THIRD WORLD
Economics
TRENDS & ANALYSIS

Published by the Third World Network KDN: PP 6946/07/2013(032707) ISSN: 0128-4134 Issue No 676 1 – 15 November 2018

WTO imbroglio calls for big decisions

By blocking appointments to the WTO's highest judicial organ, the US is seen to be holding the WTO membership to ransom in a bid to push through "reforms" that would reshape the multilateral trading system in its interests. It is time for member states to square up to this systemic threat at the topmost decision-making level of the WTO.

Also in this issue:

THIRD WORLD
Economics
Trends & Analysis

131 Jalan Macalister
10400 Penang, Malaysia
Tel: (60-4) 2266728/2266159
Fax: (60-4) 2264505
Email: twn@twnetwork.org
Website: www.twn.my

Contents

THIRD WORLD ECONOMICS
is published fortnightly by the Third World Network, a grouping of organisations and individuals involved in Third World and development issues.

Publisher: S.M. Mohamed Idris; **Editor:** Chakravarthi Raghavan; **Editorial Assistants:** Lean Ka-Min, T. Rajamoorthy; **Contributing Editors:** Roberto Bissio, Charles Abugre; **Staff:** Linda Ooi (Administration), Susila Vangar (Design), Evelyne Hong & Lim Jee Yuan (Advisors).

• **Annual subscription rates:** Third World countries US$75 (airmail) or US$55 (surface mail); India Rs900 (airmail) or Rs500 (surface mail); Malaysia RM110; Others US$95 (airmail) or US$75 (surface mail).

• **Subscribers in India:** Payments and enquiries can be sent to: The Other India Bookstore, Above Mapusa Clinic, Mapusa 403 507, Goa, India.

• **Subscribers in Malaysia:** Please pay by credit card/crossed cheque/postal order.

• **Orders from Australia, Brunei, Indonesia, Philippines, Singapore, Thailand, UK, USA:** Please pay by credit card/cheque/bank draft/international money order in own currency, US$ or euro. If paying in own currency or euro, please calculate equivalent of US$ rate. If paying in US$, please ensure that the agent bank is located in the USA.

• **Rest of the world:** Please pay by credit card/cheque/bank draft/international money order in US$ or euro. If paying in euro, please calculate equivalent of US$ rate. If paying in US$, please ensure that the agent bank is located in the USA.

Visit our web site at http://www.twn.my.

Printed by Jutaprint, No. 2, Solok Sungei Pinang 3, Sungai Pinang, 11600 Penang, Malaysia.

WTO-MTS facing existential threat, needs political decisions

The US is adopting a recalcitrant stance in the WTO in order to force through changes that would further tilt the multilateral trading system in its favour, writes *Chakravarthi Raghavan*. How will the rest of the WTO membership, in particular the developing countries, respond?

GENEVA: The World Trade Organization (WTO) and its multilateral trading system (MTS) is facing an existential threat, and it is time that member states face up to this systemic crisis and resolve it at the highest decision-making level, namely, the Ministerial Conference and, when the Conference is not in session, the General Council.

In that role, the Ministerial Conference or General Council must adopt authoritative interpretations of Article 17.2 of the WTO's Dispute Settlement Understanding (DSU), and also make clear that dispute settlement panels and the Appellate Body (AB) cannot in their rulings usurp this role of "interpretation" while "clarifying" existing provisions of the WTO agreements.

What began seemingly as US grievances over the WTO's dispute settlement process and the functioning of the AB has now clearly turned out to be a case of the US holding the WTO-MTS and its membership to ransom so that the WTO trade accords may be rewritten, tilting the scales once again against developing countries in order to benefit the US and arrest, if not reverse, the decline in its dominance of the world economy.

Despite its awesome military power, the US has now become uncompetitive in the trading sector (in goods, services including financial services, and intellectual property and innovation) and is adopting tactics to reverse the process, characterizing it all as "modernizing" the WTO. (It is unfortunate that trade officials in some developing countries have taken to mouthing the same slogan!)

Viewing the US grievances at face value when it began blocking the process for filling vacancies in the AB, a number of law academics, some former trade negotiators and other trade specialists have put forward a variety of possible solutions. Honduras has also made several proposals at the WTO. These include referring the US stance on AB vacancies as a violation of its obligations, flowing from the collective and individual good-faith obligation of WTO members to fill vacancies as and when they arise (vide DSU Article 17.2); members resorting to arbitration (thus bypassing the AB process); non-US members agreeing to a separate protocol (with suitable changes to the DSU) to settle their disputes; and the US withdrawing consent to the DSU's dispute settlement (and reverting to GATT-1947). This last doesn't stand a moment's scrutiny: it ignores both Article XV of the WTO's foundational Marrakesh Agreement, and GATT-1994 not being a successor to GATT-1947.

Apart from questions of their legality under the WTO, these suggestions would, from a practical point of view, be grossly unfair to members involved in disputes with the US, since these disputes would never get resolved. The US is involved as a complainant or respondent in almost half of disputes (judging from the disputes at the WTO hitherto).

Even if the idea behind these suggested solutions is to bring public pressure to bear on the US to change its stance, it will not work. Since the time of Ronald Reagan in the White House, the US has sincerely believed in its "exceptional" status, adopting as an appellation of honour the pejorative characterization used by the Soviet dictator Joseph Stalin when drumming the US communist leaders of that era out of the world communist movement. Whether it is the Democrats or the Republicans in power, the US truly believes that it is the source of the postwar order and thus international law-giver, without itself having to abide by it.

The pronouncements of the administration (and leading lights in the US Congress) leave little doubt that US "grievances" with the rulings and recommendations of the AB are not the real issue but merely a smokescreen.

While blocking consensus for filling

up the AB vacancies, and speaking in general terms against the AB, the US has not so far put forward any suggestions or proposals of its own. Rather, it has been adopting the old Soviet (Stalinist-era) style of saying "Nyet" but not spelling out what it actually wants and will support.

The reality is that the US wants to bring about drastic changes to the multilateral trading system to ensure that its own markets can be kept closed while those of other members, in particular the developing countries, are opened up to US exports of goods and services.

In his latest testimony to the US Senate Finance Committee (on 12 March), the US Trade Representative Robert Lighthizer enunciated these intentions clearly. The US, he said, will continue to block appointments to the AB "in order to force members to deal with much-needed WTO reforms ... It's the only way to get countries' attention."

In the same testimony, Lighthizer also did other WTO members a service by identifying the WTO Director-General (DG) Roberto Azevedo as being closely aligned and acting with the US to achieve the latter's aims, contrary to the DG's obligations (in terms of Article VI.4 of the Marrakesh Agreement) to function as an independent head of the WTO secretariat and for all its members.

The US has also suggested that the DG should be able to play an active role in the WTO functions and processes. This would be a major departure from the policy followed by members, including in particular the US itself, right from the inception of the WTO-MTS, not to give any role to the DG in substantive decision-making. Instead, the members insisted that they themselves discharge the three functions of negotiating agreements (legislative), administering the agreements (executive) and dispute settlement (judicial).

In the final stages of the Uruguay Round negotiations, the then GATT DG, Peter Sutherland, went twice before a key group of 10-15 countries negotiating the details of the soon-to-be-established WTO, pleading for the WTO head to be given a role akin to that of the heads of other international organizations. His pleas were politely turned down by the US and others. Only the EU was willing to countenance some such role (and even then, not akin to that of heads of other international organizations), as Sutherland himself told this writer at that time.

