

WTO members dogged by differences in testing time

Amid a raging pandemic and a pending leadership change, the WTO continues to see deep divides among its member states regarding various issues on its agenda. The membership remain at odds over matters ranging from fisheries subsidies to differential treatment for developing countries, even as they prepare to select a new Director-General to helm the trade body in this coronavirus-afflicted time.

- **South rebuffs attempts to create new rules at WTO amid COVID-19 – p2**
 - **South calls for extending deadline to conclude fisheries deal – p4**
 - **Outgoing WTO DG highlights achievements and challenges – p8**

..... ALSO IN THIS ISSUE

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CONTENTS

CURRENT REPORTS

South rebuffs attempts to create new rules at WTO amid COVID-19 — p2

South calls for extending deadline to conclude fisheries deal — p4

Tenures of DDGs extended until new DG is selected — p7

Outgoing WTO DG highlights achievements and challenges — p8
Reconsider WTO e-commerce duties moratorium – scholars — p10

South Africa calls for “holistic” approach to TRIPS flexibilities — p12

OPINION

COVID-19 compounds developing-country debt burdens — p14

ANALYSIS

Reconsidering the idea of a Pigou wealth tax in the time of COVID-19 — p16

THIRD WORLD ECONOMICS

is published fortnightly by the Third World Network (TWN), an independent non-profit international research and advocacy organization involved in bringing about a greater articulation of the needs, aspirations and rights of the peoples in the South and in promoting just, equitable and ecological development.

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South rebuffs attempts to create new rules at WTO amid COVID-19

Proposals for open farm trade and limiting differential treatment of developing-country members met with opposition at a recent meeting of the WTO’s governing General Council, reports *D. Ravi Kanth*.

GENEVA: Many developing countries have rebuffed attempts by the United States and the Cairns Group of agriculture exporter countries to create new rules at the World Trade Organization under the pretext of the COVID-19 pandemic.

At a WTO General Council (GC) meeting on 22 July, the developing countries – China, India, South Africa, the African Group and the African, Caribbean and Pacific (ACP) Group, among others – rejected a US move to change the negotiating function of the WTO by bringing about differentiation among developing countries in availing of special and differential treatment (S&DT), said trade envoys who asked not to be quoted.

Also at the GC meeting, members could not arrive at a consensus on the date and venue of the WTO’s 12th Ministerial Conference (MC12), despite an in-principle agreement on Kazakhstan’s offer to host the meeting in Nur-Sultan in June 2021.

Several members suggested that Kazakhstan’s offer must be treated as work in progress due to the evolving COVID-19 situation. Several developing countries, including India, South Africa, the African Group and the ACP Group, also suggested that given the challenges posed by the pandemic to international travel, the June 2021 date could be agreed as a working hypothesis.

Brazil suggested that Geneva must be considered for hosting the ministerial meeting, said a trade envoy who asked not to be quoted.

Director-General appointment

On the appointment of a new WTO Director-General from the ongoing race among eight candidates, several countries at the GC meeting highlighted the important role that the DG has to play in these times.

“The next DG is expected to lead an institution that is facing an existential

crisis,” South Africa said, adding that “the situation is further exacerbated by COVID-19 which is taking place at a time when the global economy was in a period of low growth even before” the pandemic.

“The WTO, as a member-driven institution, has a role to play to promote economic recovery, build resilience ... and promote inclusive growth and development,” South Africa said.

It suggested that “the DG plays a facilitative role and we need someone who can bring members around the negotiating table and, as the Chair of the TNC [Trade Negotiations Committee], will focus discussions on mandated issues and those required to deliver on the DDA [Doha Development Agenda] so as to have a fair, development-oriented rules-based MTS [multilateral trading system]”.

South Africa underscored the need for the DG selection process to be fair, inclusive and transparent and enable effective participation of all members.

E-commerce duties moratorium

At the GC meeting, India and South Africa drove a strong message for accelerating work on the WTO’s 1998 e-commerce work programme, particularly pertaining to the moratorium on customs duties on electronic transmissions (ET), said several participants who asked not to be quoted.

India and South Africa have introduced several proposals for a rethink about the moratorium because of the damage it has caused to developing countries in terms of revenue loss to the tune of more than \$10 billion, as well as the adverse effects on digital industrialization.

At the GC meeting, South Africa said, “When the moratorium ... was agreed in 1998, there was no clarity on the scope of the moratorium and how this may unfold with the digital revolution,” and “countries therefore agreed to discipline ET without a clear indication of the fiscal, industrial and economic implications.”

“The key concern is the impact of the moratorium ... on our efforts to industrialize digitally, including its impact in undermining existing industries,” South Africa argued.

It said that “meaningful progress on the work programme is important due to the value we attach to effective and inclusive participation in e-commerce and the digital economy and the role it can play in the development of our economies.”

Market access under COVID-19

During the discussions on a proposal by the Cairns Group entitled “COVID-19 initiative: protecting the global food security through open trade,” India, South Africa, China and many other developing countries opposed attempts to set new rules using the pandemic as a pretext without resolving fundamental problems such as a permanent solution for public stockholding (PSH) programmes for food security, the removal of Aggregate Measurement of Support and other historical asymmetries in the global farm trade.

The sponsors of the proposal – Australia, Brazil, Canada, New Zealand and other members of the Cairns Group – claimed that “at this critical time, when countries are responding to the challenges of the COVID-19 pandemic, the risks posed by additional distortive subsidies, the disposal of subsidized stocks (whether privately held or in public storage), and other measures that distort or disrupt trade cannot be overestimated.”

The Cairns Group said that “producers who are already under pressure could be put in an unviable position and the supply chains that are critical to the global agricultural and food system could be put at risk,” adding that “such developments could increase the levels of global food insecurity as a result of COVID-19.”

“To avoid this, members must show restraint and live up to their commitments, including in recent declarations and statements to ensure all emergency measures in response to COVID-19 are targeted, temporary, proportionate, science-based where relevant, and transparent – including by informing and notifying all relevant COVID-19 related measures as soon as practicable to the WTO Secretariat,” the Cairns Group said.

“The international community must continue to respond to the COVID-19 food security threat by ensuring open and

predictable agricultural markets, which will result in market-based price signals and preserved supply chains,” it added.

The US, which endorsed the Cairns Group’s proposal, criticized China for disrupting food supply chains at a time of extreme fragility.

In its intervention, India said while it had not used export restrictions on either medical items or food products so far, it had a huge problem to address food security. It stressed that issues concerning food security, particularly the PSH permanent solution, must be pursued without delay.

South Africa said the imbalances in the WTO Agreement on Agriculture (AoA) have “a significant impact on national and global structures relating to agriculture production and trade and have left developing countries in very fragile positions.”

China said it “strongly believes that the impact of the COVID-19 pandemic has clearly further indicated the importance of the food security issue in WTO negotiations.” It urged members to “make joint efforts in PSH negotiations for the permanent solution that will benefit all developing members for food security.”

In its intervention on the Cairns Group proposal, South Africa said the

imbalances in the WTO Agreement on Agriculture (AoA) have “a significant impact on national and global structures relating to agriculture production and trade and have left developing countries in very fragile positions.”

“As a result, their capacity to cope with the pandemic and economic devastation is extremely limited,” South Africa said, suggesting that “the more sustainable way of protecting global food security is to urgently address these imbalances, the priority being trade-distorting domestic support.”

Without naming the major subsidizing farm exporter countries, South Africa expressed sharp concern about “the impact of the disposal of subsidized stocks at a time when our producers are under immense pressure as a result of COVID-19.”

South Africa drew attention to the adverse effects it was facing in agriculture products such as frozen potato chips, arguing that members need “a meaningful outcome on trade-distorting domestic support.”

It also called for dealing with trade-restrictive sanitary and phytosanitary (SPS) requirements as they added to the series of costs faced by exporters.

“Key steps to respond to the crisis should include safeguarding food security and ensuring that agricultural production is sustained” and “the flexibility under Article 6.2 of the AoA to support low-income or resource-poor producers remains relevant. COVID-19 further highlights the urgent need to deliver on PSH for food security purposes and to make provision for the inclusion of new programmes,” said South Africa.

Members “must therefore prioritize the conclusion of work on mandated issues, including SSM [special safeguard mechanism] to address the destabilizing and crippling effects of import surges and downward price swings in the increasingly volatile global agricultural markets,” South Africa added.

India, South Africa, the African Group and the ACP Group challenged the Cairns Group members to engage sincerely in the negotiations to finalize the PSH permanent solution.

The European Union attacked the Cairns Group proposal, saying that some of its members had resorted to export restrictions which had not been notified until then.

Differentiation in S&DT

The US raised the issue of differentiation among developing countries in availing of S&DT in current and future trade negotiations.

It lamented that there was little progress on the issue, emphasizing that S&DT reforms must be addressed on a priority basis. It said “the WTO faces a stark choice: reform or irrelevance.”

China and several other developing countries said they had already stated their position to oppose the differentiation formulation as it was not tenable with the WTO’s treaties and rules.

China quoted Thomas Jefferson’s famous statement that “there is nothing more unequal than the equal treatment of unequal people,” saying that “in an international organization with developed and developing members, ‘non-reciprocity’ is a means and a principle to realize equity.”

