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South Bulletin: *Reflections and Foresights* takes stock of ongoing debates on major global policy challenges and delivers regular flow of analysis and commentary to policymakers in the South.

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EDITORIAL: Why Strengthening the UNCTAD Is Also in the Interest of the North

It has become evident, of late, that many countries of the North, rightly or wrongly, have been perceived to want to weaken the United Nations Conference on Trade and Development (UNCTAD). Of course, this is not a uniform story. There are differences amongst the developed countries just as there are amongst the countries of the South. It is well-known, for example, that in general the Scandinavian countries favour strengthening of the institutions of global multilateral governance, including the United Nations, whereas the United States, whenever possible, favours taking matters outside the United Nations system, whether these deal with security, development or climate change.

Some of these differences both within and between the "North" and the "South" will, no doubt, surface at the forthcoming Ministerial meeting of UNCTAD XII in Accra, Ghana, on 20-25 April, 2008. There are at least 60 bracketed paragraphs in the draft negotiated text sent from Geneva. (Bracketed texts are those on which there is yet no agreement between member countries, or for which there are alternative wordings). These include, for example, the issue of whether to increase, reduce or abolish UNCTAD`s *Intergovernmental Commissions*. The G77 countries want the existing three commissions to be retained and a new commission added on to them; the EU wants the three commissions to be merged into two; some other developed countries want all commissions abolished. There are, to give another example, differences on the issue of *policy space*. The G77 argues against the one-size-fits-all policy approach to macroeconomic development policy being promoted by some countries of the North and especially of the Bretton Woods institutions (the World Bank and the IMF), and would like instead to see UNCTAD help developing countries of the South to control their own development strategies through increased "policy space". This matter was fought and won by the South at UNCTAD XI at Sao Paulo. But the North wants now to dilute its salience in the work of UNCTAD, and is reluctant to operationalising the concept of policy space.

There are several other matters on which there are palpable differences between the "North" and the "South". These will no doubt be thrashed out in the five days of intense negotiations that will take place at UNCTAD XII in Accra.

The objective of this editorial is not to make a case for any one or more of these contentious issues. It is, rather, to argue a more general point, namely, that if the developed countries of the North wish to weaken the UNCTAD or to disempower it in critical areas of its work, then they are on to a wrong track. Or, to put it more positively, it is in the interest of both the North as well as the South, to strengthen UNCTAD and not to weaken it. Why? There are several reasons, but within the limited space of this editorial, only one would suffice for the time being.

Let us start with a recognized reality of our times, namely that the global financial system

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The India-Africa Summit: Reinvigorating South-South Cooperation

By Joseph Senona

The inaugural India-Africa Forum Summit held in New Delhi, India from 4th to 9th April 2008, culminated in the adoption of a Declaration aimed at further strengthening ties between Africa and India. The Summit marked yet another significant milestone in a growing tendency towards South-South Cooperation, in particular, between Asian and African countries in the political and economic arena. This trend aptly recognises that developing countries are emerging as important global economic players either as consumers or suppliers of goods, services, and technology; or as global political players and crucial allies for the attainment of world peace, security and stability.

Relations between Africa and India and, by and large, between Africa and Asia spawn many decades. India's trade with Africa, for instance, dates back to as far as the days of the Continental Silk Route. The Asia-Africa relationship was formalised and re-enforced by the Bandung Conference of 1955 led by, amongst others, the first Prime Minister of Independent India, Jawaharlal Nehru. The Bandung Summit brought together representatives from nations across the two continents for the first ever Asia-Africa conference. Among the principles adopted by Asian and African leaders at the historic Summit was the promotion of mutual interests and cooperation between the two continents.

"The synergies between India and Africa are mutually reinforcing, complementary and symbiotic as opposed to exploitative."

The Bandung Spirit was reinvigorated through the Second Bandung meeting in 2005 which adopted the Declaration on the New Asian-African Strategic Partnership and provided for a concrete strategic partnership between the two continents.

Forging Closer Ties

The synergies between India and Africa are mutually reinforcing, complementary and symbiotic as opposed to exploitative. Fast paced globalization, coupled with modernization of industries and a booming middle class with rising incomes and purchasing power, continually involve India and African countries to search for new opportunities. On the one hand, Africa, which possesses 17% of the known oil reserves of the world and has a huge deposit of natural gas, is widely seen as an emerging market for Indian products, SME and a source of energy and minerals for India which has experienced a surge in energy demand as a result of fast economic growth. On the other hand, India represents an alternative development partner for Africa which shares a common understanding of its development challenges and is well placed to assist Africa in meeting them. One shared characteristic between the two partners is that both still have the highest number of people living below the poverty line which makes them ideal partners in the fight against poverty and underdevelopment.

The Indian economy has been growing at a faster rate in the last four years, averaging 8.8% annually, fuelled by unprecedented expansion in manufacturing and service sectors. India is now the second fastest growing economy in the world after China. Africa too is making progress with African economies steadily making strides in terms of real GDP. In that regard, India's trade and business relationship with Africa can only grow further. From an African perspective, there are primarily two factors which have worked well to ensure India's competitiveness, and from which Africa can gain significantly. The first is the strength of India's thriving ICT sector which has emerged as a research and development hub for some of the largest IT companies in the world. India's service exports, of which IT exports account for the largest portion, amount to 60% of the country's total exports. Its software industry is expected to reach its export target of US $60 billion by 2010.

The second factor, guaranteeing beneficial South-South Cooperation between India and Africa is India's vibrant democracy which provides stability and predictability sought by investors. Indeed, the country's political system is well-entrenched and does not face long-term uncertainties associated with political uprisings. This sort of political certainty is crucial in pursuing greater cooperation on issues such as international terrorism, reform of the United Nations and use of nuclear energy for peaceful purposes.