After the WTO treaty was settled at official level in 1993 (and adopted without any change at Marrakesh), Sutherland tried to reopen the issue but the US was firm in its opposition (and ensured other key nations did not yield). This was said at the time to have been one of the reasons why Sutherland did not want to continue as WTO DG and quit early.

Those who negotiated the WTO treaty, wanting the new organization to begin without legal links to the past (the Havana Charter and its International Trade Organization, and its temporary offshoot GATT-1947), decided that GATT-1994 (as part of the WTO) was distinct and separate from GATT-1947 (and wound up GATT-1947 in 1995-96).

It is for this reason that the WTO has been characterized as being s*ui generis* among intergovernmental organizations.

(GATT-1947, which functioned before the WTO, was just a provisional arrangement, not an organization – its organizational structure and secretariat existing merely as part of the UN General Assembly's Interim Committee to bring into being the 1948 Havana Charter and its International Trade Organization.)

"Empowering" the WTO as now proposed by the US will emasculate the dispute settlement system and for all practical purposes destroy the organization.

In light of this, WTO members, developing countries in particular, have only two choices:

1. They can yield to the blackmail tactics of the US and once again allow it to bend the multilateral trading system to make it an even more unlevel playing field for developing countries, in effect consigning the latter to forever being hewers of wood and drawers of water.

2. Or, they can call the US bluff, take up the issue at the highest political decision-making level in the WTO (the Ministerial Conference and, in between its sessions, the General Council), and tell the US to either abide in good faith by the rules of the WTO-MTS (with all their rights and obligations) or withdraw from the WTO. (See Chakravarthi Raghavan, "Contemplating the unthinkable, a WTO without the US", *TWE* No. 653; and "Three-pronged assault on WTO-MTS by the US", *TWE* No. 660.)

Paying a hefty price

Launched at Punta del Este in 1986 (after 3-4 years of exploratory and preparatory talks), grounded at Brussels in 1990 (barely escaping a crash-landing) and refloated in Geneva in 1991 (but stalled for most of 1992 pending the US presidential elections), the Uruguay Round negotiations were concluded at official level in Geneva in November-December 1993, and signed and sealed in April 1994 in the Marrakesh Agreement, which came into force in 1995.

Under the treaty, the developing countries paid a heavy advance price, undertaking commitments in the areas of trade in goods, trade in services and intellectual property rights. They got very little but felt they still had gained something through a rules-based MTS and an integrated dispute settlement system (the DSU). In retrospect at least, it is clear that they allowed themselves to be fobbed off with promises, just as in previous trade talks.

(The twists and turns of the Uruguay Round have been set out in detail in Chakravarthi Raghavan, *The Third World in the Third Millennium CE*, Vol. 2, 2014, pp. 3-179.)

While the WTO-MTS has served it well, the US has made no secret of its disdain for multilateralism ever since Donald Trump entered the White House. With Lighthizer as the US Trade Representative, it has been busy trying to bury the multilateral Doha Development Round trade negotiations launched at Doha in 2001.

Having already pocketed some results, in particular the adoption of the Trade Facilitation Agreement, the US – and the EU – are reneging not only on their promises and commitments made at Doha but also on their own treaty commitments in 1994 at Marrakesh. (If they persist on this course, there will soon come a time when developing-country parties to the treaty are bound to exercise their own rights under public international law and refuse to be bound by the other parts of the treaty and agreements.)

For example, under Article 20 of the WTO Agreement on Agriculture, the US, the EU and the highly industrialized countries undertook to reverse nearly five decades of protection of their domestic agriculture markets and dumping of

heavily subsidized agriculture exports. They have since reneged on this commitment to progressive and "fundamental reforms" towards a "fair and market-oriented" agriculture system.

Worse still, they are now trying to capture the agriculture markets of the developing world through their highly subsidized agricultural products. Though they claim to have virtually eliminated all their trade-distorting domestic support pro-grammes, their ostensibly non-distorting "Green Box" support pro-grammes (in the case of cotton in the US and sugar in the EU) have been adjudged as enabling subsidized exports.

Dispute settlement grievances

With regard to the dispute settlement system, the US stance against the AB began under the Obama administration when it vetoed the reappointment of a Korean AB member for another four-year term, underscoring his purported views (as member of a division bench) in a dispute which the US lost. But the Obama administration did not raise systemic issues.

This changed under the Trump administration, when the US began blocking the process for filling vacancies in the AB. At a series of meetings of the WTO's Dispute Settlement Body over the last two years, it adopted "salami" tactics of voicing various complaints over the AB's functioning but never advancing any proposals of its own or engaging with other members in serious good-faith negotiations to change the DSU. It has merely kept saying that the changes proposed by other members did not meet its complaints.

To be sure, some of the grievances voiced by the US about the DSU and the AB are legitimate to some extent. They had in fact been raised by developing countries as long ago as 1997-98, when the AB, instead of "clarifying" the existing provisions of WTO agreements "in accordance with customary rules of interpretation of public international law" (DSU Article 3.2), had engaged in interpretations, thereby creating cumulative obligations for developing countries.

At that juncture, the US was cheerleading these outcomes. It is only now, after the AB has ruled against its attempts to protect individual US enterprises by misusing the WTO's anti-dumping and countervailing-duty rules, that the US has begun crying foul.

Nevertheless, the functioning of the dispute settlement system is a legitimate area for WTO members to revisit, fulfilling a long-delayed review of the DSU that was supposed to have been taken up in 1999. That mandate was renewed at Doha but the review is languishing still, since until recently both the US and the EU saw the system to be functioning to their advantage.

WTO members could agree to take up and complete this work expeditiously, but separating it from the systemic issue of the obligation to fill up vacancies on the AB (under Article 17.2 of the DSU). This last would require the Ministerial Conference or the General Council (when the Ministerial Conference is not in session) to provide an "authoritative interpretation" of the individual and collective obligations of members under Article 17.2.

Otherwise, the US tactics will result, before the end of the year, in the AB not being able to muster the minimum of three members to constitute a division bench to hear and dispose of appeals on points of law arising out of dispute settlement panel rulings.

As noted earlier, this will not, however, mean a reversion of the dispute settlement system to its GATT-1947 situation, as some academics have suggested. The various provisions of the DSU, including abatement of panel rulings pending AB rulings, will still be valid and operative. Thus, panel reports cannot be adopted if any party to a dispute notifies the Dispute Settlement Body of its intention to appeal, since the AB would be unable to hear the appeal. The dispute settlement system will be paralyzed and no dispute will ever be resolved through the Dispute Settlement Body.

Developing countries will lose out, but the even bigger losers will be the US, the EU, other major industrialized countries and their corporations, which would not be able, for example, to enforce their global monopoly rights provided under the WTO's intellectual property rules. Not even the combined military might of the US and its allies can prevail over others in today's world to ensure this global monopoly to US, EU and Japanese corporations. *(SUNS8873)* ❐

This article is the first in a series on the current AB impasse and other issues related to the WTO dispute settlement system. The second part will appear in the next issue of TWE.

In writing this article, the author has benefited from comments and suggestions by former GATT/WTO officials and trade negotiators including Balkrishan Zutshi and Bhagirath Lal Das from India. Any errors and deficiencies in the article are those of the author.

US derides efforts at addressing its concerns over AB

A recent meeting to discuss US concerns about the WTO Appellate Body overstepping its remit saw a notable lack of engagement – by the US itself.

by D. Ravi Kanth

GENEVA: The United States chose to keep mum at a WTO meeting held to address the specific concerns it had raised against the Appellate Body (AB)'s overreach or "judicial activism".