“Special and differential treatment is

our institutional right which we will not give up,” China said, arguing that it was ready to assume more responsibilities and make greater contributions.

South Africa reiterated that a joint proposal co-sponsored earlier by China, India and Venezuela “continues to be our response” to the US proposal for differentiation.

The US proposal maintained arbitrary criteria for determining which WTO members should continue to access S&DT, South Africa said, whereas the mandate members had on S&DT was in accordance with paragraph 44 of the Doha Ministerial Declaration, which called for strengthening the S&DT provisions to make them “precise, effective and operational.”

It was important, said South Africa, to address the G90 grouping’s revised proposal on S&DT, which it said was an essential feature of various WTO agreement provisions.

“The preamble to the Marrakesh

Agreement Establishing the WTO encourages ‘positive efforts’ to ensure that developing countries secure a share in the growth of international trade commensurate with the needs of their economic development,” South Africa said, adding that “these positive efforts take the legal form of provisions on S&DT, which are recognized under the Doha Declaration to be an integral part of the WTO agreements”.

Furthermore, “developing countries are going to be disproportionately affected by the COVID-19 pandemic, especially in Africa,” it said. “The pandemic and its effects are exacerbated by the crisis in achieving clean water and sanitation targets (SDG 6), weak economic growth and the absence of decent work (SDG 8), pervasive inequalities (SDG 10), and above all, entrenched poverty (SDG 1) and food insecurity (SDG 2) which are more prevalent in developing countries.” (SUNS9167)

South calls for extending deadline to conclude fisheries deal

The latest round of WTO talks on regulating fisheries subsidies revealed persistent differences among member states, including over the target date for sealing an agreement.

by D. Ravi Kanth

GENEVA: Several developing countries, including India, have suggested extending the deadline to conclude a fisheries subsidies agreement until the WTO’s 12th Ministerial Conference (MC12), due to the escalating COVID-19 health crisis that would make it difficult for their capital-based officials to physically participate in negotiations.

At a heads-of-delegation (HoD) meeting convened by the chair of the Doha rules negotiating body, Ambassador Santiago Wills from Colombia, the developing countries – India, South Africa, the African Group, the African, Caribbean and Pacific (ACP) Group, and the least-developed countries (LDCs) – said that COVID-19 had already imposed severe difficulties on their capital-based officials to participate in face-to-face

negotiations, said trade envoys who asked not to be quoted.

India said that capital-based officials who had to participate in the actual negotiations in Geneva, due to the complexity and technical details involved in crafting new disciplines on fisheries subsidies, would find it difficult to travel due to the health crisis.

India suggested that members should remain open to concluding the agreement by MC12, which Kazakhstan has offered to host in Nur-Sultan in June 2021.

South Africa, along with the coordinators of the African Group, the ACP Group and the LDCs, echoed similar concerns about concluding the agreement by the end of this year, stating difficulties in coordinating with capital-based officials and arranging their travel.

In contrast, the developed countries – the United States, Switzerland, and the

“Friends of the Fish” group led by New Zealand and several South American countries – signalled their intention to conclude the fisheries subsidies negotiations by yearend as per the United Nations Sustainable Development Goal 14.6.

Sharp differences

At the HoD meeting, which was specifically convened by the chair to elicit initial responses to his draft consolidated text issued in June (see *TWE* No. 702), sharp differences on various provisions came to the fore, trade envoys said.

In his introductory remarks at the meeting, the chair Wills announced an intense work plan for negotiations based on his draft consolidated text on 14 September, 5 October, 2 November and 30 November; outside of these dates, members were encouraged to continuously engage with each other. He said remote connections would again be provided in these meetings to allow capital-based experts to participate virtually, according to people present at the meeting.

Around 50 countries made preliminary remarks that revealed sharp differences between the major fisheries subsidizers –

China, the European Union, the US, Japan and Korea among others – and a large majority of developing countries seeking balanced disciplines as per their per capita fish catches and per capita subsidies, said trade envoys who asked not to be quoted.

Significantly, the major fisheries subsidizers are pushing for “capping” harmful fisheries subsidies. Up until now, developing countries have severely opposed the capping of harmful fisheries subsidies instead of eliminating them completely. Even China supported the demand for capping harmful fisheries subsidies like several countries in the Friends of the Fish group, said a trade envoy who asked not to be quoted.

The US fired the first salvo against provisions on special and differential treatment (S&DT) in the draft consolidated text. Its Ambassador to the WTO, Dennis Shea, said it considered the treatment in the draft text of S&DT as only a starting point for discussions. The S&DT text currently included would utterly undermine any beneficial effect of the draft prohibitions and would not garner any consensus, Shea said, according to trade envoys present at the meeting.

Shea also emphasized one of Washington’s core demands about transparency and notification requirements. He said transparency and accountability for individual members were key to the success of any WTO fisheries subsidies agreement, according to trade envoys present at the meeting.

The US described the draft document issued by the chair as a “partial” text and a “skeleton” that needed to be improved substantially in the intense fisheries negotiations beginning in the fall.

The missing pieces in the draft text, it said, were only placeholders for items suggested by the US “on capping subsidies, subsidy levels and transparency and notification provisions.”

The US said that “the more we look at members’ positions on overfishing and overcapacity, the more we are convinced to negotiate subsidy caps which can provide transparent and accountable policy space with serious constraints on major subsidizers.”

The draft text was also missing narrowly crafted language for income support programmes which were essential to recovering from a natural calamity, the US argued.

The US said it was ready to work with members to finalize a balanced fisheries

subsidies agreement by the end of the year.

Switzerland said the draft text was a good basis for arriving at a balanced outcome, but pressed for more work on S&DT to ensure sustainable development.

India said the draft text seemed to be reasonable and balanced for starting negotiations. The new Indian Ambassador to the WTO, Brajendra Navnit, listed various points that would need clarity in the architecture.

He asked whether the final agreement on fisheries subsidies would remain a standalone agreement or become part of the existing WTO Agreement on Subsidies and Countervailing Measures (SCM).

India called for addressing fuel subsidies so as to arrive at a balanced outcome. It

India underlined the need for robust special and differential treatment in all the pillars of the negotiations.

has suggested that whether or not they are “specific” to a particular industry such as fisheries, should be included in the coverage of subsidy prohibitions.

India’s demand for a balanced agreement on non-specific subsidies was echoed by China, said trade envoys who asked not to be quoted.

China argued that specificity did not justify an exemption from subsidy disciplines and that members with non-specific subsidies should make a contribution.

However, the EU, which is one of the major subsidizers, opposed including fuel subsidies in the prohibited list, arguing that their fuel de-taxation programme did not reduce local prices to levels lower than world market prices.

Japan said it was not appropriate to include non-specific fuel subsidies in the negotiations.

India also underlined the need for

robust S&DT in all the pillars of the negotiations – illegal, unreported and unregulated (IUU) fishing, overfishing and overcapacity, and overfished stocks – saying that India’s subsidies in the fisheries sector were minuscule as compared with those of the big subsidizers.

India further called for finalizing the preamble and dispute settlement provisions. It warned that the final fisheries subsidies agreement would only be an agreed agreement when everything was agreed.

South Africa said that “for developing countries and LDCs, fish is not just used for human consumption but contributes to the upstream and downstream industries in line with their aspirations to move up the value chain and take advantage of the blue ocean economy.”

Against the worsening COVID-19 pandemic that had dealt a heavy blow to developing economies, S&DT had become a paramount need, it said. “Our small-scale and artisanal fishers have been hard hit during this time, without the ability to go to the sea; a post-COVID recovery plan must rebuild and improve food systems and livelihoods in a sustainable way.”

South Africa urged the chair to capture in the text this dimension to improve food systems and livelihoods.

It stressed that there could be no one-size-fits-all approach to disciplining fisheries subsidies because of differing levels of development.

“Those countries that have not yet developed their fisheries sector need to be provided with an effective and implementable S&DT provision,” South Africa said.

South Africa further called for paying dedicated attention to issues of S&DT “not only based on proposals in your [chair’s] text, but also other proposals that remain valid and require further discussion.”

Without appropriate S&DT flexibilities, developing and least developed members would simply not be able to take on any obligations, South Africa said.

Citing Sustainable Development Goal 14.6 for eliminating subsidies to IUU fishing and prohibiting certain subsidies that contribute to overfishing and overcapacity, South Africa said it would support clear articulation of the ACP list-based approach that reflected that only certain subsidies lead to overfishing and overcapacity.

South Africa said it was imperative that members recognize that non-harmful

subsidies were not captured by this prohibition.

“We are not advocating for box-shifting of any kind in an a la carte menu, but merely that we must therefore think holistically about the classification of subsidies without disturbing our mandates,” it said.

It underscored the need “to target large-scale industrial fishing and not constrain the use of beneficial subsidies that contribute to the sustainability of fish stocks, safeguard food security and livelihoods of coastal communities, including policy space to develop their marine resources.”

South Africa called for specific language that takes account of natural disasters, the impact of climate change and future pandemics on the regulatory framework and design of fisheries subsidies outcomes.