Through the newly adopted framework for cooperation India and Africa have created further opportunities to increase bilateral trade volumes. Although the pace of integration of India's economy with the rest of the world has increased dramatically in the last five years, trade between Africa and India has not been a top feature of their relations, unlike between China and Africa. Notwithstanding, there has been a significant increase in both India's imports from Africa and Indian exports to Africa. India-Africa bilateral trade has risen from US 1 billion in 1990-91 to US 20 billion in 2006-07. India's exports to Africa have risen from US $394 million in

The India-Africa Summit (continued)

1990-91 to US $5.4 billion in 2004-05, accounting for 6.8 per cent of India's total exports. During 2006, Indian imports from Africa totalled US $12.6 billion, while exports to Africa were US $9.5 billion. Trade between India and South Africa in particular was in excess of $14 billion rands in 2006- more than double the 2003 levels. Indian investment in South Africa alone is estimated at US $100 million. India manly imported from Africa raw resources, such as, oil and gold while exports from India to Africa were largely composed of food oil, medicaments, rice, motor car parts and vehicles.

In 2002 in an effort to further boost trade and diplomatic ties between India and Africa, in 2002 India launched the Focus Africa programme targeting countries like Mauritius, Kenya and Ethiopia. The Indian government has also been providing financial assistance to various trade promotion organisations, export promotion councils and apex chambers in the form of Market Development Assistance under the Focus Africa programme. In 2006 India announced a line of credit of US $200 million, expected to double to over US 5.4 billion in the coming five years, to assist the New Partnership for Africa's Development (NEPAD).

These initiatives have boosted Indian investment in Africa with brands such as Sahara, TATA, and Mahindra increasingly competing on the African market. Correspondingly, FDI into India is also rising rapidly, totalling US $17.5 billion in 2006, compared with only US $6.7 billion in 2005 and US $2-3 billion for most of the 1990s.

Clearly, there remains a grand opportunity to strengthen South-South Trade and Investment between African states and India. Especially since new markets and closer regional integration might prove crucial in helping Africa move beyond the traditional reliance on single-commodity exports to diversifying its export base. This relationship, based on mutual economic benefit and cooperation, will eventually extend to cover non-economic areas and provide an impetus for the timely achieving of the Millennium Development Goals.

Identifying Co-Strengths: The Post Summit Outcomes

Although dubbed India-Africa Summit, it was not attended by all the African governments. Instead, India invited 15 African countries, broadly representative of the five African geographical regions, and the Regional Economic Communities, including the AU. The invited countries included Algeria, Burkina Faso, Democratic Republic of Congo, Egypt, Ethiopia, Ghana, Kenya, Libya, Nigeria, Senegal, South Africa, Tanzania, Uganda and Zambia. In this model, participants were able to focus on setting a way-forward towards adopting a resolution on a joint strategic partnership. The Summit identified areas of co-strengths from which each could benefit as well as common cooperative areas in which they would later on converge to formulate a strategy that can make a difference on the economies of both Africa and India.

"These forms of South-South Cooperation and partnership in the form of social, economic, cultural and political relations are well-placed to benefit both continents."

These forms of South-South Cooperation and partnerships in areas of social, economic, cultural and political relations are well placed to benefit both Africa and Asia. However, challenges remain in terms of actual implementation of the strategic partnership. Sufficient political will is necessary to urgently formalize the cooperation initiative in order to safeguard the positive measures that have already been undertaken. Also, some timely policies are needed to ensure that heavy Indian investment and business activities in Africa will not be to the detriment of African companies.

The India-Africa Summit took place a month before the Tokyo International Conference on Africa's Development (TICAD) IV Summit to be held in Yokohoma, Japan in May 2008. Although a North-South platform, TICAD is considered to represent yet another significant relationship between Africa and Asia. It is, therefore, expected that Africa would use the opportunity to entrench the gains of the Africa-India Summit and ensure maximum benefits from the strategic partnership it shares with Asia. Having Asia as a partner, and especially with Japan hosting the 2008 G-8 Summit, Africa's bumpy road to development is hopefully set to smoothen.

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Africa's Expectations: A Development Outcome of EPA and Doha Negotiations

By Elisabeth Tankeu

In the current era of globalization in which the flows of trade, investment and technology have become key instruments for promotion of economic growth, the effective integration of our continent into the multilateral trading system is critical for attainment of the Millennium Development Goals (MDGs), achievement of sustainable development, and eradication of poverty. It is in recognition of the importance of the role of trade as an engine of economic growth and of the need to improve Africa's performance in global trade that our countries and regions have, since the beginning of this decade, been engaged at great financial and human resource costs in major multilateral trade negotiations, notably the Economic Partnership Agreements (EPAs) with the EC and the Doha Round of WTO negotiations. The expectation of Africa was that successful completion of both negotiations would reinforce the efforts that our countries have been making to create a conducive environment for development through political and economic reforms. Both the EPA and WTO negotiations are now at critical stages wherein decisions and guidance by the policy organs of the African Union are required.

"Both the EPA and WTO negotiations are now at critical stages where decisions and guidance by the policy organs of the African Union are required."

Europe is a major player in global trade and an important traditional trading partner of Africa. Hence, the trend and structure of our trade with Europe have had significant implications for our development. It will be recalled that in the Cotonou Partnership Agreement (CPA), that was signed by the ACP and EU countries in 2000, the parties committed themselves to the conclusion, by 31st December 2007, of WTO-compatible trading arrangements in the form of EPAs. It was agreed that EPAs would serve primarily as instruments for promotion of sustainable development, eradication of poverty and gradual integration of ACP countries into the global economy. It was also agreed that they should reinforce and build on the existing regional integration initiatives. The understanding when the ACP countries committed themselves to WTO-rules compatible EPAs was that the rules, as they related to free trade areas, would have been made development friendly before December 2007 through successful completion of the Doha Round. The Round is now several years behind schedule and Article 24 of GATT 94 on which the EC wants EPAs with the ACP countries to be built is yet to be given the necessary Special and Differential Treatment in favour of developing countries.