At an informal meeting of trade envoys convened by New Zealand's ambassador to the WTO, David Walker, on 21 March, members discussed a proposal by Honduras on addressing criticism against overreach in AB rulings.

The WTO General Council has tasked Ambassador Walker with overseeing the informal process to overcome the impasse on filling vacancies in the AB and also to address the specific concerns raised by the US regarding the AB.

So far, the facilitator has held three meetings over the last two months. But the US, which has blocked the process to fill the AB vacancies, was absent during the first meeting and attended the subsequent two meetings at the level of a delegate instead of its ambassador.

At the 21 March meeting, for example, the US Ambassador Dennis Shea

was conspicuously absent even though the meeting was focused on the specific criticism he had made about the AB's overreach in its rulings. The US delegate present at the meeting remained silent on the solutions offered by Honduras in its proposal.

Honduran proposal

The Honduran proposal, circulated on 28 January, has, based on the US concerns, identified six areas where the AB has been said to have engaged in judicial activism:

1. The AB has been said to have engaged in providing advisory opinions.

2. The AB has been said to have included *obiter dicta* in its decisions.

3. The AB has been said to have addressed questions that are not necessary to settle a dispute.

4. The AB has been said to have addressed arguments that have not been raised by the parties to a dispute.

5. The AB has been said to have adopted an erroneous standard of review: it has been said to have gone into issues of fact by "reviewing domestic law" and by "completing the analysis" where the factual record before the original dispute panel is insufficient.

6. The AB has been said to have added to or diminished the rights and obligations of WTO members under the Dispute Settlement Understanding (DSU) and other WTO agreements: it is said that the AB has created rules on questions that were considered and left unsettled by the negotiators of these agreements. It is said that the manner in which the AB modifies or interprets the DSU has added to or diminished existing procedural rights and obligations.

The indicative list of six areas in which the AB has allegedly exceeded its mandate has resulted "in actions that add or diminish rights and obligations contrary to Articles 3.2 and 19 of the DSU", said Honduras.

Among the options it put forward to address the specific US concerns, Honduras proposed "mandatory judicial economy" by modifying Article 17.12 of the DSU that requires the AB to address "each of the issues raised". It has suggested that "under mandatory judicial economy, the AB would/could be limited to addressing only appeal claims and legal interpretations developed by the panel, that are necessary and required for the resolution of the specific dispute".

In its proposal to address *obiter dicta* by the AB, Honduras suggested a general prohibition or an instruction to the AB to refrain from including in its opinions *obiter dicta*, such that the AB is not permitted to engage in any abstract discussions or provide advisory opinions regarding provisions of WTO law.

On the issue of standard of review for the work of the AB, Honduras asked whether members "could/should add to the DSU an explicit standard of review for the AB that would make clear that the AB's mandate is to settle only the specific dispute at issue and interpret relevant provisions accordingly".

Honduras also sought to know whether members "could/should introduce a possible review mechanism to consider whether the AB has, in a particular case, overstepped its mandate and either added or diminished Members' rights and obligations, engaged in *obiter dicta* or gone into issues of fact and domestic law of Members".

Members of the possible review mechanism, according to Honduras, could include the Director-General; the Dispute Settlement Body (DSB) itself; a group of three chairpersons of the General Council, Dispute Settlement Body and Trade Policy Review Body; and "a small committee of the General Council or DSB members who, acting in their individual, not representative capacity, provide the AB and DSB with an opinion in extraordinary cases of failure to observe the guidance provided by the DSB" as set out in the options.

"[WTO] Members would also need to discuss the possible consequences of such a body finding that the Appellate Body exceeded its mandate," Honduras has suggested.

In response to the Honduran proposal, according to trade envoys present at the meeting, China said that the issues concerning overreach were "complicated" as different members had different definitions. Also, addressing overreach could take members into other areas, thereby further complicating matters.

India was reported to have expressed sharp alarm over the conspicuous silence of the US in response to the solutions offered by different members on overreach and other issues.

The European Union said that while it was happy to engage in the informal process to find solutions, the process would not serve any purpose if the US was not prepared to engage, according to a trade envoy who asked not to be quoted.

In his concluding remarks, the facilitator Walker said he would hold another meeting by the end of March before submitting his report to the WTO General Council.

The US stance would be tantamount to cocking a snook at the specifically convened process for addressing the systemic crisis that Washington itself has created at the AB, according to trade envoys who asked not to be quoted. *(SUNS8873)* ❐

US and allies circulate proposals on e-com pluri-accord

Several proponents of plurilateral negotiations on electronic commerce at the WTO have issued proposals for pushing forward the contentious initiative.

by D. Ravi Kanth

GENEVA: The United States and several other countries circulated informal proposals on 25 March for negotiating plurilateral market access commitments in electronic commerce at the WTO, in what would appear to be a clear violation of the existing 1998 WTO multilateral work programme on e-commerce.

Even though the 1998 work programme has not concluded, members of the so-called informal joint statement initiative (JSI) group on e-commerce circulated proposals for negotiating comprehensive commitments in a range of e-commerce areas.

Though the JSI members had failed to secure multilateral approval at the WTO's last Ministerial Conference in Buenos Aires in 2017, they have gone ahead with their proposals for e-com-

merce market access commitments relating to trade in goods and trade in services, as well as trade-related aspects of intellectual property rights (TRIPS) and regulatory issues among others.

Significantly, however, China, which joined the JSI group in January, has not circulated any proposal.

According to a report in the *Financial Times* on 24 March, in ongoing bilateral trade talks, China "is refusing to budge on US demands in digital trade." The US wants China to agree to the removal of restrictions on cross-border data flows, data localization, cloud computing and web-blocking among others.

Clearly, the outcome from the US-China bilateral negotiations could serve as a benchmark in the plurilateral negotiations at the WTO, said a trade envoy who asked not to be quoted.

Plurilateral proposals

The US, however, has now listed at the plurilateral level all the demands that it had made in the negotiations with China.

The four-page US proposal calls for negotiating plurilateral commitments almost on the lines of what had been agreed in the failed Trans-Pacific Partnership (TPP) negotiations. The proposed commitments include:

1. "free flow of information", such as unrestricted cross-border transfer of data, removal of requirements on mandatory storing of information in local servers and web-blocking (restrictions on cloud computing);

2. "fair treatment of digital products", involving a permanent moratorium on levying customs duties on electronic transmissions and non-discriminatory treatment of digital products;

3. "protection of proprietary information", for barring forced transfer of technologies and discriminatory technology requirements;

4. "digital security", for ensuring secure encryption technologies and cybersecurity;

5. "facilitating internet services", including cloud computing;

6. "competitive telecom markets"; and

7. "trade facilitation".

Japan, which was a member of the failed TPP agreement and later the founder of its offshoot CPTPP (Comprehensive and Progressive Agreement for

(continued on page 15)

Brazil's tectonic shift in forgoing S&DT at WTO

Brazil has declared that it will forgo the concessions accorded to developing countries in the WTO rules, marking a further shift in position that could, among others, sway the course of agriculture talks in the world trade body.

by D. Ravi Kanth

GENEVA: Brazil has made a tectonic shift in its hitherto developing-country-oriented positions, announcing that it will forgo special and differential treatment (S&DT) at the WTO.

In a sudden and surprising development, Brazilian President Jair Bolsonaro announced on 19 March, in the presence of the US President Donald Trump, that Brazil will begin to forgo S&DT at the WTO.

With this shift, Brazil is set to join the US, Australia and some other Cairns Group members in erasing the Doha agriculture mandates.

