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LDCs face improving but uncertain outlook – UNCTAD

While growth in the world's least developed countries (LDCs) as a group is expected to pick up, the current lacklustre global economic conditions will make it difficult for LDCs to embark on a path of sustained expansion and structural transformation. This was the prognosis presented by the United Nations Conference on Trade and Development (UNCTAD) in a report on “sustainable development trends” in the LDCs.

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LDCs' outlook improving but fraught with uncertainties

The world's least developed countries as a group continue to enjoy economic expansion, but a tepid global economy is unlikely to support a decisive boost in their growth and structural transformation prospects, says a UN development body.

by Kanaga Raja

GENEVA: While real gross domestic product (GDP) growth for the least developed countries (LDCs) as a group is forecast to strengthen somewhat to 5% in 2017 and 5.4% in 2018, the modest improvements in the international context fall short of what would be needed to spur growth and structural transformation in the LDCs.

This is one of the main conclusions of the United Nations Conference on Trade and Development (UNCTAD) in a new report titled *Selected Sustainable Development Trends in the Least Developed Countries 2018*.

The report was released at the sixty-sixth executive session of UNCTAD's Trade and Development Board, which met here on 5-7 February.

The report provides a brief assessment of recent economic trends and progress towards selected Sustainable Development Goals (SDGs) targets and indicators in the LDCs.

According to the report, most African and island LDCs, in particular, might find it hard to re-embark on the sustained growth trajectory that characterized the pre-crisis period, while growth resumption might be somewhat more in reach for Asian LDCs.

"Although LDCs as a group have so far continued to display positive (albeit weakening) rates of economic growth, their resilience to the unfolding conditions at the worldwide level is gradually weakening, and their outlook for the near to medium-term future remains somewhat improving but fraught with uncertainties," it said.

Lacking any decisive and coordinated policy action to strengthen global demand, redress the extreme levels of inequality across and within countries, and tackle financial vulnerabilities associated with rising indebtedness and volatile capital flows, the international economic scenario remains lacklustre.

Globally, economic growth is expected to somewhat strengthen in the coming years. However, the moderate

improvements expected for 2018 are likely to fall short of the robust and sustained expansion necessary to support a decisive advance in LDC performance, said UNCTAD.

Withstanding the slowdown without cutting key investment spending will be critical for LDCs to maintain their economic momentum and keep tackling their multifaceted infrastructural gaps.

Meanwhile, in the context of feeble recovery of international trade and moderate commodity prices, LDCs remain unlikely to find in international trade a meaningful solution to their growth slowdown, and this meagre outcome could further affect flows of foreign direct investment (FDI), which have already deteriorated in 2016.

Coupled with the levelling-off of aid flows as well as workers' remittances, this suggests that the vast majority of LDCs will continue facing sizeable current account deficits, possibly exacerbated by foreign exchange fluctuations (an appreciation of the dollar or a depreciation of their local currencies), inflating import bills and foreign-denominated debt. If these risks materialize, the increasing pressure on the balance of payments will intensify external financing requirements of the countries concerned.

"Outbreaks of civil unrest in politically unstable LDCs, humanitarian crises, and adverse environmental shocks will only increase economic vulnerabilities further, hindering investments and jeopardizing the hard-won progress made on the social development front."

Similar prospects for the global economy make it all the more imperative for the international community at large to embark in renewed concerted efforts for a "global new deal" capable of delivering inclusive growth worldwide.

At the same time, recent trends suggest that the ongoing tepid recovery alone is unlikely to provide sufficient support for most LDCs to reverse their

longstanding marginalization and income divergence while embarking on a sustainable development path.

Redressing such widening global inequalities and leaving no one behind thus requires meeting longstanding commitments towards the LDCs, as well as matching the level of ambition of the SDGs with a corresponding enhancement of the international support measures in favour of the world's most vulnerable countries, said the report.

Economic growth and structural transformation

According to the report, after weathering reasonably well the aftermath of the 2009 great recession, in the 2015-16 biennium the LDCs bore the brunt of the global trade slowdown and of the anaemic recovery associated with insufficient global demand and mounting levels of inequality.

In 2016, the LDC combined GDP experienced its lowest real growth rate since the beginning of the century (3.8%), with as many as 14 LDCs (out of 45 for which individual country data are available) suffering a deterioration of real GDP per capita.

Preliminary data for 2017 and projections thereafter suggest that some improvements are indeed taking place, with the LDC growth rate back at 5% in 2017 and a projected 5.4% for 2018.

"The picking up of the global economy, however, may well take some time to consolidate and touch a greater number of countries. Moreover, a number of risk factors, including unresolved flaws in the prevailing economic policy framework, as well as heightened policy uncertainties, loom large on this tepid recovery."

UNCTAD said the above situation can be traced to the prevailing conditions of the world economy, and most notably to:

(1) the anaemic recovery of developed economies, where aggregate demand has remained stifled by austerity measures, high levels of inequality and uncertain "animal spirits" on the part of investors, notwithstanding expansionary monetary policies and bullish financial markets;

(2) the slowdown of other (i.e., non-LDC) developing countries (especially outside the East Asian region), with several so-called "emerging economies" becoming increasingly vulnerable to trade and financial shocks; and

(3) the consequences of the strategic reorientation towards domestic-led growth in China, which has affected world demand for key commodities.

"Unless these issues are tackled through adequate and concerted policy efforts, there is a risk that a protracted lukewarm recovery will render it difficult for LDCs to generate and mobilize sufficient resources to strengthen their productive capacities, and foster economic diversification," said UNCTAD.

International prices for most primary commodity categories have trended upwards since late 2016, but this modest recovery barely made a dent to the significant drop experienced since 2011, particularly in the case of crude petroleum and minerals, ores and metals. Moreover, while the modest increase in commodity prices is projected to continue throughout 2018, large price swings are unlikely given slack supply capacities.

UNCTAD noted that growth performances across individual LDCs have continued to display wide (albeit somewhat declining) variation in 2017, as they did in the earlier biennium.

It said three of the 45 LDCs for which data are available suffered full-fledged recessions (i.e., negative real GDP growth), mainly because of idiosyncratic shocks such as internal conflict/insecurity situations. These countries were Yemen (-2.0%), South Sudan (-6.3%) and Burundi (where a virtual stagnation in 2017 followed two consecutive years of recession).

At the other end of the spectrum, several LDC economies have featured among the world's most dynamic economies, and attained in 2017 the SDG 8.1 target of a 7% GDP growth rate. These were Bangladesh (+7.1%), Djibouti (+7.0%), Ethiopia (+8.5%), Myanmar (+7.2%) and Nepal (+7.5%).

Though slightly missing the SDG target, various other LDCs – Burkina Faso, Cambodia, Guinea, Lao People's Democratic Republic, Rwanda, Senegal and Sierra Leone – posted real GDP growth in excess of 6%.

Notwithstanding some encouraging performers, it is sobering to note that in 2017 only five of the 45 LDCs for which data are available achieved the SDG 8.1 target. This represents only a marginal improvement over 2016, the year with the smallest number of LDCs meeting the 7% growth target since its first adoption in the 2001 Brussels Programme of Action for the LDCs.

This situation raises even more concerns, considering that the number of LDCs achieving the abovementioned objective is projected to remain well below pre-crisis levels also for 2018.

Considered in conjunction with LDCs' comparatively rapid demographic growth – on average 2.4% per year in 2017 – this faltering dynamism is mirrored in the sluggish rise of real GDP per capita, which, for the LDCs as a group, went from \$639 in 2016 to \$655 in 2017 (at current prices). This implies for 2017 a real growth rate of GDP per capita reaching barely 2.5%, higher than in 2016 (1.6%) but roughly half of its pre-crisis level (and lower than that in the 2012-14 window).

Looking at the performance of individual countries, the generalized slowdown of LDC economies over the last two to three years has been accompanied by an increase in the number of LDCs experiencing gradual deteriorations in the average standards of living, as measured by real GDP per capita. In 2017, as many as nine LDCs were in this situation, including two countries where the decline exceeded 3%: Afghanistan (-7%) and Yemen (-4.8%).

The uneven and somewhat erratic growth trends are accompanied by sluggish structural transformation, with many LDCs falling short of the inclusive and sustainable industrialization envisaged in SDG target 9.2, said the UNCTAD report.

