on how to address the core

issues of the DDA and their development dimension after Nairobi – whether under the DDA framework or whether under a reformulated architecture.

Against this backdrop, members must start working on the basis that there will be a Ministerial Declaration that would reflect the stock of decisions at Nairobi, as well as provide clear guidance on future work.

"My proposal therefore is to start a process that will lead us to text-based negotiations on [a Nairobi] Ministerial Declaration," the DG said, adding that he would hold consultations on how to go about the process.

Kenya's trade envoy Ambassador Stephen Karau issued a strong message

that "something has to be delivered in Nairobi" to ensure the credibility of the WTO.

"In this regard we support having a drafting group to start work on the issues that the Director-General has identified as promising for outcomes in Nairobi," Karau maintained. Given the paucity of time, "we therefore support the Director-General's proposal of having a drafting group to start work immediately," Kenya, which will host the Nairobi ministerial meeting, emphasized.

But in an abrupt response to the Kenyan ambassador's call, the DG said that he is not embarking on any drafting group at this juncture, according to people familiar with the meeting. Azevedo reiterated that his proposal is to start a process of consultations with members.

Australia underscored the need for defining the package in detail without prejudice to other aspects of the Doha Round as well as initiating a process for a narrative of a post-Nairobi work programme.

"New approaches"

The EU said it is prepared to engage through a negotiating group for a Nairobi package centred around export competition based on 2008 revised draft modalities, and some deliverables for the LDCs. The EU, however, expressed concern on improvements in special and differential treatment flexibilities as demanded by a group of 90 countries.

The EU's new trade envoy Ambassador Marc Vanheukelen said categorically that "if we could not reach agreement on the core DDA issues in the last 14 years and in particular over the last two years when we considered significantly recalibrated approaches, this doesn't inspire confidence in our ability to advance on the same basis in the future."

Therefore, "new approaches" as well as "parallel exploration of possible negotiations in other areas" are critical for bringing the WTO back into the centre of "trade rule-making."

The US trade envoy Ambassador Michael Punke said that he would agree with the DG's assessment on a finite number of issues that could bring consensus at Nairobi. The US envoy ruled out any chance of an outcome on a special safeguard mechanism (SSM),

Consultations to begin on Nairobi outcome document

by Kanaga Raja

GENEVA: WTO Director-General Roberto Azevedo has announced that he is appointing three facilitators to consult with members on developing an outcome document for the organization's 10th Ministerial Conference, to be held in Nairobi from 15-18 December.

According to information posted on the WTO website, the DG made the announcement at a meeting of heads of delegation on 12 October.

He has appointed Ambassador Gabriel Duque of Colombia, Ambassador Harald Neple of Norway and Ambassador Stephen Karau of Kenya, which is hosting the Ministerial Conference, as the facilitators.

Azevedo informed trade envoys that he would be attending a series of ministerial meetings over the next two weeks away from Geneva and that he was proposing this initial process to advance the consultations during this period.

According to information posted on the WTO website, the three ambassadors will be asking members for their views on three key issues: the structure of the potential Nairobi outcome document; the elements that the document might cover (which could include priorities for post-Nairobi work); and what subsequent process could be employed to develop a draft of the outcome document.

The WTO website cited the Direc-

tor-General as saying: "At the General Council last week we discussed the urgent need to address the issue of a potential outcome document in Nairobi – specifically what such a document should cover, and how we should arrive at a text."

"I think we all agree about the need to start this work, and that we should aim towards agreeing a Ministerial Declaration, but I think it is premature to start any kind of drafting exercise. The first step therefore must be to hear everybody's views. We need to have a process of consultations. It is important that all members have an opportunity to air their views."

Azevedo further said: "I will remain in very close contact with the facilitators during this time, and then I will report back to a meeting of all members to be held at the earliest opportunity. I don't want to prejudge where this exercise will lead. I will share the views that the facilitators have heard – on content and process – and we will decide at that point about what the next stage should look like."

According to the WTO website, negotiations on the potential deliverables for Nairobi are expected to continue in parallel with these consultations, mainly through the formal negotiating groups and other relevant committees. (SUNS8112) □

which failed due to lack of convergence over the last 14 years.

The US said it offered a proposal on domestic agricultural support but was shot down before sunset on the same day, according to a negotiator present at the meeting. Punke said there will not be any consensus to declare the DDA dead, nor consensus to continue the DDA after the Nairobi meeting. Washington was open to a post-Nairobi work plan dealing with any issue but would not reaffirm the DDA architecture which had failed for 14 years.

Continuing with the Doha Round

In sharp contrast to the EU and US positions, China called for the Doha Round based on the existing mandates to continue after the Nairobi meeting. China's trade envoy Ambassador Yu Jianhua said while he would agree with the need for a ministerial declaration, it must not be drawn from a subjective orientation. "Drafting should not deny or change [the] Doha mandate," said Yu. He said China is willing to consider new issues such as e-commerce and investment on an exploratory basis.

Brazil issued the strongest statement yet on how members are frustrated because of continued failure to address the trade-distorting domestic support in agriculture. Brazil's trade envoy Ambassador Marcos Galvao said all promises to reform agriculture subsidies and market access barriers are "broken", and agriculture always remains as "the main victim of recurrent hit-and-run ... THAT is what really compromises the credibility of our work in this organization and undermines trust among ourselves."

Galvao said candidly that "for Brazil this is a *sine qua non* condition: In order to consider joining a consensus for an eventual extremely limited outcome in Nairobi, we will definitely need a collective commitment to carry on with our work, beginning, as of January, in the areas where real negotiation and agreement could once again not be postponed."

"This commitment and the substantive agreements we may reach in Nairobi are two inseparable parts of one same package," the Brazilian envoy emphasized. Brazil is not going to pay for new issues in return for addressing the unresolved areas of agriculture, he said.

South Africa's trade envoy Amba-

sador Xavier Carim said the package of deliverables for the LDCs must be acceptable to them. He said members recognize the need for the DDA to continue because of unresolved issues. Carim said South Africa will not accept any transparency provisions that add administrative burdens or interfere with domestic processes.

Ghana said the Doha Round must not be buried in Nairobi.

India said it has consistently demanded that "a comprehensive and balanced outcome in all the three core negotiating areas viz. Ag[riculture], NAMA [non-agricultural market access] and Services as well as internally on all three pillars of Agriculture, even if with a downward recalibration of ambition, is a necessary condition for fulfilling the development mandate of this Round."

"We believe that we should continue our efforts to reach as close as possible to that result at Nairobi," India's Ambassador Anjali Prasad told her counterparts. She said "credibility and balance of the package will be essential for the success of Nairobi."

"Another critical success factor for Nairobi," said Prasad, "would be the terms on which we decide to advance the remaining DDA, should it be diffi-

cult to achieve consensus on a comprehensive set of outcomes."

"Nairobi, in such a situation, cannot be either the conclusion or the end of the DDA," according to the Indian envoy. She said "multilateral negotiations such as those envisaged under the DDA are an ongoing process, especially when they are aimed at addressing existing inequities in the trading system." "The framework provided by the DDA is a valuable component for attaining this goal, and should continue to anchor the deliberations on remaining DDA issues," India argued.

Prasad also emphasized that "special and differential treatment is an integral component of all pillars of the negotiations. Any calls for changing the existing WTO legal paradigm and seeking further stratification among developing countries will not be conducive for advancing our work, and could complicate the negotiating process immensely."

In short, the General Council meeting exposed the widening divide between the North and South in what is billed as a developmental round. It has to be seen whether countries of the South can stop the sudden push to guillotine the Developmental Round on African soil in December. (SUNS8110)

No binding commitments at Nairobi on LDC package, say developed countries

The WTO's Nairobi meeting may deliver little in the way of credible and binding outcomes, with the developed countries appearing reluctant to make significant commitments on this front, as the following two reports on recent discussions among trade envoys indicate.

by D. Ravi Kanth

GENEVA: The developed countries led by the United States have made it abundantly clear that they are not going to provide at the WTO's Nairobi ministerial meeting binding commitments in the LDC package or developmental outcomes in special and differential treatment provisions as demanded by 90 developing and least developed countries, people familiar with the development told the *South-North Development Monitor* (SUNS).

During a day-long closed-door retreat on 15 October at a hotel in Geneva, the US and its allies signalled that the

outcomes at the Nairobi meeting beginning on 15 December are not going to deliver on the "development" dimension of the Doha Round.

The US, the European Union, Australia and Japan have already declared that they will close the Doha Development Agenda (DDA) negotiations at Nairobi and move on to new issues while continuing with the unresolved issues on agriculture and industrial goods outside the DDA.

The retreat was attended by select trade envoys from over a dozen developed and developing countries to dis-

cuss the deliverables in the LDC package, the export competition pillar in agriculture, and improvements in transparency provisions.

Trade envoys from the US, the EU, China, India, Brazil, Australia, Japan, Canada, Norway, Switzerland, New Zealand, Mexico, Colombia, South Africa and Kenya, among others, took part in the meeting.

Little for LDCs

The discussion on the LDC package, which dominated the pre-lunch proceedings, was largely focused on the level of commitments that the US, the EU, Japan, Canada, Norway and Australia are willing to undertake on duty-free and quota-free market access, cotton, the simplification of preferential rules of origin, and enhanced access for services providers in the poorest countries.

On duty-free and quota-free market access for LDC exports (DFQF), which was agreed at the WTO's Hong Kong Ministerial Conference in 2005, the US has categorically ruled out binding outcomes for all the LDCs, particularly Bangladesh, Nepal and Cambodia, according to people familiar with the retreat. The US said it would not be able to provide DFQF access for up to 97% of exports of LDCs.

In the Hong Kong Ministerial Declaration, the developed countries had agreed that they shall "provide duty-free and quota-free market access on a lasting basis, for all products originating from all LDCs by 2008 or no later than the start of the implementation period in a manner that ensures stability, security and predictability."

The declaration gave a leeway to the US by saying that "members facing difficulties at this time to provide market access as set out above shall provide duty-free and quota-free market access for at least 97 per cent of products originating from LDCs, defined at the tariff line level, by 2008 or no later than the start of the implementation period." The developing countries were required to provide DFQF access in a manner they can offer depending on their ability to do so.

While developed countries such as the EU, Japan, Canada and Australia maintained at the 15 October retreat that they could fully comply with a binding commitment for DFQF access, the US

ruled out any prospect for a binding outcome at the Nairobi meeting, according to people familiar with the retreat.

On cotton, the US maintained its inability to undertake substantial commitments to reduce trade-distorting subsidies, to provide full market access and to eliminate export subsidies. The EU also indicated that it would not be able to comply with the elimination of export subsidies.

Effectively, the deliverables on cotton are anything but substantial and binding, said an LDC trade envoy familiar with the meeting.

The developed countries, particularly the US and the EU, have ruled out binding provisions on the simplification of preferential rules of origin. The LDCs have provided different options for binding provisions on the simplification of rules of origin but in all likelihood the developed countries are unwilling to offer credible commitments, said the LDC envoy.

The LDCs are also left high and dry in regard to enhanced market access for services providers from the LDCs under Mode 4. The US indicated that it would not be in a position to offer access in Mode 4 as proposed by the LDCs, according to the LDC trade envoy.

In short, the Nairobi deliverables for the LDCs will be another round of best-endeavour outcomes but not "lasting", "credible" and "binding" outcomes, several people familiar with the retreat told *SUNS*.

Sharp exchanges

The discussion on the export competition pillar for farm products was marked by sharp exchanges between the representatives of developing countries such as India, China, Brazil and South Africa on the one side, and the major developed countries on the other.

The new chair of the Doha Round's agriculture negotiations, Ambassador Vangelis Vitalis, raised three major questions at the meeting. The chair asked the participants to spell out: (i) the problem that they would face on the 2008 revised draft modalities (Rev.4) in export competition, (ii) the problem they have in complying with the Rev.4 disciplines, and (iii) how they intend to fix the problem.

The export competition pillar includes elimination of export subsidies, and disciplines on export credits, food

aid and state trading enterprises.

The EU said it wants Rev.4 as the basis in all four areas while the US said it will not accept the disciplines in export credits and food aid, according to people familiar with the meeting.

The US also said it can accept neither a 180-day duration for export credits as stipulated in the revised draft modalities of 2008, nor any discipline on food aid at the WTO, according to a person familiar with the discussion.

Sharp differences also came to the fore as the US and the EU demanded an end to the special and differential treatment flexibilities for the developing countries in export subsidies as indicated in Article 9.4 of the WTO Agreement on Agriculture.

