

IP waiver gets more backing but faces resistance from North

Support is growing, among the WTO membership and international civil society, for a proposed waiver from WTO intellectual property (IP) rules that could hinder availability of and access to COVID-19 medical products, including vaccines.

However, consensus remains elusive, with opposition to the waiver being spearheaded by developed countries that are home to patent-owning pharmaceutical industry giants.

- **TRIPS waiver gains more support despite efforts to stall its passage – p2**
 - **A vaccine that was hijacked by the rich – p6**
 - **Can a pharma company change? – p15**

..... ALSO IN THIS ISSUE

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CONTENTS

CURRENT REPORTS

TRIPS waiver gains more support despite efforts to stall its passage — p2

A vaccine that was hijacked by the rich — p6

South Africa, India call for development-oriented approach to e-commerce — p8

JSI e-commerce text could be “very damaging” for South — p9

Politicizing COVID pandemic is “utterly reprehensible” – UN rights chief — p12

OPINION

Can a pharma company change? — p15

Urgently needed deficit financing no excuse for more fiscal abuse — p16

THIRD WORLD ECONOMICS

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TRIPS waiver gains more support despite efforts to stall its passage

A proposal to forgo intellectual property protections in order to support the fight against COVID-19 is receiving growing backing both inside and outside the WTO, although opposition led by developed countries continues to impede consensus.

by D. Ravi Kanth

GENEVA: Attempts to avert an emerging “vaccine apartheid” through an intellectual property waiver for combating the COVID-19 pandemic have gained support from more countries at the World Trade Organization (WTO) as well as international civil society groups, despite what are seen as efforts by the United States and a handful of its allies to protect the monopoly profits of the leading Western pharmaceutical companies at the expense of people’s lives.

At a formal meeting of the WTO’s Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) held virtually on 10 December, the proponents of the waiver proposal – South Africa, India, Kenya, Eswatini, Mozambique, Pakistan and latest co-sponsor Bolivia – answered a maze of questions raised by countries where Big Pharma is located such as the US, the European Union, Japan, Canada and Switzerland, said a delegate who asked not to be quoted.

India and South Africa had tabled a proposal at the TRIPS Council in October for a “waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19”. The waiver would suspend implementation, application and enforcement of the relevant provisions of the WTO’s TRIPS Agreement for a defined period, opening the door to more research and development as well as production of needed COVID-19 medical products, including diagnostic kits, medicines for treatment, vaccines and also personal protective gear.

International civil society groups have mounted increasing pressure on governments to swiftly approve the waiver to combat the extraordinary health crisis that has claimed more than 1.5 million lives. In a signature campaign launched by these groups, more than 900,000 people

from around the world have called for the passage of the waiver and for putting lives before the profits and patents of Big Pharma.

At the TRIPS Council meeting on 10 December, the proponents of the waiver provided a robust response to the questions and claims raised by opponents, said a negotiator who preferred not to be quoted.

South Africa said that “ad hoc, non-transparent and unaccountable bilateral deals that artificially limit supply and competition, cannot reliably deliver access during a global pandemic.”

“These bilateral deals do not demonstrate global collaboration but rather reinforce ‘vaccine apartheid’ and enlarge chasms of inequity,” the South African delegate Mustaqeem Da Gama said, according to several negotiators who were present at the meeting.

“Disparity in access is certain to continue unless concrete steps are taken to address intellectual property barriers,” warned Da Gama.

He said claims by the EU, the US and Japan that the IP system is responsible for delivery of vaccines in record time “fly in the face of the heroic efforts of ordinary people, researchers, scientists and government support and funding to enable this monumental feat”.

Further, “not companies, but ordinary people have generously donated their skills and efforts to enable global collaboration by participating in vaccine trials, many in developing countries, putting their lives at risk for the greater good of mankind,” Da Gama said. “Yet, the irony does not escape us, these very people are denied priority access despite the enormous sacrifices they made.”

India said the waiver proposal “presents an open and expedited global solution to allow uninterrupted collaboration in

development, production and supply of health products and technologies required for an effective COVID-19 response”.

The Indian delegate emphasized that the proposal “is targeted and proportionate as it seeks waiver for a limited time from four specific sections of TRIPS Agreement, namely patents, copyrights, industrial designs and undisclosed information, in so far as they hinder the production of health products and technologies for prevention and treatment of COVID-19 pandemic.”

Pakistan said the waiver “not only promises to help large populations in developing countries, but would also allow export of medicines and medical equipment back to developed countries where poorer segments of their population could also benefit.”

Tanzania, on behalf of the Africa Group of countries in the WTO, stressed its support for the waiver proposal, adding that “the TRIPS Agreement has to ensure all the member states are not prevented in any way; they are not having difficulties to obtain the vaccine or treatment of COVID-19. This is the challenge we are having at the moment, and should be a priority for all member states”.

Indonesia voiced its support for the waiver on grounds that it offers a “different perspective to address global public health crisis by addressing one of the core challenges in rapid, equitable and affordable access to health caused by protection of intellectual properties to much-needed diagnostic kits, therapeutics, vaccines and other medical equipment to combat COVID-19 pandemic.”

Indonesia also related its own experience, stating that it “recently failed to convince Gilead to expand its production in Indonesia through voluntary licensing, to address shortages and affordability of the medicine”. Importing the medicine was costlier and more difficult due to limited supply and higher prices, Indonesia said, adding that “selective and secretive production agreement is one of the prime examples of the business-as-usual model”.

It also recalled that during the spread of H5N1 influenza in 2006, despite sharing virus samples and sequence data that were used for analysis and preparation for vaccine production, “the resulting vaccines produced by pharmaceutical companies were in fact unavailable for developing countries such as Indonesia”.

Bangladesh said that the “pandemic is of course a health issue primarily, but

this has evidently far-reaching impacts on education, human rights, food security and our economies everywhere”. Therefore, “unconditional affordable and timely access to vaccine and other cure measures must be a priority of the time”. It added that “production and distribution of vaccines and other medical equipment for containment and treatment of COVID-19 should be open to all ... and the TRIPS regulatory framework should not be a hindrance to the most stark needs of humanity”.

China supported further engagement on the waiver proposal, stating that “promoting the availability of COVID medicines and vaccines and ensuring useful and timely access to safe and effective medicines and vaccines for all members, especially the developing members and [least developed countries], is still an urgent call for the global community”.

Mozambique highlighted that “a positive consideration of the requested waiver would be a substantial contribution for the achievement of the Sustainable Development Goals”, which advocate the need to collectively advance and leave no one behind.

However, opponents of the waiver, particularly the US and the EU, where Big Pharma is located, continued to adopt “obdurate and stonewalling” tactics by raising extraneous questions as well as unsustainable claims, said a developing-country delegate who asked not to be quoted. They are using every option to block the negotiations by constantly shifting the goalposts, the delegate said.

Finding “common ground”

The TRIPS Council Chair, Ambassador Xolelwa Mlumbi-Peter from South Africa, urged WTO members to find “common ground”, suggesting that there was an emerging agreement for sending a factual and neutral communication to the WTO’s governing General Council that would reflect the state of play of the discussions and the lack of consensus at this juncture, according to a negotiator who asked not to be quoted.

Mlumbi-Peter underscored the need to find “common ground in regard to the subject matter of the waiver request, including in relation to scope and substance, as indicated by proponents in order to achieve the common objective you all share.”

An oral status report would be

presented at the next General Council meeting on 16-17 December indicating the need for further discussions on this issue, the negotiator said.

Members agreed to keep the waiver proposal on the agenda of upcoming TRIPS Council meetings so that the discussions could continue. Informal meetings of the Council are expected to take place in January and February 2021 followed by a formal session on 10-11 March.

Addressing questions posed

During the discussions on 10 December, South Africa and India called on members to work together to ensure that patents, industrial designs, copyrights and protection of undisclosed information do not become barriers to timely access to affordable medical products including vaccines and medicines or to scaling up of research, development, manufacturing and supply of medical products essential to combating COVID-19, according to negotiators present at the meeting.