Although there have been some encouraging signs, notably in terms of rising output per worker and manufacturing value added, in many instances economic expansion has failed to provide the foundations for sustained structural transformation.

This concern is confirmed by the evolution of the sectoral composition of output for LDCs as a group between 2000 and 2016 (the latest year for which data are available).

Although value added (measured in constant 2010 dollars) rose visibly in both agriculture and industry, these sectors experienced a slight contraction of their relative contribution to GDP: from 30% to 25% in the case of agriculture, and from 28% to 25% in the case of industry.

Services, conversely, increased their weight from 41% to nearly 50% of GDP. "This sector conflates, however, widespread traditional activities such as trade or transport, with circumscribed pockets of high productivity services, such as finance or information and communica-

tion technologies.”

Notwithstanding a considerable heterogeneity across individual LDCs, these sobering considerations seem to apply also at country level.

If the importance of agriculture declined in more than two-thirds of the LDCs for which data are available – in line with the long-established stylized facts – only in a handful of cases did this coincide with a significant expansion of the industrial sector; more often than not, services enjoyed by far the largest relative expansion. In fact, more than half of the LDCs actually display a shrinking of the industrial sector’s weight over the period considered (2006–16), including nearly all the LDCs where agriculture increased its share of GDP.

On the positive side, between 2006 and 2016 real manufacturing value added (MVA) increased in nearly all LDCs, with some of the top performers (typically those experiencing the sharpest growth accelerations) reaching annual growth rates exceeding 7%.

On the negative side, though, in most countries this was accompanied by a relative decline in the manufacturing share of total value added, pointing to a widespread risk of premature deindustrialization among LDCs.

According to the report, the evidence presented validates UNCTAD’s views that, even during phases of rapid economic growth, LDC economies have often struggled to foster the emergence of high-productivity activities in the manufacturing and specialized services sectors.

This situation, coupled with the capital-intensive nature of extractive industries underpinning much of the pre-crisis boom, has failed to generate sufficient employment outside (mainly small-holder) agriculture, leaving the growing labour force to be re-absorbed mainly through the expansion of (often low-productivity) services.

UNCTAD said LDCs’ infrastructural gaps and supply-side bottlenecks play a key – though by no means exclusive – role in constraining productivity growth and dampening prospects for economic diversification. Modern energy provision deserves explicit mention in this respect, not only because it is the specific object of SDG 7 (“Ensure access to affordable, reliable, sustainable and modern energy for all”), but more fundamentally because it is identified as a major constraint for 42% of LDC firms, and LDCs nowadays account for the majority of people

lacking access to electricity worldwide.

International trade and LDCs

According to UNCTAD’s estimates, worldwide trade volume growth rates over the previous year attained roughly 4% for the first three quarters of 2017. International trade flows are expected to continue picking up, but significant downside risks continue looming.

More fundamentally, even the expected modest expansion in world trade is unlikely to reverse LDCs’ longstanding marginalization in the international trade arena; all the more so if it is coupled with a protracted slack in global demand and with tepid pickup in commodity prices.

If between 2005 and 2013 LDCs’ share of global exports of goods and services had climbed up gently – from 0.75% to 1.09% – much of these gains have evaporated in the last few years. In 2016, LDCs accounted for barely 0.92% of the total, roughly the same level as in 2007.

Moreover, said UNCTAD, even though their share of world exports remains higher with respect to merchandise goods than services, nearly all the relative decline in LDC weight in world total exports can be traced to the former element.

“Only three years away from the 2020 timeline, this worrying situation underscores the difficulties in meeting the SDG 17.11 target of doubling LDCs’ share of global exports, particularly in a context of rather modest rebound of international commodity prices,” said the report.

It also noted that in 2017 the LDCs as a group are projected to register a current account deficit of \$50 billion, the second-highest deficit posted so far, at least in nominal terms. This stands in contrast with other developing countries, which, as a group, registered a current account surplus.

Moreover, projections for 2018 suggest that the combined LDCs’ current account deficit is expected to expand further, exacerbating possible balance-of-payment weaknesses and external debt vulnerabilities.

Resource mobilization in LDCs

According to the UNCTAD report, in most LDCs, efforts to mobilize domestic resources for investment are often undermined by the poor development of domestic financial markets, the narrow

tax base and weak tax collection and administration systems, as well as by the pervasiveness of illicit financial flows, notably through trade misinvoicing.

By virtue of national accounting identities, the weaknesses in the development of LDCs’ productive capacities, which typically lead to structural trade deficits, are reflected in LDCs’ heightened reliance on external sources of funding in order to finance investments in capital accumulation.

The external resource gap (that is, the difference between the gross fixed capital formation rate and the gross domestic savings rate) of LDCs as a group averaged 6.9% of GDP in 2015, up from 4.9% in 2014.

Recent data suggest that levels of external indebtedness have been surging across LDCs, both in terms of debt stocks [relative to gross national income (GNI)] and – even more so – in terms of burden of debt service (measured as interest payments relative to exports of goods and services plus primary income).

Between 2014 and 2016, the external debt stock in the median LDC increased from 25.7% of GNI to 27.8%; simultaneously, external debt service climbed by roughly 25% in two years, attaining 1.32% of exports of goods and services plus primary income. This situation has raised some concerns especially in the African region, where several countries have experienced a sharp rise in their level of external indebtedness.

According to the report, total net official development assistance (ODA) disbursed to LDCs in 2016 amounted to \$43.1 billion, representing an estimated 27% of net ODA disbursements to all developing countries. This implied a 0.5% increase in real terms year-on-year compared with 2015. This trend corroborates the fears of a levelling-off of aid flows to LDCs in the wake of the global recession, to the extent that in 2016 net ODA disbursements to LDCs remained lower – even in real terms – than in 2013 (\$43.3 billion).

The levelling-off of ODA flows has thus contributed to the gradual shrinking of their magnitude in relation to LDCs’ own economic size, with net ODA accounting for roughly 4.5% of LDCs’ combined GDP in 2016, compared with 7.7% 10 years before.

Equally important in the context of the 2030 Agenda for Sustainable Development, ODA disbursements to LDCs remain far below the target of 0.15–0.20% of donor countries’ GNI – a target which

had been first adopted in 1981.

UNCTAD said that only a handful of donor countries appear to have met the SDG 17.2 commitments in 2016: specifically, Denmark, Luxembourg, Norway, Sweden and the United Kingdom provided to LDCs over 0.20% of their own GNI, while the Netherlands met the 0.15% threshold.

Averaging over all members of the Development Assistance Committee (DAC), donor countries barely disbursed 0.09% of their GNI to LDCs.

Had donor countries instead delivered on their pledges, LDCs should have received additional development assistance worth \$32-53 billion in 2016, which might have supported much-needed investments and productive capacity development, said UNCTAD.

Despite some improvements over the last 15-20 years, LDCs continue to play a relatively marginal role in the global economy, accounting for only 2.2%

of global FDI inflows, down from a peak of 3% in the 2013-14 biennium.

In 2016, inflows of FDI to LDCs as a group attained nearly \$38 billion, down 13% from the levels of the previous year. They amounted, on average, to 3.6% of LDC GDP in the same year, with a declining weight in relation to LDCs' combined GDP.

Despite the reduction in FDI inflows, LDCs' stock of inward FDI has continued its expansion unabated, and is now estimated to be worth \$326 billion (1.2% of the global figure, or 33% of LDC GDP).

Given the importance of building strong backward and forward linkages between foreign and domestic firms, it is imperative for LDCs to pursue strategic policies to attract FDI while avoiding a "race to the bottom", and to enhance FDI development potential with a view to accelerating structural transformation, said the report. (SUNS8615) □

(CIT) rates.

"Increased tax competition could have a negative impact especially on lower-income countries, where corporate income taxes are more important for government revenues and rates are still relatively high."

Investors will face some uncertainty as the detailed effects of the tax reform are clarified, and as they wait to see how other countries, including US tax treaty partners, react to some of the measures. According to UNCTAD, concerns have been raised that provisions in the act may violate US double taxation treaties and trade rules.