India rejected the call from the US and the EU, saying there is no basis for eliminating the special and differential treatment flexibilities based on the Uruguay Round commitments in Article 9.4 of the Agreement on Agriculture and the Rev.4 text of 2008.

India said if the developed countries eliminate their export subsidies on 1 January 2016, the developing countries will phase out their export subsidies in 2021 based on the language in the Rev.4 text, according to people familiar with the meeting.

The developed countries at the retreat also adopted an extreme form of stonewalling tactics regarding the improvements in the special and differential treatment (S&DT) provisions as demanded by the G90 countries.

Instead of engaging in an honest give-and-take dialogue on the G90 proposals, the developed countries were only conveying their views through numerous faxes and raising questions, according to the people familiar with the retreat.

In a nutshell, the writing on the wall for the Nairobi meeting is clear. The developed countries have almost prepared the ground to walk away from Nairobi without delivering "credible", "lasting" and "binding" outcomes on either the LDC package, export competition pillar or improvements in the S&DT provisions.

Furthermore, the developed countries want to bury the 14-year-old DDA negotiations once and for all without delivering on any of the promises they made in 2001, several trade envoys told *SUNS*. (*SUNS8115*) □

US wants S&DT for its non-compliance on export competition pillar

by D. Ravi Kanth

GENEVA: The developed countries led by the United States have demanded special and differential treatment (S&DT) for themselves so as to not comply with the commitments in the export competition pillar based on the Doha agriculture mandates.

They, however, remain opposed to providing S&DT to the developing and poorest countries on several other issues of the Doha Round, trade envoys told the *South-North Development Monitor (SUNS)*.

"This is hypocrisy of the worst kind in which the US wants special and differential treatment for not addressing the disciplines on export credits, food aid and state trading enterprises in the Doha agriculture package but [is] not prepared to extend the same treatment for the developing and poorest countries on the core issues," said a trade envoy from a developing country.

"The US has steadfastly opposed the permanent solution for public stockholding programmes for food security, special safeguard mechanism, and a waiver from commitments for patent protection for pharmaceutical products for the poorest countries," the envoy said.

At a meeting of select trade envoys from over 30 countries on 16 October, the chair of the Doha Round agriculture negotiations, Ambassador Vangelis Vitalis, posed three questions: (i) where is the problem in Rev.4 (revised draft modalities of December 2008), (ii) what are the specific concerns of the members, and (iii) how do they propose to address them.

Many members, particularly developing countries, welcomed the chair's three questions and said categorically that they are ready to work on the basis of the 2008 revised draft modalities, according to the participants present at the meeting.

Also, trade envoys welcomed the elimination of export subsidies. However, Switzerland pressed for a longer period for phasing out its export subsidies.

But the US trade envoy Ambassa-

dor Michael Punke raised a flag on several issues in the export competition pillar based on the 2005 Hong Kong Ministerial Declaration and the 2008 revised draft modalities. He stated unambiguously that Washington will not be in a position to accept several major disciplines on export credits, food aid and state trading enterprises, according to trade envoys present at the meeting.

The US demanded "safe harbour" protection for its export credits from the disciplines of the WTO Agreement on Subsidies and Countervailing Measures (SCM) while complying with the current Agreement on Agriculture (AoA) for export credits. The US also dismissed binding commitments for food aid while raising concerns even in the area of state trading enterprises.

The US said categorically that export credit guarantees with repayment periods of 180 days and below as mandated in the Hong Kong Ministerial Declaration and the Rev.4 text are not acceptable to it since the US law allows a two-year repayment period.

The US also made it clear that the disciplines on food aid in Rev.4 are not acceptable to Washington. The US said it could agree only with best practices for food aid. The US said that it would have a problem even in the disciplines on state trading enterprises on the issue of government funding provision, according to a South American participant.

Although the European Union said it is ready to work on the basis of Rev.4, it also signalled its willingness to settle for any outcomes based on the consensus among members. Effectively, the EU indicated that it can turn a blind eye in case the disciplines on export credits, food aid and state trading enterprises are sufficiently weakened, said an envoy from a South American country.

S&DT for developing countries

While the US adopted a unilateral position on export credits, food aid and state trading enterprises, the other de-

veloped countries, particularly Australia and the EU, targeted the developing countries by calling for the elimination of special and differential treatment for developing countries under Article 9.4 of the Agreement on Agriculture, according to participants present at the meeting.

The US, however, maintained that it is not against S&DT flexibilities for developing countries, emphasizing that Washington can agree to a longer phase-out period for developing countries but that the end-point has to be the same for all members.

The strongest attack on the double standards and sheer hypocrisy of the positions adopted by the developed countries came from India.

The Indian envoy Ambassador Anjali Prasad dismissed the Australian demand on the ground that the Hong Kong Ministerial Declaration of 2005 has clearly stipulated that "developing country Members will continue to benefit from the provisions of Article 9.4 of the Agreement on Agriculture for five years after the end date for the elimination of all forms of export subsidies."

Furthermore, the Rev.4 text has stated that developing countries can "continue to benefit from the provisions of Article 9.4 of the Agreement on Agriculture until the end of 2021, i.e., five years after the end date for elimination of all forms of export subsidies [2013 for industrialized countries and 2016 for developing countries]," India argued.

Several developing countries supported India by saying that they will adhere to the Hong Kong Ministerial Declaration and the Rev.4 text to eliminate export subsidies five years after the industrialized countries do away with their subsidies, said a participant familiar with the developments.

In sharp contrast to its demand for "safe harbour" treatment for export credits from the disciplines of the SCM Agreement, the US vehemently opposed India's demand for insulating public stockholding programmes for food security from the SCM Agreement disciplines.

The US' demands in the export competition pillar and its refusal to address disciplines in the domestic support pillar are tantamount to ensur-

ing that the inequities in the Agreement on Agriculture based on the Uruguay Round continue in perpetuity, said an African trade envoy.

Even as the US mounts unprecedented pressure on members in order to secure substantial flexibilities in finalizing the disciplines on export credits, food aid and state trading enterprises, it is ready to pound the developing countries by vehemently opposing the permanent solution for public stockholding programmes for food security and special safeguard mechanism. The US is also forcing the least developed countries to run in circles over their demand for extending the waiver on TRIPS Agreement commitments until they graduate to developing-country status, the envoy added.

In short, the coming weeks will indicate whether the US can manage to secure the best concessions and treatment while a large majority of countries are not only denied the much-promised “development” dividends of the Doha Round but are asked to bury the 14-year-old Round.

At the same time, the US continues “cherry-picking” which of the Uruguay Round commitments and mandates for further work it will pursue and which it will ignore – the latest example being its unwillingness to continue negotiations on harmonizing rules of origin (mandated to be taken up and completed by end-2008) or continue with the process of agriculture reform to eliminate all agricultural subsidies. (SUNS8118) □

this will be achieved.

Regret

Trade observers have noted that at the current pace of ratifications, it seems unlikely that the Agreement will pass the two-thirds threshold in time for it to enter into force by the 10th Ministerial Conference of the WTO, to be held in Nairobi, Kenya, from 15-18 December.

Trade observers say that in the face of the current stance of the US, the EU and their allies (and the WTO secretariat promoting US interests), many developing countries – which, under the TFA, would be providing facilities to enable US and EU corporations to dominate developing-country markets – are in none too much of a hurry to undertake their domestic requirements for ratification.

Many of them are known to be regretting that, in adopting the Protocol to incorporate the TFA into Annex 1A, they have given away the collective leverage the developing countries had over the US, the EU and Japan to deliver on the latter’s development commitments.

According to trade officials, the Chair of the PCTF, Ambassador Esteban Conejos of the Philippines, described the increasing number of ratifications as a “very welcome development”. The Chair said that he expected to have a substantial number of new ratifications when the committee next meets in February 2016.

The Chair also said that since the last PCTF meeting in June, the committee had received new Category A notifications from Trinidad and Tobago, Barbados, Uganda, Belize, Lao PDR, Saint Lucia and the Seychelles, bringing the overall number of Category A notifications to 72.

(Category A contains provisions that a developing-country or LDC member designates for implementation upon entry into force of the Agreement or, in the case of an LDC member, within one year after entry into force.)

According to trade officials, the meeting also heard a number of members describing their efforts in carrying out the domestic reforms needed to meet their commitments under the TFA, as well as the challenges they have faced. These included China, Japan and Senegal. (SUNS8113) □

Less than half of total to bring TFA into force

The WTO’s new Trade Facilitation Agreement has so far secured only under half the number of ratifications required for it to come into force, making it unlikely that the treaty will take effect by the time of the Nairobi Ministerial Conference.

by Kanaga Raja

GENEVA: The total number of ratifications of the Trade Facilitation Agreement (TFA) received now covers 49 WTO members, or around 45% of the total needed to bring the Agreement into force, the final meeting this year of the WTO Preparatory Committee on Trade Facilitation (PCTF) was told.

According to trade officials, the WTO secretariat informed PCTF members on 13 October that since the last meeting of the committee on 11 June, the number of ratification instruments received had tripled.

Taking account of the fact that one of the ratifications – that of the European Union – covers 28 members, the total number of ratifications received now covers 49 WTO members.

In addition to the EU, Hong Kong-China, Singapore, the United States, Mauritius, Malaysia, Japan, Australia, Botswana, Trinidad and Tobago, the Republic of Korea, Nicaragua, Niger, Belize, Switzerland, Chinese Taipei,

China, Liechtenstein, Lao PDR, New Zealand, Thailand and Togo have ratified the TFA.

The TFA needs ratification by at least two-thirds of the WTO members accepting the Protocol before it can be inserted as among the agreements in Annex 1A of the WTO Agreement to make it binding on those ratifying it.

The Protocol of Amendment inserting the TFA into Annex 1A of the WTO Agreement was adopted by members at a WTO General Council meeting on 27 November 2014.

The Protocol will enter into force, in accordance with paragraph 3 of Article X of the WTO Agreement, when it is ratified by two-thirds of the WTO’s membership of 161 members (as of 26 April 2015) and the acceptance instruments are lodged in the WTO. Only then can the TFA enter into force, with its rights and obligations kicking in for the ratifying members.

No deadline has been set for when

US offer on LDC transition period “indefensible”, say NGOs

Civil society groups have slammed as inadequate a US proposal for a 10-year waiver from intellectual property protection for pharmaceuticals in the world's least developed countries, saying the waiver should instead be in force for as long as these countries remain LDCs.

by Sangeeta Shashikant

LONDON: The United States' offer to the least developed countries (LDCs) of a 10-year transition period to grant pharmaceutical patents is “unconscionable and indefensible”, according to six influential US non-governmental organizations (NGOs).

In a letter dated 19 October to US President Barack Obama, the NGOs conveyed this strong criticism in view of the public health and other developmental challenges facing the LDCs.

The letter states, “We fail to understand why the US, alone, continues to oppose LDCs' demand – a legally sound and justified request for a pharmaceutical transition period for as long as they remain LDCs.”

The letter also calls the US position “egregious” as “the LDC markets are of no significant financial value” and “the US is an important donor and member of the international community that is active in various LDCs in supporting HIV treatment programmes as well as initiatives such as the Global Fund; hence the US administration is a major beneficiary of the LDCs' request”.

The letter – signed by Oxfam America, Health GAP, Knowledge Ecology International (KEI), the Union for Affordable Cancer Treatment (UACT), the Young Professionals Chronic Disease Network (YP-CDN) and Public Citizen – strongly urged the US to “express its full and unconditional support” for the LDCs' requested duration.

On 16 October, the US had offered a meagre 10-year pharmaceutical transition period to the LDCs at the WTO. This took place at the meeting of the WTO Council on Trade-Related Aspects of Intellectual Property Rights (TRIPS) held on 15-16 October in Geneva.

The offer was made during informal meetings between the US Ambassador Michael Punke and ambassadors representing the LDC Group in the WTO: Ambassador M. Shameem Ahsan from Bangladesh, Ambassador Deepak

Dhital from Nepal and Ambassador Christopher Onyanga Aparr from Uganda.

According to trade diplomats, the LDC ambassadors rejected the US offer.

The impasse between the US and the LDC Group led to the suspension of the TRIPS Council meeting by the acting Council chair, Ambassador Alfredo Suescum from Panama.

Meetings planned on 19 October had to be cancelled as US Ambassador Punke, who is personally handling this matter, was still consulting with Washington for further instruction.