South Africa criticized the draft text for giving an “incentive for members who do not intend to abide by their obligation to put in place ‘mitigation measures’ even if their subsidies cause harm to fisheries.”

“This results in a zero outcome for more advanced members that can easily evade any obligations while resource-poor members will not have this luxury,” it said.

Commenting on the intense negotiating schedule of meetings or “continuous mode of negotiations” after the summer break, South Africa asked the chair: “Since capital-based officials will have to attend meetings virtually, given different time zones, how do you propose we structure the planned clusters?”

The chair must also clarify whether it was proper to indicate “only four meetings to conclude, when there are seminal substantive and institutional disciplines that are still to be negotiated,” South Africa said, suggesting that it would be a near-impossible task given the past track record of negotiations.

Asymmetries in draft text

On behalf of the African Group, Botswana highlighted the asymmetries in the draft consolidated text that was largely based on the “facilitators’ texts” which were at different levels of maturity and where, in some areas, there were divergences and concerns expressed by some members.

The African Group argued that the draft text “did not take into consideration issues that are very important to our

members [from the African region].”

It listed the following concerns:

- The Group had been consistent in its position on the necessity to focus the disciplines on large-scale industrial fishing due, firstly, to environmental considerations and, secondly, to the social and economic dimensions of small-scale fishing.
- “We have also strongly advocated for the necessity to ensure that the disciplines are simple, implementable and effective in addressing harmful fisheries subsidies as well as keeping them within the ambit of the WTO’s competence.”
- Furthermore, the Group had emphasized the importance of respecting national and international fisheries laws and regulations, and avoiding a precedence that would have the WTO undermine or reinvent existing legal and institutional frameworks on fisheries.

The African Group pointedly conveyed to the chair that “the goal of our negotiations is to discipline fisheries subsidies and not to discipline fisheries management,” arguing that “prohibiting harmful fisheries subsidies should be considered as part of good fisheries management.”

The Group drew attention to “potential inconsistencies in the draft text”, saying that “the prohibitions (IUU, overfishing and overcapacity and overfished stocks) may be undermined or rendered ineffective by exceptions or conditionalities that are further provided for in the text.”

It said “the WTO can do better in terms of arriving at a text that can be technically sound, implementable and effective in addressing the overcapacity and overfishing situation around the world in which harmful subsidies play an important role, while at the same time providing policy space and special and differential treatment to developing and least developed members in need.”

The Group said it could not agree with elements in the current draft text, as “the text has language related to areas considered as red lines to some WTO members and it is important to understand your [chair’s] views on how to deal with such provisions.”

Moreover, “the cross-cutting issues like the nature and place of this instrument in the WTO legal architecture, the monitoring and surveillance, the enforcement at the dispute settlement level as well as the

transparency and notification elements of the instrument remain outstanding” said the Group.

The ACP Group expressed sharp concerns about “capping” as “it would include LDCs and our members that are not providing harmful subsidies.”

The ACP Group said it would oppose “any inclusion of beneficial subsidies,” adding that it remained “open to refining the list of beneficial subsidies and applying them to the overfished and overcapacity/overfishing disciplines.”

China’s Ambassador to the WTO, Zhang Xiangchen, said Beijing was committed to eliminating all harmful subsidies, suggesting that past negotiations had proved it was impossible for all parties to agree on overall prohibition of subsidies.

Like the US, China, which is reckoned to be the largest subsidizer for the fisheries sector, called for a “pragmatic” way to negotiate reduction of subsidies, capping and exemption of beneficial subsidies. It suggested the need for proper criteria and methodologies of reduction, failing which members would go around in circles and arrive nowhere.

Zhang underscored the need to take account of the exemption of beneficial subsidies and formulate meaningful and effective S&DT for developing members in this process.

Indonesia, which has a long maritime coastline, called for disciplines on fuel subsidies that were not specific within the meaning of Article 2 of the SCM Agreement.

The Indonesian Ambassador to the WTO, Syamsul Bahri Siregar, said “horizontal fuel subsidy is not only tantamount to the fishing policy of each member, but more importantly, tied closely to energy policy holistically.”

Indonesia said “specificity of subsidy is an important factor in the discipline to ensure that such subsidy is not providing an upper hand, both in decreasing cost of production and maintaining unsustainable fishing, to specific industry.”

Concerning overfished stock, Indonesia said it was still not convinced of the idea of maintaining subsidies in overfished situation, be it caused by fishing activity or natural phenomena.

On overcapacity and overfishing, Indonesia said whatever proposals or ideas were placed in this section would still be heavily debated by all members. (SUNS9166)

Tenures of DDGs extended until new DG is selected

All four WTO Deputy Directors-General will have their tenures extended while the selection process for a new Director-General is underway, with the trade body's members unable to agree on whom among the four to appoint as acting DG in the interim.

by D. Ravi Kanth

GENEVA: The chair of the WTO General Council (GC), Ambassador David Walker from New Zealand, has announced that the tenures of the four incumbent Deputy Directors-General (DDGs) of the WTO will be extended for a period of almost three months during the absence of a Director-General (DG) from 1 September.

The four DDGs – Alan Wolff from the United States, Karl Brauner from Germany, Yonov Frederick Agah from Nigeria and Yi Xiaozhun from China – will continue with their respective functions, including in the areas of negotiations that fall under their remit.

But they are required to maintain close contact with the GC chair, who will be representing the 164 members at the WTO.

Current DG Roberto Azevedo will be stepping down from office on 31 August, while the DG selection process is expected to conclude only in November.

The GC decision of 10 December 2002 on the appointment of a DG states, in paragraph 23: “In the event of a vacancy in the post of Director-General, the General Council shall designate one of the existing Deputy Directors-General to serve as Acting Director-General until the appointment of a new Director-General...”

At a regular GC meeting conducted in a hybrid (in-person and virtual) format on 31 July, chair Walker admitted that there was no consensus among members on finalizing one of the four DDGs to be designated as acting DG.

Several criteria were adopted during the consultations to arrive at consensus but these criteria remained inconsistent with the WTO's foundational Marrakesh Agreement and the 10 December 2002 GC decision, he said.

Therefore, the best solution was to let all the four DDGs remain in office to carry

out their regular and respective functions in close consultations/coordination with the GC chair, said Walker, according to people who spoke to the *South-North Development Monitor (SUNS)* on condition of anonymity.

Effectively, the GC chair's pronouncements could be interpreted as his role being one of de facto acting DG working closely with the DDGs, suggested a trade envoy who asked not to be quoted.

Asked about this, the WTO spokesperson Keith Rockwell said that would not be the case as the four DDGs would carry out their regular work and only when any guidance is required would

There was no consensus among members on finalizing one of the four DDGs to be designated as acting DG.

they consult with the GC chair, which happened even in normal times.

At the GC meeting, Walker repeatedly said that he was guided by the best interests of the Organization, with “dignity, respect, transparency and inclusivity” as the basis for the solution in these exceptional circumstances of limited time.

“We proceed according to the understanding” which has common

elements that would apply for the period starting from 1 September until November, when a new DG will be appointed, Walker said. According to this understanding, there are no structural changes being made in the functioning of the WTO secretariat, he said.

The GC chair had held a virtual meeting with various regional coordinators on 30 July regarding the designation of an acting DG.

Apparently, he informed them that four names (the DDGs) had been mentioned by members as potential acting DG. But out of these four, two (Wolff and Brauner) were most commonly mentioned, he said.

He also said that the possibility of rotating between the two or all four DDGs had been mentioned by members, suggesting that there was no consensus.

The developed countries were reported to have different positions: while the US preferred Wolff and was open to rotation among the two most commonly named DDGs, the EU wished to designate Brauner as acting DG and, if there was to be a rotation, supported rotation among the four DDGs, said a participant who was present at the meeting.

The coordinator of the group of Latin American and Caribbean countries (GRULAC) stressed that the majority of the group members had expressed readiness to join any consensus to be reached, the participant said, adding however that one GRULAC country flatly opposed Wolff.

The African Group was neutral and expressed the view that it could support any consensus reached by other regional groups.

Modalities of selection

The GC chair has also announced the modalities for the final phase of the selection process beginning on 7 September.

The process will be carried out in three rounds of members expressing their preferences from among the eight DG candidates. From the eight, three candidates will be removed in the first round, and another three in the second round, with two remaining in the final round.

Members will be asked to express four preferences in the first round and two preferences in the second round, leaving two candidates in the final round.

The eight candidates in the DG

race are Jesus Seade Kuri from Mexico, Ngozi Okonjo-Iweala from Nigeria, Abdulhameed Mamdouh from Egypt, Tudor Ulianovschi from Moldova, Yoo Myung-hee from South Korea, Amina C. Mohamed from Kenya, Mohammad Maziad Al-Tuwaijri from Saudi Arabia, and Liam Fox from the United Kingdom.

Walker said that he would be guided by two facilitators – the chair of the WTO Dispute Settlement Body, Ambassador Dacio Castillo from Honduras; and the chair of the Trade Policy Review Body,

Ambassador Harald Aspelund from Iceland – in holding consultations with members on a “confessional” basis.