Changes and impacts

The UNCTAD document said the act includes changes to the corporate tax regime that are likely to have important consequences for international investment. These changes will affect both cross-border investment into the US and the investment positions of US MNEs abroad. As such, they could have a significant impact on global investment patterns, given that almost half of global investment stock is either located in the US or owned by US MNEs.

According to UNCTAD, measures that will directly affect the investment climate in the US include:

- (i) a reduction of the statutory corporate income tax rate from 35% to 21% effective from 2018;
- (ii) immediate full expensing of investment cost;
- (iii) the capping of deductible interest to 30% of taxable income.

Measures directed at the international tax regime for MNEs include:

- (i) a switch to a territorial tax system through a 100% deductibility of dividends of foreign affiliates;
- (ii) a transitional measure for existing overseas retained earnings in the form of a mandatory deemed repatriation subject to a one-off tax payment (15.5% on cash, 8% on illiquid assets);
- (iii) a set of anti-avoidance measures, including a tax on global intangible low-tax income and a tax on payments to overseas affiliated firms that erode the tax base in the US.

Global investment patterns could see important developments over the coming period, said UNCTAD, as the full implications and workings of the tax reform act become clear. In this context, UNCTAD highlighted the following findings:

- Repatriation of overseas funds,

US tax reform could lead to repatriation of \$2 trillion

The recent changes to the corporate tax regime in the US could trigger a mass repatriation by US firms of funds held overseas, causing a sharp drop in global stocks of foreign investment, according to an UNCTAD analysis.

by Kanaga Raja

GENEVA: The US tax reform bill adopted in December 2017 could lead to the repatriation of almost \$2 trillion of overseas funds held by US multinational enterprises (MNEs), leading to sharp reductions in global stocks of foreign direct investment (FDI), the UN Conference on Trade and Development (UNCTAD) has said.

In a special edition of its *Investment Trends Monitor* focusing on the US' Tax Cuts and Jobs Act, UNCTAD said the act will have significant implications for global FDI patterns. It will affect MNEs and foreign affiliates accounting for almost 50% of global FDI stock.

UNCTAD said that the overview of the tax reform measures relevant for international investment provided in the *Investment Trends Monitor* is necessarily succinct and incomplete. It does not consider all detailed provisions and measures applicable to specific industries. Specific measures have been adopted affecting, for example, the energy sector and the financial sector, which could also

have implications for cross-border investment, it said.

"The discussion also does not take into account broader macro-economic effects. Increased budget deficits due to the tax cuts could affect interest rates and the investment climate." Decisions by the US Federal Reserve could offset the fiscal stimulus, it said.

And developments in other policy areas, notably international trade, would have a strong impact on the activities of MNEs and on international investment.

The outcomes will also very much depend on reactions in other countries. For example, China has recently put in place measures to encourage reinvestment by foreign MNEs in its territory.

Also, with the move to a territorial tax system, the motivation to engage in a degree of tax competition increases for US trade and investment partners that are small open economies (not offshore economies). In fact, said UNCTAD, a number of countries have recently announced cuts in corporate income tax

possibly to the tune of almost \$2 trillion, will lead to negative outflows and a sharp reduction of US outward stock (and inward stocks elsewhere).

- The removal of the need to keep earnings overseas could lead to structurally lower retained earnings in foreign affiliates of US MNEs.

- This, combined with the anti-avoidance measures, could lead to a re-routing of FDI links in the international corporate structures of US MNEs.

- The greater degree of freedom in the use of overseas cash might lead to a further increase in mergers and acquisitions (M&As) (although perhaps more domestic M&As than cross-border M&As), but the curbs on interest deductibility might dampen this effect.

- The stimulus to investment in the US provided by a lower CIT rate and full investment expensing might lead to higher inward investment in the US, and possibly to further re-shoring of manufacturing activity.

"The impact on investment in the developing world remains to be seen. However, developing countries need real investments in productive assets, not cash parked overseas," said UNCTAD Secretary-General Mukhisa Kituyi in a press release.

Corporate tax cut

According to the UNCTAD document, the headline measure of the act is the reduction in corporate income tax from 35% to 21%. The measure is undoubtedly beneficial for business in the US and brings the nominal rate in line with the rate in most major developed economies, such as the 22% average rate in the EU and the 24% average in the OECD countries.

However, said UNCTAD, the effect on international investment of this measure per se is likely to be limited.

The many tax breaks in the complex fiscal environment in the US already resulted in an average effective tax rate (AETR) close to the OECD average. And MNEs (both US MNEs and foreign investors in the US) enjoyed an even lower rate than domestic businesses due to opportunities to avoid tax through their international networks.

The impact of the rate reduction on international investment is also likely to be limited because while nominal income tax rates can be a factor in investment decisions, they are not among the most important investment determinants.

Other locational factors, such as access to markets, technology, R&D facilities and labour costs, are generally far more significant determinants.

The reduction of the CIT rate by 14 percentage points is dwarfed by the labour cost differentials between the US and, for example, the Asian economies that have been the manufacturing location of choice for many US MNEs; hourly labour compensation costs in manufacturing in the US are three times higher than the average of the five Asian economies that host most US outward FDI stock in the sector.

According to UNCTAD, a more impactful measure in terms of stimulating investment may be the full deduction of capital expenditures on equipment. This will provide a significant boost to firms in capital-intensive sectors. A few large firms, including AT&T, Boeing and Apple, announced significant new investments in the US shortly after the adoption of the bill.

The effect is partly diluted by the cut in the CIT rate; full deductibility of expenditures would have been a greater boon under the 35% headline rate. "Further dilution might occur through potential upward price pressures for capital equipment, but on balance past studies have shown a significant impact of comparable investment tax credits on capital expenditures in the United States."

However, said UNCTAD, while the measure will positively affect capital expenditures by both domestic firms and affiliates of foreign MNEs, the effect is likely to be most pronounced for expansions or upgrades of existing operations (with the possibility to reduce tax liabilities on existing income streams). "The impact on new foreign investment flows into the United States is much less clear," it said.

A dampening effect on investment might come from the cap on the deductibility of interest expenses to 30% of taxable income.

In the current low-interest-rate environment, and after the deleveraging that has taken place among corporations over the past decade, this cap will not pose a significant limitation for most businesses. However, it could increase the cost of capital for highly leveraged businesses and for private equity investors, and it could affect M&A deals, including cross-border M&As, that rely on adding high levels of debt in acquisition targets.

Fund repatriation

According to UNCTAD, the most significant change to the tax regime for MNEs is the shift from a worldwide system (taxing worldwide income, with credits for taxes paid overseas) to a territorial system (taxing only income earned at home). This brings the US regime closer to the majority of OECD economies. The shift is accomplished through a 100% deductibility of received foreign dividends.

The switch to a territorial system removes the anomaly of the regime whereby overseas earnings incurred tax liabilities that became payable only upon repatriation of funds to the US, leading to vast amounts of deferred tax liabilities parked overseas. As a result, US outward FDI stock is made up to a large extent of accumulated overseas profits, or retained earnings. As these retained earnings could be deployed for capital expenditures on a pre-tax basis, the possibility to defer tax liabilities indefinitely has effectively acted as a stimulus measure for the overseas operations of US MNEs.

The possibilities provided by the US international tax regime have allowed some of its MNEs to operate with significantly lower global average effective tax rates than their competitors from other regions. For example, General Electric has been found to have a global AETR of less than 10%, compared with more than 30% for its direct competitor Siemens (Germany).

UNCTAD said as the incentive for US MNEs to maintain large stocks of retained earnings overseas will be much reduced, the impact on FDI patterns could be significant.

The shift to territoriality and the huge existing stock of overseas deferred taxes necessitate a transitional measure included in the reform bill. All deferred taxes will be treated as if they were being repatriated, and taxed at relatively favourable rates (compared with the full statutory rates) of 15.5% for retained earnings held as cash, and 8% for non-cash assets, i.e., earnings that have actually been reinvested.

This measure is widely expected to have the most significant and immediate effect on global investment patterns, said UNCTAD.

It noted that a tax break on repatriation has been long awaited by MNEs, since the last such break in 2005 in the

form of the Homeland Investment Act (HIA). At the time, a one-time reduced rate was offered for repatriated funds, which led to about \$300 billion of retained earnings being brought back to the US – causing significant negative outward FDI flows.