In the absence of Punke, the LDC matter will not make any headway, informed sources say.

Earlier this year, the LDC Group had submitted, as required by Article 66.1 of the WTO's TRIPS Agreement, a “duly motivated request” seeking an extension of the pharmaceutical transition period for as long as a country remains an LDC. The Group's request is aimed at extending the pharmaceutical transition period granted by paragraph 7 of the WTO's 2001 Doha Declaration on the TRIPS Agreement and Public Health. The transition period comes to an end this year.

(Article 66.1 of the TRIPS Agreement states: “The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.” Paragraph 7 of the Doha Declaration on the TRIPS Agreement and Public Health states: “We also agree that the least-developed country Members will not be obliged, with respect to pharmaceutical products, to implement or apply Sections 5 and 7 of Part II of the TRIPS Agreement or to enforce rights provided for under these Sections until 1 January 2016, without prejudice to the right of least-developed country Members to seek other extensions of the transition periods as provided for in Article 66.1 of the TRIPS Agreement.” The TRIPS

Council has formally adopted paragraph 7 of the Doha Declaration.)

At the June 2015 TRIPS Council session, the LDC Group defended its request, arguing that the classification of LDCs is contingent on a number of key human development indicators including levels of poverty, literacy, infant mortality and economic vulnerability determined by the United Nations. It also presented statistics showing the poor economic performance of LDCs, their widespread poverty and the massive public health challenges that prevail in LDCs.

The LDC Group further presented evidence of the successful use of paragraph 7 of the Doha Declaration by LDCs such as Sierra Leone, Djibouti and Zambia to facilitate importation of affordable medicines and to speed up the supply of such medicines, stressing also that the paragraph 7 mechanism is known as “one of the most successful provisions” of the Doha Declaration.

The US remains the only country vehemently opposing the LDCs' request for a pharmaceutical exemption until a country ceases to be an LDC. The European Union and other WTO members are willing to accept the LDCs' demands.

The United Nations (including WHO, UNDP, UNAIDS, UNITAID), the Vatican, and multiple US Senators and Representatives have also expressed unequivocal support for a pharmaceutical transition period linked to the graduation status of LDCs.

The most vulnerable

The NGO letter states that LDCs are the most vulnerable and poorest segment of the international community and the majority of the LDCs are in the Sub-Saharan region. They are characterized by low per capita income, low level of human development and economic vulnerability, in addition to inherent geographical and environmental constraints.

The letter quotes the UN which states that more than 70% of the LDC population live on less than \$2 per day and an estimated 252 million people live with hunger. It also refers to World Bank data from 2014 which reports that only 36% of LDCs have access to improved sanitation facilities while 68% have access to an improved drinking water source and as of 2012, two-thirds

South moots making non-violation complaints inapplicable to TRIPS

Also at the 15-16 October TRIPS Council meeting, developing countries called for the upcoming Nairobi Ministerial Conference to declare that "non-violation complaints" are inapplicable to the TRIPS Agreement.

by D. Ravi Kanth

GENEVA: A large majority of developing and least developed countries turned the tables against the United States and Switzerland at the WTO on 15 October by proposing that non-violation complaints (NVCs) shall be made inapplicable to the TRIPS Agreement, several participants told the *South-North Development Monitor (SUNS)*.

Even a few developed countries such as Norway and New Zealand supported this draft proposal from over 90 developing and least developed countries for the Nairobi Ministerial Conference to declare the inapplicability of NVCs to the TRIPS Agreement.

The US and Switzerland, which called for the termination of the existing moratorium on NVCs, stood isolated at the meeting.

Unlike with other WTO agreements, there is currently a moratorium on bringing disputes pertaining to nullification or impairment of benefits under the TRIPS Agreement as a result of "the application by another Member of any measure, whether or not it conflicts with the provisions of this Agreement", or as a result of "the existence of any other situation". During the period of the moratorium, the TRIPS Council is mandated to examine the scope and modalities for such complaints and submit its recommendations to the Ministerial Conference.

Permanent moratorium

At an informal meeting of the TRIPS Council on 15 October, over 90 developing and least developed countries proposed a resolution calling for a permanent moratorium for applying non-violation complaints to disputes under the TRIPS Agreement.

Peru, which proposed the resolution on behalf of the developing and least developed countries, said that "there is a confluence of interests with many members including the African and LDC members who are not co-sponsors of the resolution."

"An overwhelming majority of countries now want that the NVCs should be made inapplicable," Peru said.

Among the co-sponsors of the proposal tabled by Peru are Brazil, India, China, the Philippines, Thailand, Russia, Chile, South Africa, Sri Lanka, Nepal, Korea, Cuba, Indonesia, Argentina, Colombia, Egypt and Ecuador.

India warned that the application of NVCs to the TRIPS Agreement will have a "chilling" effect on members and "the flexibilities [in the TRIPS Agreement] will be severely curtailed."

India said there is "a strong potential" that intellectual property regimes and practices in member countries will be subjected to legal challenges.

"The cycle of moratoriums must end and the draft ministerial decision [cir-

culated by Peru] is the culmination of these efforts to end the moratorium," India maintained.

The European Union said it doesn't see any relevance of applying NVCs to the TRIPS Agreement. The EU maintained that if there is no consensus on Peru's proposal, members must agree to extend the moratorium for not applying NVCs in the TRIPS context.

Norway said "applying non-violation and situation complaints to the TRIPS Agreement would be particularly difficult and problematic in relation to the principle of legal certainty."

"We are therefore of the view that non-violation and situation complaints should be determined inapplicable to the TRIPS Agreement," Norway said, adding that "while we are not a co-sponsor, we strongly support the content of the draft ministerial decision [proposed by Peru]."

New Zealand also called for NVCs to be made inapplicable to the TRIPS Agreement.

Notwithstanding the overwhelming support from members for the draft ministerial decision against NVCs, the US and Switzerland stuck to their position that the moratorium will be terminated at the Nairobi meeting.

"We will not support the ministerial decision, as well as the moratorium," the US maintained, according to a participant present at the meeting. "If there is no consensus on the continuation of moratorium [at the Nairobi meeting], then NVCs will automatically apply," the US warned.

Switzerland said the dispute settlement provisions provide sufficient guidance to members for applying NVCs to the TRIPS Agreement.

It remains to be seen how the large majority of developing and the poorest countries will press their issue at Nairobi in the face of opposition from the US and Switzerland. (SUNS8115) □

of people in LDCs lacked access to electricity.

In 2014, per capita gross national income for LDCs was \$915, compared to \$55,200 for the US, the latter further states, adding that LDCs' productive capacity is highly limited and they have severe infrastructure deficit and are also at the bottom of technology development.

The letter refers to natural calamities

that LDCs face, such as the recent earthquake in Nepal, which further worsen their living conditions and add to the development challenges in these countries. Many LDCs are also challenged by violence, war, conflict and political instability, symptomatic also of poverty, inequalities and social injustices.

"These countries also suffer enormous health burdens, both of commu-

nicable and non-communicable diseases. Recently, the Ebola crisis plagued Sierra Leone, Guinea and Liberia; all LDCs," stressed the joint letter.

Defending the LDCs' requested duration, Jamie Love of Knowledge Ecology International, a signatory to the letter, argues that "LDC countries will not amend their patent law for a temporary waiver of the WTO rules. Right

now, many LDC countries have ignored the laws on the books, because of the temporary waiver, for drugs to treat HIV/AIDS, often encouraged by those involved in delivering affordable drugs, who are working with tight budgets. But this is not sustainable.

"NGOs providing services and donors both have been threatened by patent holders with lawsuits for inducing infringement of patents, and the global norms for enforcing patents are becoming more strict, and cross-border in nature. A permanent waiver for LDCs will lead to model law waivers for drug patents, and give countries the incentive, stability and technical assistance they need to ensure that they have access to generic medicines."

Rohit Malpani, Director of Policy and Analysis at Medecins Sans Frontieres Access Campaign, in supporting the LDCs' demand, states, "We work in over half of the world's countries that are classified as least-developed, and our medical teams know all too well the impact of medicines and vaccines being priced out of reach." "If the world's poorest countries are forced to introduce patents on medicines prematurely, prices on life-saving drugs will rise and millions of people will be treading the fine line between staying alive and dying."

"Cynical posturing"

Brook Baker of Health GAP said: "The US is offering a miserly 10-year extension of LDCs' freedom from pharmaceutical monopolies not because the poorest countries in the world are profit centres for Big Pharma and Big Bio but to make a political point and to tell a big lie. The political point is that they will always go to bat for the multinational bio-pharmaceutical empire (even though US companies routinely avoid paying US taxes by exporting profits to tax-havens in Ireland and elsewhere). The big lie is that pharmaceutical monopolies are good medicine for even the weakest economies, a tenet of pharmaceutical fundamentalism disproven by all available economic evidence. Ten years is simply not long enough."

"Nothing of substance will change in LDCs concerning their need for more affordable generic medicines while they remain LDCs. Nothing substantial will change about their need to accelerate technological capacity in the pharmaceutical sector. Ten years does not give certainty – instead it creates a pall of

uncertainty. Ten years is insufficient to motivate legislative enactment of the pharmaceutical extension in the majority of LDCs that have not adopted it thus far. It is certainly insufficient to motivate generics to set up shop in LDCs. The ten-year demand by the US is cynical posturing without principle at its worst and threatens the health of one billion people living with inadequate health care in LDCs."

Stephanie Burgos, Economic Jus-

tice Policy Manager at Oxfam America, said: "US government opposition to the reasonable request by the world's poorest countries for a permanent waiver from applying global intellectual property rules is unconscionable. It runs counter to the Obama Administration's commitment to support country-led development and puts the US on the wrong side of history in efforts to improve global health through access to medicines for all." (SUNS8117) □

EU commitment on access to drugs is an "empty gesture"

The EU's continued push for strict intellectual property standards that threaten the availability of affordable generic drugs is not in keeping with its stated commitment to promote access to medicines, say two international health advocacy groups.

by Kanaga Raja

GENEVA: The European Commission's current commitments on access to medicines have proven to be empty words and gestures, contradicted and undermined by a long history of including substantive "TRIPS-plus" provisions in European Union free trade agreements (FTAs) and other damaging EU trade policies.

This is one of the main findings of a joint report released by Medecins Sans Frontieres (MSF) and the global network Health Action International (HAI) on 14 October.

The report called on the EU to develop a comprehensive access-to-medicines policy that ensures that its trade policy is consistent with its development, research and global health goals.

Amongst others, MSF and HAI called on the EU not to use FTAs with low- and middle-income countries (LMICs) to introduce TRIPS-plus intellectual property (IP) rules that extend monopoly protection, nor introduce new IP enforcement rules or investment protection to the detriment of access to medicines.

TRIPS-plus rules are those which go beyond the standards set by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

MSF and HAI further urged the EU to support the LDCs' request for an extension of the TRIPS Agreement transition period until LDCs graduate from

being LDCs. The EU should also support LDCs' request for a waiver of Article 70.8 and Article 70.9 of the TRIPS Agreement for the duration of the transition period.

The joint report was released as EU Trade Commissioner Cecilia Malmstrom was due to publish on the same day a draft review of the EU's trade and investment policies.

"The EU's long history on pushing LMICs to accept IP protection that exceeds international [TRIPS] obligations shows that the Commission's stated support for access to medicines [has] so far been empty gestures," said Tessel Meliema, Policy Advisor at HAI, in a press release.

"Instead of putting LMICs on trade watch lists and threatening them with financial sanctions for making use of TRIPS flexibilities to improve access to medicines, the EU should actively support these countries in making effective use of these policy flexibilities," Meliema added.

According to the press release, the European Commission's recent decision to support the world's poorest countries in their request for an indefinite extension from implementing IP rules on medicines until they are no longer classified as LDCs could, however, promise a new, more positive direction for EU trade policies under Commissioner Malmstrom.

In their report, MSF and HAI com-

mend the Commission for explicitly recognizing the need to address access to affordable, safe and effective medicines.

"However, looking at the Commission's current access to medicines commitments in more detail, these have proven to be empty words and gestures, contradicted and undermined by a long history of including substantive damaging TRIPS-plus provisions in EU free trade agreements, and other damaging EU trade policies."

Contradiction

The report identified the contradiction between the Commission's stated commitments to ensure access to medicines and the EU's trade policy.