South Africa suggested that while an effective response to the pandemic requires rapid access to affordable medical products – diagnostic kits, medical masks, other personal protective equipment and ventilators, as well as vaccines and medicines – the outbreak has led to a swift increase in global demand, with many countries facing shortages, constraining the ability to effectively respond to the outbreak.

Given the worsening global shortages of these products, South Africa argued that putting the lives of health and other essential workers at risk has led to many avoidable deaths while prolonging the pandemic.

South Africa said while the efforts to develop COVID-19 vaccines successfully and in record time are commendable, these efforts remain insufficient to address the needs and underlying problems.

Responding to a question as to why the scope of the proposed waiver extends to patents, trade secrets, copyrights and industrial designs and what is the evidence that a waiver from these aspects is important to contain, prevent and treat COVID-19, South Africa said that the co-sponsors of the proposal had presented elaborate answers during the last TRIPS Council meeting on 3 December.

As regards which measures would fall within the scope of the waiver, whether

measures that are indirectly related would also be included within the scope and who would make this determination, South Africa said the proponents have clarified that “the issue is not whether a measure is directly related or indirectly related. It is a matter of what is needed to prevent, contain and treat COVID-19.”

Assuring the opponents that any measure that is not in relation to COVID-19 would not be covered, South Africa said that “for instance, a therapeutic for cancer treatment would not fall within the scope of the waiver.” The waiver, it said, is very specific to COVID-19 for its “prevention, containment and treatment, and therefore, is proportionate.”

In response to US concerns about the waiver resulting in counterfeit medicines, South Africa said the waiver request does not extend to trademarks and “counterfeit trademark good” as defined in Article 51, footnote 14 of the TRIPS Agreement. It urged WTO members “not to confuse and conflate issues of quality of a product with issues of intellectual property of medical products.”

As regards questions concerning the need for the waiver given the establishment of the COVAX facility to secure vaccine supplies, South Africa said the targets set by the World Health Organization (WHO)’s Access to COVID-19 Tools Accelerator (ACT-A, which includes COVAX) to provide 2 billion vaccine doses (for 1 billion people) to the world by the end of 2021, 245 million courses of treatment and 500 million diagnostic tests in 2021 “are insufficient to meet global needs of the 7.7 billion people of this world.”

“As we have seen vaccine rollouts in the developed world, we cannot but continue to wonder when equitable and timely access will become a reality, with more than 90% of all future production of likely vaccine candidates being reserved for rich developed countries,” South Africa said.

South Africa also addressed claims by Brazil, the EU and Switzerland that the mere existence of patents or patent applications does not amount to a barrier. It pointed to its submission to the TRIPS Council in November which presented “a preliminary non-exhaustive snapshot of the patent filing and granting status” of five therapeutics candidates that are under review by the ACT-A’s therapeutics pillar. The patent list includes:

i. Regeneron’s monoclonal antibody therapy REGN10993 + REGN10987 was

granted a patent in the US in June 2020 which expires only in 2040;

ii. Merck’s Molnupiravir (MK-4482) has primary patent applications filed in at least 28 jurisdictions, including two regional patent offices, expiring between 2035 and 2038;

iii. Atea Pharmaceuticals’ AT-527 has primary and secondary patents filed or granted in nearly 60 jurisdictions, expiring between 2036 and 2038;

iv. Incety Corp’s baricitinib has primary and secondary patents filed or granted in nearly 50 jurisdictions, expiring in 2029; and

v. Roche’s monoclonal antibody therapy tocilizumab has primary and secondary patents filed or granted in nearly 30 jurisdictions, expiring between 2022 and 2028.

South Africa added that its submission also includes the patent landscape for the Pfizer/BioNTech and Moderna vaccines.

Drawing attention to the exclusive and monopoly rights that a patent holds during the patent period, South Africa said that “with this monopoly, the patent holder is able to prevent other competent manufacturers from producing and supplying the patented subject matter, as well as to charge exorbitant prices for the patented medicines, hence hindering the timely access to affordable treatment.”

Therefore, it said, the patent landscape presented in its submission is “a warning shot of the existing and emerging patent barriers to access and the need for the international community to take urgent action to overcome these barriers so that supply may be diversified and scaled up”.

Commenting on the US assertion that “where intellectual property rights exist, they can be licensed to companies around the world to scale up manufacturing”, South Africa asked: “If VL [voluntary licensing] mechanisms work, why do various licence agreements concluded by companies exclude half of the world’s population from supply and only license to a few very specific manufacturers? Why is it that no one knows the full terms of the licence?”

South Africa asked whether the companies can “provide full details of all voluntary licences signed with companies all over the world to scale up manufacturing and for global supply that have been signed by Pfizer/BioNTech and Moderna with respect to their vaccines, and the therapeutics of Regeneron and Eli Lilly that recently received emergency

approval in the US”. It sought to know “the full terms of the licences, with whom these licences have been signed, which countries will be supplied, when will they be supplied etc.”

It also asked: “Why are there geographical restrictions in the VL to limit supply only to low- and middle-income countries (LMICs) under the agreements, excluding supply to other developing countries? Taking note that the issue of classification of countries based on singular criteria such as per capita GDP ignores the deep and persistent structural deficits between developed and developing countries.”

To a question raised by the US about the data regarding how certain obligations have systematically hindered prevention, treatment and containment of COVID-19 so that a waiver is needed, South Africa said that “the discussion of the current proposal is to acknowledge the limitation of the existing legal options and to provide additional flexibility at the international level.”

It said that Canada, Germany and Hungary must provide information as to why they “swiftly [amended] national laws to enable quicker use of compulsory licence, what kind of data was relied upon at that time demonstrating the necessity of revising the laws”. Maintaining that “TRIPS flexibilities are important to increase access to medicines and other medical products not just in a pandemic”, South Africa asked “why pressure has been applied on developing countries for implementing and supporting public health safeguards in their intellectual property laws and policies under the EU’s annual IP enforcement report and the [US] annual ‘Special 301 Report’, which was released in the midst of a raging COVID-19 pandemic”.

Pointing to the EU IP Action Plan released in November, South Africa said the plan “reiterates the exigent need to deploy COVID-19 technologies, not only in Europe but also on a global basis.” It noted that the plan calls for voluntary pooling and licensing of intellectual property related to COVID-19 therapeutics and vaccines, in line with the recent resolution of the World Health Assembly to promote equitable global access as well as a fair return on investment. It then asked the EU to “elucidate further on how they intend to transform this lofty rhetoric into concrete action”.

According to South Africa, “the EU IP Action Plan notes that the [European] Commission is working on mechanisms that would enable and incentivize the rapid pooling of critical IP in times of crisis. Could the European Union please explicate on these mechanisms that would enable the rapid pooling of critical IP in times of crisis?”

India said the time has come to agree on a global solution for a global pandemic. Challenging the assertion that the IP system provides sufficient tools to ensure swift and equitable access to vaccines and medical products for all, the Indian delegate said the availing of flexibilities under the TRIPS Agreement on a case-by-case basis entails many problems. India said the waiver would provide greater certainty to manufacturers by providing them freedom to operate.

India replied to a question from the EU “as to how the waiver could operate with regard to the vaccine production, including the transfer of the required technology and knowhow and how it would affect the existing licensing mechanisms and COVAX in general”. India said “in the area of vaccines, there are two primary barriers, patents and protection of undisclosed information. Patents are used to protect various aspects of the underlying technology as well as the product.” In addition, “manufacturing knowhow, test data and cell lines are needed to facilitate diversification of vaccine production. Hence the importance of addressing protection of undisclosed information under Article 39 of [the] TRIPS [Agreement].”

The wide range of patents and patent applications as well as exclusivity related to undisclosed information create a complex and uncertain legal environment for scaling up vaccine development, production and supply, India pointed out.