Overseas retained earnings of the US MNEs are now much higher. At \$3.2 trillion – with some \$2 trillion held in cash – they are now about seven times the level in 2005.

“Mandatory deemed repatriation could thus potentially lead to very large capital flows back to the United States to the extent that it could affect the dollar exchange rate.”

However, a key contrast with the 2005 HIA is that, at the time, funds had to be repatriated in order to benefit from the reduced rate. As a result, an estimated two-thirds of the total funds available for repatriation were brought back (with the remainder presumably reinvested in non-liquid assets, or required for overseas operations).

The current tax reform does not include such a requirement (or incentive) to actually repatriate funds. Therefore, MNEs may opt to keep a larger share of retained earnings overseas, either to finance future expansion and M&As, or because yields in emerging economies are higher.

Ultimately, the impact will depend on the actions of a relatively small number of very large MNEs that, together, hold the bulk of overseas cash.

UNCTAD noted that five high-tech companies alone (Apple, Microsoft, Cisco, Alphabet and Oracle) together hold more than \$530 billion in cash overseas, i.e., one quarter of the total amount of liquid assets that are estimated to be available for repatriation. The 50 top overseas cash holders in the S&P 500 have parked about \$925 billion of cash outside the US. The largest cash holders are intellectual-property-intensive MNEs in high-tech, pharmaceuticals, engineering and a few branded consumer goods companies.

The potential impact on global FDI positions is clear, said UNCTAD. Mass repatriations could cause significant negative outward FDI flows and a large drop in the outward FDI stock position of the US, from the current \$6.4 trillion to possibly as low as \$4.5 trillion, with adverse consequences for inward FDI stocks in other countries.

About a quarter of US outward stock of FDI is located in developing countries. However, it is likely that a relatively large share of the stock located in developing countries is invested in productive assets and therefore non-liquid or not easily repatriated.

Looking only at holdings of liquid assets, the largest portion (almost 40%) of funds available for repatriation appear to be located in the United Kingdom and its offshore territories.

“The impact of funds repatriations on actual investment in the United States is a great unknown,” said UNCTAD.

The 2005 HIA has been widely criticized as a “windfall” for MNEs and their shareholders, which did not lead to significant additional capital expenditures and jobs. Current expectations are again that a significant part of the funds will be either returned to shareholders through dividends or share buy-backs, spent on M&As (which do not lead to immediate investment in additional productive capacity), or used for debt reductions or higher pension contributions.

“Projections for the actual stimulus effect vary wildly, with proponents of the reform predicting significant new investment, and others (including the Federal Reserve in its projections underpinning monetary policy) adopting a more cautious stance.”

Tackling tax avoidance

According to UNCTAD, the tax reform package includes further measures to persuade MNEs to bring back certain assets and activities to the US, and at the same time to combat tax avoidance and erosion of the tax base in the US.

A key measure aimed at MNEs that hold intangible assets and intellectual

property overseas for the purpose of booking profits from royalties in lower-tax jurisdictions is the global intangible low-taxed income (GILTI) regime and the foreign-derived intangible income (FDII) rules.

According to UNCTAD, the effects of these measures will be felt by “the most GILTI MNEs” including high-tech and pharmaceutical firms. Tech MNEs in particular will be affected. Their overseas retained cash holdings are almost eight times their tangible assets, compared with two times for other MNEs. And their global AETR is significantly lower.

The GILTI and FDII measures could lead to changes in practices and international corporate structures in US MNEs with the associated re-routing of FDI positions, it said.

UNCTAD said the reform package also aims to tackle other types of erosion of the tax base in the US.

The act includes a base erosion anti-abuse tax (BEAT), which is an alternative minimum tax designed to curtail excessive earnings stripping through payments to foreign related parties. The BEAT measure could lead to affiliates in the US of foreign MNEs paying more tax under the new regime, despite the reduction in the statutory CIT rate.

The tax reform has been, and is, controversial in many quarters, and the ultimate effect of the measures in it is hard to predict. The intent of the combination of provisions is clear, though: to bring back overseas funds of US MNEs and to stimulate the investment of these funds in productive assets.

Equally clear is that the reform package will have significant implications for global FDI patterns over the coming years, UNCTAD concluded. (SUNS8616) □

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UN expert to develop rights assessment framework for economic reforms

Noting the harm wrought by austerity measures taken in response to the global financial crisis, a UN human rights expert is drawing up guiding principles for evaluating the rights impacts of economic reform policies.

by Kanaga Raja

GENEVA: The policy responses to the recent financial crisis have revealed a deep-seated structural neglect of human rights in economic policy formulation, insufficient protection of the most vulnerable and a lack of attention to participation, consultation, transparency and accountability, a United Nations human rights expert has said.

"That neglect is the driving force behind the development of guiding principles for assessing the human rights impact of economic reform programmes and the development of analytical and methodological tools to assess human rights impacts."

This is one of the main conclusions highlighted by Juan Pablo Bohoslavsky, the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights.

The conclusions are in his report to the thirty-seventh session of the UN Human Rights Council taking place on 26 February-23 March.

According to the rights expert, the guiding principles will help States and international financial institutions to comply with their human rights obligations in periods of financial distress when considering fiscal consolidation measures, countercyclical initiatives and alternative economic choices.

"Although such human rights-specific guidance has not yet been adequately developed, relevant tools, experience and research exist to inform the efforts to do so," he said.

He added that the guiding principles should start from the premise that managing economic and fiscal affairs is a core government function and responsibility.

Fiscal consolidation and wider economic reforms are not inherently incompatible with a State's human rights duties; indeed, such measures can comply

with international standards if they are designed and implemented with those standards in mind, Bohoslavsky underlined.

In March 2017, the Human Rights Council, in its resolution 34/3, had requested the Independent Expert to develop guiding principles for assessing the human rights impact of economic reform policies, in consultation with States, international financial institutions and other relevant stakeholders.

In his present report, the Independent Expert discusses the development of such guiding principles. He identifies the main challenges of developing the principles, including their basis, scope, content, issues related to timing, and some reflections on how to proceed, and concludes with some preliminary recommendations for discussion on the content and format of the guiding principles.

The Independent Expert said he intends to circulate the draft guiding principles to States, international financial institutions, national human rights institutions, civil society organizations and other relevant stakeholders by August 2018 with a view to obtaining written feedback in the form of comments from all stakeholders. He plans on submitting the final text of the guiding principles to the Human Rights Council for its consideration at its fortieth session.

Evolution in responses to financial crises

In his report, Bohoslavsky highlights the evolution in structural adjustment responses to financial crises and the mitigation of adverse social impacts up to the 2007-08 financial crisis, as well as how structural adjustment programmes affect human rights.

He underscored that, for both economic and legal reasons, economic reform programmes must be inclusive and advance human rights.

According to the report, the 2007-08 global financial crisis is widely considered the worst of its kind since the Great Depression. A decade later, it continues to take a toll through fiscal austerity that dampens recovery and reduces the scope for economic and social transformation that is needed to generate more inclusive, rights-based societies with access to decent work, social services and social protection for all.

The contagion of the financial crisis that was ignited in the United States was fuelled by what has been described as "hyper-globalization", which brought both benefits and increased vulnerability to societies around the world. It also opened the way for financialization, a process that enabled financial institutions and markets to increase in size and influence. The United Nations Conference on Trade and Development (UNCTAD) concluded that the continuation of that process, along with deepening inequalities, increased the likelihood of a financial crisis recurring.

"Irrespective of whether financial crises are caused by external or internal factors or a combination of both, there is need to develop frameworks for solving them which put respect for human rights at the centre," said Bohoslavsky.

The rights expert noted that since the 1980s, there has been growing consensus that economic crises and many structural adjustment policy packages that have been implemented to prevent or overcome them can cause severe adverse human rights impacts.

"It is then not surprising that economic reform policies have been increasingly associated with initiatives to mitigate adverse impacts on the livelihoods of poor communities. Yet, for a number of reasons, these initiatives have often been far from being considered successful."

While it has been acknowledged that structural adjustment and fiscal consolidation policies can have massive adverse impacts on persons in situations of vulnerability, most of those policies have not been designed or implemented in a manner that would promote or safeguard human rights. Often the focus has been limited to mitigating the worst social impacts, rather than implementing reforms that would prevent or dampen future crises.