The Brazilian leader's pronouncement during his trip to the White House was a signal to the US that it should press ahead with its demand to eliminate S&DT once and for all, said a South American trade envoy who asked not to be quoted.

Effectively, Brazil concurred with the US that there cannot be any self-designation by developing countries for availing of S&DT during negotiations at the WTO, including the fisheries subsidies negotiations.

For many developing countries led by China and India, which have categorically opposed US moves to do away with S&DT in the ongoing negotiations in all areas at the WTO, Brazil's decision to junk S&DT could be seen as a betrayal against the backdrop of the consistent positions held hitherto by Brasilia on the Doha agriculture mandates.

Brazil along with India, China and South Africa among others had established the G20 coalition in 2003 as a response to the US and the EU joining hands to put aside their differences in the agriculture sector and mount a joint assault on the markets of developing countries. The Brazil-India-led G20 aimed to bring a development dimension into global farm trade by addressing the historical inequities and asymmetries in the sector.

Although the G20 now still exists on paper, it remains paralyzed after Brazil's former ambassador to the WTO, Roberto Azevedo, became WTO Director-General in September 2013. Since then, Brazil has divorced itself from the positions it had held as the G20 coordinator.

Brazil's rupture with the December 2008 draft agriculture modalities and its subsequent alliance with Australia and the US on farm trade issues was all over the place at the WTO, the South American envoy said.

Brasilia also filed a trade dispute at the WTO in February against India's alleged minimum support price for sugar.

Agriculture talks

During the technical meetings of the Doha agriculture negotiating body in March, Brazil, Australia and other Cairns Group members adopted almost identical positions on domestic support.

It remains to be seen whether Brazil will now formally join the US, Australia and several other developed countries in demanding the elimination of Article 6.2 of the WTO Agreement on Agriculture that provides S&DT to developing countries. The US, Australia and other Cairns Group members want to eliminate input subsidies that developing countries can provide under Article 6.2. The US had made the scrapping of this specific S&DT entitlement its core demand in the run-up to the WTO's 2015 Ministerial Conference in Nairobi.

According to Article 6.2: "In accordance with the Mid-Term Review Agreement that government measures of assistance, whether direct or indirect, to encourage agricultural and rural development are an integral part of the development programmes of developing countries, investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures, as shall domestic support to producers in developing country Members to encourage diversification from growing illicit narcotic crops. Domestic support meeting the criteria of this paragraph shall not be required to be included in a Member 's calculation of its Current Total AMS [Aggregate Measurement of Support]."

The US and several Cairns Group countries brought the elimination of S&DT as one of their priority issues in the current Doha agriculture meetings being convened by the chair, Ambassador John Deep Ford of Guyana.

Further, the US and Australia have also targeted the *de minimis* provision that enables governments in developing countries to provide support to their farmers in the absence of any entitlement to avail of the AMS. During the consultations held by Ambassador Ford, cuts in *de minimis* support were raised by Australia and several other farm exporting countries.

As the US and its Cairns Group allies led by Australia and Brazil intensify their efforts to erase the Doha agriculture negotiating mandates, China, India and South Africa [for the Africa, Caribbean and Pacific (ACP) Group of countries] have demanded the elimination of the Amber Box domestic farm subsidies as a prerequisite for addressing the reduction commitments in domestic support for agriculture.

The developing countries led by China and India have also called for extending the proposed permanent solution for public stockholding programmes for food security to all developing and least-developed countries.

Indonesia, which is the coordinator of the G33 developing-country grouping, has categorically said that public stockholding programmes and the mandated permanent solution must cover all developing countries.

During the dedicated session of the Doha agriculture negotiating body on 14 March, Indonesia reminded opponents of the permanent solution such as Paraguay, Canada and Australia that the Nairobi Decision of December 2015 made it clear that the permanent solution should cover existing and future

programmes, including all developing members without exception.

Adopting stonewalling tactics, the opponents of the permanent solution insisted that the users of public stockholding programmes must demonstrate why the Bali interim solution on this issue is inadequate.

The dedicated sessions in March on the permanent solution, the agricultural special safeguard mechanism and on cotton revealed that major developed countries are not in any mood to resolve these three issues.

"There is not much change in the positions even though the chair Ambassador Ford is trying hard to zero in on some options during the period between July and September so as to arrive at some limited outcomes" during the WTO's next Ministerial Conference (which will take place in Nur-Sultan in June 2020), said a trade envoy from an Asian country.

On market access, which is the core priority for the US, many members, particularly the farm defensive countries of the G10 led by Switzerland, insisted that any discussion on outcomes for the Ministerial Conference must be comprehensive and not based on cherry-picking, said a trade envoy. All market access issues such as tariff reduction, tariff peaks, tariff escalation, tariff quotas and special safeguards (SSG) must be addressed along with market access for industrial goods and services, negotiators from the G10 said during the March meetings.

The US, which hardly intervened during the meetings, demanded that members must submit data first before addressing the issues in agriculture.

The countries in the Cotton-Four grouping – Benin, Burkina Faso, Chad and Mali – had provided data on all forms of support to cotton and demanded that Green Box support for cotton must be addressed along with the AMS and Blue Box payments.

[The WTO's Appellate Body, in a previous dispute raised by Brazil against the US, ruled that the Green Box support provided by the US to its cotton farmers enabled export of subsidized cotton with adverse effect on world cotton markets. The US never implemented this ruling, merely compensating Brazil for an initial period. – *SUNS*]

In conclusion, it is clear that there is not going to be much progress in the WTO agriculture talks before the Ministerial Conference in Nur-Sultan next year. But the sudden change in Brazil's positions could galvanize the US and the Australia-led Cairns Group to demand outcomes centred around the elimination of Article 6.2 of the Agreement on Agriculture and sharp cuts in *de minimis* support. *(SUNS8871)*❐

China unlikely to get US assurances over Huawei ban

Even as China opens its doors wider to foreign investors, the US is seeking to shut out the likes of Chinese telecoms company Huawei from undertaking projects abroad.

by D. Ravi Kanth

GENEVA: Despite extending an olive branch to the United States and the European Union by enacting a new foreign investment law to provide liberal treatment to foreign companies, Beijing is unlikely to secure any firm assurances from Washington over the lifting of restrictions on Chinese telecom giant Huawei providing 5G mobile Internet infrastructure.

The US has enacted a law that prohibits federal agencies from buying Huawei's telecommunications equipment on national security grounds. The US is also ratcheting up pressure on Germany and several other Western governments to avoid using Huawei gear even though the Chinese company is far ahead of its rivals in the area of 5G technology.

In lockstep with the escalating US actions against Chinese companies, the European Union unveiled a blueprint on 12 March to stop its member governments from joining hands with the Chinese government and companies in pursuing projects.

The European Commission has called China a "systemic" rival and threatened to impose tighter rules on Chinese investments in EU member countries. It called for a more balanced and reciprocal economic relationship with China, saying that Beijing "preserves its domestic market for its champions" by restricting access for foreign enterprises, subsidizing local competitors and failing to protect intellectual property rights.

Notwithstanding Brussels' policy statement against Chinese investments, the new Italian government said on 14 March that it will go ahead with China's Belt and Road Initiative (BRI) and enable investments for BRI projects.

Foreign investment law

Against this backdrop, a new Chinese law adopted on 15 March will provide for foreign companies to be treated on the same footing as domestic companies. The law, which will become effective on 1 January 2020, contains unified provisions for the entry, promotion, protection and management of foreign investment, according to a Xinhua news agency report.