India said that “to date most multinational corporations holding COVID-19 vaccine IP have not shown any willingness to openly license or transfer technologies to all competent vaccine developers globally.” The pharmaceutical industry, it added, has objected to participation in WHO’s COVID-19 Technology Access Pool.

“The waiver is about lifting the legal barrier, it does not preclude the possibility of companies agreeing to voluntary licences,” India said, suggesting that the COVAX facility “will also benefit from the waiver as production

will expand with more manufacturers engaged in manufacturing”. “With robust competition, prices can also be expected to be substantially reduced.”

Challenging the argument of developed countries that the IP system provides the necessary incentives for product development and commercialization, Eswatini said research and development (R&D) for emerging infectious diseases has typically been dependent on public funding and not the IP system. It argued that COVID-19 is no different, with billions of dollars of public funds spent on R&D and manufacture of vaccines.

It cited the case of the Pfizer-BioNTech vaccine, for which BioNTech secured public funds to the tune of \$546 million, as well as more than \$6 billion spent on supply deals, while Moderna secured more than \$1 billion for R&D. It noted that AstraZeneca has gone so far as to state that the development of the vaccine will have no financial implications for the company since expenses to progress the vaccine are anticipated to be offset by funding from governments and international organizations.

In response to the EU justifying its use of advance purchase agreements on the grounds of expanding production, Pakistan said that such agreements are “in fact reinforcing inequitable access to vaccines”, and even “if production is being expanded, it seems to be for the benefit of a few wealthy nations”. Pakistan referred to reports that “wealthy nations representing just 14% of the world’s population have bought up 53% of all the most promising vaccines so far” and that “some countries have already made arrangements to acquire up to 9 doses per person, while among 70 developing or poor countries, only one out of every 10 people will be vaccinated by the end of 2021. It is also estimated that many lower-income countries could have to wait until 2023 or 2024 for vaccination”.

Pakistan emphasized that the “situation reveals a lack of global cooperation and solidarity to ensure equitable access and allocation. More specifically, IP monopolies are limiting vaccine production and equitable access”.

Referring to the EU’s emphasis on AstraZeneca’s licence, Pakistan said “the licence is limited and insufficient to meet global need” and that their “pledge to provide doses to developing nations can only reach 18% of the world’s population next year at most”. “Besides, AstraZeneca’s

CEO has reportedly opposed any public sharing of technology and IP”

Opposition to waiver

The US, which has been fiercely opposing the waiver proposal, said that the IP system plays a key role in developing partnerships with respect to manufacturing, transportation and distribution. These partnerships, it said, can help facilitate access to innovative products; in particular, voluntary agreements on mutually agreed terms and conditions have effectively served to advance access to key innovations throughout this pandemic.

The US drew attention to exclusive voluntary licensing agreements signed by one company with generic pharmaceutical manufacturers based in Egypt, India and Pakistan to manufacture its drug for distribution in 127 countries.

The US suggested that it is manufacturing capacities and problems with supply chains which remain the most significant concerns, especially for vaccines. It added that WTO members should also be concerned about the pandemic creating the opportunity for an increase in counterfeit health and safety-related products.

It called for paying more attention to “other factors that are relevant to the access question, [including] pricing and procurement policies, taxes mark-ups, and tariffs and other national policies that result in higher costs for consumers and for health systems.” It said that some countries continue to apply tariffs of up to 20% on pharmaceuticals and 10% on vaccines – an issue that is not explored in the waiver proposal.

Despite sharp concerns expressed by several EU parliamentarians about the hurdles posed by IP rights, the EU reiterated that the IP system as it stands now is part of the solution to the challenge of universal and equitable access to vaccines and COVID-19 treatments.

According to the EU, the development of vaccines was largely due to the unprecedented work done in collaboration among governments, pharmaceutical innovators, foundations and researchers. In suspending the relevant IP rights, collaboration and manufacturing will not be enhanced – to the contrary, it would be slowed down or even decline to the detriment of all.

Despite growing disparities in the

access to the new COVID-19 vaccines, the EU went on to highlight that many pharmaceutical companies have committed publicly and are already working closely with governments to ensure that the vaccines will be available and affordable to all who need them.

Canada suggested that solutions can be found within the flexibility provisions of the TRIPS Agreement, particularly Article 31*bis*. Canada, which has purchased enough to vaccinate its population five times over, also said it is committed to a global effort to address the pandemic.

Canada, jointly with Australia, Chile and Mexico, also presented a paper entitled

“Questions on Intellectual Property Challenges Experienced by Members in Relation to COVID-19”. These co-sponsors claim that they are “committed to fully understanding the nature and scope of any concrete IP barriers experienced by Members related to or arising from the TRIPS Agreement”.

However, although South Africa, India and others have pointed out the difficulties in using TRIPS flexibilities such as Article 31 and Article 31*bis*, these concerns have been ignored. Canada now claims that the concerns raised are mostly “in relation to the domestic implementation” and not “suggestive of issues with the TRIPS

regime such that would necessitate a waiver”.

In conclusion, it is clear that the proponents of the waiver are increasingly gaining support inside the WTO despite the relentless efforts by the US, the EU, Japan, Switzerland, Canada and other developed countries to stall its passage. The proponents have ensured that the battle continues into next year when issues relating to the disparities in access to vaccines and therapeutics will become crystal clear.

An earlier version of this article was published in SUNS No. 9253 (14 December 2020).

A vaccine that was hijacked by the rich

Wealthy countries have snapped up supplies of COVID-19 vaccines, leaving little for the rest of the world.

by *Thalif Deen*

NEW YORK: There is a longstanding belief that virtually everything in this world is stacked up against the poor and the downtrodden. The COVID-19 vaccine is no exception because some of the world's richest nations, including the US, Canada and the UK, seem to have cornered most of the supplies – whilst marginalizing the world's poorer nations.

The move towards hijacking the newly found remedy has triggered a new brand of misguided patriotism: vaccine nationalism.

According to a CNN report on 9 December, the histrionics from American and British leaders point to growing vaccine nationalism in wealthier nations.

Rich countries with 14% of the world's population have bought more than half of all the most promising vaccines, according to the People's Vaccine Alliance, an international coalition of health and humanitarian organizations.

Nine out of 10 people living in 67 poor countries will miss out on the vaccine in

2021, the Alliance said, pointing out the deals made by rich countries mean they have “hoarded enough doses to vaccinate their entire populations nearly 3 times over.”

Canada has reportedly bought enough doses to immunize its citizens five times over.

“Unless something changes dramatically, billions of people around the world will not receive a safe and effective vaccine for COVID-19 for years to come,” according to Anna Marriott, health policy manager for Oxfam, a member of the coalition.

Economic inequality

Vaccine nationalism is also one facet of the widening economic inequalities between the developing and the developed world.

Ben Phillips, author of *How to Fight Inequality*, told Inter Press Service (IPS) that the scandal is not just that rich

nations are marginalizing poor nations from scarce supplies; the bigger scandal is that there is such scarcity of supplies only because companies are being allowed to hoard licences and knowhow.

Between 1996 and 2001, the prioritization of companies' intellectual property over people's health meant millions of people in poor countries died from AIDS when the treatment for HIV was known and producible cheaply, but was kept by profit-driven policy deliberately too costly and too rare, said Phillips.

He said “it's astonishingly mean-spirited, and utterly short-sighted, that the same approach is being pursued now with COVID-19”.

The drug company shareholders would still grow their riches – just a little more slowly – if licensing and knowhow were shared so that international mass production at scale could begin, he noted.

“We can still change course. That way, lives can be saved and the global economy restarted. No one is safe until everyone is safe, and the world can't recover till all countries can,” said Phillips.

“But none of this will be given freely by leaders – it will only happen if enough people push them to do so. COVID-19 survivors, backed by HIV survivors who know the stakes, are leading an inspiring fight for just that,” he added.