After more than five years of strenuous negotiations with the European Commission, it was not possible for any of the four African Regional Groupings (CEMAC, ECOWAS, ESA and SADC into which African countries configured themselves) to conclude a full EPA by the deadline of 31 December 2007. This has been due primarily to the divergence of positions between the EC and the African Groupings on major issues, especially the development dimensions of EPAs. The request of the Groupings for the EC to give binding commitments on the provision of adequate, predictable and additional resources, over and above the European Development Fund (EDF), for dealing with supply-side constraints, building production and trade capacities, and for meeting adjustment costs of opening African markets to European products, has not been addressed by the EC.

The slow progress in EPA negotiations and the failure of the EC to address issues of major interest and concern to Africa led the Policy Organs of the AU, including the Summit of Heads of State and Government, to request the EC for an extension by two years of the deadline of 31st December 2007 for conclusion of full EPAs and securing the necessary waiver in the WTO. The request was rejected by the EC. Instead, the EC proposed a two-stage EPA: Interim Agreements to cover mainly trade in goods and market access issues to be followed by full EPAs.

Under pressure and the threat of disruption of their trade with the EC and of losing their preferential access to the Community Market if they rejected the proposal for Interim Agreements, as many as 18 African countries had to initial such agreements outside the regional configurations in which they had been negotiating with the EC. Analysis of the Interim Agreements indicates that not only have they not addressed the development dimensions adequately, but have also resulted in the breaking of solidarity and unity of our Member States and weakening rather than strengthening of Africa's regional integration initiatives. The Interim Agreements contain some elements, (viz Most Favoured Nation clause, elimination of export subsidies, standstill clause, etc) which have the effect of reducing the policy space for African countries. They have focused mainly on trade in goods, based on the EC's rather restrictive interpretation of Article 24 of GATT 1994, as it relates to the definitions of substantially all trade and the transition period for

Africa's Expectations (continued)

reciprocal trade liberalization.

It is against this background of disappointment with current state of EPA negotiations that, at their recent Summit which was held in Addis Ababa, the Heads of State and Government of the African Union directed the convening of this Joint Conference of African Ministers of Trade and Finance. The aim was to reflect on the EPA negotiations and to make recommendations on the way forward for engagement with European leaders at the highest possible level. Over the last three days, senior officials and experts have worked hard and come up with recommendations and a draft declaration, which will assist in carrying out our important mandate. Moving forward will require elimination of deficiencies (such as clauses that limit the policy space in our countries and undermine regional integration efforts) in the Interim Agreements, some of which were concluded in a rush.

The development dimensions and regional integration implications of EPAs have to be fully addressed in the next stage of the negotiations. It is also important to reiterate the importance of maintaining our unity and solidarity in the negotiations. In engagement with a powerful partner, such as the EU, our strength lies in unity. We must avoid the temptation of moving forward alone. We must make efforts to abide by the decisions and declarations collectively adopted by our Heads of State and Government. If we do not respect those decisions, we cannot expect our partners to do so.

"The problems facing African countries in the respect of the Doha Negotiations are as formidable as those confronting them in the EPA negotiations."

The problems facing African countries in respect of the Doha Round negotiations are as formidable as those confronting them in the EPA negotiations. The commitment made in Doha in November 2001 by the Members of WTO to put development at the core of the new Round of the negotiations is yet to be fully reflected in such critical areas as agriculture, NAMA and services. The Round is several years behind schedule because the major players have not been able to muster the necessary political will to demonstrate flexibility and make concessions in their negotiating positions that will permit the successful conclusion of the Round.

Over the years, the Conference of AU Ministers of Trade, the AU Executive Council and AU Summit of Heads of State and Government had adopted a number of Declarations in which the concerns and interests of our Member States were adequately articulated. These common positions and interests remain valid and this Joint Conference of African Ministers of Trade and Finance should re-affirm them. Our negotiators in Geneva should continue to pursue them in this last stage of the Doha Round of negotiations. As in the case of the EPA negotiations, getting a development outcome of Doha Round that takes into account African interests and concerns, will depend critically on continued solidarity and unity of our members. It has been argued that the developing countries, including those on our continent, stand to benefit most from a rules- based multilateral trading system and from the successful completion of the Doha Round. African countries should, therefore, support early conclusion of the Round, but not at the expense of our legitimate demands for a just and balanced outcome that takes adequate account of Africa's interests and concerns.

The adoption of the Aid for Trade initiative by the 6th WTO Ministerial Conference in Hong Kong constitutes, up to date, one of the most important development-oriented outcomes of the Doha Round. The major challenge facing our countries now in respect of this initiative is to ensure that it is adequately funded with predictable additional resources. Trade capacities programmes need to be well designed and effectively implemented on the principles of transparency, non-conditionality, and be demand-driven as articulated in the common African position on the initiative. The Aid for Trade must not be allowed to go the way of previous international initiatives that promised so much to Africa but in the end delivered very little to our people.

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This article is an extract from the speech delivered by Mrs. Tankeu at the African Union Ministerial Meeting on Trade and Finance on 3 April 2008 in Addis Ababa, Ethiopia.

The entire speech can be downloaded from:

http://www.africa-union.org/root/ua/conferences/2008/avril/ti/01-03avr/statement%20trade%20and%20finance%20ministerial%20april%2001-03%202008.doc

The World Customs Organisation: Setting New Standards of Intellectual Property Enforcement through the Back Door?

By Viviana Muñoz Tellez

The World Customs Organization (WCO) is currently dwelling deep into the realm of international intellectual property and trade norm-setting. It is developing and actively promoting voluntary international standards and model laws that exceed those established by the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). These TRIPS-plus measures risk undermining the necessary balance on intellectual property enforcement.