Bohoslavsky said countercyclical responses that invest in social development are both feasible and associated

with a more equitable and sustainable economic recovery. However, many States and international financial institutions do not seem to have learnt those lessons; austerity has been the predominant response to the recent financial crisis, and fiscal consolidation policies have largely remained human-rights-blind, with their principal focus on ensuring balanced public budgets at all costs.

International and regional human rights mechanisms have pointed out that budget cuts in various countries have affected the rights to health, education, food, housing, work, social security, water, as well as political and civil rights, such as access to justice, the right to participation, and the freedoms of expression, assembly and association.

“The right to life and personal integrity has not been spared; economic crises further entrenched by austerity policies have triggered an increase in suicides in some countries, resulted in the exclusion of individuals from life-saving public health care and weakened public health-care systems to such extent that they have been ill-equipped to respond to epidemics.”

The report pointed out that austerity policies are often justified by an overly simplified or misleading diagnosis – in particular, blaming excessive public expenditure for fiscal crises without even considering other relevant factors, such as external shocks, insufficient revenue streams, financial deregulation, widening inequalities, depressed wages among low- and middle-income households or other failures owing to globalization.

Policy decisions are frequently taken without sufficient consideration of less harmful policy options and reliable analysis of foreseeable outcomes. The information is often not publicly accessible in any meaningful way nor subject to meaningful participation by groups in society that may be adversely affected.

“To date, there is no general framework or methodology for adequately assessing the human rights impact of economic reform policies. That makes it extremely difficult to assess the real and often cumulative effects of austerity policies on the entire population and, in particular, the most marginalized segments,” the Independent Expert said.

He noted that while the 2007-08 international financial crisis was the worst in decades, the origin of the debt crises in Latin America in the 1980s, which had spread globally, was also tied to domestic policy concerns in the United States

and other developed countries. Following the Latin American crises, advanced economies sought to tackle their high levels of inflation and attract investments by increasing interest rates, which escalated interest payments for borrowers in the developing world.

Debtor countries turned to the International Monetary Fund (IMF) for bridge finance and for advice on how to deal with the financial impacts of the crises. The structural adjustment policy package that came to be characterized as the “Washington Consensus” became the dominant remedy. As a condition for accessing IMF financing, the reduction or reform of public spending and the liberalization of markets by removing controls and barriers, including on the movement of capital, were proposed.

By the mid-1980s, governments, researchers and an emerging international civil society community had begun to voice their concerns about the severe, adverse impact of such policy prescriptions on the ability of countries to promote inclusive growth, develop human capabilities and strengthen fair opportunities for all members of society.

Nonetheless, the traditional macro-economic policy recommendations of market liberalization and structural adjustment continued to dominate, while a number of initiatives were developed in parallel to mitigate their adverse social impacts.

In the late 1980s, the international financial institutions launched “social funds” as temporary social assistance or social protection facilities. That initiative gave rise to the development of the early social impact assessment tools. However, those mechanisms were often not sufficient and the turnaround and resumption of inclusive growth often failed to materialize in the short and medium term.

With the new millennium, the international development community turned more decisively to strengthening the agency of the actual beneficiaries beyond social service delivery systems. Attention shifted to social protection as a means of securing livelihoods for the elderly and people living with disabilities, facilitating access to nutrition, health and education for children, as well as generating household incomes during adjustment and transition periods. Social protection floors and conditional cash transfers became major trends in social development cooperation in the early 2000s, favoured by a wide range of governments.

“Yet, no consistent and comprehensive rights-based framework for conducting human rights impact assessments of economic reform programmes has emerged,” said the rights expert.

Impact of austerity measures

According to the Independent Expert, today, more than two-thirds of countries across the world are contracting their public purses and limiting, rather than expanding, their fiscal space. Countries are struggling to protect hard-fought gains in improving social protection and coverage. Those gains were the subject of extended advocacy over almost 30 years, but have become increasingly at risk of being reversed.

A 2015 study indicated that austerity was expected to impact more than two-thirds of all countries during 2016 to 2020, affecting more than six billion people or nearly 80% of the global population by 2020, and that, contrary to public perception, austerity measures were not limited to Europe; many of the principal adjustment measures featured most prominently in developing countries.

Fiscal consolidation policies have varied from one country to another. Nevertheless, seven of the most common fiscal consolidation measures are: (a) public expenditure cuts affecting human-rights-sensitive fields such as public health care, social security and education; (b) regressive tax changes; (c) wage bill cuts and caps and reduction of positions in the public sector; (d) pension reforms; (e) rationalization and further targeting of safety nets; (f) privatization of public utilities and service providers and introduction of user fees; and (g) reduction in food, energy and other subsidies affecting the prices of essential goods and services such as food, heating and housing.

Fiscal consolidation measures are often accompanied by structural reforms, such as deregulation, labour market flexibilization, reduction in labour rights and various administrative and legal reforms.

While these measures are ostensibly aimed at facilitating future economic growth, reducing unemployment and increasing tax revenues, they have often directly affected the enjoyment of human rights, including access to justice, said the Independent Expert.

“Numerous United Nations bodies and human rights mechanisms have concluded that the financial crises have threatened government expenditure on

a wide range of social welfare services when and where they were most needed. Austerity measures have contributed to prolonging the economic crisis and compounded the threat to human rights beyond that posed by the crisis alone.”

Austerity policies have contributed to increased social exclusion, as evidenced by long-term unemployment, an increase in homelessness and other manifestations for which there are no easy cures. Addressing such consequences costs governments much more than investing in their prevention.

“It seems obvious that understanding and monitoring the human rights impact of economic reform policies are critical for preventing and mitigating short- and long-term impacts and for building resilience to future crises,” said Bohoslavsky.

The report by the Independent Expert also highlighted the legal imperatives as to why human rights should guide economic reform programmes.

It said that while States have the primary responsibility to comply with international human rights treaties and standards, international financial institutions and other international organizations are also bound to respect human rights.

Like any other subject of international law, international financial institutions are bound by the obligations incumbent upon them under the general rules of international law, under their constitutions or under the international agreements to which they are parties. They are therefore obligated to comply with the human rights set out in the Universal Declaration of Human Rights and in international human rights treaties, which have become part of customary international law and which reflect the general principles of law.

“While many human rights norms are subject to qualifications and limitations, fiscal consolidation and economic reform measures should never violate the minimum core content of economic, social and cultural rights, nor be directly or indirectly discriminatory or result in the adoption of impermissible retrogressive measures in terms of the enjoyment or implementation of economic, social and cultural rights.”

The prohibition of impermissible retrogression in human rights law is the key economic, social and cultural rights standard for assessing rights-harming

fiscal consolidation and economic reform measures, said the rights expert.

He also noted that wealth and income inequalities had been widening within countries over the two to three decades prior to the latest financial crisis, both in the developing world and among the more developed economies. In 2015, an analysis by the Organization for Economic Cooperation and Development (OECD) showed that income inequality had a negative and statistically significant impact on medium-term growth. The analysis also indicated that a main factor behind inequality hurting growth is failure to make adequate education opportunities available to poorer households.

The rights expert said equally critical to economic recovery and human development is the expansion of income and work opportunities for all. Poverty and exclusion from the labour market have been described as a waste of human resources with adverse impact on economic growth both through lack of their contribution to the economy and by their need for additional protection.

Human rights impact assessment

The Independent Expert noted that there is a wide range of impact assessment tools that have been developed since the approach was first introduced in the 1970s to address environmental impacts. Human rights impact assessments are among the newer tools, but the literature has already articulated the value added of a human rights approach.

“Applying a human rights impact assessment approach to situations of and in response to financial stress would be new in the context of economic reform.”

A human rights impact assessment would provide a framework and normative guidance that would prompt analysis of the deeper causes of a crisis as well as serious consideration and analysis of alternative responses to crises that can provide a more sustainable path to longer-term growth.

Important lessons can be learnt from the reactions to the 2007-08 financial crisis over the past 10 years. The impact – both direct and indirect – of economic policy change on human rights is complex and multidimensional and policymakers could draw on lessons learnt from developing a multidimensional approach to poverty.

According to Bohoslavsky, what was lacking until the 2007-08 financial crisis was an analysis of the multiple ways in which fiscal consolidation measures could impact human rights.