The new law allows foreign companies to freely operate on par with domestic companies except in areas/sectors specified in a "negative list". It also bans forced technology transfers and removes other restrictions so as to enable foreign companies to function in a liberal framework.

According to the new law, foreign companies will equally enjoy government policies supporting enterprise development and be able to participate in standard-setting and in government procurement through fair competition. The intellectual property rights of foreign investors will also be protected under the law.

"If we make a promise on opening up, we will certainly deliver," Chinese Prime Minister Li Keqiang told reporters on 15 March. "Going ahead, we will continue to listen closely to the views from various parties and we'll keep China open," he said.

"It is a full testament to China's de-

termination and confidence in opening wider to the outside world and promoting foreign investment in the new era," said Wang Chen, vice-chairman of the Chinese National People's Congress standing committee.

American financial giants have welcomed the new law, which would enable US asset management companies and rating agencies like Standard & Poor's to operate in China. According to a report in the *Financial Times* on 15 March, the American Chamber of Commerce in China "welcomed the change 'in principle' but raised concerns at the lack of international business input."

US pressure

But China's drive to open up to foreign companies in its domestic market is not being reciprocated by the US or the EU in same measure. For example, the US administration has now upped the pressure for blocking Huawei from gaining entry into Germany and several other countries.

According to a report in the *Wall Street Journal* on 11 March, the Trump administration has threatened the German government that Washington would limit intelligence sharing with Berlin if Huawei is allowed to build Germany's 5G infrastructure.

The *WSJ* cited a letter by the American ambassador in Berlin to Germany's economics minister on 8 March in which the US threatened that "allowing the participation of Huawei or other Chinese equipment vendors in the 5G project would mean the US won't be able to maintain the same level of cooperation with the German security agencies."

The letter "marks the first known time the US has explicitly warned an ally that refusing to ostracize Huawei could lessen security cooperation with Washington", according to the *WSJ* report.

The US is exerting unprecedented pressure on its allies to ban Huawei on grounds that the Chinese company would share data with the Chinese government. Australia recently banned Huawei's 5G equipment while Japan has toughened its rules.

So far, however, the US has failed to provide any concrete evidence that

(continued on page 16)

Climate change a threat to agriculture and UN's anti-hunger goal

Speaking with *Thalif Deen*, sustainable agriculture expert Hans R. Herren makes the case for transforming the farming system to meet the challenge posed by climate change and to equitably produce enough food for all.

NEW YORK: The United Nations has vowed to eradicate extreme hunger and malnutrition on a self-imposed deadline of 2030. But it is facing a harsh reality where human-induced climate change – including flash floods, droughts, heatwaves, typhoons and landslides – is increasingly threatening agriculture, which also provides livelihoods for over 40% of the global population.

In an interview with Inter Press Service (IPS), Dr. Hans R. Herren, President of the Washington-based Millennium Institute, said while agriculture remains the single largest employer on a global scale, it is even more so "when we talk about the entire food system – from production to consumption."

It is worth noting, he pointed out, that the people employed along the food value chain are the least well paid, with farmers and many in the food preparation industry among the least-paid and poorest members of society.

"How is this possible, given that without food, there is no life?" he asked.

"We do have a structural problem in agriculture, with a number of blockages [see the report of the International Panel of Experts on Sustainable Food Systems (IPES) titled *From Uniformity to Diversity*] which hamper … transformation in the food system [that] would allow for more equity as well as better food quality, accessibility, in all regions of the world."

This is important given that climate change is a major challenge to agricultural production in all parts of the world, with increasing impact in already food-challenged areas in many sub-tropical and tropical areas of the world, said Herren, who is also President and founder of the Biovision Foundation for Ecological Development.

The UN admits that significant changes are needed in the global food and agriculture system if we are to nourish the hungry.

"In our world of plenty," says UN Secretary-General Antonio Guterres, "one person in nine does not have enough to eat while about 820 million people still suffer from hunger."

Speaking at the Fourth Environment Assembly in Nairobi on 14 March, UN Deputy Secretary-General Amina J. Mohammed said the newest 5G technology and artificial intelligence "can help build smarter agricultural systems, energy-efficient buildings, more connected energy grids and give us real-time information to better respond to climate-induced natural disasters. Real-time information about weather patterns increases crop productivity, improving both food yields and economic security".

The opportunities that these new technologies will create for climate action are immense, Mohammed said, pointing out, however, that they do come with potential risks. "5G is projected to use twice as much energy as we consume for today's digital networks. This is concerning for a world that needs to lower emissions – not grow them."

Governments must ask digital and Internet companies to power their new infrastructure and data centres with clean energy and cool the centres with waste water, she said. "The new technology reality will require us to plan ahead – and invest differently," she added.

Achievable goal

Asked if the UN's much-publicized Sustainable Development Goals (SDGs), which call for the eradication of extreme hunger and malnutrition by 2030, are realistic, Herren said: "Yes, Goal number 2 [on ending hunger] is achievable within the 2030 time period given for the SDGs … [but] not if one continues to invest in short-term projects that may boost production in the short term but jeopardize it in the medium and long term by destroying soils, losing biodiversity and ruining farmers with dependencies on external inputs and government subsidies."

Herren said there is enough food to nourish the world population by 2050, projected at some 9 billion people. "Today we do produce already enough for such a population, and the problem is less the quantity than the access. We overproduce and waste lots of food in the developed world, while in the countries in transition, farmers are being neglected."

Herren said it has been easier for governments to import subsidized, cheap food from overseas rather than help local farmers produce the needed food.

"I have 30 years of experience in Africa, and know that farmers there can produce sufficient affordable and quality food for all. This with some R&D [research and development] support, market access and also more investments in infrastructure along the food value chain."

With these investments, he noted, one would also create quality jobs, raise income levels and support economic and social development.

With the right agricultural practices such as agroecology – not the Green Revolution approach that is still promoted by the Gates Foundation, USAID, the World Bank and other development agencies – one would promote the change needed to make agriculture the engine of growth and the solution, not the problem, when it comes to climate change.

"We are not too far off, but still need a dramatic and urgent transformation toward agroecology if we want to have solutions that are truly sustainable and in line with achieving the Sustainable Development Goals," said Herren.

He said the *Agriculture at a Crossroads* report, produced by the International Assessment of Agricultural Knowledge, Science and Technology for Development that he co-chaired, suggested a transformation of the conventional and industrial agriculture model towards agroecology, organic, permaculture and other forms of sustainable agriculture, but the blockages mentioned in the IPES report have stood in the way of such transformation.

Excerpts from the interview:

IPS: The 2018 annual State of Food Security and Nutrition *report identifies climate change as a key force behind the ongoing rise in global hunger. How much of damage could be inflicted by extreme weather conditions on food and agriculture in the foreseeable future?*

Herren: Climate change (CC) is the

most important threat to food production, and must be both mitigated and adapted to. Agriculture can be a key element in mitigation, by sequestering carbon underground, but this is only possible with organic/agroecology-based agriculture.

These forms of agriculture bring resilience into the system, because they are diverse, deal with the soil and in harmony with the local environment. They do not use external inputs based on fossil energy, and so are CC-neutral in the worst case and CC-positive at their best, when practised with all the science that has been developed already to support them.

To ignore CC and the impact on agricultural production by continuing the promotion of the Green Revolution model with synthetic fertilizers, pesticides and GMOs [genetically modified organisms] is criminal, this knowing that alternatives exist and are feasible.

IPS: Have there been enough investments in infrastructure and technology to improve agricultural productivity – particularly in the developing world, and more so in Africa? If not, why is this lacking?