The United Nations says that the widespread pandemic, which has claimed the lives of over 1.6 million people worldwide since early this year, “is not only the greatest global health crisis since

the creation of the United Nations 75 years ago but it is also a humanitarian, socioeconomic, security and human rights crisis.”

Addressing a two-day Special Session on COVID-19 on 3-4 December, the President of the UN General Assembly Volkan Bozkir said: “The world is looking to the UN for leadership, to step up and take demonstrable action to address the greatest challenge our world is facing today. This crisis compels us to shake up how things are done, to be bold, and to restore confidence and trust in the United

Nations.”

Professor Kunal Sen, Director at the Helsinki-based UN University-World Institute for Development Economics Research (UNU-WIDER), told IPS that while it is understandable that rich-country governments want to immunize their own citizens, especially those in vulnerable categories, vaccine nationalism may deprive citizens of low-income countries of COVID-19 vaccines for many months to come.

“The world needs a people’s vaccine which can be provided universally, and

it is important for the international community to develop a vaccine which is compatible with universal access,” he declared.

The New York Times reported 10 December that three of US President Donald Trump’s close political allies, who were infected with the virus and recovered fast, were given medications that were unavailable to the rest of the country.

As a result, COVID-19 is being described as a disease that exposes the gulf between the haves and the have-nots. (IPS)

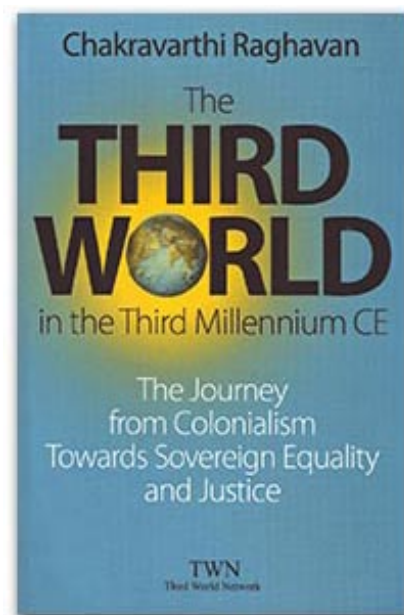
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South Africa, India call for development-oriented approach to e-commerce

South Africa and India have proposed reviving multilateral discussions in the WTO on electronic commerce, which is currently the subject of plurilateral negotiations with a contentious liberalization agenda.

by D. Ravi Kanth

GENEVA: South Africa and India have stepped up their efforts at the WTO to create multilateral momentum in “promoting an inclusive development-oriented approach to electronic commerce”, in what appears to be an attempt to counter the informal plurilateral Joint Statement Initiative (JSI) talks that seek to safeguard hundreds of billions of dollars of profits of Google, Amazon, Facebook, Apple and Microsoft among others, analysts said.

Ahead of the WTO’s General Council meeting on 16-17 December, South Africa and India have jointly submitted a proposal on how to go about building a strong multilateral edifice for discussing, among other issues, the huge revenue and industrial impacts arising from the existing WTO moratorium on customs duties on electronic transmissions.

The two countries called for reinvigorating the WTO’s multilateral 1998 work programme on e-commerce. Emphasizing that “multilateralism is vital in a world facing developmental challenges,” they proposed “structured discussions under the 1998 work programme” in all WTO bodies as mandated by the General Council more than two decades ago.

In their proposal, which was circulated on 3 December, the two countries proposed that the General Council should direct that the “E-commerce Work Programme be a standing item in the relevant WTO bodies” as per the 1998 mandate.

The mandate calls for sustained discussion on trade-related aspects of e-commerce in the WTO Councils for Trade in Goods, Trade in Services, and Trade-Related Aspects of Intellectual Property Rights (TRIPS), and Committee on Trade and Development.

The South Africa-India proposal called for the General Council to ensure that the 1998 work programme remains

under “continuous review through a standing item on its agenda and take up consideration of any trade-related issue of a cross-cutting nature as entailed in the 1998 Work Programme.”

South Africa and India suggested that the “structured thematic discussions in the General Council through various platforms” may include the following items:

(i) Developmental aspects of e-commerce;

(ii) Scope, definition and impact of the moratorium on customs duties on electronic transmissions; and

(iii) Examination of the challenges experienced by developing countries and least developed countries (LDCs) in relation to e-commerce and exploring ways of enhancing the participation of developing countries in e-commerce.

Lack of progress

South Africa and India expressed concern that despite the mandate on structured discussions on all trade-related topics of interest brought forward by members, including by LDCs on issues concerning the moratorium on customs duties on electronic transmissions, there had been little progress. Further, there had been few substantive discussions on issues even from a “trade policy perspective”, the two countries said, suggesting that “there are also different approaches by the WTO bodies on this issue of critical importance to the membership, with some bodies having the Work Programme on electronic commerce as a standing item in the agenda, while in some it is an ad-hoc item that is only put in the agenda at the request of Members even though there is a clear Ministerial mandate on issues to be addressed by each of the WTO bodies.”

Given the unfolding “digital transformation” of which e-commerce is an integral part, it is imperative to continue the exploratory discussions under the 1998 work programme, the two countries argued.

After the WTO’s 11th Ministerial Conference (MC11) in December 2017, India and South Africa in 2018 called for a “rethink” of the moratorium on customs duties on electronic transmissions, focusing on several thematic areas, including: (1) revenue implications of the moratorium; (2) scope and definition of electronic transmissions; (3) technical feasibility of imposing customs duties on electronic transmissions; and (4) broader impact of the moratorium on trade and industrialization and any other issue with respect to the moratorium.

Subsequently, Switzerland and other members called for the need to broaden and deepen the discussion on the moratorium.

So far, said South Africa and India in their proposal, issues such as the scope, definition and impact of the moratorium remain issues “of interest to Members and are critical in determining the decision of Ministers at MC12 [scheduled to be held in NurSultan, Kazakhstan, in June 2021] on the future of the moratorium”.

Several countries, including the LDCs, have submitted various papers and inputs to underscore the need for “a multilateral discussion that will result in deliverables that will promote an inclusive and development-oriented digital transformation agenda for consideration by Ministers at MC12,” South Africa and India said.

They cautioned that “the discussion in the JSI on e-commerce narrowly focuses on the development of legally binding rules and risks further marginalization of developing countries in global trade.”

Citing a paper by the UN Conference on Trade and Development (UNCTAD), South Africa and India said “the COVID-19 pandemic has highlighted a deepening digital divide both within and between countries.”

“Despite the rapid uptake of digital technologies, significant divides remain, both between and within countries. Developing countries are disproportionately affected by the pandemic, both from a health and economic point of view,” they pointed out.

They pointed to the growing disparities

in access to the internet, with only “35 per cent of population in developing countries [having] internet access as compared to 87 per cent in the developed world”. The LDCs “are the most vulnerable to the human and economic consequences of the pandemic and lag behind in relation to digital readiness with only one in five people in LDCs using the internet.” Also, the purchase of goods or services online is limited to well below 5% of the population in developing countries.

“As a result, countries which are hyper-connected have been able to continue many of their economic operations online during the ongoing pandemic, but countries which are less connected were not even able to provide basic information on combating COVID-19 where it was most needed,” South Africa and India said.

They said the UNCTAD eTrade Readiness Assessments have shown that “there are significant gaps and barriers in several policy areas ranging from ICT [information and communication technology] infrastructure, payment solutions, skills, legal frameworks, insufficient quality of broadband services that hamper the ability of many developing countries to leapfrog and leverage digital trade.”

Internal and external taxes

The joint proposal by South Africa and India comes at a time when several industrialized countries are on the verge of imposing tens of millions of dollars of internal taxes on the huge volumes of e-commerce activities undertaken by tech behemoths such as Google, Amazon, Facebook and Apple, with these firms currently paying little tax on their billions in profits.

According to a news report in the *Financial Times* on 25 November, the “French tax authorities have begun demanding millions of euros from US technology groups as they push ahead with a new digital services tax that has enraged Washington.”