He said: “Policymakers need more detailed guidance that could help to combine that knowledge with analytical approaches that would allow human rights impact assessments to be carried out in a timely and solid manner and improve policy responses to financial crises by ensuring that they prevent, minimize and mitigate adverse human rights impacts.”

Ensuring participation is essential for human rights impact assessments. A key challenge is how to identify, reach and understand the depth and breadth of impacts on different groups at risk of marginalization or vulnerability, such as women, children, the elderly, persons with disability, national, ethnic, linguistic and religious minorities or other groups that may be at risk in a given national context, such as indigenous peoples, refugees or internally displaced persons. “Reliable and disaggregated data are needed to strengthen modelling or at least inform a more detailed analysis.”

The rights expert said that once the analysis of potential impacts is done, a core part of a human rights impact assessment is designing prevention, mitigation and compensation measures to counteract adverse impacts. This is done by selecting alternative measures, modifying proposed measures through compensating for impacts (e.g., providing cash payments to the poorest to compensate for the removal of fuel subsidies).

The report highlights some key points that it said need to be addressed and considered in designing a human rights impact assessment. These include the legal basis of the guiding principles; scope of the guiding principles; timing (focus on *ex ante* human rights impact assessments); addressing different situations; what should be covered; who should conduct the human rights impact assessment; how data and information should be collected; and how the human rights impact assessment should be carried out.

As to what should be covered, the Independent Expert proposed that the human rights impact assessment should include: (a) review of all the policy options for tackling a crisis, including

countercyclical measures; (b) analysis of how policy changes and proposed budget cuts and other adjustment measures are likely to affect the population, in particular the most vulnerable groups – using a variety of quantitative and qualitative tools; (c) analysis of the extent to which budget, policy, legislative and other changes may contribute to fulfilling the State's human rights obligations or potentially undermine them; and (d) a (non-exhaustive) list of preventive or mitigating measures to take to respond to the analysis that are in line with the government's human rights obligations.

Some recommendations on the guiding principles

In order to advance the discussion on the development of the guiding principles for assessing the human rights impact of economic reform policies, the Independent Expert has recommended that the guiding principles should:

(a) Recognize that managing economic and fiscal affairs is a core government function, while underlining the obligations of States and international financial institutions to ensure that their economic reform policies and conditionalities on financial support respect human rights;

(b) Draw on existing human rights standards relating to economic, social, cultural, civil and political rights at the international and regional levels, including core international human rights treaties, their authoritative interpretation in general comments, statements, decisions, guiding principles, concluding observations and recommendations issued by international human rights mechanisms;

(c) Set out the normative framework that has emerged from the extensive work carried out to date in relation to human rights and the financial crisis, and provide specific guidance on how to apply the framework. That should include specific guidance on assessing economic reform policies with a view to: (i) identifying positive human rights impacts; (ii) preventing or mitigating adverse impacts on the enjoyment of economic, social, cultural, civil and political rights; (iii) identifying and preventing potential violations of the core minimum obligations relating to economic,

(continued on page 14)

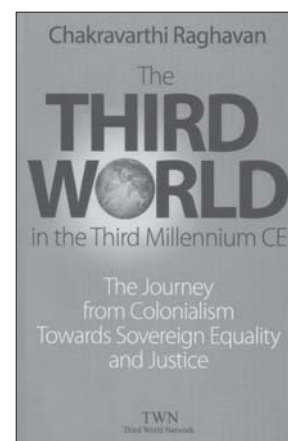
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The Journey from Colonialism Towards Sovereign Equality and Justice

By Chakravarthi Raghavan

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Attacks against multilateralism likely at mini-ministerial in India

An upcoming mini-ministerial meeting in India aimed at addressing agriculture and development issues in the WTO could end up becoming a platform for advancing plurilateral discussions on contentious new subject areas.

by D. Ravi Kanth

GENEVA: The mini-ministerial meeting on 19-20 March that India is sponsoring and hosting faces the prospect of an intensified attack against multilateral trade liberalization from the sponsors of plurilateral initiatives on electronic commerce and investment facilitation among others.

India is convening the meeting to address agriculture and development issues set out in the Doha Work Programme of the World Trade Organization (WTO). However, the plurilateral sponsors attending the New Delhi meeting have their own plans to drum up support for their initiatives on e-commerce, investment facilitation, disciplines for micro, small and medium-sized enterprises (MSMEs), and trade and gender, according to people familiar with the development.

Aggressive campaign

Ahead of the meeting, which will see the participation of around 40 trade ministers including from all the industrialized countries, the plurilateral sponsors have intensified their aggressive campaign for launching discussions on their plurilateral initiatives at the WTO despite lack of multilateral approval.

Though failing to secure multilateral approval at the WTO's eleventh Ministerial Conference in Buenos Aires on 12 December 2017, the plurilateral sponsors had gone ahead and announced their specific initiatives on e-commerce, MSME disciplines, investment facilitation, and trade and gender on 13 December.

The US, which endorsed the plurilateral initiative on e-commerce at Buenos Aires, however chose to stay away from the initiatives on investment facilitation and MSMEs, promoted by China. In a similar vein, China and Pakistan chose not to join the plurilateral initiatives on e-commerce and trade and gender. China, which has stated its com-

mitment to the unresolved Doha issues, indicated its willingness to pursue new issues such as investment facilitation and disciplines for MSMEs.

Following the Buenos Aires meeting, trade ministers from select countries made their renewed pitch for plurilateral initiatives at a closed-door dinner meeting on 25 January on the sidelines of the World Economic Forum meeting in Davos, Switzerland. The WTO Director-General Roberto Azevedo also joined the plurilateral bandwagon at the dinner meeting, according to a participant who asked not to be quoted.

Surprisingly, Azevedo kept silent on the plurilateral initiatives when the sponsors, including the US, called for pursuing the plurilateral discussion on e-commerce at the closed-door informal ministerial meeting the next day hosted by Switzerland.

At that informal ministerial meeting, US Trade Representative Robert Lighthizer said that plurilateral initiatives are not suitable for rule-making in all areas except e-commerce. The US had already presented a "non-paper" on e-commerce in 2016 in which it had set out the broad goals that must be accomplished at the WTO. In its proposal, the US unveiled "a number of trade-related policies that can contribute meaningfully to the flourishing of trade through electronic and digital means."

China, however, remained silent on the plurilateral initiatives at the Davos meeting, emphasizing that members must respect their multilateral obligations.

Subsequently after the Davos meeting, Brazil fired the first salvo on investment facilitation, calling for "structured discussions" at the WTO on the issue. Brazil had created the G20 developing-country coalition for reforming global trade in agricultural products, particularly reducing trade-distorting domestic farm subsidies. The same Brazil has now ensured the death of the G20 and has

become instead the champion of investment facilitation.

Brazil said that its proposal, which was circulated on 1 February in the WTO, was not meant to be a negotiating proposal but rather: (i) a platform (among others) to promote more focussed and text-based discussions, as well as (ii) a response to the call made in a joint ministerial statement issued at the WTO's Buenos Aires meeting calling for the beginning of "structured discussions with the aim of developing a multilateral framework on investment facilitation".

Multilateral or plurilateral?

Against this backdrop, the forthcoming informal ministerial meeting in New Delhi could become the launching pad for the plurilateral initiatives, given the speed at which their sponsors are proceeding.

India wants to focus on issues of agriculture and development but it remains moot whether it would be able to prevent the plurilateral sponsors from firing salvos from India's shoulders.

At the last informal ministerial meeting hosted by India, on "Re-Energizing Doha – A Commitment to Development" and held in 2009, India had issued a set of objectives aimed at "weaving them into a response of solidarity to move the multilateral process forward."

"This is what the Delhi meeting attempts to achieve ... it brings together groups from across the spectrum of interests and positions in the Doha negotiations, in a microcosm of the WTO itself, in a bid to give a determined push to the multilateral process," India had stated in a discussion paper issued for senior officials for that meeting.

Given the near-wreckage brought about in the Doha trade negotiations by the US along with other industrialized and several developing countries over the past several years, culminating in the disastrous collapse of the Buenos Aires meeting, and in the face of the aggressive push for plurilateral discussions on e-commerce and other issues, it remains to be seen how India will be able to bring about a consensus at the upcoming Delhi meeting to advance discussions on agriculture and development.