The GC chair emphasized that he would adopt strict confidentiality procedures during the three phases of the selection process, underlining that he would inform neither the candidates nor the members about the number of preferences expressed in each round.

After each round, members will be informed about the candidates who will be asked to step down from the contest

based on the criteria of selection.

The GC chair said that, “as in the past, the positions and views expressed by members will be treated in the strictest confidence by us, with no information or other forms of indications of individual members’ specific preferences made available by us to other members, to the candidates or to the public.”

The selection process reinforces the opacity of choosing the new Director-General, said a participant who asked not to be quoted. (*SUN9173*)

Outgoing WTO DG highlights achievements and challenges

WTO Director-General Roberto Azevedo, who will leave office on 31 August, has delivered a farewell statement which touted his accomplishments but also left some things unsaid.

by *D. Ravi Kanth*

GENEVA: The outgoing WTO Director-General Roberto Azevedo, in a farewell statement, proclaimed his achievements, namely the Doha Trade Facilitation Agreement (TFA) and a partial agreement on export subsidies, while admitting the loss of the appeals body that has effectively made redundant the WTO’s enforcement function, trade envoys told the *South-North Development Monitor* (*SUNS*).

In his statement delivered at a WTO General Council (GC) meeting on 23 July, Azevedo did not however acknowledge that the Appellate Body (AB) became dysfunctional on his watch.

Significantly, Azevedo signalled the need for pursuing more plurilateral initiatives like the current Joint Statement Initiatives (JSIs).

“The joint statement initiatives potentially represent one path to a more nimble, flexible WTO,” he said, while acknowledging the fact that “any new flexible non-multilateral arrangement – whether it is the JSIs or something similar – will inevitably raise important practical and systemic questions.”

Nevertheless, Azevedo contended that “this approach [of embarking on

plurilateral arrangements] is the only way we can save trade multilateralism”.

Touching on the consensus principle that is the bedrock of the 164-member intergovernmental organization, Azevedo argued that the WTO “will not survive” if “full consensus is required to even begin to discuss any issue.”

“I am glad this is not where we are today,” he claimed.

Clearly, Azevedo can claim ‘success’ for turning the multilateral trade body into a plurilateral organization where powerful members can create their own JSI dens and force the weak and poor members to agree to the rules they forge, said a participant caustically after the meeting.

Azevedo also indicated the need to adopt an approach of grading flexibilities to developing and least-developed countries based on their ability to undertake commitments, as in the TFA.

Declaring that a “one-size-fits-all recipe” won’t work at the WTO, he suggested differentiation on grounds that “an open-minded approach to flexibilities would open up a new era of fruitful work for the organization.”

“And when exploring potential areas

for such work, unanimous agreement [based on the consensus principle] cannot be a prerequisite for starting conversations at the WTO,” he held.

Significantly, he did not mention his own role as DG in crafting the JSIs after the summer break in 2017, when he and his office worked day and night to give shape to the various JSIs, as reported in *SUNS* in October 2017.

Seeing the writing on the wall after the change of administration in Washington, a Director-General who is supposed to work for all members abandoned overnight work on outstanding issues such as a permanent solution for public stockholding programmes for food security (because of opposition from the US) and the special safeguard mechanism (SSM) among others, said a former trade envoy who asked not to be quoted.

Trade Facilitation Agreement

Azevedo claimed success for concluding the Doha Trade Facilitation Agreement, though he did not mention that he had opposed the TFA when he was Brazil’s Ambassador to the WTO. “For Brazil and many others, this [trade facilitation] is not a self-balancing issue,” he had said at an informal GC meeting on 7 June 2012.

And since the Doha Trade Facilitation Agreement was concluded at the WTO’s 9th Ministerial Conference in Bali in December 2013, he has seemingly dropped the word “Doha”, despite the fact that it is part of the enlarged Doha framework that was agreed in July 2004.

Moreover, the conclusion of the TFA had hinged on accommodating Cuba’s concerns over the unilateral embargo

imposed on the country by the United States. At the Bali conference, the Cuban deputy minister for trade and investment Ilean Barbara Nunez Mordoche refused to negotiate with Azevedo, who was conducting the closed-door negotiations with key players, due to his alleged proclivities towards the US. The incident prompted the chair of the conference, Indonesian trade minister Gita Wirjawan, to intervene and pacify her, according to people present at the meeting. (See <https://www.livemint.com/Opinion/ZvCf0XZzczILdvX6Lh6vDK/Azevdos-legacy-at-the-WTO.html>)

In his farewell statement, Azevedo also did not mention the reasons for the undermining of the Doha trade negotiations at the 10th Ministerial Conference in Nairobi in December 2015.

In the run-up to that meeting, the US and a group of other developed countries had mounted a huge campaign in Geneva to abandon the Doha Development Agenda (DDA) negotiations in which Azevedo appeared to play the central role, according to a former Indian trade envoy who asked not to be identified.

The ambiguous paragraph 30 of the Nairobi Ministerial Declaration stated: “We recognize that many Members reaffirm the Doha Development Agenda, and the Declarations and Decisions adopted at Doha and at the Ministerial Conferences held since then, and reaffirm their full commitment to conclude the DDA on that basis. Other Members do not reaffirm the Doha mandates, as they believe new approaches are necessary to achieve meaningful outcomes in

multilateral negotiations. Members have different views on how to address the negotiations. We acknowledge the strong legal structure of this Organization.”

Azevedo’s comments in his farewell speech – that “this approach [of embarking on plurilateral arrangements] is the only way we can save trade multilateralism” – seem to resemble the language of paragraph 30, particularly the line “as they believe new approaches are necessary to achieve meaningful outcomes in multilateral negotiations.”

Turning to the systemic crisis in the WTO’s two-stage dispute settlement mechanism, without which the trade rules cannot be enforced, Azevedo remained silent on who had undermined the Appellate Body.

It is an open secret that the AB has become dysfunctional after the US single-handedly blocked the selection process for filling the vacant posts at the body. Whether Azevedo likes it or not, the AB has been decimated under his watch, said a legal analyst who asked not to be quoted.

Azevedo did however acknowledge: “[T]he fact that we [namely just one member – the US] are not in a position to agree on the means of enforcing our agreements speaks volumes.”

Having remained silent on the intransigent stand of the Trump administration, which had praised his tenure during the last seven years, Azevedo said that “a dysfunctional dispute settlement mechanism introduces an unacceptable asymmetry in the system. This asymmetry is to the particular detriment of the smaller and more

vulnerable parties to any dispute. I don’t think we can simply sweep this under the rug, and it must remain a priority for WTO members to address.”

Azevedo also said that working on the Doha work programme was “a tall order”; as guardian of the trade body, he can seemingly claim credit for leaving it in a comatose state. (SUNS9168)

Whether Azevedo likes it or not, the AB has been decimated under his watch, said a legal analyst who asked not to be quoted.

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Reconsider WTO e-commerce duties moratorium – scholars

A new study adds to calls for a reassessment of the WTO bar on customs duties on electronic transmissions in light of its impacts on tariff revenues and policymaking options in the digital economic sphere.

by *D. Ravi Kanth*

GENEVA: A recently published study by Manuel Montes and Jane Kelsey on “The moratorium on tariffs on electronic transmissions” has further bolstered efforts by India and South Africa at the World Trade Organization to bring about a fundamental rethink of the WTO moratorium due to the loss of fiscal revenue it causes and its non-tariff impacts on development.

Montes is Senior Advisor of the Society for International Development. Kelsey is a Professor of Law at the University of Auckland, New Zealand, where she specializes in international economic regulation.

In their study, Montes and Kelsey support the findings of successive studies done by the United Nations Conference on Trade and Development (UNCTAD) on the adverse impacts of the moratorium on tariff revenues and future digital industrialization in developing countries.

They highlight the following effects on development stemming from the moratorium:

- (i) The impact of the moratorium on developing countries is much greater than on the developed countries, since developing countries are more dependent on trade tariffs. The dependence of the US and Japan (who are leading proponents of making the moratorium permanent) on customs duties in their total tax revenue is just 1% and 0.9% respectively. Many developing countries are up to 30 times more dependent on customs revenues than the US or Japan. For example, Bangladesh is 29 times more dependent than the US, the Philippines 19 times and India 13 times more dependent.
- (ii) There is considerable ambiguity in the scope of the current moratorium,

especially the nature of what is being traded internationally, which gives rise to uncertainty and contest over its scope. Assuming the moratorium applies to “digitized products”, the growth rate for this type of “good” has been and will continue to be massive. Further, although existing estimates of tariff revenue losses from the moratorium appear to be relatively small at the present time, there is potential for explosive growth in the future.

- (iii) Contrary estimates from developed-country analysts that there would be net losses from not continuing the moratorium use different methodologies that are laden with problematic assumptions.
- (iv) Non-tariff impacts on development, especially on the policy space for developing countries to diversify their economies into sectors that are facilitated by digital technology, are not adequately factored into current assessments.
- (v) A huge range in the estimated impacts of a moratorium on a country-by-country basis across the global South, and an unclear trend in the future, reinforce the importance of retaining policy space.
- (vi) Claims that it is technically problematic to levy customs duties are overstated, as evidence from some countries shows.