A core group of developed countries and right holder groups, participating on an equal footing in the WCO SECURE (Provisional Standards Employed by Customs for Uniform Rights Enforcement) Working Group, have set and continue to shape the agenda. Participation and input from developing countries is minimal. The third meeting of the SECURE Working Group will be held on April 24 and 25, 2008 in Brussels with the aim of finalizing the draft text on new standards on intellectual property enforcement. These would then be presented to the WCO Policy Commission and Council in June 2008 for consideration and adoption as WCO IPR standards.

"Thought the costs of the system are substantial, its full impact is still unclear in light of growing demands and pressure on custom administrations to strengthen TRIPS commitments."

Pressure to Extend Border Measures for Intellectual Property Enforcement

Prior to the TRIPS Agreement, border measures were rarely used as a means of enforcing intellectual property rights. The TRIPS Agreement includes detailed provisions on "special border measures" that developing countries were obliged to implement by 2005. Least Developed Countries (LDCs) benefit from a transition period for implementation that currently extends until 2013. Nevertheless, in recent years developed countries, particularly via the Group of Eight (G8) and various initiatives pursued at international organizations such as the WTO, WIPO and WCO and bilaterally via Economic Partnership Agreements (EPA) and Free Trade Agreements (FTAs) are increasingly promoting greater use and reliance on border measures to control trade in counterfeit and pirated goods, and an extension of the current powers granted to customs authorities in accordance with the TRIPS framework.

The EU- ECOWAS EPA for example (draft as of April 2007) would require ECOWAS member states, the majority of which are LDCs, to establish TRIPS-plus special border measures in relation to the import, export and re-export of goods suspected of infringing a broad range of intellectual property rights, including patents, a plant variety right, a design and a geographical indication. No assessment of the impact of such measures on LDCs is undertaken.

Evaluating the Impact of TRIPS-plus Border Measures

Countering trade in counterfeit and pirated goods is an important public policy concern to the extent that counterfeiting and piracy may undermine national economic, right holder and consumer interests. One reason to use border measures is the fact that stopping counterfeit and pirated goods at the border is easier than tracking down the infringing goods once they enter the domestic market. But the current trend to expand TRIPS-related border measures is excessively driven by interest of right holders in having additional or alternative means to enforce their intellectual property rights faster, more cheaply and with less effort. This is evidenced by the cosy relationship and role of right holder groups at the WCO. As a result, there is little discussion in the current discourse on the potential harmful impact of extending border measures for intellectual property enforcement on legitimate trade, the costs involved in establishing and maintaining such a system, and the necessary safeguards it requires against abuse.

For governments, particularly of developing countries which are copying to meet the basic needs of their people, border measures for intellectual property enforcement demands re-prioritization and great expense both in terms of financial and human resources. In implementing TRIPS obligations on border measures, customs authorities in developing countries are struggling to adapt to their new role and many are handicapped in lieu of scarce resources. While the traditional role of customs is revenue collection mainly via taxes on imports, they are now required to act as an intellectual property enforcement agency. Consequently, customs and border authorities in developing countries will require substantial and constant specialized training and time to gain experience in effectively implementing the system for border control. This includes not only experimenting in implementing the obligations, but also in applying safeguards against abuse by right holders, customs officials and third parties and devising measures to ensure customs actions do not become barriers to trade.

The World Customs Organisation (continued)

It is also too early to assess the impact of existing TRIPS-plus intellectual property border enforcement regulations in developed countries, including the European Communities' custom regulation (Council Regulation (EC) No 1383/2003) in force as of 1 July 2004. Nonetheless, recent cases are pointing to the potential for abuse by right holders.

Concerns on Activities at the World Customs Organization

The WCO is an international organization based in Brussels, Belgium, representing 171 customs administrations with a limited mandate. As of 2005, the WCO is increasing its work relative to the enforcement of intellectual property rights by developing model legislation and best practices for WCO members within the WCO SECURE Working Group. The extent of the WCO activities, particularly development of "intellectual property standards" is alarming given that i) they may extend beyond the WCO mandate, ii) may undermine the careful balance achieved in the TRIPS in relation to intellectual property enforcement and the use of special border measures iii) contain many TRIPS plus elements without any prior assessment of their potential impact iv) are based on developed countries national and/or regional standards and v) strongly favour and are guided by right holder interests.

> *"At the WCO more voices of dissent from developing countries, particularly from LDCs , need to be heard."*

TRIPS-plus elements in the draft WCO SECURE IPR standards and model law abound. The latter for example clearly states that it is intended to promote TRIPS-plus intellectual property enforcement measures. The new elements introduced include: i) customs are empowered to suspend clearance of goods that are being imported, exported or in transit either at the request of right holders and at their own initiative (TRIPS obliges only with respect to imports, and does not oblige countries to grant customs power to act on their own initiative) ii) customs are empowered to suspend the clearance of goods that are suspected of infringing any intellectual property rights (TRIPS only obliges in respect of counterfeit trademark goods and pirated copyright goods) iii) customs are empowered to suspend clearance of goods suspected of being copyright protection-defeating devices (the TRIPS Agreement includes no obligation of this type. It is also not an explicit obligation in the WIPO Copyright Treaty (WCT) nor the WIPO Performance and Phonograms Treaty (WPPT)). The latest draft of the Model Law is not publicly available.

It would be especially dangerous for developing countries and more so for LDCs to implement extend TRIPS special border measures against goods suspected of infringing any intellectual property right. Allowing customs authorities to suspend clearance of goods suspected of infringing certain intellectual property rights, particularly a patent, would mean endowing customs officers with a role that far extends their competence and abilities. Proving patent infringement is a highly complex and technical process. If developing countries extend special border measures to include patents the risk that these may be abused by right holders and the possibility that these measures may constitute barriers to trade increases greatly.