The US, which has characterized this as “an example of unfair tax”, has threatened France with a billion dollars in retaliatory measures, including the prospect of a new trans-Atlantic trade war.

However, despite these moves to levy domestic digital services taxes, when it comes to external taxes like customs duties, industrialized countries such as

the European Union, Australia, New Zealand and the US as well as Singapore and Korea fiercely oppose the termination of the moratorium on customs duties on electronic transmissions.

Rashmi Banga, a leading digital trade expert at UNCTAD, told the *South-North Development Monitor (SUNS)* on 8 December that “it is often argued that countries are free to impose internal taxes on big tech firms/digital platforms so there is no need for applying customs duties on their exports and the moratorium on [customs duties on] electronic transmissions should continue.”

“However, if a small and medium-sized firm (SME) from a developing country pays the internal taxes and also faces customs duties for its exports, then why shouldn’t exporters of digital products not pay both the internal taxes and customs duties? Why should the big tech firms and digital platforms get special and differential treatment?” she asked.

Banga argued that “developing countries need to develop their digital capacities and for this there is a need to understand the implications of digital rules,” adding that “there is already a work programme on e-commerce in the WTO, which is a forum where the member states

can freely discuss and negotiate these digital rules.”

“Instead of discussing the digital rules and improving understanding about the digital rules, however, the attention of the member states is being diverted because of the non-mandated plurilateral JSI, where highly technical texts are being circulated, and those developing countries which have joined are being asked to negotiate,” Banga said.

Expressing sharp concern that the developing-country participants in the JSI negotiations do not have the requisite technical capacity to negotiate on the JSI texts coupled with the unknown contours of the digital revolution in the future, Banga argued that “taking any commitments in digital products and services can therefore be counterproductive.”

She said “UNCTAD’s Trade and Development Report (2020) has therefore argued for not multilateralizing any outcome coming from the JSI.”

“Also, JSI outcomes cannot be called a plurilateral agreement in the WTO, as some would like to refer, since they do not have a consensus of the [WTO] member states for their negotiations,” Banga said. (*SUNS9250*)

JSI e-commerce text could be “very damaging” for South

Amid the efforts to advance the multilateral e-commerce discussions in the WTO, the coordinators of the plurilateral JSI talks have released a draft negotiating text that is seen as detrimental to developing-country interests.

by D. Ravi Kanth

GENEVA: A consolidated negotiating text on electronic commerce issued by the three coordinators of the non-mandated informal plurilateral Joint Statement Initiative (JSI) group at the WTO is “very damaging” for the interests of developing countries.

Even those developing countries that are participants in the JSI group are being reduced by the dominant developed

countries to being “rule-takers” and not “rule-makers”, a senior official at the UN Conference on Trade and Development (UNCTAD) told the *South-North Development Monitor (SUNS)*.

On 7 December, the three JSI coordinators – Japan, Australia and Singapore – issued a restricted 90-page consolidated negotiating text (INF/ECOM/62) under the somewhat

misleading title of “WTO Electronic Commerce Negotiations”.

“The consolidated text of the JSI titled ‘WTO Electronic Commerce Negotiations’ may attempt to give the impression that countries are close to an agreement on e-commerce in the WTO, but this text has no legal standing in the WTO,” Rashmi Banga, a digital trade policy expert at UNCTAD, told *SUNS*.

Banga said that the “WTO members can negotiate only on the mandated issues and e-commerce is not a mandated topic for negotiations.”

“There is a separate work programme [in the WTO] on e-commerce which was set up in 1998 for discussing the e-commerce related issues, where members freely discuss the development implications of e-commerce rules,” Banga pointed out.

“The [JSI] text itself highlights that ‘several have noted the need to determine the relationship of the provisions with Members’ market access commitments, and the legal architecture of the JSI outcome,’” the UNCTAD official said.

The JSI text is also replete with fundamental differences among the participants as revealed in the heavily bracketed provisions on almost all issues, Banga added.

The manner in which the three coordinators structured the consolidated negotiating text appears to be full of tricks, as issues concerning fundamental differences on what would constitute electronic transmissions – i.e., scope and definitions – have been pushed to the end of the text in Annex 1 on page 79.

Further, “the proposals are mostly from developed countries with just a few exceptions like China,” Banga said, suggesting that this has perverse and damaging implications for developing countries.

Non-WTO-mandated negotiations

The JSI on e-commerce was first announced at the WTO’s 11th Ministerial Conference in Buenos Aires in 2017 after trade ministers had blocked a plurilateral proposal for launching negotiations on e-commerce at the meeting itself. At that meeting, India, South Africa and many other developing countries had said unequivocally that the real discussions on e-commerce are being held under the multilateral mandate of the 1998 work programme.

Subsequently, the US and its allies – Japan, Australia and Singapore – along with other developed countries and some developing countries from South America were forced to launch the JSI initiative, not from the actual meeting hall but on the margins of the Buenos Aires ministerial meeting.

In light of the JSI’s origins, to issue the negotiating text under the title of “WTO electronic commerce negotiations” is not only highly misleading but also smacks of a mischievous and utterly false effort, said a trade negotiator who asked not to be quoted.

Also, the timing of the issuance of the negotiating text before the WTO General Council meeting on 16-17 December appears to be an attempt to undermine the South Africa-India initiative to reinvigorate the negotiations under the multilateral 1998 work programme.

UNCTAD’s Banga said that, in the WTO’s 12th Ministerial Conference (which is slated to be held in NurSultan, Kazakhstan, in June 2021), “WTO members need to focus on the mandated issues of the negotiations.”

“With respect to e-commerce, the only mandated issue, as agreed in December 2019, is to arrive at a decision with respect to the moratorium [on customs duties] on electronic transmissions,” Banga said.

“Other important issues for the developing countries which are mandated for negotiations include issues in agriculture like domestic support, export restrictions, market access, special safeguard mechanism, public stockholding, export competition, export restrictions, cotton and fisheries,” she said.

Banga said that “members should not divert their attention to ‘new issues’ while there remains an unfinished agenda.”

“Attention should be paid for delivering on the core issues in the Doha Development Agenda which was promised to the developing countries and which seeks to improve the global market access of developing countries,” the UNCTAD official argued.

JSI negotiating text

In the JSI negotiating text, the three coordinators said that it is “a working document that captures progress so far in the WTO Joint Statement Initiative on Electronic Commerce.”

Although the coordinators said the text

“brings together streamlined text based on all text proposals submitted by Members to date and has been prepared under the responsibility of the co-convenors,” the reality is that most of the textual proposals were submitted by the developed-country participants.

According to the three coordinators, “the draft text reflected in this document is subject to the consideration of several cross-cutting issues that many Members have highlighted in the negotiations, including the following:

- Several Members have noted that they would expect security, general and prudential exceptions to apply.
- Several have expressed their intention that commitments would not apply to government procurement, or information held by or on behalf of a Party, or measures related to such information, including measures related to its collection.
- Some Members have said they want to carve out from scope financial services as defined in the GATS Annex on Financial Services.
- Several have noted the need to determine the relationship of the provisions with Members’ market access commitments, and the legal architecture of the JSI outcome.”

The coordinators said that the “document has been prepared on a without prejudice basis, and text that is not in square brackets does not indicate agreement to or conclusion of the text.”

The negotiating text is divided into six parts, with the first part focusing on “facilitating electronic transactions” and including electronic transaction frameworks, electronic authentication and electronic signatures, electronic contracts, electronic invoicing and electronic payment services.

It also includes proposals on “digital trade facilitation and logistics” covering topics such as paperless trading, *deminimis*, customs procedures, improvements to trade policies, single window data exchange and system interoperability, logistics services, enhanced trade facilitation, use of technology for the release and clearance of goods, and provision of trade facilitating and supportive services.