Questions of scope and interpretation

The study by Montes and Kelsey discusses the much-contested scope of the moratorium and supports UNCTAD’s assessment that the scope of the moratorium is limited to “digitizable goods” and does not include electronically

delivered services.

According to the study, “Two issues of interpretation are especially problematic. First, some commentators have sought to interpret the potential scope of the moratorium broadly to include the digital delivery of services, not just of digitized products. That would expand the potential scope of the moratorium far beyond its original intention. While the [1998 WTO Work Programme on Electronic Commerce] defined electronic commerce in terms of goods and services, the moratorium applied to ‘the current practice of not applying customs duties on electronic transmissions’. The current practice was to apply customs duties to specified categories of goods described by HS codes that were bound under the GATT [General Agreement on Tariffs and Trade], subject to special and differential treatment.”

It further argues that: “Services transactions between foreign suppliers and domestic consumers are governed by regulatory disciplines under the GATS [General Agreement on Trade in Services], whose rules do not address the liberalization of customs duties. Technically, there is an area of cross-over between the two agreements: the supply of computer services, including consultancy, development and implementation of software, is classified as a service, whereas software in hard copy or digital form is a good, with an HS classification. WTO rules on customs duties apply to the latter. To extend the scope of the moratorium beyond that would impose obligations on Members that they never anticipated at the time it was adopted ... It is important to recall that developing countries insisted on the use of request and offer negotiations and positive list scheduling as a means to limit the scope of their GATS obligations. It would be unreasonable and inequitable to extend coverage of the moratorium to services on the basis that such duties might have been possible in 1998.”

The study also points out that there is a second disagreement on scope. Some developing countries have insisted that the scope of the moratorium is limited to the vehicle or medium of transmission and does not include the content being transmitted. At the WTO’s 11th Ministerial Conference in Buenos Aires in December 2017, Indonesia had sought the insertion of a footnote to clarify that electronic transmissions do not include digital books, films, music etc.

Another important issue raised by the study concerns the treatment of the moratorium in free trade agreements (FTAs) which are being negotiated.

A number of FTAs, including the TPPA (Trans-Pacific Partnership Agreement)/CPTPP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership), have made the moratorium permanent for parties to those agreements, note Montes and Kelsey. Meanwhile the European Union, in its recent FTA negotiations, has called for parties to agree that “electronic transmissions are the supply of services under the cross-border services chapter and neither party may impose customs duties on electronic transmissions”.

In contrast, the 16-country Regional Comprehensive Economic Partnership (RCEP) reiterates the parties’ commitment to the WTO temporary moratorium, with any future adjustments to that position depending on outcomes within the 1998 WTO Work Programme on Electronic Commerce. Further, the entire RCEP e-commerce chapter is unenforceable.

These questions of scope and interpretation, say Montes and Kelsey, are fundamental and will remain contested as digital technologies have evolved rapidly and digital products have substituted for traditional commodities.

The study suggests that prior agreement on which products are implicated by electronic transmission at the level of HS system codes should be a prerequisite for discussion of the future of the moratorium, with provision for renegotiating the list in the future. Without such clarity, developing countries would be surrendering tax policy in a very important part of the tax toolkit.

Flawed methodologies

The study also criticizes the methodologies adopted in the studies on the impact of the moratorium conducted by the European Centre for International Political Economy (ECIPE) and the Organization for Economic Cooperation and Development (OECD), both published in 2019.

It points to “important flaws in the ECIPE methodology and its implementation. The study applies the method of computable general equilibrium modelling (CGE) to estimate the economic impact. It uses a data set common to CGE trade modelling known as GTAP [Global Trade Analysis Project], which does not

have the actual electronically transmitted products broken out separately as specific products... It does not reflect the possibility that higher tariffs on imports could stimulate domestic production, which generates new employment opportunities and additional incomes. The typical CGE model considers such effects to be outside the model and treats them with skepticism.”

On its part, say Montes and Kelsey, the OECD’s analysis “draws on two recent studies that use US trade data to evaluate protectionism provoked by recent US policies to impose tariffs. These studies find that the costs of these policies are borne by domestic consumers, with harmful impacts on productivity, employment, and balance of payments. That methodology and its related policy arguments may well be applicable to developed countries, although it is notable that they can be disregarded in relation to specific sectors whose expansion these countries are themselves prioritizing. They are much

A permanent moratorium would vastly reduce the policy space of developing countries to address rapidly growing, and poorly defined, trade in digitized goods, Montes and Kelsey conclude in their study.

less applicable to developing countries, which might be more willing to accept the estimated welfare losses generated from higher prices for specific HS products with the aim of creating new domestic enterprises in these sectors.”

As regards the non-tariff impacts of the moratorium on development, Montes and Kelsey succinctly argue that in order to achieve structural transformation, developing countries must transit from being consumers of imported products to being producers.

Several scholars like the economist Ha-Joon Chang and successive UNCTAD Trade and Development Reports have underscored the need for the state to take a proactive role in industrialization in developing countries. Interestingly, even the US Trade Representative Robert Lighthizer has highlighted the need to build robust domestic supply chains in crucial sectors.

Historically, because new economic activities are not commercially profitable for domestic enterprises, successful efforts to introduce such activities require governments to subsidize investment and protect the activities from import competition until they can match their counterpart foreign products in cost and quality.

A permanent moratorium would vastly reduce the policy space of developing countries to address rapidly growing, and poorly defined, trade in digitized goods, Montes and Kelsey conclude in their study. As there are currently no bound tariffs for digitizable products which move online, developing and developed countries could raise them for domestic policy reasons in the absence of a moratorium. This means the actual potential tariff revenue loss could be higher than projected by both UNCTAD and their study, say Montes and Kelsey.

At present, they say, the temporary moratorium mainly benefits large digitalized companies, almost all of which are US companies, and provides these companies with first-mover advantages to the disadvantage of all other countries. Even European countries remain concerned about their inability to obtain sufficient tax revenue from their operations. European companies would be potentially disadvantaged in the same way as developing countries if the moratorium is made permanent.

In a similar vein, a recent study by Dutt and Thrasher (2020) of Boston University on “Growing share of online trade undercuts government ability to pull in revenue” used the methodology adopted by UNCTAD and estimated that a cumulative amount of \$1,612.57 billion of “online” trade escaped potential trade taxation by governments in the period 1998-2018.

The study argued that this lost revenue can never be recovered by the developing countries by using internal taxes as there exists a large informal sector which is out of the tax net. (SUNS9169)

South Africa calls for “holistic” approach to TRIPS flexibilities

To address public health concerns, policy measures to limit stringent intellectual property rights should be considered in other areas of intellectual property besides patents, South Africa has proposed at the WTO.

by D. Ravi Kanth

GENEVA: South Africa has called for a “more holistic approach to TRIPS flexibilities” in combating a COVID-19 pandemic that appears to have become a “milking cow” for the world’s leading pharmaceutical companies to secure billions of dollars of public funds and adopt predatory pricing policies for new therapeutics and vaccines.

This call is made in the country’s proposal on “Intellectual property and public interest: Beyond access to medicines and medical technologies towards a more holistic approach to TRIPS flexibilities”, put forward for discussion at a special meeting of the WTO’s Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) on 30 July.

In its proposal, South Africa noted that “a main focus at the WTO has been how to facilitate access to medicines in the context of the Doha Declaration on TRIPS and Public Health.” It cited a 2016 report by the United Nations Secretary-General’s High-Level Panel on Access to Medicines which said “WTO Members retained important public health flexibilities that can be used to adapt their intellectual property law, policies and practices to meet human rights and public health objectives. These include the ability to determine patentability criteria, issue compulsory licences, authorize parallel importation, apply general exceptions and employ competition laws to limit and remedy the abuse of intellectual property rights in domestic legislation.” However, South Africa said “there are still a significant number of countries that do not make full use of available flexibilities under the TRIPS Agreement.”

South Africa said the use of TRIPS flexibilities to address a public health concern is usually seen as a matter concerning patents. “However, the COVID-19 pandemic requires a more integrated approach to TRIPS flexibilities

that include various other types of intellectual property (IP) rights including copyrights, industrial designs and trade secrets.”

At present, there is lack of understanding at the national level on the use of TRIPS flexibilities in other areas of intellectual property beyond patents, South Africa said, adding that “in other fields of IP, national IP laws may not even provide for sufficient flexibilities to address issues of access.” It emphasized that “a variety of IP rights are relevant in the fight against COVID-19”.

“The COVID-19 crisis created the need to produce essential equipment and medical supplies, [and] there is a growing need to be able to manufacture essential medical devices such as masks, ventilators and other personal protective equipment,” said South Africa. “As the debate over COVID-19 moves beyond medical issues, the nature of the pandemic requires non-medical approaches to detect, diagnose and trace the coronavirus.”

South Africa pointed to studies which found that “levels of neutralizing antibodies against SARS-CoV-2 remain high for a few weeks after infection, but then typically begin to wane”, and stated that the only infectious disease comparable to COVID-19 in its broad geographic distribution and that has been eradicated is smallpox.