Among the developing country members of the WCO, only Brazil is actively engaged in the SECURE Working Group discussions. Albeit, the WCO has recently published a list of 34 countries that purportedly "have indicated their intention to implement the WCO SECURE IPR Programme", which includes thirteen LDCs and various developing countries. Developed countries are notoriously missing. Right holder groups, on the other hand, participate on equal footing as WCO members in the working group, thus can equally suggest draft language. Right holder groups also jointly with the WCO secretariat provide technical assistance to WCO members.

Brazil has expressed deep concerns on the activities on intellectual property enforcement of the SECURE Working Group as a country that has fully incorporated its international intellectual property obligations. It has highlighted that any result of the work of the Working Group should not contradict the international legal framework that governs intellectual property enforcement, particularly the TRIPS Agreement. This includes both the substantive obligations and safeguards. But at the WCO more voices of dissent from developing countries, particularly from LDCs that requested in the WTO extension of the TRIPS transition period, need to be heard.

Whether or not the WCO has the authority and political support to craft "soft law" in the field of intellectual property enforcement is an open question. TRIPS-plus international standards and model laws on border measures for intellectual property enforcement advanced by the WCO are voluntary and thus not in themselves legally binding. Nonetheless, soft law is often the basis on which "hard law" is later established. The issue of strengthening intellectual property enforcement is now high on the agenda of developed countries (Biadgleng and Munoz Tellez, Research Papers 15, South Centre). At the WTO TRIPS Council, Japan, the United States and Switzerland have sought to engage members in discussion on their experi-

The World Customs Organisation (continued)

ence in implementing TRIPS and TRIPS-plus special border measures. This has raised questions from other members as to whether there is compliance with the TRIPS obligation to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse (WTO document IP/C/M/55, paras. 228-233).

Opposition encountered in one forum drives proponents of TRIPS-plus enforcement measures to shift to another. It cannot be said with any certainty that if the WCO IPR Standards are agreed to, these will not be advanced in the future as binding norms in fora “with teeth” such as the WTO.

What Next?

To increase reliance on border measures for the enforcement of intellectual property rights is a policy choice that requires careful *ex-ante* assessment. The system cost, complexity and potential negative impact on trade are too often understated.

The TRIPS Agreement requires that governments ensure that measures and procedures for the enforcement of intellectual property rights, including border measures are fair and equitable. It also requires that they be applied in a manner that avoids the creation of barriers to legitimate trade, and provide for safeguards against their abuse. These elements require further discussion and examination in the WCO, other multilateral fora and bilateral negotiations where TRIPS-plus border enforcement measures are being advanced.

The upcoming third meeting of the WCO IPR Standards Working Group would greatly benefit from the participation of developing country WCO member states, to bring forth some of these concerns. The working group should further discuss the impact of the proposed TRIPS-plus IPR standards before reaching any agreement. Member states party to the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and the World Intellectual Property Organization (WIPO) who are based or follow intellectual property-related processes in Geneva and less so in Brussels, should monitor and scrutinize more closely the activities and discussions in the WCO.

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New and Emerging Challenges for the South: Systemic Failures (Part 1)

By Vikas Nath

2008 marks the completion of 20 years of establishment of South Commission in 1987 with late Mwalimu Julius Nyerere, the former President of Tanzania, as its Chairman and Dr. Manmohan Singh, the current Prime Minister of India as its General Secretary. In 1990, the South Commission presented its seminal report "The Challenge to the South" where it made a comprehensive analysis of challenges the South faced in the global context in the 1980s and early 90s. The report presented the South's achievements and failings in the development field and suggested directions for action. It is now over 15 years since the report was presented.

Times have changed and fresh challenges make it necessary for us to review new and emerging issues confronting the South. To this end, the South Centre periodically organizes the South Intellectual Platform workshops which bring together a small group of experts from the South to reflect on these issues and then assist in the development of home-grown measures at the national, South-wide, and international level to cope with the new challenges and opportunities. Some of the reflections emerging from these workshops, organized since 2006 under the aegis of Mr. Benjamin Mkapa, Chairman of the South Centre and former President of Tanzania, and Dr. Yash Tandon, Executive Director of the South Centre, are shared below.

The State of the South

It is not possible to make obvious generalizations of the State of the South today as their experiences and development paths have varied widely in the last 15 years. A striking feature is the growing divergence of development among developing countries. Some success stories in some countries sharply contrast with slow development in others. There are probably more differences in economic development now than there used to be. While Africa and Latin America are mostly disillusioned with globalization, Asia is ambivalent since there are losers as well as winners in the continent. Social progress has been uneven: unemployment, growing inequality and poverty continue to strike some countries harder than others. Even the impacts of under development are felt differently in the current scenario. For instance, earlier the crisis usually came as a loss of employment but now it comes as a loss of income as well as of employment and

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sense of security. Consequently, one can witness a profound change in the nature of development challenges that the South faces today and on the ways of responding to the same.

Virtual Disappearance of Development from the Global Agenda

There is a widely shared view that development is no longer on the global agenda. Wherever development does figure in discourses around poverty, trade and governance, it is defined in a very narrow sense and as an add-on attribute to the core non-development agenda. This, however, was not always the case.

Development used to be on the global agenda in the years following the World War II owing to changes in the balance of forces - at the global as well as the national level. The historic conference at Bandung in 1955, attended by the political stalwarts of newly independent African and Asian countries, provided the starting point and spirit to engage in development issues of concern collectively to the South. Unfortunately this spirit of collective action and engagement on development issues has diluted over the years.

The current weakness in the discourse is in large part due to the ideological dominance of neo-liberal models or economic fundamentalism which has edged out wider development discourses in international forums and institutions. Consequently, the policy space available to developing countries to refocus on development issues and engage the North on development issues specific to the South, within these current neo-liberal parameters, remains limited and is a cause for the widening of the North - South divide.