Moreover, the US administration, which is going to accelerate its safeguard actions on steel and aluminium products in addition to the recent safeguard du-

ties slapped on solar cells and large washing machines, is in no mood for any multilateral work on agriculture and development.

In short, India faces a serious challenge to accomplish its multilateral objectives on agriculture and development

at the upcoming meeting in New Delhi. Being the host, it will face a difficult task to ensure that the plurilateral sponsors are kept in check. Otherwise they will reinforce the perception that the WTO is not meant any longer for multilateral trade liberalization. (SUNS8622) □

AB impasse accentuated by DG's silence, voting mooted by some

The US' blocking of the process to fill vacancies in the WTO's highest adjudicating arm has met with little public comment from the WTO head – and with calls by some quarters for a vote among member states to resolve the deadlock.

by D. Ravi Kanth

GENEVA: The grave crisis facing the WTO's Appellate Body (AB) is being accentuated by the continued silence of WTO Director-General Roberto Azevedo over the destructive role played by the United States.

Though isolated, the US has persistently blocked repeated attempts to fill the vacancies at the highest adjudicating body for global trade disputes, said an authoritative source who asked not to be quoted.

"The Director-General thinks it is better to keep silent over repeated attempts by the US to block the selection process for filling three vacancies at the Appellate Body and take up the issue privately [with Washington]," the source said.

"Azevedo's strategy is not to raise the issue in public but hold consultations with the USTR [United States Trade Representative Robert Lighthizer]," the source maintained.

But such a strategy won't work as the US is in no mood to relent from its position, the source added.

At a brainstorming meeting of trade envoys from the grouping of Africa, Caribbean and Pacific (ACP) countries on 15 February, Azevedo said, "We must also face up to concerns around the Appellate Body."

He did not, however, elaborate on the concerns which are undermining the effective functioning of the AB. Clearly, the concerns are arising due to the actions of only one country, i.e., the US, which has blocked the selection process for several months.

Instead of calling a spade a spade, Azevedo merely said at the meeting that "no doubt this [the systemic crisis at the

AB] is in the forefront of members' minds, given the urgency of the situation."

"We should seek to resolve this issue as quickly as we possibly can," he said, without suggesting how.

"We must also reflect on how to keep the system functional while the solution eludes us," the Director-General said, knowing full well that the workload on the remaining AB members has increased.

He goaded the members "to take the lead here". "Indeed we have already seen some efforts to this end," Azevedo maintained.

Appeal

A day after Azevedo spoke to the ACP trade envoys, more than 60 countries made a desperate appeal for launching the selection process for filling the three vacancies at the AB even as the US is determined to continue with its obstructionist position to block any fresh appointment, according to people familiar with the development.

Ahead of a meeting of the WTO's Dispute Settlement Body (DSB) on 28 February, leading developed and developing countries spoke in one voice about "the urgency and importance of filling the vacancies in the Appellate Body" so as to ensure proper functioning of the highest global trade dispute resolution organ.

In their proposal, which was circulated on 16 February, the signatories – Argentina, Australia, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, the European Union (which

includes 28 countries), Guatemala, Honduras, Hong Kong (China), India, Israel, Kazakhstan, Korea, Mexico, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Russia, Singapore, Switzerland, Chinese Taipei, Turkey, Ukraine, Uruguay and Vietnam – made a four-point appeal for launching the selection process.

The four points are:

(1) to launch: (a) one selection process to replace Ricardo Ramirez Hernandez, whose second four-year term of office in the AB expired on 30 June 2017; (b) a second selection process to replace Hyun Chong Kim, who resigned from the AB as of 1 August 2017; and (c) a third selection process to replace Peter Van den Bossche, whose second four-year term of office expired on 11 December 2017;

(2) to establish a Selection Committee, consistent with the procedures set out in document WT/DSB/1 and with previous selection processes, composed of the Director-General and the chairpersons of the General Council, the Goods Council, the Services Council, the TRIPS Council and the DSB, to be chaired by the DSB chairperson;

(3) to set a deadline of 30 days for WTO member states to submit nominations of candidates; and

(4) to request the Selection Committee to carry out its work in order to make recommendations to the DSB within 60 days after the deadline for submitting nominations of candidates, so that the DSB can take a decision to appoint three new AB members as soon as possible.

But the US is not in any mood to relent from its decision to undermine the AB permanently so as to ensure that it can settle trade disputes through bilateral negotiations, as was the case in the old GATT (General Agreement on Tariffs and Trade) system that preceded the WTO, said a trade envoy who asked not to be quoted.

Given the consistent US stand against any rapid selection process, the issue of filling the vacancies will remain unaddressed, the trade envoy said.

The voting option

Clearly the time has come for voting on this issue, according to people familiar with the development.

In 2014, Kenya had suggested voting when the then DSB chair, Ambassador Jonathan Fried, decided to reopen the selection process for a vacant position at the AB after the US blocked the Kenyan

candidate. Kenya said that if consensus could not be found, members could take a decision through voting.

In a letter to the DSB chair, Kenya offered a detailed explanation as to why it could not agree to "reopening" the selection process.

It said it was "unprecedented" not to have an appointment made in the DSB when the selection committee, chaired by Fried, found that all the four nominees to fill the vacant position were "very qualified" to be appointed.

The committee's other members then included WTO Director-General Azevedo, General Council chair Ambassador Shahid Bashir of Pakistan, chairman of the Goods Council Ambassador Pierre-Andre Dunbar from Haiti, chair of the Services Council Ambassador Abdolazeez Al-Otaibi from Saudi Arabia, and chair of the TRIPS Council Ambassador Alfredo Suescum from Panama.

As a last resort in the absence of consensus, the selection committee must take recourse to voting under Article IX.1 of the WTO Agreement, Kenya said.

"Kenya views the current situation on appointment of an Appellate Body member to be very unique and voting ought to be adopted as a one-time only decision because of the very special reasons that apply in this instance," Nairobi argued.

It pointed out that "another selection process would question the legitimacy of the WTO system as a system mandated to resolve disputes amongst Member states, if the selection of candidate amongst 4 highly qualified candidates is a challenge."

"Therefore, consensus or voting on the four candidates is necessary," Nairobi emphasized.

The four candidates in the race then included Kenya's James Thuo Gathii, a professor of international law at Loyola University in Chicago, Cameroon's Yenkong Ngangjoh Hodu, a senior lecturer in law at the University of Manchester, Egypt's Abdel-Hamid Mamdouh, who is the director of the services division at the WTO secretariat, and Australia's Joan Fitzhenry, a trade lawyer.

The US had blocked the Kenyan candidate even though he secured maximum support from countries that conveyed their decision.

The only way to break the current stalemate in the face of the US decision to block the selection process is to go for

voting, some members argue, citing this.

Clearly, if the Director-General can indicate that voting is a better option as he knows that things are not going to change given the current USTR's stated positions against the AB, it will end the deadlock, the source said.

(continued from page 11)

social and cultural rights; (iv) screening economic reform measures against discriminatory impacts in law and in practice that are incompatible with international human rights law; (v) identifying impermissible retrogression of economic, social and cultural rights; and (vi) clarifying the circumstances in which certain retrogressive measures may be justifiable, based on the principles of necessity, proportionality, legitimacy and reasonableness;

(d) Be applicable to different circumstances in the context of acute financial crises, in less challenging economic times, in developing countries and in highly advanced economies;

(e) Ensure prompt consideration of various policy alternatives, beyond austerity measures, in response to fiscal constraints;

(f) Complement debt sustainability analyses with a view to integrating human rights impacts and social sustainability in the assessment;

(g) Provide guidance on and references to analytical approaches that could make visible the potential impacts of reform measures and show how the burden of adjustment is shared across different income quintiles, gender, age and different social groups, including the most marginalized;

(h) Ensure that the assessment of human rights impacts is based on qualitative and quantitative data, disaggregated by gender, disability, age group, region, ethnicity and any other relevant grounds, based on a contextual, country-level appreciation of groups at risk of marginalization;

(i) Provide specific guidance for carrying out cumulative, rights-based impact assessments of various reform measures that are often implemented in parallel as part of fiscal consolidation packages, such as taxation and public expenditure reform, so that the fuller im-