Herren: No, there is a lack of R&D investments by governments, same story in the so-called developed world actually.

We need to reinvent the agriculture and food system research and extension infrastructure, which remains mostly stuck in the Green Revolution paradigm of solving all problems with chemicals and plant breeding, GMOs.

Agriculture is very dependent on local ecological factors, so research has also to be done close and with the farmers, a change in the way one does R&D.

It is the role of government mostly, with some support from the private sector, to ensure that good science and without patents is made available to the farmers ... not the other way around as is the case now, where development agencies and major foundations are dictating what is good for the farmers.

IPS: There are predictions that food in itself may be treated as a medicine – healthy eating patterns like the Mediterranean diet focusing on nuts, fruits, olive oil and vegetables – to fight diseases such as obesity and diabetes. Is this feasible in a distant future?

Herren: What is needed is a healthy production system which produces healthy food, residue-free and rich in nutrients. This food can only come from organic and agroecologically produced food. Most of the food produced via Green Revolution methods, which include all the synthetic fertilizers and pesticides for crops, feed and fibres, growth hormones and antibiotics in animal production, is unhealthy, leads to cancer and chronic diseases that are burdening already bankrupt governments around the world, with healthcare costs totally out of control.

Therefore, and also because of the health of the planet, a change in the food system is urgently needed. The change can be done, we can produce enough quality food everywhere on the planet to satisfy everyone's needs (but not greed, as Mahatma Gandhi so rightfully said). *(IPS)* ❐

Why the US needs a financial transaction tax

In light of proposals to introduce a tax on financial transactions in the US, *Kavaljit Singh* contends that such a levy would raise substantial revenue as well as curb financial market instability.

The financial transaction tax (FTT) is an issue that never goes away from the public agenda completely. It keeps coming back to policy and political discussions in different forms across the world. Currently, the idea of an FTT is gaining popularity within the Democratic Party of the United States as a policy tool to curb excessive speculation and high-frequency trading that destabilizes markets, and to generate a significant amount of revenue to finance social programmes such as free college tuition.

On 5 March, Democrats in both houses of the US Congress introduced bills to impose an FTT in the US. Senator Brian Schatz of Hawaii introduced a bill titled "The Wall Street Tax Act of 2019"[1] in the Senate, while Representative Peter DeFazio of Oregon introduced a companion bill in the House of Representatives. The bill proposes a 0.1% tax (i.e., 10 cents on every $100 financial transaction) on stocks, bonds, foreign exchange, derivatives and other financial assets traded in the US markets. Initial public offerings (IPOs) and short-term debt of fewer than 100 days would be exempted from the proposed FTT. Further, the proposed tax would apply to the actual payment for derivatives contracts between the seller and the buyer, rather than to the notional value of the contracts.

The bills are co-sponsored by more than a dozen lawmakers (including Alexandria Ocasio-Cortez and Kirsten Gillibrand) from the House and Senate. Besides, labour unions, civil society groups and progressive economists have also supported the idea of an FTT.

The likelihood of the bill becoming law in 2019 seems remote, however, because not a single Republican in either chamber of Congress has extended support. Moreover, there is strong resistance from the powerful financial lobbyists. Despite these obstacles, the FTT may become a part of progressive tax ideas with the approach of the 2020 presidential and congressional campaigns. Some presidential candidates – including Bernie Sanders and Elizabeth Warren – have supported versions of an FTT in the recent past.

The history of financial transaction taxes

Contrary to popular perception, financial transaction taxes are not new. Many countries including the US, the UK, Australia, Belgium, France, India, Italy, Sweden and Taiwan have already implemented similar taxes on a variety of financial transactions with mixed outcomes.

In the UK, investors pay a stamp duty reserve tax of 0.5% on the purchase price of shares of a company incorporated in the UK or shares of a foreign company that has a UK share register.

From 1914 to 1965, a federal FTT was levied on sales and transfers of stock in the US. At present, the US Securities and Exchange Commission (SEC) levies a modest "Section 31 fee" on stock transactions, and the proceeds are used to fund the agency's regulatory costs. In 2018, about $2 billion was collected by the SEC from this fee.

In 1984, Sweden introduced a tax of 1% on stock transactions. The tax was doubled in 1986, and it was extended to fixed-income securities and derivatives in 1989, albeit at lower rates. In 1991, the tax was abolished. There is a broad consensus in the economic literature that the Swedish FTT was a failure. There are three key reasons why it failed. Firstly, the tax rates on stocks and some derivatives transactions were too high. Secondly, the tax was poorly designed as it was levied only on registered Swedish brokerage services, which encouraged foreign investors to avoid the tax by moving their trading in Swedish stocks to non-Swedish brokers based in London. As a result, more than half of the equity trading volume migrated from Sweden to London. Thirdly, some fixed-income securities were exempted from the FTT due to its narrow scope. Nevertheless, there are many important lessons to be learnt from Sweden's failed experience with the FTT in the 1980s.

The potential revenue

There is no denying that the revenue potential of any financial transaction tax would depend on its specific design. However, the potential revenue that could be raised with an FTT is very large in the US because more than $1 trillion in stocks and bonds is traded on each business day in its financial markets.

As several FTT proposals have been floated in the US in recent years, the revenue potential estimates vary depending on the design of the FTT and modelling assumptions. Also, it is difficult to predict precisely how the behaviour of financial market participants will change due to a small transaction tax. Besides, actual revenue collections can fall short of the estimates if market conditions deteriorate.

Nevertheless, most estimates show that an FTT in the US could raise between $35 billion and $100 billion annually. These are not trivial amounts. A recent Congressional Budget Office report[2] calculated that a 0.1% tax on the value of the securities and 0.1% tax on payment flows under derivatives would increase revenues by $777 billion over 10 years (2019-28), based on an estimate by the staff of the Joint Committee on Taxation. This estimate takes into account offsets in income and payroll tax revenues.

Apart from reducing the federal budget deficit, part of the proceeds of an FTT could be used to fund the Green New Deal (proposed recently by congressional Democrats), healthcare and other welfare programmes.

Further, the FTT is a progressive way to generate tax revenues as the top 10% of American households own 84% of all stocks. Therefore, anyone concerned about the growing income

and wealth inequality in the US should welcome the FTT as it would be progressive in nature.

Will the FTT drive trading away from the US to FTT-free jurisdictions? Not necessarily. An FTT in the US may encourage other countries to adopt a similar tax, thereby reducing the scope of tax avoidance. As discussed below, some European Union member states are supportive of implementing an FTT within the bloc. If both the US and the EU agree on tax harmonization, international cooperation on the FTT is also feasible in the long run.

Taxing the bloated financial sector

It is widely acknowledged that the financial sector in the US has remained undertaxed despite achieving unprecedented growth in the last three decades. For instance, most financial services are exempted from value-added tax (VAT) in the US. The same is the case with other developed countries. At its peak in 2007, the financial sector contributed 8.3% to the US gross domestic product (GDP) and accounted for 41% of total corporate profits. Eleven years later, Wall Street profits are heading back to pre-crisis levels.

Strange as it may sound, too much finance could be bad for the economy, as a growing body of economic literature shows that financial development benefits the economy only up to an optimal point, beyond which the costs begin to rise.[3]

While analyzing the relationship between financial development and growth, an International Monetary Fund (IMF) staff discussion note stated that "the effect of financial development on economic growth is bell-shaped: it weakens at higher levels of financial development."[4]

On whether the real economy has benefited from the recent growth of the financial sector, Adair Turner, the then chairman of the Financial Services Authority of the UK, wrote in 2010: "There is no clear evidence that the growth in the scale and complexity of the financial system in the rich developed world over the last 20 to 30 years has driven increased growth or stability, and it is possible for financial activity to extract rents from the real economy rather than to deliver economy value."[5]

Excessive finance can not only increase the frequency of boom-bust cycles, thereby undermining financial stability, but it can also divert resources, talent and human capital from productive sectors of the economy to the financial sector.