Crisis of Development Theory and the Problem of Definition

The development discourse since the sixties has largely been dominated by the North relying heavily on Western literature and paradigms which reflect the vision of the North on what development encompasses.

It is crucial to know what is meant by "development" since the term is often used differently to achieve different ends in various debates. While some countries may go for a strictly economic definition of development linked to GDP, "development" can also have a broader meaning to include social development, sustainable development and human development. All these different definitions have over the years found their way into various UN conferences and summits.

A comprehensive definition of the term "development" should mean self-improvement of the conditions of the people, and this is not in contradiction to other definitions as it includes both the economic as well as social aspects of development. The difference is that development is defined by the "self." It is not something imposed from the outside. This comprehensive meaning of development has not fully entered into the policy-making arena. For instance, discussions about human development on one hand and trade issues on the other have been separated. It is necessary to link them together and adopt an integrated approach.

Key Message from the South Commission

The key message of the South Commission to the countries of the South can be summarized under five headings: Development should:

1. *Be people centred*
2. *Pursue a policy of maximum National Self-Reliance*
3. *Supplement that with a policy of maximum collective South- South Self-Reliance*
4. *Build maximum South-South Solidarity in relation with the North*
5. *Develop Science and Technology*

Julius K. Nyerere, 31 March 1993

One of the reasons why governments in the North do not change their development recipes to this more comprehensive vision is because of their close linkages with international institutions, such as, the World Bank and the IMF, and their preoccupation with creating economic conditions in developing countries which will allow them to pay back their debts. To break this logjam, where development is not just seen as an economic process (increase in GDP), but as a process of creating welfare for the people, an institutional mechanism is needed to mediate between economic growth and social development.

In the current scenario, an economist's vision of development based exclusively on trade and growth is artificial. The focus should be on multi-polar globalization-- a term which is in contrast to the dominant concepts of the World Bank, the World Trade Organization and other international financial institutions. This concept expresses the idea that globalization can be jointly re-negotiated.

The challenge of definition has been further burdened with

New and Emerging Challenges for the South (continued)

the broadening of the scope of development. Sustainable development has become the ultimate goal on every development agenda but consensus on its meaning has not yet been reached.

There is urgent need to reshape the concepts we utilize when talking development in a way that takes into account developing countries' perspectives and draws on South-originating knowledge and their "home-grown" solutions. After all, these countries must own not only the process and policies of development but the very notion of what development is. In order to contribute to the international agenda at the multinational level, governments need to regain their policy space and initiate independent debate on national priorities and interests.

Failure of Economic and Financial system

When countries of the South became independent they adopted their own development policies. Different experiments were made. Some chose nationalization while others, like China, put emphasis on social transformation, land reforms and a gradual opening up to the world market. Some of these experiments succeeded while others did not.

After the initial optimistic years, several countries lost their hard-earned independence. Especially since mid-1980s, in great part as a result of the IMF and the World Bank prescriptions, namely structural adjustment policies. Then again, these countries regained some independence in recent years with debt cancellations and weakening of the conditionalities. However, as a result of this trajectory several countries are confused and are not able to judge the robustness of available policy prescriptions.

Even at present, there are far too many World Bank and IMF prescriptions circulating within the national-level policymaking arena in the South. Not enough room is available for these countries to judge the robustness of these policies and to absorb policy lessons emerging from other South countries, especially those that are on the path to higher growth rates.

Consequently, most developing countries continue to witness a net negative resource transfer, and the situation may not improve as long as the South continues to compete with the North for capital and intellectual property. It should be noted that at present the most rapidly growing economies are those which are accumulating current account benefits and are witnessing the enlargement of domestic markets as well as people's purchasing power.

While trade liberalization may be undertaken under certain conditions, the South should be aware of the risks posed by the policies of IMF and the World Bank. Countries should also be aware that by accepting the IMF and the World Bank policies, they will have to adhere to a series of conditions that may not be of benefit to them.

The New Colonial Activism

The world today is getting increasingly bipolar - big South players (China, India, and Brazil) are co-opted or pressured to take on unfavourable trade commitments while small states are either bought off or simply sidelined. The outcome leaves most developing countries in a worse-off position. Strategic fragmentation of certain historical alliances in the developing world by the old colonial powers accentuates the already high dependence of small and weaker states on commodity exports and preferential trade. Such "resurgence of colonial activism" is crystallised in the ongoing European Partnership Agreements (EPAs) with the group of African, Caribbean and Pacific states and the changing EU-ACP relationship. Preferential trade regimes are dismantled under pressure from the WTO. Developing countries are forced to compete on highly unequal terms in markets with highly subsidized agricultural production and to open-up their economies for agricultural dumping of excess produce.

Colonial activism has also been evident in the importation of Western values (democracy, good governance and human rights protection) through political aid conditionality which is being increasingly attached to trade and aid agreements. While such conditionality works through government-government transfers, donor funds often uphold dictatorial regimes and produce the opposite effect - the consolidation of power of despots willing to pay lip service to Western values.

The above are some of the key systemic failures identified by the participants to the periodic South Intellectual Platform workshops organized by the South Centre since 2006. In the next part of the article, reflections on the major issues of debate and the way forward will be shared.

(This is Part 1 of the series of reflections emerging from the South Intellectual Platform of the South Centre. Part 2 will appear in the next issue of the South Bulletin.)

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With research inputs from Petra Zeier and Petya Boevska, South Centre

Investment Must Address Concerns of Developing Countries

By Anil K. Kanungo

Not taking into consideration the issue of investment as part of Doha Round of Negotiations in the July Framework concluded at Geneva on July 31 2004, on a priority basis, may have been a temporary positive development for developing countries, but the long-term benefits that accrue out of such an issue cannot be ignored. The fact that investment is crucial to the economic growth of a country and more so in the case of developing countries, establishing an international orderly regime on investment, even in the form of Multilateral Agreement on Investment (complementary to developing as well as developed countries), as proposed by the developed countries would, however, be a welcome step.