(Independent observers say the legal situation regarding voting to resolve this issue is rather murky, but whether the filling of the vacancies by voting is in accord with the WTO rules is a matter to be decided by the AB. – SUNS) (SUNS8627) □

pact on rights holders and particular groups at risk can be assessed;

(j) Set out an international standard and framework for conducting human rights impact assessments of economic reform policies that can be adjusted to the particular needs of government departments, advisory bodies, parliamentary committees, national human rights institutions, international financial institutions, international human rights mechanisms, academic institutions or civil society organizations;

(k) Include suggestions on how to integrate human rights impact assessments into existing assessment methodologies that governments, international financial institutions and other bodies may already be using;

(l) Consider the best way to carry out a human rights impact assessment in order to ensure that the results can effectively inform policy decisions, while at the same time address the independence and credibility of the assessment undertaken;

(m) Establish the criteria to be met by the assessment team;

(n) Provide guidance on how to ensure the meaningful participation of all relevant stakeholders and affected individuals and groups, including women, children, the elderly, persons with disability, migrants, minorities and other groups at risk of vulnerability, such as indigenous peoples, refugees and internally displaced persons;

(o) Set out the standards for transparency and accountability when carrying out the impact assessment and for the publication and reporting of information and the assessment;

(p) Recommend that human rights impact assessments be instituted and carried out regularly, before, during and after the implementation of economic reforms that may have the potential to cause significant adverse human rights impacts, and facilitate States' reporting obligations to the UN Committee on Economic, Social and Cultural Rights. (SUNS8619) □

Tackling inequality: talk is easy

There seems to be a growing consensus around the policy actions needed to reverse widening inequality, but putting these measures into effect has proven rather more difficult.

by Anis Chowdhury and Jomo Kwame Sundaram

At this year's Davos World Economic Forum (WEF), Canada's Prime Minister Justin Trudeau warned the world's business leaders and fellow politicians, "tackle inequality or risk failure".

Five years ago WEF founder Klaus Schwab had observed, "We have too large a disparity in the world; we need more inclusiveness ... If we continue to have un-inclusive growth and we continue with the unemployment situation, particularly youth unemployment, our global society is not sustainable."

In 2014, the WEF released a 60-page report suggesting that income inequality ranked first among the major global risks facing societies and economies.

Christine Lagarde, International Monetary Fund (IMF) Managing Director, told the 2014 WEF, "In far too many countries the benefits of growth are being enjoyed by far too few people. This is not a recipe for stability and sustainability."

Similarly, in an interview ahead of the spring 2014 joint IMF-World Bank meetings, World Bank President Jim Yong Kim warned that failure to tackle inequality risked causing social unrest; "the next huge social movement is going to erupt ... to a great extent because of these inequalities."

Inequality still growing

Yet, inequality of wealth and income continues to grow unabated, and has even accelerated from time to time.

Two recent reports – the Paris-based Inequality Lab's *World Inequality Report 2018* and Oxfam International's *Reward Work, Not Wealth* – highlight how global inequality has worsened in recent years, especially since the 2008-09 global financial crisis. Despite difficulties in estimating wealth, other recent reports, such as the Bloomberg Billionaires Index, UBS/PwC *Billionaires Report*, Allianz *Global Wealth Report* and Credit Suisse *Global Wealth Report*, highlight similar or related trends.

Meanwhile, the rich and wealthy describe themselves as wealth creators; they justify their wealth accumulation by arguing that they employ millions of people even as they suppress wages through labour market reforms and other means, and jack up already astronomical executive rewards. They point to their

philanthropy and support for the arts and sports, often used for money-laundering.

Meanwhile, tax dodging grows, both through illegal tax evasion and legal tax avoidance even as their champions induce a "race to the bottom" as tax competition cuts top marginal tax rates.

As the *World Inequality Report 2018* and *Reward Work, Not Wealth* reveal, the super-rich are at the root of the problem. They deprive governments of billions of dollars, forcing governments to cut essential services and provision of public and social goods, aggravating the hardships of the majority as their earnings stagnate or even fall.

It is thus no wonder that while global wealth races ahead, global household debts increased by 5.5% in 2016, the highest growth since 2007. Global debt rose faster than nominal economic output for the first time since 2009, and the global debt-income ratio increased by almost one percentage point to 64.6%, despite total global wealth increasing by \$16.7 trillion, or 6.4%, in 2017.

Inequality social, not natural

In fact, growing inequality is not inevitable; it is created socially, the result of dismantling regulations restraining market excesses, transfers of public assets to private hands through privatization since the early 1980s, and transnational corporation (TNC)-led globalization that required weakening of labour's bargaining power.

Decisive actions can reverse growing inequality, as was done after the Second World War, such as asset or wealth redistribution through actions such as radical land reform and inheritance and wealth taxes. Regulations, such as anti-trust laws and protection of labour rights, as well as public policy actions, e.g., universal access to education, health and social protection, helped check the vicious circle of growing inequality created by the wealthy.

There seems to be a growing consensus about core policy measures to tackle widening inequality. For example, the OECD suggests three main ways to tackle mounting inequality: promoting employment for all; enhancing access and performance in education and training at every level by investing in people's

skills; and reforming tax/benefit systems for fairer economic distribution while fostering growth.

Even IMF research agrees that fiscal policy can be a powerful redistributive instrument, and suggests enhancing the progressivity of taxation, universal basic income for emerging and developing countries, and the reduction of gaps in education and health.

The Oxfam report has a long list of recommendations for governments and international institutions to tackle growing inequality, including: limiting returns to shareholders; eliminating the gender pay gap; eliminating slave labour and poverty pay; enhancing labour's bargaining power by allowing them to organize; regulating TNCs; promoting fairness; progressive taxation; progressive public spending including universal health and education; a universal social protection floor; and eradicating tax havens.

But who will act?

Missing from the discussion, however, is agency, typically requiring state capacity to do the necessary, as the history of such reforms clearly shows.

While the state has the mandate and legitimacy to redistribute wealth and resources through progressive taxation and social provisioning, the relentless attack on the state by neoliberals has significantly diminished needed capabilities over the last four decades.

Rebuilding state capabilities needs much more than "good governance" reforms or anti-corruption legislation as touted by international organizations and donors. Developing-country governments must be enabled to develop the capacity to address critical obstacles to development and to overcome resistance from vested interests or established elites.

Rebuilding capabilities requires fiscal resources. Tax evasion and international tax competition, used by the rich to accelerate wealth accumulation, are two of the most critical obstacles to enhancing fiscal space.

If elites are at all serious about tackling the growing gap between the super-rich and the rest of us, they know what they have to do. And it certainly is not more of the same. (IPS) □

Anis Chowdhury is Adjunct Professor, Western Sydney University and the University of New South Wales (Australia); he held senior United Nations positions in New York and Bangkok. Jomo Kwame Sundaram, a former economics professor, was UN Assistant Secretary-General for Economic Development, and received the Wassily Leontief Prize for Advancing the Frontiers of Economic Thought in 2007.

PUTTING FOOD FIRST

Towards a Community-Based Food Security System in Indonesia

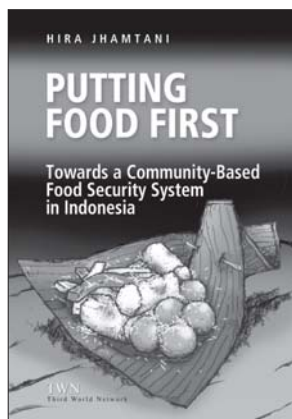
by Hira Jhamtani

Ensuring that every person in one of the world's largest and most populous nations has enough food on the table is understandably an undertaking of great import.

Putting Food First examines the food security situation in Indonesia with a view to determining how this can be done.

This book draws attention to serious shortcomings in food production and distribution in the country, which led to many cases of malnutrition, especially among children, in 2005. These flaws are ultimately rooted in policy failures, not only in the agriculture sector per se but also in the related spheres of trade, industrialization, rural development and environmental and natural resource management.

Recognizing the multidimensional nature of the problem, the author puts forward a set of short-and long-term policy recommendations aimed at attaining food security within a broader national framework of sustainable development. Realization of this goal will entail a shift from the existing industrial, monoculture-oriented farming system to a community-based and ecologically sound agriculture which indeed "puts food first".



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