For instance, it noted that despite the clear negative consequences that the TRIPS Agreement had on access to medicines (such as HIV treatment in African, Asian and Latin American countries), the EU has since pushed for LMICs to adopt even stricter levels of IP protection (TRIPS-plus rules) through bilateral and regional FTA negotiations, IP dialogues and watch lists.

"TRIPS-plus rules exceed minimum WTO obligations and threaten access to affordable medicines," it said.

It noted that the damaging public health consequences of TRIPS-plus rules for people living in LMICs have been documented in numerous studies. For example, an impact assessment study demonstrated that an up to 10-fold price increase for key medicines occurred in Jordan when the United States imposed the TRIPS-plus rule of data exclusivity.

In addition, said the report, the European Commission has pushed for stronger investment protection under EU FTAs since 2011, including investor-state dispute settlement (ISDS). Using ISDS, pharmaceutical companies can sue a government by arguing that legitimate and WTO-compliant government measures to promote access to medicines will damage their IP-protected investments.

The report underlined that the lack of access to medicines is no longer just a problem in developing countries. "European Member State governments currently face a looming access to medicines crisis as they struggle to afford new medicines with excessive price tags. Moreover, despite strong IP protection and continued strengthening of

market monopolies in Europe, there has been a striking lack of medical innovation. Only few truly valuable medicines have been brought to market over the last decade."

With this in mind, MSF and HAI stressed that "the EU should seriously question whether strengthening IP protection and enforcement for pharmaceuticals through bilateral trade agreements is truly in the public interest."

The report compared the commitments outlined in the Commission's Communication on "Trade, growth and intellectual property – Strategy for the protection and enforcement of intellectual property rights in third countries" (2014) against the substantive provisions in EU trade agreements and policies to assess the validity of the claim that it promotes and protects access to medicines.

It found that the Commission has a long history of including TRIPS-plus IP rules for pharmaceuticals in its bilateral and regional trade negotiations. Examples include agreements with trading blocs (e.g., Central America and the Andean Community), countries (e.g., India, Thailand, South Korea, Vietnam and Canada) and EU neighbouring countries (e.g., Ukraine and Moldova).

Prospective and retrospective impact studies confirm that these TRIPS-plus rules threaten access to affordable medicines and, over time, will be detrimental to public health in developing countries.

The European Parliament has, on several occasions, opposed the inclusion of TRIPS-plus measures in FTAs – most notably, in its 2007 resolution on TRIPS and public health. "Recently, the European Parliament reiterated that full EU support for third countries' use of TRIPS flexibilities is essential."

According to the report, the inclusion of TRIPS-plus provisions in the negotiating text has caused immense public outcry in the EU negotiations for an FTA with India. It said that more stringent IP rules in India would be particularly harmful because India has an invaluable role as "pharmacy of the developing world" by producing quality, affordable generic medicines. As such, India provides over 80% of the world's generic antiretroviral medicines.

While some damaging IP provisions, such as patent term extensions

and data exclusivity, were removed from the negotiating text after strong civil society pressure, excessive IP enforcement provisions and the inclusion of IP in the definition of "investment" under the ISDS mechanism remain serious concerns.

"As reports about the resumption of negotiations have recently emerged, the removal of the TRIPS-plus enforcement clauses and the exclusion of IP from the scope of ISDS are imperative to safeguard the lifeline of affordable generics from India for millions of patients in developing countries."

The report noted that the WTO Ministerial Conference adopted the Doha Declaration on the TRIPS Agreement and Public Health in 2001. The Doha Declaration affirms that WTO rules on IP (i.e., the TRIPS Agreement) should not prevent countries from taking the necessary measures to safeguard public health. Such measures are known as "TRIPS flexibilities".

All EU FTAs include a standard reference in the preamble to confirm adherence to the Doha Declaration. "Yet, such a reference is an empty gesture if, at the same time, the substantive provisions of the agreement include TRIPS-plus provisions that impact the price of medicines. In addition, the Commission uses other areas of its trade policy to pressure countries to refrain from making full and legitimate use of TRIPS flexibilities. This includes placing third countries on trade watch lists for fully legitimate exercise of TRIPS flexibilities."

TRIPS-plus measures, as they relate to pharmaceuticals, directly contradict the spirit and intent of the Doha Declaration, said MSF and HAI.

Blocking TRIPS flexibilities

The report cited some examples of Commission practices that show how the EU interferes with other countries that attempt to use TRIPS flexibilities to protect public health.

The Commission produces a "priority country list" to assess third countries' performance on IP protection and enforcement, which is based on the EU's interpretation of the TRIPS Agreement. These country-specific reports outline the perceived deficiencies in these countries' IP frameworks which the EU believes should be remedied. These lists put undue pressure on third countries

to change their IP laws and practices.

Closer examination of some countries' reports show that the Commission actually denounces IP measures that are perfectly legal under the TRIPS Agreement and beneficial to public health, the report said, with one example of such measures being the use of compulsory licensing.

A compulsory licence, or the mere threat of issuing one, is an effective tool to ensure a substantial decrease in the price of a medicine. Many developing countries, including Thailand, Brazil and Ecuador, have used this instrument to lower medicine prices to meet public health needs. High-income countries, such as the United States, have also used compulsory licensing as a tool to negotiate a lower price for medicines.

The Commission has also put countries on its watch list for using different and often stricter (but TRIPS-compliant) standards for granting pharmaceutical patents. These countries have adopted specific patent legislation aiming to prevent a widespread commercial practice known as "evergreening", in which pharmaceutical companies obtain new patents for minor modifications of existing medicines that offer no additional therapeutic advances.

"Preventing such a practice by introducing stricter patentability criteria is perfectly legal under WTO law and very beneficial from a public health perspective because cheaper generics can enter the market faster," said the report.

South Africa is currently implementing a much-needed patent law reform process and has published a new draft patent policy. The Commission has submitted its comments to the South African government and has argued in favour of introducing TRIPS-plus measures and against the use of TRIPS flexibilities as proposed in this draft policy.

The report said the proposed South African draft policy could play a key role in ensuring that the five million HIV-positive people in South Africa can access the latest generation of antiretroviral medicines. "Yet, the EU argues in its submission that South Africa should consider TRIPS-plus measures, including patent term extensions, stronger IP enforcement and the introduction of data exclusivity. The South African government is under no legal obligation under TRIPS to implement any of these measures, which

would increase medicine prices."

IP-related technical assistance

The EU also uses technical assistance programmes as a way to export European IP standards, even to LDCs, which are not obliged by the TRIPS Agreement to implement these standards.

When the EU combines technology transfer with a package of IP-related technical assistance, it pushes countries to implement levels of IP protection that are wholly inappropriate for their level of socioeconomic development.

For example, in Bangladesh, an LDC with an average income of little over \$3 a day, the Commission implemented an IP programme worth €1.2 million. Given its LDC status, Bangladesh is not obliged by the WTO to do so, and should therefore not spend scarce resources on implementing TRIPS IP provisions.

"It may be difficult for LDCs to refuse IP-related technical assistance, particularly if it is bundled with a large package of much-needed technology transfer. Unfortunately, the EU provides little transparency about the content of its IP programmes," said MSF and HAI.

In 2010, they noted, the EU funded the drafting of Uganda's controversial IP Enforcement Counterfeit Goods Bill. This proposed law caused an outcry because it threatened access to life-saving generic medicines by defining counterfeiting so broadly that it criminalized the production and importation of generic medicines. The financing of this project was part of Uganda's implementation of the economic partnership agreement (EPA) between the EU and East African countries.

Uganda, being an LDC, was (and still is) under no obligation to implement the TRIPS Agreement, let alone implement TRIPS-plus IP enforcement standards as envisaged in the (now rejected) draft Counterfeit Goods Bill.

According to the report, these examples show that there is a need for greater transparency in the EU's IP-related technical assistance programmes, as well as an urgent need to align EU trade policies with development objectives.

"It is important to clarify whether the EU IP support programmes also in-

clude training in the full use of all TRIPS flexibilities, including transition periods available to LDCs, compulsory licences, public health friendly patentability criteria, patent oppositions and limitations and exceptions to patents."

The report also highlighted that pharmaceutical companies increasingly use "tiered pricing" strategies to show their commitment to access to medicines. This refers to the practice of selling drugs to different countries at different prices depending on their economic status.

"However, it is a misconception that tiered pricing is the most effective access to medicines strategy. It is first and foremost a commercial strategy that allows pharmaceutical companies to maximize their profits in all countries, because prices are determined according to the highest price a country, or a segment within a country, is prepared to pay. Moreover, for many medicines, including cancer medicines, pharmaceutical companies do not provide any access programmes."

While emerging upper-middle classes are now firmly on the pharmaceutical industry's radar as promising growth markets, tiered pricing strategies that target these discrete populations of high-income patients are particularly harmful when deployed in middle-income countries. Under tiered pricing regimes, these countries, home to 73% of the world's poor, are being charged prices that only a fraction of the population can afford, while the poorest and most vulnerable people are left behind.

The Commission states that it is a major contributor to health-related aid. However, policy coherence for development is clearly lacking between EU health-related development goals and trade policies, said the report.

The conflicting interests between supporting and protecting public health in partner countries and promoting the European pharmaceutical industry's interests in free trade agreements and European partnership agreements have largely proved to favour the latter.

"While health-related aid from the EU can provide substantial benefits to public health systems and capacity building around the world, high medicine prices can seriously undermine the benefits that such assistance may create."

According to the report, the EU urgently needs a comprehensive, overarching access-to-medicines policy that encompasses all relevant policy areas, including public health, international development, research and trade. "This will ensure that the economic interests of the EU do not undermine, or take primacy over, the protection of public health in developing countries and beyond."

It is worrying to see that the Commission interprets sound policy coherence as restricting or ending participation or funding in specific EU-funded programmes if a third country consistently "breaches" IP rights. Moreover, it is doubtful whether such a unilateral penalty system is supported under WTO rules.

In general, said MSF and HAI, no country can, nor should, impose penalties on other countries based on a unilateral interpretation of the TRIPS Agreement.

Falsified and substandard medicines

The Commission's claims that IP enforcement is an effective tool for removing falsified and substandard medicines from the market are a misconception, the report said.

"IP enforcement does not address health and safety concerns of substandard and falsified medicines. It can, however, create unnecessary barriers to access to affordable generic medicines."

It is important to clarify that "falsified medicines" refer to mis-labelling of ingredients, while "substandard medicines" are medicines that do not meet applicable safety, efficacy and quality standards. Neither of these two categories has anything to do with IP infringement.

The report said substandard medicines are genuine medicines that are produced by authorized manufacturers but do not meet quality specifications. They can therefore be both originator and generic medicines and an IP enforcement framework has no relevance or use for combatting substandard medicines.

Crucially, the term "counterfeit", which may involve commercial trademark disputes, should not be used in relation to medicines because it is an overly broad term that conflates IP issues with quality assurance and regu-

latory problems.

The Commission's conflation of the various categories wrongly asserts the relevance of IP enforcement when addressing the problem of substandard and falsified medicines.

"Unfortunately, the Commission uses its trade relations with LMICs to push them to embrace the flawed argument that stricter IP enforcement is the best remedy to protect patients from poor-quality medicines."

Instead, said the report, the Commission should use more accurate and precise terms, such as "falsified" or "substandard", for medicines. It should also address the problems they separately pose through improved regulatory measures in exporting and importing countries.

The conflation of categories has also been instrumental for the introduction of new and stronger TRIPS-plus IP enforcement rights (e.g., in the in-transit area at the border) on medicines in the EU, which increases the risk of abuse and over-enforcement by rights holders and potentially deters generic competition.

EU customs officials have previously seized medicines in transit in the EU on the grounds of alleged patent (or, in one case in Germany, trademark) infringement in the EU, even though both the sending country (particularly India) and the receiving country did not have patents on the relevant product.

"Such seizures of goods-in-transit represent an unacceptable expansion of the territorial enforcement of a patent (or trademark) that limits the free movement of generic medicines and generic competition. IP enforcement on goods in transit – even if limited to criminal trademark infringement (counterfeits) – bears the risk of impeding generic competition and does not address the real problem of falsified and substandard medicines."

Recommendations

The report said that in the upcoming revision of its trade and investment policy, the EU must ensure that its public health, development, research and trade policies are consistent with, and beneficial for, access to affordable medicines for citizens in the EU and LMICs alike.