The history of efforts towards establishing a Multilateral Agreement on Investment (MAI) has been a long and chequered one. Its origin goes back to the OECD driven proposal in the eighties which was ultimately given a quiet burial after a strong protest from civil society as well as breaking of ranks (withdrawal of France) amongst the developed countries themselves. It was only during the Singapore Ministerial Conference in 1996 that the issue of investment resurfaced. The exclusive Working Group on Trade and Investment created during this conference provided a forum and a mandate for all member countries to express their positions on this issue. Discussions continued under this Working Group till it found a concrete shape in the Doha Ministerial Conference, and finally resulting in the Doha Ministerial Declaration on Investment. The promises made by the developed countries to look into the concerns of the developing countries, as set out in Doha Ministerial Declaration (DMD) on Investment before negotiating at Cancun Ministerial Conference in 2003, were never kept. Such polarized opinions led by the G-20 group of developing countries, spearheaded by Brazil, India, China and South Africa, opposed any forward movement on investment at Cancun despite serious attempts made by the developed countries to have a MAI.

So far the deadlock over this issue suggests that the extent of disagreement between the developed and the developing countries is only becoming wider. An immediate solution may not be in sight but the revival of DMD on Investment looks significant as it would steer the negotiations to arrive at a consensus. Areas critical to developing countries' interests, such as, scope and definition, transparency, non-discrimination, modalities for pre-establishment commitments based on a GATS type positive list approach, development provisions and consultation and settlement of disputes between members mandated by DMD, need to be discussed at length in order to pronounce the benefits embedded in such an agreement for the host countries. DMD's recognition of the needs of the developing countries and least developed countries for technical assistance and capacity building is a pointer to Western negotiators that the MAI must address these concerns of the developing countries. It also recognized that special development, trade and financial needs of these countries should be taken into account as an integral part of any framework.

The role that foreign direct investment plays in the development process of a country is well recognized by national governments. However, the fact that such flows of investment and other forms of investment need to be compatible with the national interests of the host country is what should form the basis of the MAI. This is particularly significant in respect to developing countries like India, which have developed appropriate technologies that could sustain production at low cost levels, especially in small scale and cottage industries. What is at stake for a country like India before entering into the Agreement is the real scope of the proposed Agreement, meaning thereby, whether in addition to foreign direct investment, other types of investments would also be covered. India has always specifically advocated the need for policy flexibility in terms of determining the forms of investment that would contribute to the expansion of the country's trade in the light of national interest.

While a simple, transparent and investor-friendly policy regime is a necessary condition for attracting foreign capital, the proposed Multilateral Agreement will only tilt the balance of power between a developing country, especially a weaker one, and the asset holders, which is already in favour of the latter.

The issue may have been temporarily put to rest but will bounce back in the near future as developed countries have much bigger stakes in it. Continuous pressures exerted even now by the developed nations and Trans National Corporations (TNCs) on developing countries to sign the MAI will eventually push the latter to agree to a somewhat balanced format. The earlier formula of code of conduct for TNCs, charted out by developing countries under the auspices of the United Nations Centre on Transnational Corporations in the nineties, may be activated to balance out the rights and obligations of the foreign investors and host countries particularly from the developing world.

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EDITORIAL: Why Strengthening UNCTAD Is Also in the Interest of the North (continued from the front page)

is in serious crisis; the institutions of global financial governance (the IMF and the World Bank) do not have either the means or the credibility that they used to have in the heyday of globalization. This the North must acknowledge. There are efforts to "modernize" these institutions, such as, for example, through reforming the voting formula in the IMF. But these, let us be candid, are palliatives, and do not address the fundamental and underlying issues that are at the bottom of the financial crisis, of which the subprime mortgage meltdown was only a surface phenomenon. And here, then, is the question: at which fora, within or outside the UN system, can issues of global significance of this magnitude be discussed?

Because the IMF and the World Bank have manifestly failed to address these issues, the Northern countries have chosen to discuss these in private forums such as the World Economic Forum at Davos, at which selected government representatives, the private sector, and other stakeholders from the South are "invited." Of late, the G7/8 countries have taken to inviting selected countries of the South at their own summits such as at Gleneagles in 2006 and in Heiligendamm in 2007. Let us face it: these summits have failed. At Gleneagles the G7 made many promises to the South, especially to African countries, for example, on the matter of aid and debt relief. The debt relief did come, but since then debts have piled up once again because the G7 at Gleneagles never even touched, let alone analyze the fundamental and underlying causes of debt. As for aid, we are still where we have been over the last forty years; the US and the UK are the least committed to dipping into their coffers to provide 0.7% of their national incomes for development aid. At Heiligendamm, the selectively invited countries of the South were not happy at being served the dessert after the dinner had been consumed; or to put matters without flummery, they did not want to be "co-opted" into a predetermined agenda of the North. At the next Summit of the G7 in Tokyo there is talk of inviting up to 30 countries of the South. But that, in our view, would be an exercise in futility.

Two aspects of the changing reality must be acknowledged. One, things are falling apart; and two, there is a fundamental structural shift in economic and political power in favour of the South. It is no accident that the banks in the North are now being "recapitalized" by "sovereign wealth" from the South. This phenomenon alone is raising a number of issues of concern to the North as well as the South that need to be addressed in a proper forum that is not *ab initio* dominated by the North.