South Africa cited the GAVI Vaccine Alliance as cautioning about the uncertainty around the technical feasibility of eradicating COVID-19, raising the need for the global community to plan for the possibility that the disease will be in global circulation indefinitely. “In the absence of prophylaxis through a vaccine and more effective treatments, non-medical measures have been an important priority in dealing with the devastating impacts of COVID-19,” it pointed out.

Given the proliferating shortages of

masks, face shields and hand sanitizers to guard against COVID-19, many developing and least-developed countries need domestic manufacturing capacity to avoid dependence on imports to meet their needs, South Africa said.

South Africa said Article 31*bis* of the TRIPS Agreement enables a country to produce vital medicines under compulsory licence for export. However, the stringent conditions attached have made it almost impossible to avail of this provision. “In any event, many developing country Members may also face legal, technical and institutional challenges in using TRIPS flexibilities”, particularly countries that have never utilized flexibilities such as compulsory licences, South Africa added.

South Africa also drew attention to the World Health Organization’s COVID-19 Technology Access Pool (C-TAP), which requires intellectual property holders to voluntarily license such rights on a “non-exclusive and global basis to the UNTAID-established and supported Medicines Patent Pool and/or through other public health research and development mechanisms, consortia or initiatives that facilitate global and transparent access and voluntary non-enforcement of intellectual property rights, as appropriate, during the COVID-19 pandemic, to facilitate the wide-scale production, distribution, sale and use of such health technologies throughout the world.”

It noted that “to date no company has committed to doing so. Instead limited, exclusive and often non-transparent voluntary licensing is the preferred approach of pharmaceutical companies, which will be insufficient to address the needs of the current COVID-19 pandemic”.

Beyond patents

In its proposal, South Africa has provided several examples for considering TRIPS flexibilities beyond the field of patents, such as in the areas of big data, 3D printing and trade secrets.

In the case of “big data outside of the health system”, it said: “Smartphones, mobile data, artificial intelligence, databases and algorithms have been used in the COVID-19 pandemic to leverage the detection and control of the virus. Different types of IP rights are relevant to protect AI algorithms, some may be protected by copyright and trade secrets while other technology is protected by

patents while database rights and trade secrets may also be relevant.

“While these approaches help with efforts to contain the spread of the virus, they can raise issues about the right to privacy and personal freedoms. National security concerns may also arise in the context of Article 73 of the TRIPS Agreement.”

When it comes to 3D printing, there are several obstacles to manufacturing vital medical equipment using this technology during the current pandemic, said South Africa. It referred to a law firm’s advice that any person or company intending to manufacture parts using 3D printing should carry out some due diligence to identify:

- who ultimately holds the intellectual property rights in the component;
- whether the part is protected by patent or registered design;
- whether the rights holder is willing to permit the parts to be manufactured in return for a small or nominal royalty for the wider public benefit; and
- whether any regulatory approval is needed for supply of the parts.

“This case clearly demonstrates the interface between IP and new technologies such as 3D printing and may require a better understanding of how a balance may be achieved between rights holders and third parties,” South Africa said.

South Africa also looked at the area of trade secrets, which encompass vast quantities of information needed to discover, test, create and manufacture diagnostics, treatments and vaccines. “Potential trade secrets include manufacturing processes, test data, medical formulas, and more. For vaccines and other biologic medicines, cell lines, genomic information, and other biological material can also be held as trade secrets. Data about the effectiveness of medicines and vaccines are trade secrets. Even so-called negative information – information about what does not work – can be a trade secret.”

Given the protection accorded to industrial secrets under Article 39.2 of the TRIPS Agreement, both voluntary and compulsory licences, though common in other forms of IP, are unusual in trade secrets, said South Africa.

It cited Professor David S. Levine as saying: “Clearly, there should be times when trade secrecy’s ability to lock down

information gives way to broader national and international information sharing concerns. If there were ever a case for re-examining trade secrecy’s unquestioned dominance, a public health crisis on the scale of COVID-19 would be the time ... What seems initially like a narrow issue involving intellectual property law and innovation may actually be a critical barrier to our ability to rapidly, effectively, affordably, and safely solve the COVID-19 pandemic. The time is now to examine, and re-examine, trade secrecy’s hold on information and our collective health.”

South Africa concluded by raising four questions for WTO members to consider at the TRIPS Council meeting:

1. To what extent are TRIPS flexibilities embedded in areas outside patent protection well understood? If so, how are WTO members implementing such understandings in their national and regional laws?
2. What are the likely difficulties that

members may face in dealing with a changing technology landscape where embedded IP rights may affect the dichotomy between IP rights as private rights and the public interest dimensions recognized in the TRIPS Agreement?

3. What are the benefits and limitations of initiatives such as voluntary licences and pledges to access much-needed technology to deal with the COVID-19 pandemic?
4. Are there circumstances where trade secrets can be shared more broadly? If so, what are those circumstances? Would national or international health pandemics fall within this category?

In short, South Africa has brought to centrestage at the WTO the need to address forms of intellectual property other than patents, such as copyrights and trade secrets, that could prove a major barrier to combating the COVID-19 pandemic. (SUNS9172)

TWN Trade & Development Series No. 43

The WTO and Its Existential Crisis

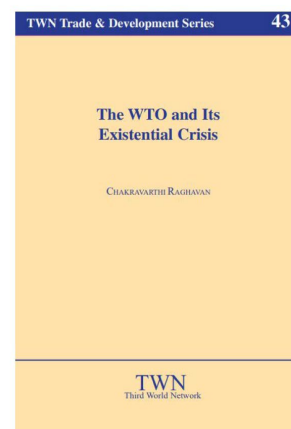
by *Chakravarthi Raghavan*

The multilateral trading system centred in the World Trade Organization (WTO) faces no less than an existential threat stemming from the United States’ blocking of new appointments to the WTO’s Appellate Body (AB) – a standstill which could effectively paralyze the entire mechanism for resolving trade disputes between countries.

While the US stance has been seen as a means to force through a reshaping of the WTO in Washington’s own interests, it has also cast a spotlight on longstanding flaws in the WTO dispute settlement system. As this paper points out, dispute panels and the AB have in several cases been perceived as unduly altering the balance of WTO member states’ rights and obligations, often to the detriment of developing countries.

The priority now, asserts the paper, is to “call the US bluff” and address the AB impasse at the highest political decision-making level of the WTO. Separately, a review of the WTO dispute settlement regime, which is long overdue, should be undertaken in order to ensure that the system enshrines principles of natural justice.

To purchase the book, visit: <https://twon.my/title/tnd/td43.htm>



COVID-19 compounds developing-country debt burdens

Without adequate relief measures, the coronavirus-induced economic slump may tip many low-income countries, already shouldering heavy loan loads before the pandemic, into debt distress.

by Anis Chowdhury and Jomo Kwame Sundaram

COVID-19 is expected to take a heavy human and economic toll on developing countries, not only because of contagion in the face of weak health systems, but also due to containment measures which have precipitated recessions, destroying and diminishing the livelihoods of many.

Developing countries generally have limited fiscal capacities to finance relief and liquidity provision in the short term while rebuilding economic life on a more sustainable basis in the longer term.

The 2020 Financing for Sustainable Development Report shows debt vulnerability growing in many developing countries well before the pandemic. For example, public sector borrowings of commodity exporters increased substantially after prices collapsed in 2014-15. With these prices further depressed now, the pandemic will increase developing-country debt.

Investors withdrew nearly \$80 billion from emerging markets in the first quarter of 2020 – the largest capital outflow in history, according to the Institute of International Finance – as remittances fell at least 20%, i.e., by over \$100 billion.

Most other developing countries do not have strong enough credit ratings to secure low-cost foreign sovereign debt despite low interest rates in the North.

Ballooning debt

According to the World Bank's recent *Global Waves of Debt* report, the past decade has seen the largest, fastest and most broad-based increase in emerging market and developing economy (EMDE) debt in the past half-century.

Since 2010, total EMDE debt – both public and private – rose from 108.6% of GDP (88% without China) to more than 170% (108% excluding China), totalling \$57 trillion in 2019. Private corporate debt accounted for much of this ballooning EMDE debt, rising from 77% of GDP in

2010 to 117% in 2018. But public debt (without China) has also risen from 38.6% of GDP in 2010 to 49.4% in 2018.

Following a sharp decline during 2000-10, total low-income country (LIC) debt rose from 51.5% of GDP (\$137 billion) in 2010 to 65.8% (\$268 billion) in 2018. Public debt is far more important in LICs, rising from 36.5% of GDP in 2010 to 45.7% in 2018, borrowing more from “non-traditional” sources, notably China.

When governments can borrow on reasonable terms to invest in projects needed for sustainable development, debt may be desirable, if not necessary, especially in resource-poor countries. International Monetary Fund (IMF) research suggests that optimal debt levels depend on many considerations.

Nevertheless, debt can have very undesirable impacts, especially when not well used. Debt composition can also be worrisome. The recent debt build-up is particularly concerning because much of it is external.

And now, developing countries' ability to service growing debt is constrained by falling export revenues due to pandemic-induced commodity price collapses complicated by the shift to riskier debt.