The 2008 financial crisis and the ensuing bank bailouts have clearly shown that a bloated financial sector can impose significant costs on the broader economy and society. Hence there is a strong rationale for seeking a "fair and substantial contribution" from the financial sector to the fiscal costs of bank bailouts.

The 2008 crisis has also raised legitimate questions about the benefits of an oversized financial industry in the US. There is a growing consensus that a stable and well-regulated financial sector is vital for the achievement of long-term sustainable economic growth and developmental objectives. Post-crisis, there has been a great deal of discussion on curbing short-term speculative trading in the US financial markets. In this context, a financial transaction tax could be a part of the policy toolkit to dampen the unproductive parts of the financial sector.

Curbing high-frequency trading

Another key objective of a financial transaction tax is to curb high-frequency trading of doubtful social value.

In the last two decades, the landscape of stock market trading has changed drastically after high-frequency trading (HFT) came into vogue during the 2000s. On Wall Street, the high-frequency traders rely on high-speed connections to trading platforms, use high-powered computers to execute trading orders, and take very short-term positions.

These traders belong to a broader group called algorithmic traders. Algorithmic trading is based on a technology-driven, pre-programmed mathematical model that allows execution of trading orders at a very high speed (without human intervention) in order to benefit from the smallest movement in the prices of stocks, commodities and currencies. Computers execute the buy or sell orders not in seconds but microseconds. The high-frequency traders take advantage of tiny differences in prices to book profits at the expense of retail investors with slower execution speeds.

Fears have been expressed that HFT could be a source of market instability as witnessed during the 2010 "flash crash" when a rogue algorithm sparked a sudden 9% fall in the Dow Jones index and wiped out nearly $1 trillion in market value within a few minutes. There are also legitimate concerns that the high trading volumes generated by HFT firms can push prices away from fundamental values.

The supporters of HFT often highlight its important role as providers of liquidity. However, that role is increasingly being questioned by experts in the light of evidence which shows that high-frequency traders can withdraw from their market-making role if the volatility rises abruptly or if they detect markets are becoming more one-sided.

As most high-frequency traders employ similar algorithms and adopt similar strategies, a simultaneous withdrawal by these traders can pose a systemic risk to the entire market, as happened during the flash crash. As pointed out by Nikolaos Panigirtzoglou of JPMorgan: "A simultaneous withdrawal by HFTs not only amplifies the initial market move, but also creates step changes or gapping markets as liquidity provision gets impaired and quotes are withdrawn."[6]

In a relevant research paper, Didier Sornette and Susanne von der Becke noted that "HFT provides liquidity in good times when it is perhaps least needed and takes liquidity away when it is most needed, thereby contributing rather than mitigating instability."[7]

After the 2010 flash crash, regulatory authorities in the US and Europe have introduced new measures (such as circuit breakers) to regulate the harmful HFT. A financial transaction tax could also complement such regulatory measures to rein in HFT in the US markets. An FTT will make transactions with a shorter time horizon costlier, hence curbing aggressive short-term trading that benefits high-frequency traders more than ordinary investors.

What is good for high-frequency traders is not necessarily

good for ordinary investors.

Europe leads the way

In the aftermath of the 2008 financial crisis, the idea of introducing a financial transaction tax has gained momentum in Europe. After the leaders of the G20 major economies failed to endorse an FTT for raising new resources for poor countries, the European Commission in 2011 proposed an EU financial transaction tax that would apply to all financial transactions except bank loans and primary markets. The base of the proposed EU FTT is very broad, covering a wide range of financial instruments and transactions such as securities, derivatives, repos and money market instruments. Under this proposal, the trading of shares and bonds would be taxed at a rate of 0.1% while derivative contracts would be taxed at 0.01%. Further, the FTT would have to be paid if one party to the transaction is located in the EU.

The proposed tax was supposed to be launched in January 2014 but it got postponed several times due to lack of unanimity among EU member states on how it should be implemented. In 2013, an attempt was made to introduce an FTT in 11 member states through the instrument of "enhanced cooperation". After that, the UK's 2016 referendum to leave the European bloc has further delayed this process.

It is important to note that some member states such as France, Belgium, Italy and Greece have already introduced a tax on financial transactions within their jurisdictions. France introduced an FTT on equities in August 2012 while Italy introduced it in March 2013. These countries have confirmed their commitment to introducing an EU-wide FTT despite strong opposition from European financial firms and some member states such as the UK and Sweden.

In the coming years, the FTT is likely to remain on the EU agenda even though the bloc is currently grappling with the potential Brexit fallout.

Financial transaction taxes in India: Alive and kicking

India introduced a securities transaction tax (STT) on stock market transactions in 2004 and, based on its success, a commodity transaction tax (CTT) on trading of non-agricultural commodity futures contracts in 2013. From 2018 onwards, the CTT has also been imposed on commodity options contracts which were introduced in the Indian markets. The STT rate varies with the type of transaction and security.

In a recent op-ed in the *Financial Times*, Kirsten Wegner, chief executive of Modern Markets Initiative, an advocacy group sponsored by high-frequency traders, claimed that India's experiment with the FTT had failed badly.[8]

Contrary to Wegner's assertion, financial transaction taxes are alive and kicking in India. From a revenue generation perspective, the STT has been a success story, with average collection of $1 billion for the past eight fiscal years. During 2017-18, the STT collection touched Rs.118 billion ($1.6 billion), not a trivial amount in a country with a narrow tax base.

The Indian experience shows that both transaction taxes are an efficient instrument of tax collection as the tax is collected by the exchanges which then pay it to the exchequer, thereby overcoming cumbersome bureaucratic processes.

Some of the concerns raised by the critics of India's financial transaction taxes have not yet materialized in the Indian markets. The critics had anticipated a lower trading volume would reduce liquidity, and thereby market quality. There is no evidence to suggest that the transaction taxes have triggered a liquidity squeeze in the Indian markets.

Wegner refers to a fall in trading volume in the Indian commodity markets during 2013-14 and puts the blame solely on the CTT. There is no denying that the commodity trading volume dropped during that period, but the principal reason behind the drop was a Rs.6 billion payment scam that broke out at National Spot Exchange Limited in July 2013, not the CTT of 0.01% as argued by Wegner. In this scam, some 200 big commodity brokers were alleged to have colluded with the exchange to defraud investors. Since 2017, trading volumes and liquidity at the Indian commodity exchanges have gone up.

Besides broadening the taxation of the financial sector, these taxes can enable Indian authorities to trace certain transactions that undermine market integrity. The transaction taxes could be particularly valuable to the authorities as alternative mechanisms to track the flow of illicit money into the Indian financial markets are weak. Besides, a centralized database of money flows helps fill the large information gaps about the real ownership of financial assets.

Is the FTT a silver bullet?

Of course, an FTT is not a panacea to all the ills plaguing Wall Street but its potential to raise substantial tax revenues and to curb high-frequency trading of doubtful social value cannot be overlooked.

The success of an FTT in the US would largely depend on the design of the tax. The tax should be levied widely, covering a wide range of financial instruments, transactions and institutions to prevent tax avoidance. The US authorities need to design the FTT in a manner that maximizes revenue and minimizes distortions. Achieving multiple policy objectives through an FTT will always be a balancing act. To make it effective and responsive, the proposed FTT may need additional fine-tuning as nowadays market conditions change rapidly.