It called on the EU to develop a comprehensive access-to-medicines

policy that ensures that its trade policy is consistent with its development, research and global health goals. To achieve this, the EU should:

- Support generic competition to allow broad access to medicines in LMICs. In particular, the EU should actively support governments that use available legal measures, including TRIPS safeguards and flexibilities, to protect and promote public health. The EU should immediately stop targeting countries, like India, that have implemented progressive TRIPS-compliant IP policies that promote access to medicines through its watch list of "priority countries".

- Refrain from implementing financial sanctions, as envisaged in its new strategy on IP enforcement in third countries, upon countries that make use of WTO-compliant rules.

- Engage in meaningful technology transfer that allows developing countries to build a sound technology base. It must not offer these programmes in tandem with IP-related technical assistance.

- Provide full transparency of the content of its IP-related assistance programmes for LMICs. It should also ensure that parallel IP assistance efforts do not undermine health-related development projects.

- Avoid using the term "counterfeit" when discussing concerns about the quality, safety and efficacy of medicines. The EU should instead focus upon the categories of substandard and falsified medicines and ensure the right tools are used to combat concerns with these categories.

- Ensure transparency in the development of its trade and investment agenda. If public interest and consumer organizations are not aware of what is negotiated, they cannot engage in public debate and scrutinize the EU trade and investment agenda. Without real transparency of negotiations, EU trade agreements are pieced together in an undemocratic and opaque process and lack real representation of public interest and consumer groups.

- Generate more data of better quality on the economic and social impact of IP protection and enforcement, particularly on the potential negative impact of high levels of IP enforcement on generic competition and public health. (SUNS8114) □

Rights expert recommends new IP regime for pharmaceuticals

Pointing to concerns that intellectual property laws may undermine the enjoyment of human rights, including the right to science and culture, a UN rights expert has called, among others, for a new intellectual property regime for pharmaceutical products that is consistent with rights law and public health needs.

by K.M. Gopakumar

GENEVA: The United Nations Special Rapporteur in the field of right to culture, Fareeda Shaheed, has recommended a new intellectual property (IP) regime for pharmaceutical products, stressing that there is no human right to patent protection.

This recommendation was made in her report to the current 70th session of the UN General Assembly.

The Special Rapporteur recommends that "the United Nations should convene a neutral, high-level body to review and assess proposals and recommend a new intellectual property regime for pharmaceutical products that is consistent with international human rights law and public health requirements, and simultaneously safeguards the justifiable rights of inventors".

This is drawn from the recommendation of the Global Commission on HIV and the Law appointed by the UN Development Programme (UNDP).

[The Global Commission made the following recommendation with regard to patents and access to medicines: "The UN Secretary-General must convene a neutral, high-level body to review and assess proposals and recommend a new intellectual property regime for pharmaceutical products. Such a regime should be consistent with international human rights law and public health requirements, while safeguarding the justifiable rights of inventors. ... Pending this review, the WTO [World Trade Organization] Members must suspend TRIPS [Trade-Related Aspects of Intellectual Property Rights Agreement] as it relates to essential pharmaceutical products for low- and middle-income countries."]

Two other important recommendations by the Special Rapporteur are:

- States have a positive obligation to provide for a robust and flexible system of patent exclusions, exceptions and flexibilities based on domestic circumstances, including through the establishment of compulsory and govern-

ment use licences when needed.

- States have a human rights obligation not to support, adopt or accept intellectual property rules, such as TRIPS-plus provisions, that would impede them from using exclusions, exceptions and flexibilities and thus from reconciling patent protection with human rights. International agreements that do not provide sufficient flexibility should be renounced or modified.

The report focuses on patent policy for the enjoyment of the right to science as provided in Article 15.1(b) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which establishes that State Parties recognize the right of every one "to enjoy the benefits of scientific progress and its applications".

The report in its conclusion states: "A model of access to technology based on individual ability to pay is rational and legitimate from a purely commercial perspective. From a human rights perspective, however, deprivations through patent exclusivity may be deemed as arbitrary, discriminatory or disproportionate, depending on the extent to which human rights interests are implicated by the specific technologies at stake, and the degree to which patent exclusivity, rather than production costs, create the high prices.

"The obligations of States under intellectual property treaties must not jeopardize the implementation of their obligations under human rights treaties. Implementing unreasonably strong patent protection may constitute a violation of human rights.

"The human right to science and culture, as enshrined in Article 27 of the Universal Declaration of Human Rights and Article 15 of the International Covenant on Economic, Social and Cultural Rights, requires measures to ensure the affordability of and accessibility to technologies that are essential for a life with dignity and supporting the realization of other human rights."

The Special Rapporteur's report examines the following issues prior to making the conclusions and recommendations:

- international and national legal framework of the right to science as well as patent policy;
- inventors under Article 15.1(c) of the ICESCR, i.e., the moral and material interests of inventors and discoverers and the rights of indigenous peoples and local communities;
- tensions between patent policy and the right to science and culture, such as the impact of patent policy on ensuring access to essential technologies and on the direction of scientific research;
- asserting the right to science and culture in patent policy by promoting the right through exclusions and use of exceptions and flexibilities, and the importance of public participation.

The report is part of the Special Rapporteur's examination of the impact of IP regimes on the right to science and culture. Earlier, the Special Rapporteur had submitted a report to the 28th session of the UN Human Rights Council titled "Copyright policy and the right to science and culture".

Normative framework of the right to science

In the introduction, the Special Rapporteur recognizes the relationship between human rights and IP as "important and complex". The report states, "The last decades have witnessed growing concern that the design and implementation of intellectual property laws may undermine the enjoyment of human rights."

According to the Special Rapporteur, apart from the tension between patents and the right to health, the patent policy in the areas of agriculture, energy-saving and climate change technologies is feared to threaten enjoyment of the right to food and the right to a safe and sustainable environment.

The Special Rapporteur states that Article 15.1 of the ICESCR provides a framework for "reconciling the tensions between human rights and intellectual property laws". She defines the normative content of the right to science as:

- "(a) access to the benefits of science by everyone without discrimination;
- "(b) opportunities for all to contribute to the scientific enterprise and freedom indispensable for scientific research;
- "(c) participation of individuals

and communities in decision-making; “(d) an enabling environment fostering the conservation, development and diffusion of science and technology”.

Further, the Special Rapporteur stated that “the spirit of the human right to science and culture recognizes human knowledge as a global public good and recommended that States guard against promoting the privatization of knowledge to an extent that deprives individuals of opportunities to take part in cultural life and enjoy the fruits of scientific progress”.

The Special Rapporteur notes the shift in the international patent regime from the 1970s to the TRIPS Agreement, which ignores the diversity of national needs. She also notes that in response to flexibilities in the TRIPS Agreement, corporations and some developed states “have pushed since its inception for a wider and stronger set of standards through add-on agreements, often called TRIPS-Plus treaties or provisions”.

Conveying clearly a sceptical view on the so-called benefits of the TRIPS Agreement such as increase in research and development investment, rewarding human creativity, disclosure of invention and development of new technologies, the Special Rapporteur states: “These claims need to be carefully weighed, taking into consideration the various interests at stake and the technologies in question (for example, some require expensive research, some do not). The effects of intellectual property rights are strongly context-dependent. It is not possible to expect the same outcomes in countries with very different levels of technological capacity and industrial profile.”

Aggressive patenting practices exploit such administrative weaknesses. The practice of patent “trolling” and the proliferation of patent thickets – where the right-holder’s aim is not to manufacture any product or use the process but to launch frivolous lawsuits and collect fees based on ambiguous patent claims or exclude others from developing competing technologies – obstruct further development and dissemination of technology. High numbers of low-quality patents hinder research, legitimate competition and access to technology.

The Special Rapporteur also points out that the patenting of new uses or evergreening of patents would result in the extension of the patent life beyond the 20 years set out in the TRIPS Agreement.

She further expresses concern over the “appropriation of scientific knowledge through patents (such as patents on genes) and the patenting of discoveries (that is, pre-existing information versus inventions); of frivolous innovations; and the practice of misappropriation of indigenous and local communities’ innovations through patents”.

Inventors under Article 15.1(c) of the ICESCR

Even acknowledging the fact that the UN Committee on Economic, Social and Cultural Rights considers the term “author” to also include the creator of scientific innovations, the Special Rapporteur refutes the claim that Article 15.1(c) of the ICESCR recognizes intellectual property rights as a human right.

[Article 15.1(c) reads: “The States Parties to the [ICESCR] recognize the right of everyone ... to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”]

According to the Special Rapporteur, “The equation of intellectual property regimes with the human right to protection of the moral and material interests of authors is false and misleading”.

Further, she stresses that “intellectual property rights primarily protect business and corporate interests and investments”. Even though the report recognizes the use of the term “author” in Article 15.1(c) to include inventors and scientific discoveries, the right is limited to the moral and material rights of the inventions “with which they have a strong personal link similar to the link between an author in the traditional sense and their creative work of authorship”.

The report states: “This right does not provide patent holders’ grounds to challenge patent rules as providing inadequate protection of their financial or commercial interests. Nor can the right to protection of moral and material interests be used by States to defend patent laws that inadequately respect the right to science and culture.”

In the context of indigenous peoples, the report states: “International and national intellectual property regimes have historically failed to adequately take into account the concerns of indigenous peoples and local communities. The interests in maintaining control over non-commercial, communally created and historically

rooted cultural assets tend to fall through the cracks of intellectual property regimes.”

In this regard, the Special Rapporteur acknowledges the work of the World Intellectual Property Organization’s Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore but remarks that the “progress seems uncertain”.

Tensions between patent policy and the right to science

According to the Special Rapporteur, the right to science in Article 15.1(b) of the ICESCR clearly includes patented technologies.

The report clearly states: “The human rights perspective demands that patents do not extend so far as to interfere with individuals’ dignity and well-being. This may be the case, for example, when the patent-holder’s property right is so strong as to make compulsory licensing of medicines impracticable or unduly cumbersome.”

The Special Rapporteur highlights the adverse impact of patenting in the areas of pharmaceuticals, food, energy, information and communication technologies, nanotechnologies and synthetic biology. Further, the report says that lack of access to technology affects the enjoyment of the right to participate in the political, social, economic and cultural life of society.

According to the Special Rapporteur, “Interrogating the impact of patent policy on the right to science cannot be dissociated from interrogating its impact on the right to participate in cultural life and to pursue specific ways of life, such as in the case of small farmers”.

Asserting the right to science

According to the Special Rapporteur, “States must ensure that their patent laws are well-designed to promote the right of the public to participate in scientific progress, both through universal access to essential technologies and by eliminating or overcoming barriers to scientific research and technological development”.

Towards this purpose, the report calls upon governments to use flexibilities. It states: “It is crucial that international legal regimes on patents continue to leave room for countries to adopt and implement policies to abide by their human rights obligations.”

On flexibilities, the report empha-

sizes: "Although exclusions, exceptions and flexibilities are fully part of international intellectual property law, such as the TRIPS Agreement, they remain optional from the perspective of trade law. From the perspective of human rights, however, they are often to be considered as obligations."

Recommendations

The report makes recommendations in the following areas: ensuring transparency and public participation in law-making; ensuring the compatibility of patent laws, policies and practices with human rights; exclusions, exceptions and flexibilities; adopting policies fostering the right to science and culture, including the right to scientific freedom; and indigenous peoples and local communities.

Some of the important recommendations are:

- International patent instruments should be subject to human rights impact assessments and contain safeguards for human rights, including the right to health, food, science and culture.

- The WTO bodies should take into account human rights standards and obligations when interpreting WTO rules on intellectual property. They should review rules that have a negative impact on the realization of human rights.

- States should refrain from pressuring other states to adopt TRIPS-plus provisions or to otherwise forego the use of TRIPS-compliant flexibilities.

- At the domestic level, judicial or administrative procedures should enable members of the public to request the implementation and expansion of exclusions, exceptions and flexibilities to assure their constitutional and human rights.

- States should invest in science, ensure independence for researchers, guarantee their freedom to publish results and their ability to continue to undertake research, to improve existing technologies and processes, and to be innovators in their own context for their survival needs, regardless of patents.

- Plant variety rules should not impede the right of small farmers to continue to use, save, exchange and sell farm-saved seeds and to continue to engage in experimentation, especially *in situ*.

- Universities and other public research institutions should ensure that their licensing approaches are compatible with their primary mission to ex-

plore and develop technological innovations for the benefit of society.

- States should do more to distinguish between generic medications and counterfeit medications. States through which generic medications transit have a responsibility to treat the generics in accordance with the law of the destination country.