The world needs a forum where there is an inclusive dialogue between *ALL* countries of the world, where differences and divergent viewpoints are recognized and respected, and where common grounds are discovered for building workable consensus. Instead of "reinventing" the IMF and the World Bank with palliative reforms; instead of turning to Davos over which governments (from the North or from the South) have no control, an institution that has no operational capacity; instead of trying to co-opt selected countries from the South in the G7/8 process and creating two-tiered or three-tiered "consultations" that are both superficial and non-operational; why not instead strengthen the institution in the UN system that has long been mandated to be such a forum -- the UNCTAD, that:

a) is inclusive;

b) has proven its capacity to address fundamental issues of our times and undertake serious, critical, and forward-looking analytical work;

c) has had a clear development focus;

d) has been a forum where consensus between nationally empowered delegations can be negotiated; and

e) has had and can bolster the capacity to operationalise and put into effect consensually agreed work programme of the global community?

Why not? The UNCTAD must be provided with adequate resources by the UN system. For example, the post of Deputy Secretary-General has been vacant for more than a year; that and other vacancies must be filled soon. It is time the thinking public, and their representatives in government in both the North as well as the South, recognise that we are living a world that has vastly changed from the late 1940s when many of the institutions of global governance (including the Bretton Woods institutions) were created; and even from 1989 when the Berlin Wall fell and the West marched triumphantly to restructure the world to their design. It is now a different world altogether. There are past institutions that, because of the embedded power structures, are unreformable (such as the World Bank and the IMF and the Security Council of the UN), but then there are also existing multilateral institutions that can be strengthened, among them the UNCTAD, and reinvented to be more in tune with the times.

Let us do so now. The UNCTAD needs to be revalidated, reinforced and revitalised for the benefit of the South and the North.

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Addressing the Challenge of Commodities Dependence and Development (continued from the back cover)

Concrete actions for addressing long-term price decline and price volatility may include measures such as more effective supply management to counter over-supply. Parallel measures can also be taken to promote a more dynamic response on the consumption side of the equation. Some of these mechanisms existed in the past either internationally though the International Commodity Agreements and/or at the domestic level, through marketing boards. The dismantling of the marketing and other regulatory tools of these mechanisms has led to significant changes in the functioning of agricultural commodity markets. The results have not been satisfactory for the commodity dependent countries and their producers. Alternatives similar to the previous mechanisms (but which address their perceived weaknesses) may be put in place.

Equally important, compensatory finance mechanisms can assist commodity-dependent developing countries to smooth consumption and investment in the face of export earning fluctuations. Some mechanisms of this nature exist under the IMF but they have not been actively used by the intended beneficiaries due to conditionality. Others, such as the FLEX scheme of the European Union, are also plagued by inefficiencies and delays in the disbursement procedures.

Regarding market concentration there is a clear role for competition policy both at the national and international levels. Cooperation in this area should be focused on putting checks and balances on the power of buyers such as processors and retailers in the value chain. Competition policy in this framework will take into account the interests of producers of commodities in developing countries, as much as those of consumers. In addition, promoting producers organisations and their active involvement in policy making and implementation will provide for successful and legitimate commodity-diversification efforts.

As UNCTAD Members meet in Accra, Ghana on 20-25 of April to charter the agenda of the organization for the next four years, the problems related to commodity dependence will certainly feature as part of the ministerial deliberations. The African Group has given priority to commodities and expects UNCTAD's Secretariat mandate in this area to be strengthened in a way that provides Africa with adequate instruments to effectively tackle economic dependence. What is necessary from all involved, apart from declarations on the importance of commodities, are concrete actions to tackle in a concerted manner the various dimensions of the commodities problematic.

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9 June —25 July 2008

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Reflections and Foresights

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Op-Ed: Addressing the Challenge of Commodities Dependence and Development

By Luisa Bernal

A large number of developing countries, especially in Africa, depend on a handful of commodities for most of their export earnings. This dependence makes these countries vulnerable to commodity price volatility, long-term price declines and increasingly, the consequences of greater market concentration upstream and downstream by multinational companies.

Significant price volatility of primary agricultural commodities, on which many developing countries depend, translates into export earnings fluctuations, and consequently uncertainty in domestic income, savings and government revenues. Instability in commodity prices translates, finally, into macroeconomic instability that is inimical to development.

The long-term pattern of commodity prices shows a downward trend. Indeed, current commodity prices have reached high levels, fuelled by strong demand from Asia and energy-related considerations. However, not all commodities have witnessed a price increase. Prices of tropical commodities like cocoa and coffee have not increased significantly, partly due to structural over-supply, which implies that markets are unable to match demand and supply within a reasonable time lag and at competitive prices. Moreover, aggregate real prices of agricultural raw materials and food have shown only a marginal recovery. In 2003 they stayed below the mid-eighty price levels (See IMF commodity index, World Economic Outlook 2006).

Market concentration, on the other hand, relates to a phenomenon in which a few players control particular segments of the value chain. This concentration seems to be behind the low prices commanded by exporters of traditional tropical commodities. The phenomenon, furthermore, has accelerated recently. Large number of producers and exporters in developing countries face an increasingly smaller number of input suppliers, processors and retailers that by virtue of their dominant position in the market manage to extract conditions from producers not otherwise available in a competitive market.

The causes leading to price volatility of primary agricultural commodities and long-term price decline, as well as market concentration, are many, and require a combination of measures at the country level as well as concerted international efforts. The long-term solution to the problems arising from commodity dependence is economic diversification. Commodity-dependent developing countries must be supported in their efforts to diversify and to smoothly integrate into the world economy. This would entail both financial and technical assistance for undertaking projects for increasing productivity and entering into new dynamic sectors, and policy space for governments to exercise an active guiding role in promoting innovation and value addition locally. The establishment of a fund to channel resources for diversification is a concrete manner in which the international community could assist commodity-dependent developing countries in achieving their development objectives. Another important contribution would be made through the attainment of a pro-development and fair outcome in the Doha round which addresses the current imbalances in the rules that work against the developing countries.

(Continued on the inside back cover)

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