In the second part concerning “openness and electronic commerce”, the topics include non-discriminatory treatment and liability (non-discriminatory treatment of digital products, and interactive computer

services), flow of information (focusing on such highly divisive issues as cross-border transfer of information by electronic means/cross-border data flows), location of computing facilities (retaining data in local servers or cloud computing), bracketed provisions relating to financial information/location of financial computing facilities for covered financial suppliers (a US proposal), customs duties on electronic transmissions, and access to internet and data.

The third part of the JSI text, on “trust and electronic commerce”, includes items

such as consumer protection, online consumer protection, spam, privacy issues such as personal information protection and personal data protection, business trust, the highly controversial issue of sharing source code, and ICT products that use cryptography.

The fourth part covers “cross-cutting issues” such as transparency, domestic regulation and cooperation, cybersecurity and capacity building.

The fifth part, on “telecommunications”, which is largely based on EU proposals, focuses on updating the WTO reference

paper on telecommunication services.

The sixth part focuses on “market access” issues and is also based on EU proposals, with an attached annex on scope, general provisions and so on.

In short, the negotiating text indicates provisions largely aimed at protecting and enhancing the interests of Google, Amazon, Facebook, Apple, Microsoft, Alibaba and Tencent among others, said several negotiators who preferred not to be identified. (SUNS9252)

A Clash of Climate Change Paradigms Negotiations and Outcomes at the UN Climate Convention

By Martin Khor and Meenakshi Raman

Climate change is the biggest problem facing humanity and the Earth. To address it requires fundamental changes to economies, social structures, lifestyles globally and in each country.

International cooperation is crucial. But to achieve this is difficult and complex, because there are many contentious issues involved, not least the respective roles and responsibilities of developed and developing countries.

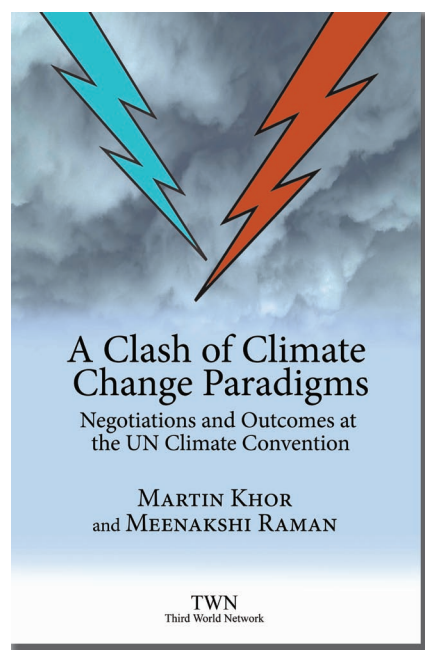
This book is an account of the outcomes and negotiations at the UN Framework Convention on Climate Change (UNFCCC). It covers the Convention's annual Conference of Parties (COP) from Bali (2007) to Paris (2015), where the Paris Agreement was adopted, to 2018 where the rules on implementing Paris were approved, and to Madrid (2019).

The two main authors took part in all the COPs analysed except the 2019 COP. The book thus provides a unique ringside view of the crucial negotiations and their results at the UNFCCC as the different countries and their groups grappled with the details on how to save the world, and who should take what actions.

This brief account will be useful, even indispensable, for policy-makers, researchers, civil society activists and all those interested in the climate change issue.

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Email twon@twonetwork.org for further information, or visit

<https://www.twn.my/title2/books/Clash%20of%20climate%20change%20paradigms.htm>

Politicizing COVID pandemic is “utterly reprehensible” – UN rights chief

The UN’s top rights official has denounced politicization of the COVID-19 outbreak, stressing instead the need for the recovery process to uphold human rights, which she described as a “vaccine” against the socioeconomic ills exposed by the pandemic.

by Kanaga Raja

GENEVA: The United Nations High Commissioner for Human Rights, Michelle Bachelet, on 9 December said it was astounding that even to this day some political leaders were still playing down the impact of the COVID-19 pandemic, disparaging the use of simple measures such as wearing masks and avoiding large gatherings.

“A few political figures are even still talking casually of ‘herd immunity’, as if the loss of hundreds of thousands of lives is a cost that can be easily borne for the sake of the greater good. Politicizing a pandemic in this way is beyond irresponsible – it is utterly reprehensible,” she said.

The High Commissioner was speaking at a hybrid press conference on the eve of Human Rights Day, which is celebrated annually on 10 December.

Reflecting on the events of this year, Bachelet said “2020 is a year none of us will ever forget. A terrible, devastating year that has scarred so many of us, in so many ways.”

She noted that at least 67 million people were infected, and 1.6 million dead, in a pandemic that is far from over. This has had a devastating impact on countries’ economies and on employment, income, education, health and food supply for hundreds of millions of people, and has been a massive setback to development, to efforts to alleviate poverty and to raise the status of women and girls.

“2020 has taken its toll not only across all regions and virtually all countries, but also on the full range of our human rights, be they economic, social, cultural, civil or political,” said Bachelet.

“COVID-19 has zeroed in on the fissures and fragilities in our societies, exposing all our failures to invest in building fair and equitable societies. It has

shown the weakness of systems that have failed to place a central focus on upholding human rights.”

The human rights “vaccine”

Noting that recent weeks have seen extraordinary progress in vaccine development, she said that this is testimony to the ingenuity and determination of humans in a time of crisis. “But vaccines alone cannot resolve the pandemic, or heal the damage it has caused,” she added. States need not only to distribute these vaccines equitably all over the world, they need to rebuild economies, repair the damage done by the pandemic, and address the gaps that it has exposed.

In this context, the High Commissioner pointed to three very different possible futures: we can emerge from this crisis in an even worse state than when it began – and be even less well prepared for the next shock to our systems; we can struggle mightily to get back to normal – but normal is what brought us to where we are today; or we can recover better.

“The medical vaccines that are being developed will hopefully eventually deliver us from COVID-19, albeit not for many months yet. But they will not prevent or cure the socioeconomic ravages that have resulted from the pandemic, and aided its spread,” she cautioned.

“But there is a vaccine to hunger, poverty, inequality, and possibly – if it is taken seriously – to climate change, as well as to many of the other ills that face humanity. It is a vaccine we developed in the wake of previous massive global shocks, including pandemics, financial crises and two World Wars.”

The name of that vaccine is human rights, Bachelet said, adding that its core

ingredients are embedded in the Universal Declaration of Human Rights (whose anniversary is celebrated on Human Rights Day).

The Universal Declaration is made actionable through the obligations that almost all states have undertaken by ratifying one or both of the International Covenants (on Civil and Political Rights, and on Economic, Social and Cultural Rights) spanning all five areas of human rights, she said.

The Universal Declaration also gave birth to other important international treaties to better protect the rights of specific groups such as children, women, people with disabilities and migrant workers; and ones aiming to tackle forms of discrimination which lead to the greater inequalities, poverty and lack of development that have fed and fertilized the socioeconomic devastation caused by COVID-19.

“COVID-19 has shone a stark spotlight on our failure to uphold those rights to the best of our ability, not just because we couldn’t, but because we neglected to – or chose not to,” said the rights chief.

“The failure of many countries to invest sufficiently in universal and primary healthcare, in accordance with the right to health, has been exposed as extremely short-sighted. These vital preventive measures are costly, but nothing like as costly as failing to invest in them has proved to be.”

Many governments failed to act quickly or decisively enough to halt the spread of COVID-19. Others refused to take it seriously, or were not fully transparent about its spread, said Bachelet.

“Astoundingly, even to this day, some political leaders are still playing down its impact, disparaging the use of simple measures such as wearing masks and avoiding large gatherings,” she added.

“A few political figures are even still talking casually of ‘herd immunity’, as if the loss of hundreds of thousands of lives is a cost that can be easily borne for the sake of the greater good. Politicizing a pandemic in this way is beyond irresponsible – it is utterly reprehensible,” she said.

“Worse still, rather than bringing us together, the response to the pandemic has in some places led to further division. Scientific evidence and processes have been discounted, and conspiracy theories and disinformation have been sown and allowed – or encouraged – to thrive.