- As suggested by the Global Commission on HIV and the Law, the United Nations should convene a neutral, high-level body to review and assess proposals and recommend a new intellectual property regime for pharmaceutical products that is consistent with international human rights law

and public health requirements, and simultaneously safeguards the justifiable rights of inventors.

- Enhanced disclosure requirements in intellectual property legislation, such as sources, should be adopted to protect the right of attribution of communities whose traditional knowledge contributed to a patent application.

- Companies benefiting from patents in the pharmaceutical sector should disclose information about the costs for developing drugs, the items included in such costs and the sums they reinvest in research and development. (SUNS8111) □

(continued from page 21)

"But what does this image transfer mean for the reputation and neutrality of the UN? Isn't there the risk that the cooperation with controversial corporations adversely affects the image of the UN as a neutral broker and undermines its reputation?" Martens asked.

When the United Nations seeks outside financial assistance either for development needs or to advocate social causes, according to one UN source, it invariably turns to the private sector these days.

Perhaps the most demanding is Secretary-General Ban Ki-moon's appeal to private investors to help the United Nations reach its staggering \$100 billion target per year in funds to battle the devastating consequences of climate change. Ban is relying primarily on private sector funding while also appealing for funds from governments and the public sector.

The study is also critical of the UN's Global Compact, described as the world's largest corporate sustainability initiative, which involves 8,371 companies in 162 countries at last count. The Global Compact has been most instrumental in opening up the United Nations to the business sector, according to the study.

"While it may have been designed to do exactly the opposite – sensitize businesses for public interests through the promotion of the ten Principles – it also serves as a platform and promoter of corporate interests in the UN."

This is aggravated by its dependence on private funding and its overly complex governance structure, which gives little space to member states while limiting oversight to those making financial contributions.

"In fact, the Global Compact is one of the few UN entities which are predominantly dependent on private money. This may have repercussions on how its mandate is being interpreted and implemented."

Martens said funding of all UN system-wide activities is around \$40 billion per year. "While this may seem to be a substantial sum, in reality it is smaller than the budget of New York City, less than a quarter of the budget of the European Union, and only 2.3% of the world's military expenditures," he pointed out.

"As the World Bank calls on the global community to move from 'Billions' to 'Trillions' to meet the investment needs of the Sustainable Development Goals, the United Nations still has to calculate in terms of 'Millions'."

Barbara Adams, co-author of the study, said many member states, particularly the large donors, pursue a dual approach of calling for greater coherence in UN development activities while at the same time increasing their use of earmarked funding, which furthers fragmentation.

She added: "This pick-and-choose dynamic, together with ongoing financial constraints, has opened the space for corporate sector engagement."

Increasingly, she noted, the UN is promoting market-based approaches and multi-stakeholder partnerships as the business model for solving global problems.

Driven by a belief that engaging the more economically powerful is essential to maintaining the relevance of the UN, this practice has harmful consequences for democratic governance and general public support, as it aligns more with power centres and away from the less powerful, she declared. (IPS) □

World economy to grow by 2.5% this year, says UNCTAD

Global economic growth this year is projected to be 2.5%, according to the United Nations Conference on Trade and Development (UNCTAD) – much the same as in 2014 but significantly below the pre-crisis level. In its *Trade and Development Report 2015*, UNCTAD looks at how different regions of the world economy are expected to fare and considers whether the lower post-crisis growth trajectories reflect a “secular stagnation” in developed countries.

by Kanaga Raja

GENEVA: Growth in the world economy in 2015 is expected to remain more or less unchanged from the previous year, at 2.5%, the United Nations Conference on Trade and Development (UNCTAD) has said.

In its flagship annual publication, the *Trade and Development Report 2015*, released on 6 October, UNCTAD said that there will be a slight acceleration of growth in developed economies, a moderate deceleration in developing economies and a contraction of gross domestic product (GDP) in transition economies.

“Therefore, world output growth will remain significantly below the 4% rate posted in the pre-crisis years.”

In the section of its report focusing on recent trends in the world economy, UNCTAD said developed countries are expected to grow at around 1.9% in 2015 compared with 1.6% in 2014. The eurozone and Japan, in particular, are experiencing a moderate acceleration of growth, although from very low rates in 2014.

Developing countries as a whole will continue to expand at a rate of more than 4%, mainly owing to the resilience of most countries in the Asian region. However, other regions are experiencing a significant slowdown due to lower commodity prices and capital outflows, which have prompted tighter macroeconomic policies in some countries. The worst hit by all these developments are Latin America, the transition economies and West Asia, while the African sub-regions present a more mixed picture.

In developed countries, recent improvements in economic activity reflect a pick-up of domestic demand, owing to greater household consumption and to a less stringent fiscal stance. The increase in household consumption is

largely due to lower energy prices and improvements in some labour markets, with lower unemployment rates in countries such as Germany, Japan, the United Kingdom and the United States.

Monetary policies remain expansionary, with very low interest rates in all developed regions and “quantitative easing” (QE) programmes in the eurozone and Japan.

In Europe, the QE programme of the European Central Bank (ECB) helped to further reduce yields on sovereign debt, but so far this has had little impact on credit flows to the private sector.

Nevertheless, household deleveraging has already eased in recent months, fiscal austerity has been moderated or slightly reversed, and real wages have improved on account of the fall in commodity prices.

However, said the report, fragilities persist: in many countries higher rates of employment have not been matched by better-quality jobs, and some banks are showing signs of weakness, while downside risks have increased with the uncertainty over the sustainability of debt in Greece.

“The latter represents the most immediate threat to the sovereign debt yields of Portugal, Spain and other European countries which had recently started to recover from the depths of the crisis.”

In Japan, following the recession in 2014, economic activity is starting to improve, aided by consumer and investment spending. Lower energy prices will have a positive influence on the balance of trade and on consumption expenditure, as will exports to the United States, which rose in the first months of 2015.

The United States is expected to continue its post-crisis growth trajec-

tory with a 2-2.5% growth rate, which is below previous recoveries but allows steady job creation. Fiscal austerity is easing at the federal and state levels, and residential investment is recovering from a low base.

However, said UNCTAD, with scant evidence of nominal wage increases, there are concerns that households’ balance sheets will remain fragile. Even if the expected very gradual increases in the policy interest rate do not represent a significant tightening of monetary conditions, they have already impacted international capital movements and led to a dollar appreciation. This in turn may result in net exports having a negative impact on GDP growth.

Outlook for developing world

Economic trends in developing economies have followed a different pattern since the crisis, said the report. In response to the initial shock in 2008-09, many developing economies applied ambitious countercyclical policies, including increased fiscal spending and incomes policy measures that were sustained long enough to encourage a continuing rise of household expenditure and, by extension, private investment.

Some of these countries are now scaling back or even reversing their policy stimuli as they face capital outflows or lower export prices. By contrast, for oil importers, the recent improvements in their terms of trade enlarge the room for manoeuvre.

Among those most affected by lower commodity prices and capital outflows have been the transition economies, whose GDP is expected to decline in 2015. In the Russian Federation and Ukraine, balance-of-payments problems were aggravated by political conflicts. Steep currency depreciation and inflation dampened domestic demand and deepened economic recession. This in turn affected neighbouring countries for which the Russian Federation is a major market and source of remittances.

In Latin America and the Caribbean, the economic slowdown which started in 2011 is forecast to continue, with an estimated growth rate of less than 1% in 2015. In particular, South America and Mexico have continued to experience losses in their terms of trade and reversals of portfolio investment

inflows since the second half of 2014.

"Lower export prices have affected tax receipts and have also led to the paralysis of several investment projects, particularly some linked to oil exploitation and mining, and to a fall in gross fixed capital formation."

Governments have generally sought to sustain real wages and keep unemployment in check despite the slowdown of economic growth. As a result, private consumption is still the main engine of growth for the region, though its rate of expansion was less dynamic in 2014 and early 2015.

The report said that the more stringent external environment, and in some cases the inability to maintain countercyclical policies and credit expansion, resulted in less supportive policies in the first months of 2015, and even austerity measures in the case of Brazil.

By contrast, most Central American and Caribbean countries benefited from lower oil prices and were also less vulnerable to speculative capital outflows.

"The linkages of their manufacturing sector with United States markets, together with the increase in remittances from abroad, should contribute to significant growth of these sub-regions, which is likely to be well above the regional average."

The picture in the African region is also varied. In the last decade, growth in sub-Saharan countries has been mostly driven by rising private consumption and infrastructure spending, linked in many countries to commodity production, with a positive impact mainly on the construction and service sectors. Recently, however, some large oil-exporting countries such as Angola and Nigeria have announced cuts in public spending, notably capital investment and subsidies.

Meanwhile, growth in most East African countries, whose terms of trade have improved, is expected to continue at a relatively fast pace. By contrast, West African countries are likely to continue to suffer from the consequences of the Ebola epidemic. Economic growth is forecast to remain subdued in South Africa due to supply-side constraints in the energy sector, coupled with restrictive fiscal and monetary policies.

According to UNCTAD, as in previous years, Asia is the most dynamic region, and is estimated to account for almost half of total growth in the world economy in 2015.

"Growth is being driven essentially by domestic demand, with an increasing contribution of consumption, both

public and private. Hence, even though investment rates have been very high in comparison with other regions (and should remain so, given the region's infrastructure needs), most Asian countries (particularly China) seem to be rebalancing the structure of their demand."

In the past few years, the contribution of domestic demand to growth has exceeded that of net exports, and the share of consumption (private and public) in GDP has tended to increase. However, the bursting of the stock market bubble in China has created economic uncertainty, as it could affect domestic demand.

Nevertheless, said UNCTAD, the growth of private consumption is essentially based on rising incomes rather than on credit or an appreciation of asset values, which should ensure sustainability.

Meanwhile, lower oil prices have eased current account deficits in several countries, such as India and Pakistan, and the Indian economy is forecast to expand by more than 7%.

In West Asia, Turkey also benefited from lower oil prices, but most of the oil-exporting economies in the sub-region face deteriorating terms of trade. In addition, military conflicts have reduced growth prospects in parts of this sub-region.

International trade trends

The report noted that like global economic activity, international trade remains subdued. Between 2012 and 2014, the rate of growth of world merchandise trade (by volume) oscillated between 2% and 2.6%. These growth rates are significantly below the average annual rate of 7.2% recorded during the 2003-07 pre-crisis period.

In 2014, world merchandise trade at current prices grew at even lower rates (only 0.3%, to reach \$19 trillion) due to the significant fall in the prices of major commodities.

Preliminary estimates for 2015 indicate that merchandise trade volume could grow at a rate close to that of world output. This remains largely insufficient to provide, by itself, a significant stimulus to economic growth.

Data for the first five months of 2015 indicate that growth in world merchandise trade in 2015 may be slightly weaker than in 2014. During these five months, the volume of international trade grew by a year-on-year average of less than 2%.

Overall, said the report, world trade

has displayed little dynamism. The moderate trade growth mainly reflects an improvement in North-North trade, with only limited positive effects on exports from developing to developed countries.

On the other hand, according to UNCTAD, trade in services maintained its growth, to reach \$4.9 trillion in 2014 – a year-on-year increase of 5.1% (at current prices), which was higher than the growth of merchandise trade.

Transport services grew by 2.7% while travel and goods-related services increased by 6% and 2.8% respectively. Transport and tourism represent 55% of services exports from developing countries and 62% from least developed countries (LDCs), compared with only 39% from developed economies.

Turbulence in commodity markets

According to the report, commodity markets witnessed turbulent times in 2014 and the first half of 2015. Most commodity prices fell significantly during the course of 2014, continuing the downward trend from their peaks of 2011-12. The most dramatic fall was that of crude oil prices since mid-2014, which had widespread influence.

The report said the main reason for the recent fall in most commodity prices has been abundant supply, as the investment response to the price boom of the 2000s has significantly increased production over the past few years.

The resulting tendency towards oversupply has been reinforced by weakening demand due to sluggish growth in the world economy more generally, and the recent slowdown in a number of large developing economies in particular.

Apart from supply and demand fundamentals, the financialization of commodity markets continued to influence price developments, as financial investors have been reducing their commodity positions in conjunction with the downturn in prices and returns from commodity derivatives.

Another important factor in the commodity price decline has been the strong appreciation of the dollar over the past year.

According to the report, the market for crude oil took the lead in commodity price developments in 2014. After having remained at a relatively stable level since April 2011, with oscillations within a \$100-\$120 band, crude oil prices plummeted in the second half of 2014. For example, the price of Brent crude fell from a monthly average of

\$112 (a barrel) in June 2014 to a low of \$48 in January 2015. This decline of 56.7% pushed the price of crude oil to its lowest level since 2009.