The US is in an advantageous position as it can learn from different countries' experiences (both positive and negative) with an FTT. It can design the proposed tax based on some successful examples while avoiding the design flaws of the Swedish FTT.

If carefully designed, and used in conjunction with other regulatory measures, an FTT has the potential to rein in the casino mentality and short-termism that characterize the US financial markets. ❐

Kavaljit Singh is Director of Madhyam, a New Delhi-based non-profit policy research institute. The above is reproduced from Madhyam Briefing Paper No. 24 (23 March 2019). The full paper with illustrations is available at www.madhyam.org.in.

Notes

1. The text of the bill is available at https://www.congress. gov/bill/116th-congress/senate-bill/647/text?q=%7B%22search%22%3A%5B%22congressId%3A116+AND+billStatus%3A%5C%22Introduced%5C%22%22%5D%7D.

2. Congressional Budget Office, "Budget Options: Impose a Tax on Financial Transactions", 13 December 2018. Available at https://www.cbo.gov/budget-options/2018/54823.

3. See, for instance, Stephen G. Cecchetti and Enise Kharroubi, "Reassessing the Impact of Finance on Growth", BIS Working Paper No. 381, Bank for International Settlements, July 2012; Stephen G. Cecchetti and Enise Kharroubi, "Why Does Financial Sector Growth Crowd Out Real Economic Growth?", BIS Working Paper No. 490, Bank for International Settlements, February 2015; and Ratna Sahay et al., "Rethinking Financial Deepening: Stability and Growth in Emerging Markets", IMF Staff Discussion Notes 15/08, International Monetary Fund, 2015.

4. Sahay et al., op. cit., p. 5.

5. Adair Turner, "What Do Banks Do? Why Do Credit Booms and Busts Occur and What Can Public Policy Do About It?", in *The Future of Finance: The LSE Report*, London School of Economics and Political Science, 2010. Available at https://harr123et.files.wordpress.com/2010/07/futureoffinance5. pdf.

6. Quoted in Tyler Durden, "JPM Explains How HFTs Caused Friday's Sterling Flash Crash", Zero Hedge, 10 September 2016. Available at https://www.zerohedge.com/news/2016-10-09/jpm-explains-how-hfts-caused-fridays-sterling-flash-crash.

7. Didier Sornette and Susanne von der Becke, "Crashes and High Frequency Trading", Swiss Finance Institute Research Paper No. 11-63, August 2011. Available at https://ssrn.com/abstract=1976249.

8. Kirsten Wegner, "US Financial Transaction Tax Would Put Unfair Burden on Savers", *Financial Times*, 11 March 2019. Available at https://www.ft.com/content/5a0c9816-41b9-11e9-9499-290979c9807a.

(continued from page 6)

Trans-Pacific Partnership), has proposed issues similar to those in the US proposal.

For example, it has asked the plurilateral participants to negotiate on "regulatory frameworks facilitating e-commerce/digital trade", including cross-border data flows and prohibition of data localization such as using computing facilities, and open networks among others.

The European Union, which differs from the US on issues such as data privacy, wants a "provision ensuring that national legal systems allow contracts to be concluded by electronic means and those legal requirements for contractual processes neither create obstacles nor result in such contracts being deprived of legal effectiveness."

The EU also wants "a set of provisions to guarantee that national legal frameworks are in place to ensure that members do not deny the legal effect and admissibility as evidence in legal proceedings of electronic authentication and trust services solely on the basis that they are in electronic form."

The EU has also proposed that the plurilateral members negotiate strong commitments on consumer protection.

Surprisingly, some of the developing countries which hitherto championed the cause of credible reforms in global farm trade – Brazil, Argentina and Colombia among others – have now become new messiahs of digital trade, said a South American trade envoy who asked not to be quoted.

Argentina, Colombia and Costa Rica, for example, want the plurilateral negotiations to result in "bindings of market opening in e-commerce-related sectors of trade in goods and services" and "regulatory issues".

Brazil, which recently announced that it would forgo special and differential flexibilities accorded to developing countries, has suggested four "negotiating pillars": "market access" in services and non-services sectors of e-commerce; "electronic commerce facilitation"; "development of electronic commerce"; and a "reference paper on electronic commerce."

Several other members of the plurilateral group such as New Zealand, Singapore, Chinese Taipei and Russia have also circulated proposals on various aspects covering e-commerce.

Notably, however, the proposals do not include negotiations on security-related blanket restrictions such as the recently imposed restrictions by the US on Chinese telecommunications companies like Huawei. Such intransigent security-related restrictions on telecommunications firms ought to figure prominently in the ambit of any e-commerce negotiations but they are nowhere to be seen in any of the proposals.

In short, the battle lines are being drawn between, on the one side, countries such as India, South Africa and a large majority of developing nations that are determined to conduct negotiations on the basis of the 1998 multilateral work programme, and, on the other side, the informal plurilateral votaries led by the US which seem determined to cause irreparable damage to the multilateral framework of the WTO, trade envoys said.

[Any plurilateral trade agreement on e-commerce that provides for conditional benefits to its members bristles with several problems of WTO legality. Unless the parties to the agreement extend its benefits unconditionally to all other WTO members, the accord will violate the WTO's "most favoured nation" (MFN) provisions.

[If the parties seek to have the accord included as a plurilateral agreement in Annex 4 of the WTO Treaty (so as to exclude benefits to other WTO members), it would require the approval of the WTO membership, "exclusively by consensus", at a Ministerial Conference.

[Even this approach, if agreed to at a Ministerial Conference, may be WTO-illegal, as such a plurilateral accord would be a colourable attempt at avoiding the requirements of the WTO treaty's amendment provisions. – *SUNS*] *(SUNS8875)* ❐

(continued from page 9)

Huawei's 5G infrastructure would be employed for espionage purposes. Germany has said it has seen nothing to indicate that Huawei would use its customers' equipment to spy for Beijing.

The exclusion of Huawei "on the say-so of American officials, without evidence of spying, would set a dangerous precedent", *The Economist* magazine warned in its editorial on 31 January. "The same precautionary logic would justify banning all hardware made in China or keeping Chinese firms out of industries like e-commerce or finance."

The US is also placing restrictions on investments by Chinese companies in other high-tech areas such as advanced chips and artificial intelligence. Last year, the US Congress passed laws for scrutinizing Chinese investments in start-ups and other small and medium-sized Silicon Valley companies.

Clearly, there is a contrast between what the US is asking China to do in terms of removing all restrictions on foreign companies and protecting intellectual property, and what Washington is itself doing to stop China and its leading telecoms companies in foreign markets.

On another front, the US Trade Representative Robert Lighthizer informed the US Senate Finance Committee on 12 March that the US wants to impose retaliatory tariffs on Chinese goods in case Beijing fails to implement the commitments that are now being negotiated in US-China trade talks.

The US, however, does not want China to be able to impose any retaliatory measures in response to the US measures, suggesting that Beijing cannot have equal rights with Washington in areas of trade policy actions.

Lighthizer has also indicated that China should not be able to avail of special and differential treatment flexibilities at the WTO.

In short, China seems to be extending more concessions without securing cast-iron guarantees that the US will refrain from restrictive actions against Chinese telecoms and other hi-tech companies. Ironically, China is actively pursuing the plurilateral e-commerce initiative in the WTO without any guarantee that the barriers on Huawei would be eased. *(SUNS8868)* ❐