“These actions have plunged a knife into the heart of that most precious commodity, trust. Trust between nations, and trust within nations. Trust in government, trust in scientific facts, trust in vaccines, trust in the future,” she said.

“If we are to bring about a better world in the wake of this calamity, as our ancestors undoubtedly did in the wake of World War II, we have to rebuild that trust in each other,” she added.

Inequality and discrimination

“It has been shocking, but sadly not at all surprising,” said Bachelet, “to see the disproportionate toll of COVID-19 on individuals and groups who are marginalized and suffer discrimination – in particular people of African descent, those from ethnic, national or religious minorities, and indigenous peoples.” This has been the case in some of the world’s richest countries, where the mortality rate of some racial and ethnic minorities has been up to three times that of the overall population.

The High Commissioner pointed out that when COVID-19 hit, members of discriminated groups and indigenous peoples were over-exposed to contagion because of their low-paid and precarious work in specific industries. “Many of the people we suddenly started to recognize and refer to as essential – health care workers, cleaners, transport workers, shop employees – come from such minorities.”

They were also under-protected because of limited access to healthcare and social protections, such as sick leave and unemployment or furlough pay. They were less able to isolate themselves once infected, due to inadequate living conditions, limited access to sanitation and the inability to work from home. This meant the virus could spread much more easily within their communities, and from those communities back into wider society.

The High Commissioner said that over the past 11 months, the poor have become poorer, and those suffering systemic discrimination have fared worst of all.

She said children in homes with limited or no internet access or computer equipment have fallen behind in their education, or dropped out of it altogether, with girls especially badly affected.

“Had adequate social and economic protections been in place for a much higher

proportion of the world’s population, in poor countries and in rich ones – had we applied the human rights vaccine – we would not be in such a bad state as we are today,” said Bachelet.

COVID-19 has very clearly demonstrated that inequalities and discrimination not only harm the individuals who are directly affected and unfairly impacted, they create shockwaves that ripple across the whole of society, she added.

Bachelet said this was shown most graphically when the coronavirus ripped its way through shockingly ill-prepared and under-equipped institutions such as care homes for older people and people with disabilities, orphanages, migrant dormitories and prisons.

“Had adequate social and economic protections been in place for a much higher proportion of the world's population, in poor countries and in rich ones – had we applied the human rights vaccine – we would not be in such a bad state as we are today.”

Those who were most critical to saving lives were themselves inexcusably put at risk, with shortages of masks and protective clothing as the pandemic surged through the wards. She noted that health workers are only some 2-3% of national populations, yet they comprise around 14% of COVID cases reported to the World Health Organization (WHO).

The High Commissioner said that the impact on women has been particularly devastating, due to the horrendous increase in domestic violence all across the world, and because a large proportion of women work in the informal sector and in healthcare. “And because many were left with no choice but to withdraw from the labour market in order to care for children no longer able to go to school, and for older people and the sick.” In some areas, women’s rights risk being set back decades, including through more limited

access to sexual and reproductive rights, she said.

“If we are to recover better, women will need to play a much greater role in decision-making and priority-setting. It is no coincidence that in a world where so few countries have women leaders, several of the countries viewed as having handled the pandemic most effectively were in fact led by women.”

Bachelet said that discrimination also lies at the heart of another of 2020’s defining features, when racial injustice and police brutality were brought sharply into focus by the killing of George Floyd and the worldwide protests that followed. “In many countries, we saw a burgeoning realization of persistent racial injustice and systemic racism, raising unresolved histories of racist oppression, and demanding far-reaching structural changes.”

In countries in conflict, COVID has added an additional layer to already multifaceted human rights calamities. In this context, the High Commissioner cited the example of Yemen, where “a perfect storm of five years of conflict and violations, disease, blockades, and shortage of humanitarian funding, set against an existing backdrop of poverty, poor governance and lack of development, is pushing the country remorselessly towards full-scale famine.” There has been no shortage of warnings about what will happen in Yemen in the coming months, but a distracted world is doing little to prevent this very preventable disaster, she said.

She also said rights to free expression, to assemble and to participate in public life have been battered during the pandemic. She said the contribution of civil society to surviving the pandemic and recovering better once it is over will be absolutely vital, and the curtailing of civil society’s contributions is one of the surest ways of undermining that recovery, by removing one of the key remedies.

Recovering better

“The pandemic has left us exposed, vulnerable, and weakened. Yet, in its devastation, it has also provided clear insights on how we can turn disaster into an opportunity to reset our priorities and improve our prospects for a better future,” Bachelet said.

“Even with stretched resources, the

main ingredient that we need to build that future is political will. The will to put our money where it is most needed – not wanted, needed.”

She added that there is a need to address inequality, including with tax reforms that could help fund major socioeconomic improvements. Similarly, richer countries need to help poorer countries survive this crisis and recover better.

“Repairing the frayed system of multilateralism will be essential to manage the recovery. The work must begin at

home, but leaders in powerful countries need to once again recognize that, more than ever, our world can only meet global challenges through global cooperation,” she said.

“Narrow nationalistic responses will simply undermine collective recovery. The first test of this will be our ability to ensure that new COVID vaccines and tools reach everyone who needs them. The pandemic has highlighted over and over again that no one is safe until everyone is safe,” Bachelet emphasized.

“Will we seize this moment to devise ways to recover better? Will we properly apply the human rights vaccine that can help us build more resilient, prosperous and inclusive societies? Will we take the immediate necessary steps to combat the biggest existential threat of all, climate change?” the High Commissioner asked.

“Let’s hope so. Because if we do not, especially with regard to climate change, 2020 will simply be the first step on the road to further calamity. We have been warned.” (SUNS9252)

Battles in the WTO

Negotiations and Outcomes of the WTO Ministerial Conferences

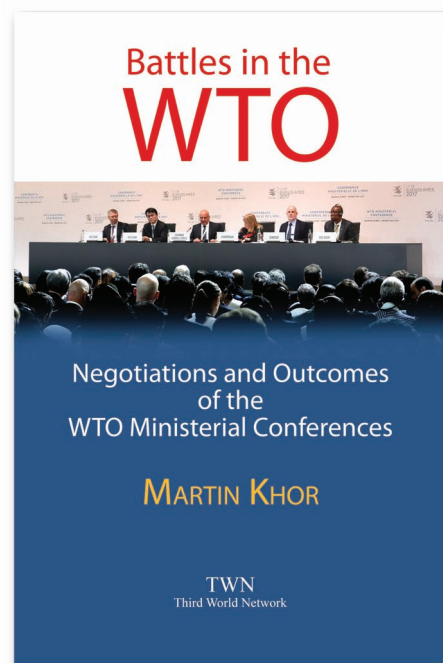
By Martin Khor

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

Can a pharma company change?

It is profit, not altruism, which motivates COVID-19 vaccine development by the drug companies, writes *Joel Lexchin*.

Health Canada announced its approval of Pfizer's COVID-19 vaccine on 9 December. Earlier, the news that the same vaccine was on the way in the United Kingdom – and that others are not far behind – was a relief to people all over the world, or at least those in developed countries that can afford the vaccine.

The arrival of the vaccine also seems to have boosted public approval for the pharmaceutical industry. Globally, the industry's "trust and like score" grew to over 68% of people surveyed in 2020 from 65% in 2018.

The bump in the industry's score was probably helped by the September joint pledge from nine companies that they would "stand with science" and not try to get a vaccine approved until it had been thoroughly tested for efficacy and safety. This statement was widely seen as the companies standing up to US President Donald Trump, who was making promises about an "October surprise" in a bid to enhance his re-election chances.

Can a drug company change? The evidence is not clear-cut.

The AstraZeneca vaccine is a case in point. The company has promised not to make a profit from the vaccine during the pandemic and is going to sell it at \$3 to \$4 per dose, a price that is one-fifth to one-tenth the cost of the other leading vaccine contenders from Pfizer, Moderna and Johnson & Johnson.