The plunge in oil prices was mainly caused by greater world production, particularly of shale oil in the United States. In 2014, world oil production increased by 2.3%, while in the United States it grew by 15.9%. Indeed, in the short period between 2011 and 2014, United States oil production increased by 50.6%, reaching levels not achieved since the early 1970s.

The report said this led to significant increases in inventories. Substantially higher oil production in the United States contributed to the relative stability of oil prices between 2011 and mid-2014, as it compensated for production disruptions in other producing countries. When these disruptions became less of a problem and the oversupply more evident, prices started to fall in mid-2014.

However, the price decline accelerated after the November meeting of the Organization of the Petroleum Exporting Countries (OPEC) where it was decided not to change production quotas, a decision upheld at the subsequent OPEC meeting in June 2015. "This has been widely interpreted as an attempt by OPEC to defend its market share and to undercut higher cost producers, such as shale oil, tar sands and deepwater oil producers, so as to drive them out of the market."

Overall, said UNCTAD, international crude oil markets present a new landscape, with the increasing importance of production in the United States and an abandonment of OPEC's price-targeting policy. As long as this persists, the United States could replace Saudi Arabia as the key swing producer.

This would mean that when prices fall to very low levels, investment and production in the United States could be cut, pushing prices up; and once prices reached a certain level, United States oil production could rise, thereby exerting a downward pressure on prices.

Indeed, a significant characteristic of shale oil drilling is its flexibility. As a result, there would be an upper cap on oil prices which would depend on the break-even price of profitability for shale oil producers.

"However, there appears to be little agreement on what that price is. In sum, it is not likely that prices will approach \$100 per barrel any time soon. As shale oil production has a short life span, this

will depend on how long the shale oil boom lasts."

On the demand side, expectations of lower economic growth also played a role in the collapse of oil prices. Indeed, specialized agencies made continuous downward adjustments to their projections for demand growth.

"In any case, the reversal of the upward trend in commodity prices is a new reminder of the challenges faced by developing countries that depend on only a few commodities, as they are exposed to boom and bust cycles resulting from price changes. Therefore, to achieve and maintain sustained growth, it is crucial for them to implement policies that facilitate economic diversification and structural change."

The phenomenon of "secular stagnation"

The report said that the observation that the growth trajectories of many developed countries have remained at substantially lower levels than before the crisis, despite several years of accommodative monetary policy, somewhat improved financial conditions and some relaxation of fiscal consolidation, has created a sense of a "new normal" that now defines the future evolution of incomes in developed countries.

The concern is that the crisis that erupted in 2008 may have had a long-lasting effect on the growth potential of these economies. This could be for a variety of reasons. One is that a financial crisis of this magnitude has necessarily affected the balance sheets of a wide range of economic actors – including private and public agents, financial and non-financial sectors – and it has generated significant spare production capacities.

Normally, these negative impacts are eventually overcome, although it may take several years, especially in the absence of appropriate countercyclical policies. However, this time there is a concern that the abnormally prolonged period of low investment and high unemployment will become self-sustaining because of their lasting repercussions in terms of reduced production capacities and productivity.

Another impact of the crisis may be more subtle: to the extent that it brought to a sudden end an extraordinary period of credit expansion that had supported asset bubbles and artificially boosted consumption and growth, it may have released a number of underlying factors that tend to ham-

per growth in the long term.

These pre-existing long-term factors, and not the financial crisis per se, would be the true cause of protracted slow growth. And rather than a cyclical downturn, developed economies could be entering into a period of "secular stagnation".

According to UNCTAD, this has revived the debate on the drivers of economic growth dating back to classical economists such as Adam Smith, David Ricardo, John Stuart Mill and Karl Marx, which received a further twist in the "secular stagnation thesis" presented in the late 1930s by Alvin Hansen.

The Hansen thesis refers to "sick recoveries which die in their infancy and depressions which feed on themselves and leave a hard and seemingly immovable core of unemployment".

In his original analysis, Hansen stressed the problems of "inadequate private investment outlets" in the context of declining population growth, the relative ineffectiveness of monetary policy, and technological change that failed to stimulate substantial capital disbursement.

According to the report, all these factors were eventually reversed in the post-war period, not least because of massive public intervention – including deficit spending – which was a possible solution proposed by Hansen himself.

However, the sluggish recovery from the 2008 crisis, in which it is possible to identify traces of those very same elements, has led to a reappearance of "stagnationist" analyses in the public debate.

The modern twist on the "secular stagnation hypothesis" suggests that, since the crisis, the traditional macroeconomic toolkit, and especially monetary policy, has lost much of its effectiveness.

"With the deleveraging processes after the crisis, and nominal interest rates already close to zero, monetary expansion has not translated into increasing credit to finance private sector expenditures; instead it has been directed to investment in financial assets. High levels of indebtedness that adversely affect investment demand have been identified as an explanation for the sluggish growth rates in developed countries, which would also affect future performance."

In the academic debate on the secular stagnation hypothesis, agreement has yet to be reached on whether in fact secular stagnation exists and, if so,

which are its long-term or structural determinants.

Some hold that the deceleration of growth has been due to a combination of supply-side factors. According to them, the size of the labour force has diminished due to developed countries' shrinking and ageing populations, and a hypothesized reduced speed of technological innovation is holding back productivity growth.

Also, especially in most severely crisis-hit countries in Europe, some governments have taken measures to increase the flexibility of labour markets and to reduce social benefits, aimed at addressing "supply-side constraints" in order to boost competitiveness, while maintaining contractionary fiscal policies for prolonged periods.

Other observers argue that secular stagnation reflects a decade-long tendency of inadequate aggregate demand growth. They attribute the major cause of secular stagnation to the lack of growth of labour incomes.

From this perspective, the decline in the wage share in developed countries by about 10 percentage points since the 1980s has considerably constrained income-based consumer demand, with attendant adverse effects on private investment.

These adverse demand effects resulting from worsening functional income distribution have been reinforced by widening gaps in the distribution of personal income, as the share in total income of the richest households has strongly increased, and these households tend to spend less and save more of their incomes than other households.

These trends have been strengthened by policies that seek to address the demand shortfall essentially through monetary expansion. However, instead of inducing firms to invest in productive activities, such a policy has resulted in firms investing in financial assets, which spurs asset price bubbles and worsens wealth distribution, without addressing income stagnation for the majority of the population.

Policy debate

According to the report, the related policy debate has been mainly concerned with whether private investment and aggregate demand growth can be best spurred by supply-side-oriented structural reforms or by demand-side-oriented fiscal and incomes policies.

The former approach is based on the belief that product and labour markets that are not sufficiently flexible dis-

courage enterprises from increasing their fixed investments. However, to the extent that secular stagnation results mainly from weak demand, such a policy approach will tend to worsen rather than resolve the problem.

An alternative approach gives a prominent role to incomes policy (e.g., minimum wage legislation, reinforcement of collective bargaining institutions and social transfers) and to public expenditure to address weaknesses both on the demand and the supply sides. This is obviously the case for public investment in infrastructure.

Moreover, said the report, a progressive incomes policy increases demand, as it strengthens the purchasing power of social segments with a high propensity to consume. This in turn creates outlets for private investment, with multiple benefits: higher wage incomes and improvements in formal employment reduce the financial pressure on pension schemes and allow households to increase their consumption spending without adding to household debt. And higher levels of activity and employment are known to foster productivity as well, creating virtuous circles of demand and supply expansion.

Thus, said UNCTAD, fiscal expansion and income growth will increase output and at the same time accelerate

potential output growth, thereby animating a virtuous feedback relationship that lays the basis for future sustained, non-inflationary growth. International coordination would multiply these invigorating effects while preserving balance-of-payments sustainability.

The implications of this debate for developing countries are significant, said the report.

A protracted period of stagnation in developed countries would weaken demand for exports from developing countries, affecting both output growth and productivity, and eventually generate balance-of-payments problems in these latter countries.

Furthermore, the choice of monetary expansion as the main instrument for fostering demand, coupled with prevailing unregulated capital movements, generates volatile financial flows to emerging economies of magnitudes that are well above the latter's absorptive capacities.

"Unless developing countries are able to apply macroeconomic and prudential policies to check such financial shocks, they will enter into a sequence of asset price bubbles and debt-fuelled consumption sprees. The subsequent financial collapse and economic retrenchment could eventually lead to secular stagnation worldwide," UNCTAD cautioned. (SUNS8107) □

UN manipulated by TNCs, study charges

The UN is increasingly turning to the business sector for funding and collaboration, says a recent study, putting at risk its reputation and democratic governance.

by *Thalif Deen*

NEW YORK: The United Nations is facing charges of being politically manipulated by big business and transnational corporations (TNCs) – some openly violating labour rights and environmental standards the world body so vociferously advocates.

A study from Global Policy Forum (GPF) released on 22 September warns that the United Nations is "embarking on a new era of selective multilateralism, shaped by intergovernmental policy impasses and a growing reliance on corporate-led solutions to global problems."

"The changing funding patterns of the UN and its funds, programmes and specialized agencies reflect these alarm-

ing trends."

Some of the key features, the study points out, include the growing gap between the scale of global problems and the (financial) capacity of the UN to solve them; the growing share of non-core contributions and earmarked trust funds in UN finance; increased reliance on the corporate sector; and the outsourcing of funding and decision-making to exclusive global partnerships.

The 140-page study, titled "Fit for Whose Purpose? Private Funding and Corporate Influence in the United Nations", was released ahead of the UN Sustainable Development Summit which took place on 25-27 September.

Asked who should be blamed for the current state of affairs, Jens Martens, Director of Global Policy Forum and co-author of the study, told Inter Press Service (IPS) that member states have failed to provide sufficient and reliable funding to the UN system. "This situation is compounded by the insistence over many years of Western governments, led by the USA, on a doctrine of zero-growth to the UN assessed budget," he said.

The result has been increasing reliance on voluntary and non-core funding, as well as a growing number of ad hoc and disparate partnerships between the UN and the business sector, Martens added.

Corporate ascendancy

The UN Centre on TNCs (UNCTC), which was established in 1975 primarily to monitor TNCs, was dismantled in 1992. Some of the initiatives to hold corporations accountable to the public started in the 1970s, including discussions about a Code of Conduct for Transnational Corporations. But this, and all subsequent efforts, met with vigorous opposition from TNCs and their lobby groups, and they ultimately failed.

At the same time, says the study, corporate actors have been very successful in implementing public relations strategies that have helped to present business enterprises as good corporate citizens seeking dialogue with governments, the UN and decent concerned "stakeholders", and able to implement environmental, social and human rights standards through voluntary corporate social responsibility (CSR) initiatives.

Martens told IPS the UN Secretary-General and UN heads of agencies have become energetic advocates of business sector engagement and partnerships. Beyond viewing these arrangements as a new source of funds, they are driven by the belief that engaging powerful corporations is essential to maintaining the relevance of the UN in addressing today's global challenges, he pointed out.

"But they sell the UN at a cheap price. While the costs for the companies are remarkably low, the benefits can be comparatively high."

He said companies benefit from a strong image transfer by associating themselves with the UN, win greater visibility and gain direct access to global policymakers.

(continued on page 16)

The Third World in the Third Millennium CE

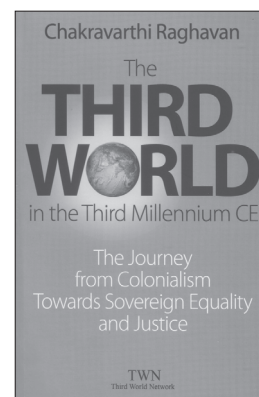
The Journey from Colonialism Towards Sovereign Equality and Justice

By *Chakravarthi Raghavan*

The development path traversed by the countries of the Third World since emerging from the colonial era has been anything but smooth. Their efforts to attain effective economic sovereignty alongside political independence, even till the present day, face myriad obstacles thrown up on the global economic scene. This drive to improve the conditions of the developing world's population has seen the countries of the South seek to forge cooperative links among themselves and engage with the North to restructure international relations on a more equitable basis – not always with success.

In this collection of contemporaneous articles written over a span of more than three decades, *Chakravarthi Raghavan* traces the course of dialogue, cooperation and confrontation on the global development front through the years.