The external share of EMDE government debt reached 43% in 2018, while foreign-currency-denominated corporate debt rose from 19% of GDP in 2010 to 26% in 2018.

Commercial credit increased over threefold from 2010 to 2019, rising from 5.0% to 17.5% of LICs' external public debt, while contributing to more than half of their non-concessional government debt.

Heavier burdens

Many developing countries face sovereign debt crises, unable to pay off accumulated debt or interest. An increasing share is owed to China,

especially by “un-creditworthy” poor countries, but European bond markets and private lenders still account for more.

African government external debt payments doubled in two years, from 5.9% of government revenue in 2015 to 11.8% in 2017. A fifth of Africa's external debt of about \$405 billion is owed to China, 32% (\$132 billion) to bond markets and other private lenders, and 35% (\$144 billion) to multilateral institutions such as the World Bank.

Debt servicing accounts for the largest share of government spending, and remains the fastest-growing expenditure item in sub-Saharan African budgets. As debt from private creditors is more expensive, 55% of interest payments go to them.

Interest payments due on private debt to African nations for the rest of 2020 are around \$3 billion. Compared with very low to negative rates in Europe, America and Japan, most African governments are paying 5-16% interest on 10-year government bonds.

African countries have been accused of borrowing too much, but the problem is that they are paying far too much interest, mainly due to rating agencies' and bond issuers' prejudices and practices. Thus, although Ethiopia has grown at 8-11% for over a decade, its sovereign credit rating has not improved.

Also, transparency about contingent liabilities, e.g., due to state-owned enterprise debt and public-private partnership transactions, is limited in most developing countries, especially for debt owed to commercial and non-Paris Club creditors. Contingent liabilities may also grow during this pandemic as governments have to extend loan guarantees for the private sector to prevent total economic collapse.

Debt also increases inequality in a number of ways. First, debt enriches creditors and financial intermediaries, typically at the expense of borrowers. Interest and other capital gains greatly increase asset incomes, wealth and capital.

Second, government debt often enriches wealthy elites. Some of the politically well-connected profit from project financing, the burden of which is borne by the people. A leaked World Bank study estimated that 5% of all new Bank finance to poor countries ended up in tax havens. Bank loans to 22 countries receiving aid during 1990-2010 also

increased deposits in secret offshore bank accounts.

Third, fiscal arrangements involving debt typically deepen inequality. To service debt, governments often increase taxation and cut spending.

While the IMF and financial interests usually insist on fiscal consolidation involving austerity, creditors may even demand “credible”, compliant finance ministers.

While taxes on the wealthy can be increased, the dominant trend in the last four decades has been otherwise. Instead, the IMF has urged governments for decades to increase revenue through value-added and other regressive indirect taxation, usually on consumption.

Many governments have had to cut expenditure in order to service debt, usually making social spending cuts, worsening inequality and social discontent, triggering widespread protests in Kenya, Ecuador, Lebanon and elsewhere.

Relief urgently needed

The severity of current recessions, affecting most countries, and dim prospects of robust rebounds may tip many LICs into debt distress.

The United Nations Conference on Trade and Development (UNCTAD) has warned of a “looming debt disaster” in developing countries, calling for \$1 trillion in debt relief.

On 15 April, finance ministers of the G20 major economies agreed to a “time-bound suspension of debt service payments” for 76 low-income developing countries eligible for World Bank International Development Association consideration, while the IMF has offered debt service relief to 25 of the poorest countries. Nevertheless, the UN believes these actions will not be enough to avoid defaults as the G20 move does not affect private lenders.

The unique but varied and changing

nature of the pandemic and efforts to contain contagion, and the specific challenges of relief, revival and reorientation imply neither that “one size fits all” nor that other formulaic solutions, e.g., to address financial crisis, are appropriate.

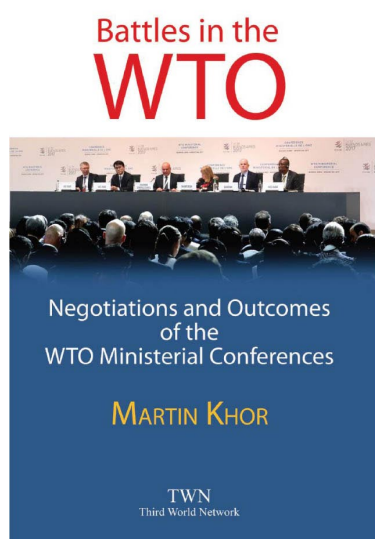
Policy measures will not only need to address the specificities of the COVID-19 crises, but must also take into consideration the legacy of earlier problems, including the burdens of accumulated debt and debt servicing. (IPS)

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

Battles in the WTO

Negotiations and Outcomes of the WTO Ministerial Conferences

By **Martin Khor**



The World Trade Organisation has been an extremely controversial and divided organisation ever since its establishment in 1995. The big battles are most evident at its highest governing body, the Ministerial Conference, where the Trade Ministers of member states convene to chart the WTO's course.

This book is a compilation of contemporaneous reports and analyses of what unfolded at each Ministerial, as well as a few “mini-Ministerials”, that took place from the WTO's inception up to 2017. As these articles reveal, the Ministerials have been the stage on which battles over the future direction of the WTO are most prominently played out. These clashes have mainly pitted developed member states pushing to expand the WTO's ambit into new subject areas, against many developing countries which call instead for redressing imbalances in the existing set of WTO rules.

This book also shines a light on the murky decision-making methods often employed during Ministerials, where agreements are sought to be hammered out by a select few delegations behind closed doors before being foisted on the rest of the membership. Such exclusionary processes, coupled with the crucial substantive issues at stake, have led to dramatic outcomes in many a Ministerial.

The ringside accounts of Ministerial battles collected here offer important insights into the contested dynamics of the WTO and the multilateral trading system in general.

MARTIN KHOR (1951-2020) was Adviser to the Third World Network. He was formerly Executive Director of the South Centre (2009 to 2018). He was the author of several books on trade, development and the environment, including *Globalization and the South*. He followed the negotiations in the WTO for many years, including at most of the Ministerial Conferences.

Email twnetwork.org for further information, or visit <https://www.twn.my/title2/books/Battles%20in%20the%20WTO.htm>

Reconsidering the idea of a Pigou wealth tax in the time of COVID-19

With governments desperately seeking to raise resources to tackle the COVID-19 crisis, a wealth tax mooted back in the first half of last century may just offer a solution, writes *Kavaljit Singh*.

Arthur Cecil Pigou (1877-1959), a British economist, is well known for his contributions to welfare economics. One of the most prolific writers of his time, Pigou wrote over a dozen books and more than 100 articles and pamphlets dealing with both theoretical and practical aspects of welfare economics. His writings cover a wide range of human welfare issues from unemployment to housing to taxation.

Some of his most famous books include *Wealth and Welfare* (1912), *The Economics of Welfare* (1920), *A Capital Levy and a Levy on War Wealth* (1920), *The Political Economy of War* (1921) and *The Theory of Unemployment* (1933).

In the 1920s, Pigou gave an analytical solution to the concept of externalities, which occur when external costs and benefits spill over to third parties. He advocated a tax on any market activity that creates negative externality (spillover costs to third parties). A typical example of a negative externality is pollution. A variety of Pigouvian taxes are prevalent today to address negative externalities. Carbon taxes on fossil fuels are an excellent example of a Pigouvian tax. Similarly, taxes on tobacco, sugary drinks and plastic bags are imposed to reduce consumption and to create a more socially optimal outcome.

In contrast, a positive externality occurs when benefits spill over to third parties. Pigou advocated that governments should encourage positive externalities by subsidizing goods and services (such as education and health) that generate spillover benefits. In sum, the Pigouvian taxes and subsidies are aimed at maximizing economic welfare.

A levy on capital

The four years of the First World War (1914-18) left Britain mired in debt. By the end of the war, Britain's national debt stood at £7.1 billion, and the interest payments alone were equal to nearly one-third of government revenue. In 1920, Britain's debt-to-GDP ratio was five times as large as it was in 1914. The key reason behind deteriorating public finances was heavy reliance by the British government on borrowings (rather than taxation) to finance wartime expenditure. The bulk of borrowings were in the form of floating debt and long-term loans. Taxes contributed to just one-fourth of total wartime expenditure.

Right from the beginning of the war, Pigou extensively contributed to domestic policy discussions on managing the fiscal burden of war finances. One of his key recommendations was a one-time capital levy of 25% on the owners of capital or other wealth to reduce Britain's fiscal burden. He elaborated on this idea at great length in several publications, including *A Capital Levy and a Levy on War Wealth* and *The Political Economy of War*.

The idea of a one-time capital levy to settle the war debt received broad political support in Britain after the end of the war. The proposal was endorsed by the Labour Party, Trade Union Congress and others. The Labour Party fought the 1924 election on the platform of the capital levy.

However, Pigou's proposal was severely criticized over concerns related to administrative costs, disincentives for savings, and an exodus of capital from Britain. In response to such concerns, Pigou gave a point-by-point rebuttal and forcefully argued that a one-time capital levy would not affect the total amount of capital but would only transfer income and wealth from rich individuals to others via taxation. In his opinion, a one-time capital levy was a much better option than facing the prospect of at least five decades of heavy taxation. In the end, the Treasury rejected the levy proposal on the grounds that it would depress asset prices.