The respected journalist and longtime observer of international affairs brings his inimitable blend of reportage, critique and analysis to bear on such issues as South-South cooperation, corporate-led globalization, the international financial system, trade and the environment-development nexus. Together, these writings present a vivid picture of the Third World's struggle, in the face of a less-than-conducive external environment, for a development rooted in equity and justice.



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Protracted stagnation threatens solidarity, development

If the UN's newly adopted post-2015 development agenda is to be fulfilled, a more ambitious and reinvigorated global partnership for sustainable development is required, write *Jomo Kwame Sundaram* and *Rob Vos*.

A new post-2015 international development agenda was officially launched at a UN summit in New York in September. The ambitious list of 17 development goals includes a call for a revitalization of the global partnership for sustainable development.

The International Conference on Financing for Development held in Addis Ababa in July was the first test of the degree of commitment to endow the new agenda with the means needed to meet the level of ambition. The Addis Ababa Action Agenda (AAAA) by and large reiterated commitments made towards the outgoing Millennium Development Goals (MDGs) agenda.

A more ambitious and reinvigorated global partnership is definitely needed. The protracted economic stagnation and continued austerity in rich countries do not augur well. The track record of global partnership under the present MDG agenda has been rather disappointing, to say the least, even during better years before the financial crisis of 2008-09.

The United Nations' annual MDG Gap Reports, including the recently released 2015 report, highlighted several shortfalls in international efforts to achieve the MDGs, providing sobering reminders of the need to substantially step up efforts to meet longstanding international commitments.

Over four and a half decades ago, the international community committed to transferring 0.7% of the gross national income (GNI) of rich countries to poor countries in the form of official development assistance (ODA), or aid.

After falling in the 1990s following the end of the Cold War, the volume of ODA has increased by two-thirds (66%) in real terms since 2000, reaching \$135 billion in 2014. Yet, this represented only 0.29% of donor-country GNI, less than half of what was promised, implying a shortfall of \$191 billion.

At least 0.15% of donor GNI (\$70 billion) should have gone to the least developed countries (LDCs). Instead, in 2014, about \$45 billion – or barely 0.10%, or two-thirds of the share prom-

ised – actually reached the LDCs, a shortfall of at least \$22 billion.

At the Gleneagles summit, the leaders of the G8 leading industrial countries promised to increase annual ODA to Africa by \$25 billion to \$64 billion (in 2004 prices). Actual delivery has fallen short by \$18 billion per year – a 72% gap between promise and delivery!

Aid effectiveness

While falling short of promises, aid has provided a relatively stable international flow, and been critical for some of the stronger growth performances in Africa in recent years, especially when used for improving infrastructure and boosting agriculture.

Much bilateral ODA used to be tied, or for donor projects, rather than for budget support. Tied aid often means paying too much for overpriced goods and services from the 'donor' country, including unnecessary or unwanted technical assistance.

Some progress was made in unttying aid during the 1990s. This came to a virtual halt from the start of the new millennium with the share of untied aid provided by OECD-DAC donor countries increasing only slightly from 80% to 83% between 2000 and 2013.

Only meagre progress has been made in enhancing budget support and lowering increasingly fragmented project aid. Hence, a large share of aid continues to be allocated following donor priorities, thereby limiting policy space and effective national ownership for recipients.

Debt

The main success story over the last decade probably involves debt sustainability: there was significant progress with the heavily indebted poor countries (HIPC) initiative and the supplementary multilateral debt relief initiative (MDRI). Unfortunately, however, debt relief is still not treated as additional to ODA, in effect resulting in "double counting" – the first time as

a concessional loan, and then as a debt write-off.

Consequently, actual resource transfers are often significantly less than reported ODA, much of which goes to servicing existing debt. External debt ratios for developing countries as a whole continue to decline, although the ratio is higher for low-income countries following the 2008-09 crisis. Though levels are higher now than around 2000, most are not considered dangerously high.

However, this situation may well worsen with the continuing collapse of primary commodity prices beginning in the last year. A few heavily indebted poor countries (HIPC) are approaching high levels of debt distress, with most concern over debt in many small-island developing states (SIDS), especially in the Caribbean, facing external debt ratios well over 100%.

Over the past 15 years, the spate of sovereign debt crises has also involved much-better-off countries, most notably Argentina, Iceland and Greece, underscoring the need for the international community to develop an equitable and effective sovereign debt workout framework.

Trade preferences

The 2001 LDCs summit at Brussels committed the international community to ensuring 100% duty-free, quota-free (DFQF) access for LDC exports. In practice, the share (excluding arms) increased from about 75% in 2000 to around 90% a decade ago, to drop again to 84% in 2014.

Guaranteed access is only available for 80% of product lines. However, any target short of 100% would allow importing countries to exclude those product lines which LDCs can successfully export.

Access to technology

Affordable and equitable access to new technologies will be increasingly crucial for human progress and sustainable development in many areas, including enhancing food security as well as climate change mitigation and adaptation.

The decline of public sector research and extension efforts, the strengthening of intellectual property rights claims and the correspondingly greater private control of technologies – all have ominous implications for the

poor who cannot afford access.

Progress towards ensuring affordable access to generic essential medicines has been modest, with evidence varying considerably. During 2007-14, such medicines were only available in 58% of public facilities and 67% of private facilities.

Compared to international reference prices, the average cost of these medicines was about 5.7 times higher in lower-middle-income countries, and three times in low-income countries. This poor track record should put some pressure on the ongoing discussion about the "means of implementation" to facilitate achievement of the post-2015 Sustainable Development Goals (SDGs).

The AAAA – which was expected

to ensure the means for implementation of the new global partnership to achieve these ambitious goals – does not suggest any great eagerness by development partners to rise to the challenge.

If the agreement on the SDGs, AAAA and Agenda 2030 has been sincere, then it is essential to mobilize the means on a much greater scale to achieve the promise of a more inclusive and sustainable, poverty- and hunger-free world. (IPS) □

Jomo Kwame Sundaram and Rob Vos are both with the Food and Agriculture Organization of the United Nations, and were previously with the UN's Department of Economic and Social Affairs. The views expressed in this article are those of the authors and do not necessarily represent the views of, and should not be attributed to, IPS – Inter Press Service.

the goals.

ActionAid research in August discovered that tax incentives given to big corporations in West Africa drain the region of an estimated \$9.6 billion a year – money which could be spent on health and education.

And globally it is estimated that developing countries lose over \$200 billion a year from corporate tax dodging. Yet rich countries continue to block moves for a global body on tax to make the rules fairer.

The 800 million people in poverty worldwide need change. In many ways, people are ahead of the UN as they're doing it without flashy launch events or concerts.

Across Africa, people have been mobilized and fought for the right to free primary school education, with massive wins. And in my native Brazil, women without access to land have organized themselves, taken on brutal landlords and won the right to farm the land.

Leaders are acknowledging the idea of inequality but poor people around the world are not just recognizing it, they are wrenching it from its roots and organizing themselves to build something new.

To achieve real change for poor people, the business-as-usual approach I saw at the UN recently won't be good enough. The climate conference in Paris in December will be the first test. If world leaders do not commit to emissions cuts and agree to financing to help developing countries with climate impacts, then success for the goals will be off to a very shaky start. (IPS) □

Adriano Campolina is Chief Executive of ActionAid International. The views expressed in this article are those of the author and do not necessarily represent the views of, and should not be attributed to, IPS – Inter Press Service.

The party's over for the Sustainable Development Goals

The UN must go beyond business-as-usual in order to realize its Sustainable Development Goals – and poor people around the world are showing the way.

by Adriano Campolina

The Pope has left the UN and the traffic in Manhattan is back to normal. The hoard of government delegations, NGOs and civil society representatives are packing up and the press is moving on. The party's over for the Sustainable Development Goals.

In September member states of the UN agreed goals which aim to end extreme poverty, fight against inequality and fix climate change. The Sustainable Development Goals (SDGs) cover almost every aspect of poverty and are targets for every country around the world, developed and developing alike.

For such ambitious goals to be achieved, leaders will need to turn their promises on inequality into policies that will deliver real change.

One day after the deal was done, I had a glimpse of how hard it will be to convince the world's leaders.

Attending a meeting on growth as part of the official SDG agenda, I was surprised the narrative of free trade and mega-investments continued to flow unbounded from governments.

Despite having a goal dedicated to ending inequality, the language of false market-based solutions continues – the

same solutions which for years have locked people into low-paid employment, divested money from public services and helped drive up inequality in almost all countries. The consequences of bad investments on people and the environment – causing environmental degradation, evictions and land grabbing – were blatantly ignored.

But here lies the catch. Corporations are not just stalking the corridors of the UN and promoting investments damaging to the poor, they also have a stranglehold on how countries raise taxes which will enable them to pay for

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TPP raises the barriers to access to affordable medicines

New trade treaties like the Trans-Pacific Partnership are ratcheting up already high levels of intellectual property protection to the benefit of big pharmaceutical corporations from the US and the EU.

by Carlos M. Correa

The pharmaceutical industry from the US and Europe scored a major victory with the adoption, in 1994, of a binding agreement on intellectual property – the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) – in the context of the then nascent World Trade Organization (WTO).

While some transitional periods were allowed, the TRIPS Agreement did not leave any space for special and differential treatment based on the countries' levels of development. In particular, it imposed on all WTO member states the obligation to grant patents in all fields of technology.

The lack of patent protection promotes price competition in the pharmaceutical market and, in some cases, clears the way for the development of generic pharmaceutical industries. The most notable case is that of India, which developed a strong pharmaceutical industry and is known today as "the pharmacy of the developing world."

The Trans-Pacific Partnership (TPP) is an ambitious trade agreement between the US and 11 other countries from the Pacific Rim region (Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam).

Notably, there are major differences in the level of development of these countries; for example, Vietnam's gross domestic product per capita is approximately 43 times less than the US GDP per capita. Despite this, Washington seeks the application of the same standards of protection to all parties in the partnership.

In fact, tariffs are already low among the TPP countries. There is very little gain to be obtained from the TPP in this regard. What such agreements tend to be really about are issues such as intellectual property rights. And the most important strategic reason of the TPP initiative for the US is likely to be to counter China's growing influence in the Asia-Pacific region, and to make the region less hospitable for Chinese "state capitalism."

Enhanced intellectual property protection

Enhanced intellectual property protection of pharmaceutical products had been a key concern for the US in the trade negotiations that led to the adoption of the TRIPS Agreement. Despite the significant enhancement of the international standards of intellectual property protection that that agreement entailed, the pharmaceutical industry from the US and the European Union remained unsatisfied. They aimed at even higher standards of protection.

However, it soon became evident that it would not be possible to obtain such higher standards within the relevant multilateral organizations, the WTO and the World Intellectual Property Organization (WIPO), where developing countries resisted further increases in intellectual property protections.

In this scenario, developed countries opted to seek the enhanced protection demanded by the pharmaceutical industry and other constituencies through bilateral or plurilateral trade agreements, where the bargaining position of individual countries is weaker and the promises of market access, or other real or expected trade advantages, make agreements on intellectual property more viable.

Thus, while under the TRIPS Agreement patents must last for 20 years from the date of application, the free trade agreements (FTAs) promoted by the US oblige the partner signatory countries to extend the patent term to compensate for "unreasonable" delays beyond a certain period in the procedures for the marketing approval of a medicine as well as in the examination and grant of patent applications.

FTAs also oblige member states to, among other things, grant patents based on "utility" rather than industrial applicability and, importantly, to secure market exclusivity on the basis of the protection of test data required for the marketing approval of pharma-

ceuticals, generally for five years from the date of such approval in the country where protection is sought.

FTAs also require partners to establish a "linkage" between the marketing approval of medicines and patents, thereby granting pharmaceutical companies rights that, under some FTAs, are stronger than those available under the US law.

For instance, a study found that the patent term extension would generate in Colombia an increase in pharmaceutical expenditures of \$329 million and a reduction in pharmaceutical consumption of 7% by 2025.

With respect to the potential impact of the TPP in particular, a study by Australian and US researchers estimated that, in Vietnam, the government would only be able to provide antiretroviral therapy to 30% of people living with HIV (down from its current rate of 68%) since the cost per person per year of treatment would increase to \$501 under the US proposal from its current level of \$127.22.

The negative impact of TRIPS-plus standards on access to medicines has been found even in developed countries that are not net exporters of intellectual property rights, such as in Canada and Australia.

The costs incurred by the smaller partners in FTAs are disproportionately high in relation to the benefits that accrue to pharmaceutical companies. (IPS)

Carlos Correa is the special adviser on trade and intellectual property issues at the South Centre.

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