Taxing the rich

Pigou called for a more progressive tax system in Britain. He was unequivocally in favour of imposing higher tax rates on the rich, albeit temporarily. In his view, higher taxes on the rich were the best way to raise financial resources and should be "levied on an exceptional occasion for the purpose of financing an unprecedented war." He contended that just like stronger men were needed to fight the battle, the economically stronger should also bear the extra tax burden.

He firmly believed that the British government had "committed a serious mistake in taxing so little and borrowing so much" to finance wartime expenditure. He was against indiscriminate government borrowing as it would necessitate higher taxes on the shoulders of poor people. Pigou wanted to shift the tax burden to those with the broadest shoulders. He explained that taxing the wealthy individuals would be the best option to reduce the war debt at once as the government could not generate substantial additional revenue by taxing the poor.

In Pigou's words: "In the present cataclysmic and exceptional war, the very rich and the rich ought to bear a proportion of the objective burden very much larger than that [in peacetime]. There is one way, and one way only, in which this result can be brought about. The ratio in which the war is financed with money borrowed from people with large incomes should be much diminished; and the ratio in which it is financed with money collected from them under some form of progressive taxation should be much increased."

Pigou's proposals for a capital levy and higher taxes on the wealthy need to be revisited in the light of the triple crises of coronavirus: a health crisis, an economic crisis and a financial crisis.

COVID-19: An existential threat

Many world leaders have described the COVID-19 pandemic as the greatest threat faced by their countries since World War II. UN Secretary-General Antonio Guterres recently warned that the pandemic “has an economic impact that will bring a recession that probably has no parallel in the recent past.” In India, some state governments (including Delhi and Karnataka) have set up dedicated “COVID-19 War Rooms” to closely monitor and manage the outbreak.

Pundits have often used the war metaphor to explain the gravity of the health pandemic and its associated economic challenges. Even though comparisons of the pandemic to war have inherent limitations, it is not hard to imagine that the economic damage caused by COVID-19 worldwide could be far greater than the damage caused by World War II.

If not a war, COVID-19 is undoubtedly a public health emergency that has brought the global economy to a standstill and pushed the world into a recession that would be much worse than the 2008 global financial crisis.

Bigger economic challenges lie ahead

In many important ways, the pandemic has dramatically exposed the existing faultlines in societies and economies around the world. Presently, we are witnessing only the beginning of its social and economic impacts. More significant social and economic challenges lie ahead, especially for the poor and developing countries.

There are growing fears that the COVID-19-induced recession may last longer than initially anticipated – potentially into 2021 and even beyond. Although it is difficult to predict the shape of economic recovery, most economists foresee a U- or W-shaped, rather than V-shaped, recovery.

While it is too early to comprehend the full impact of the COVID-19 crisis on global poverty levels, the World Bank has recently estimated that the crisis could potentially push 71 million to 100 million into extreme poverty. In particular, South Asia and Sub-Saharan Africa would witness a substantial increase in the number of poor people.

The International Labour Organization (ILO) has estimated that nearly 400 million full-time jobs (based on a 48-hour working week) were lost in the second quarter of 2020, and the labour market recovery will remain uncertain and incomplete during the second half of the year. Needless to add, the ambitious Sustainable Development Goals (SDGs) set out by the UN are under threat from the coronavirus pandemic.

Governments around the globe are struggling with a “scissors effect” of decreasing tax revenues due to the sudden stop in economic activity and rising expenditures due to the higher demand for health and social protection in the wake of the pandemic. Apart from strengthening public health infrastructure, there have been renewed demands across countries for ensuring basic minimum income for the poor and most vulnerable households.

To mitigate the economic catastrophe, governments need plenty of money. Now the moot question is: Where will the money come from? A country may choose to borrow from official or private lenders, but this would entail a higher debt burden on future generations. Another option is to print money and spend it, albeit with some constraints. Yet another option is

to introduce a wealth tax or impose higher taxes on the rich. As discussed previously (see *TWE* No. 699), governments could raise substantial revenues in a fair and efficient manner by introducing wealth taxes on wealthy individuals to meet COVID-19-related costs, without placing additional burdens on future generations.

An opportune time for a wealth tax

Contrary to popular perception, wealth taxes are not new. Many countries (from India to South Africa to Canada) levied a variety of wealth taxes in the past. With the advent of neoliberal economic policies in the 1990s, however, wealth taxes went out of fashion, but some European countries (Norway, Spain, Switzerland and Belgium) still enforce a wealth tax.

Wealth taxes could be applied to a variety of assets, including cash, bank deposits, stocks, real estate, personal cars etc. They could be levied sporadically (in the form of a capital levy) or on an annual or regular basis. They could be levied on an individual's wealth as well as on a transfer of wealth.

The imposition of a wealth tax on wealthy individuals becomes even more critical in the present time as the wealth of billionaires has been rapidly increasing since the onset of COVID-19. Amid the pandemic, the net worth of the world's leading billionaires spiked even as millions of poor people across the globe lost their jobs and livelihoods.

According to a recent report by the Institute for Policy Studies, US billionaires saw their total wealth surge by over \$755 billion between 18 March and 23 July, while over 52.4 million Americans filed for unemployment benefits during the same period. Somewhat similar trends could also be seen across countries. In India, for instance, Mukesh Ambani added \$15.5 billion to his fortune in July alone following a series of capital-raising deals with global investment and technology firms. As per the Bloomberg Billionaires Index, Ambani is the fifth-wealthiest person in the world, with a net worth of \$78.9 billion as of 30 July. In contrast, the pandemic could push 260 million Indians into poverty, according to estimates by the United Nations and the Oxford Poverty and Human Development Initiative.

So, what could be the revenue-generating potential of a capital levy in the US? Ian Kumeckawa has estimated in a back-of-the-envelope exercise that a 5% levy on the US' richest 1% could raise \$1 trillion and an additional 5% levy on the wealthiest 0.1% could furnish half a trillion more, thereby covering half of the US' pandemic fiscal stimulus. If carefully designed and implemented, a one-time levy or a continued wealth tax could mobilize a portion of funds needed to tackle COVID-19 in other countries too.

Although Pigou had proposed the wealth tax as a one-time levy to pay off the national debt, the idea of a continued wealth tax on the super-wealthy is gaining traction in Latin America. In April, Peru announced a solidarity tax on wealthy Peruvians with an objective that they should shoulder a larger share of the economic burden of the pandemic. Similar wealth taxes have also been endorsed by opposition candidates and parties in Brazil, Bolivia, Chile and Ecuador to fill the massive fiscal holes created by the pandemic.

In the US, even before COVID-19, the Democratic presidential candidate hopefuls Senators Elizabeth Warren and Bernie Sanders advocated wealth taxes to increase tax revenues and to reduce inequality.

The unprecedented nature of the pandemic offers a new

window of opportunity to governments to introduce wealth taxes on wealthy sections of society. Specifically targeted only at wealthy individuals, wealth taxes (in myriad forms) need immediate consideration by policymakers to mobilize the resources required to mitigate the social and economic impacts of COVID-19.

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TWN Climate Change Series no.4

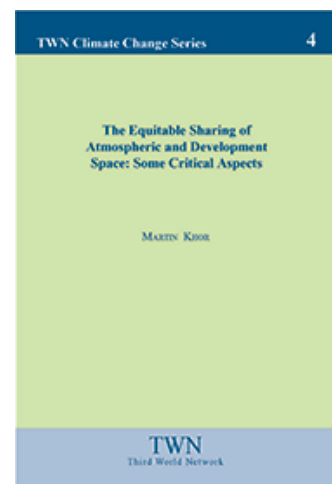
The Equitable Sharing of Atmospheric and Development Space: Some Critical Aspects

Tackling the climate change crisis demands urgent actions to cut atmospheric emissions of the heat-trapping greenhouse gases that are causing global warming. The responsibilities this entails should at the same time be divided equitably between developed and developing countries, as recognised in the United Nations Framework Convention on Climate Change (UNFCCC).

The equity imperative is rooted in the development needs of the developing countries and in the fact that emissions of carbon dioxide and other greenhouse gases over the years mostly originated in the developed countries. This paper fleshes out how this historical “carbon debt” and other equity considerations could be taken into account in the sharing of the global atmospheric space. Such an arrangement would, as envisioned by the UNFCCC, involve the developed countries taking the lead in emission reductions and in providing financial and technological support for a shift by developing countries to low-emission growth pathways.

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Understanding the Enhanced Transparency Framework and Its Modalities under the UNFCCC's Paris Agreement

To assess progress towards curbing global warming, Parties to the United Nations Framework Convention on Climate Change are required to provide information on actions taken to reduce emissions of greenhouse gases, deal with the impacts of climate change, and support implementation of the UNFCCC commitments. Such reporting has now been significantly scaled up under the Enhanced Transparency Framework (ETF) established by the UNFCCC's Paris Agreement. Complying with these more rigorous reporting rules under the Paris Agreement may pose a challenge for developing countries given their capacity constraints.

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