The company is also making deals with Gavi, the Vaccine Alliance, and has a licensing agreement with Serum Institute of India to supply low- and middle-income countries. According to the company's CEO Pascal Soriot, "We want to cover the whole world so everyone can get access to this vaccine."

At the same time, when there was a possible safety problem in September and AstraZeneca's clinical trials had to be temporarily stopped, the company disclosed the information on a conference call with JP Morgan clients, but didn't make the same information public.

AstraZeneca has also reserved the right to declare when the pandemic is

over, which could be as early as July 2021 according to a document seen by the *Financial Times*. Presumably at that time the price will go up, although Soriot has not disclosed what that price will be.

Intellectual property

South Africa and India are calling on the World Trade Organization to temporarily waive intellectual property rights related to COVID-19 products and treatments. The aim is to be sure that medicines, vaccines and other technologies needed to control the pandemic can be made available to all. The pharmaceutical industry is opposed to this proposal.

Companies argue that they are already taking voluntary actions that make this move unnecessary. Moderna is not going to enforce its COVID-19-related patents against other companies "while the pandemic continues," and is willing to license its intellectual property for COVID-19 vaccines for the post-pandemic period.

A company statement said, "We feel a special obligation under the current circumstances to use our resources to bring this pandemic to an end as quickly as possible." But as Ron Labonte and Mira Johri have written in *The Conversation*, this is a one-time deal and has "the aura of charity rather than of obligation."

Others opposed to the waiver argue that it would be much quicker to pressure companies to allow non-exclusive licences and technology transfer of their products. But the AstraZeneca agreement with India's Serum Institute is only a limited success. The deal lacks transparency about costs, while Pfizer has not shown any sign of licensing or transferring the technology needed to manufacture its patented products. Pfizer's reply to this criticism is that "a one-size-fits-all model disregards the specific circumstances of each situation, each product and each country."

So far, no pharmaceutical company has contributed to the COVID-19 Technology Access Pool, an initiative backed by the

World Health Organization and endorsed by 40 countries that encourages the voluntary donation of COVID-19 health technology-related knowledge, intellectual property and data. The aim of C-TAP is to ensure all populations around the world have access to affordable health products as soon they need them.

Back in May when C-TAP was announced, Pfizer CEO Albert Bourla said, "At this point in time, I think it's nonsense, and ... it's also dangerous," a remark echoed by AstraZeneca's Soriot, who maintained that intellectual property is "a fundamental part of our industry and if you don't protect IP, then essentially, there is no incentive for anybody to innovate."

Private profits, public partners

Both CEOs have reaped major financial rewards during the pandemic. Between April and August, AstraZeneca stock and options owned by Soriot increased by nearly \$15 million in value. The day after Pfizer announced promising interim results about its vaccine, Bourla sold over 130,000 shares of Pfizer stock worth \$5.6 million as part of a regularly scheduled plan to periodically sell some of his Pfizer shares.

Finally, it's important to remember that the drug companies had public partners that provided large amounts of money to accelerate the development of vaccines.

Moderna received \$955 million from the Biomedical Advanced Research and Development Authority and the US government's Operation Warp Speed initiative. In addition, Moderna inked a deal with the US government worth \$1.5 billion for 100 million doses of its vaccine should it be successful.

Even Pfizer, which did not directly take money from the US government, had a contract worth \$1.95 billion to manufacture 100 million doses of its product if it is effective.

In contrast to Moderna's earlier altruistic pronouncement, its CEO Stephane Bancel told investors that "Moderna retains worldwide rights to develop and commercialize [its vaccine] mRNA-1273. Without a corporate partner, Moderna will realize all the profits from our COVID-19 vaccine.... We should have a unique cash position at the end of 2021."

Despite the injection of money from the US government, the government

has no say in Moderna's manufacturing programme.

We should applaud drug companies for developing multiple vaccines in record time, but let's not be under any illusion about whether a drug company can

change. In the end, it is profits that are motivating them.

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Urgently needed deficit financing no excuse for more fiscal abuse

Fiscal policy implementation during the COVID-19 crisis must promote relief, recovery and development while at the same time guarding against irresponsible spending.

by Jomo Kwame Sundaram and Anis Chowdhury

Fiscal and monetary measures needed to fight the economic downturn that is largely due to COVID-19 policy responses, require more government accountability and discipline to minimize abuse.

Such measures should ensure relief for the vulnerable, prevent recessions from becoming depressions, and restore progress. They should help the most helpless, especially those in the informal sector and casual employment. Efforts should also seek to accelerate structural transformation towards the Sustainable Development Goals (SDGs). Progress was already falling behind before the pandemic, e.g., on mitigating global warming.

The pandemic and policy responses have created a most unusual situation, demanding extraordinary policy responses to mitigate threats to livelihoods and incomes. Bold initiatives are needed to overcome obstacles to sustainable development.

Unconventional solutions need to be considered as the conventional wisdom is part of the problem, especially since the neoliberal counter-revolution against Keynesian and development economics four decades ago.

In recent decades, counter-cyclical fiscal policies over business cycles have been replaced by annually "balanced budgets" and "fiscal consolidation". This has involved spending cuts for public, including social, services, and social

protection more broadly.

Taxation has become more regressive, with lower direct tax rates on wealth as well as corporate and personal income, as indirect taxation, mainly on consumption, has grown. Such tax reforms and regressive government spending have worsened inequality.

Deficit financing inflationary?

Publics often presume that governments tax first in order to spend. In practice, they usually spend first, and then tax. Government spending typically requires more borrowing and debt, traditionally by selling bonds and other securities, including to the central bank. Selling government treasury bonds to the central bank increases money supply, unless the monetary authority correspondingly reduces its other liabilities.

Neoliberal critics insist that increasing money supply, popularly referred to by the media as "printing money", must inevitably worsen inflation.

However, there is overwhelming empirical evidence to the contrary as the US Federal Reserve, the European Central Bank, the Bank of England and the Bank of Japan greatly increased money supply over the last decade. They mainly did so by buying private securities and getting commercial banks to lend more at lower interest rates.

As such unconventional monetary

policies, including "quantitative easing" (QE), in the last decade did not raise prices, there is no reason to presume that central banks buying treasury bonds – to pay for relief, recovery and building a better future – will be inflationary.

Deficit spending ineffective?

Governments can also borrow from the public, e.g., by selling bonds to them. But according to neoliberal beliefs, borrowing from the public will raise the interest rate, "crowding out" private borrowers who cannot afford the higher "costs of borrowing". Hence, they claim, investments will fall, slowing growth.

But for Keynesians, government spending is not inflationary when economic resources are not fully employed or utilized, i.e., as long as there is idle excess capacity, e.g., unemployment. Keynesians also reject the neoliberal claim that public investment will "crowd out" such private spending.

Keynesians stress that economic stagnation discourages private investment. By boosting demand and sales, government spending increases private profits and investment. Declining private spending or demand thus requires government spending to boost aggregate demand. Government spending on infrastructure, health and education also improves productivity, and hence profitability, offsetting higher borrowing costs. Thus, government spending serves to "crowd in", not "crowd out", private investment.

Incoherent, unsupported objections

The "Ricardian equivalence" objection is very different, claiming that when governments borrow, people spend less, in anticipation of higher taxes. This supposedly undermines the intent of greater government spending to raise aggregate demand. But again, there is no

strong supporting evidence for this effect.

This argument is not only quite different from the earlier “crowding out” and inflation objections, but also implies that the three neoliberal arguments against deficit financing are mutually contradictory and cannot be coherently sustained.

In contrast, the International Monetary Fund (IMF) found that “debt-financed projects could have large output effects without increasing the debt-to-GDP ratio, if clearly identified infrastructure needs are met through efficient investment”, accelerating recovery from the global financial crisis.

Similarly, in response to the pandemic-induced recessions, the IMF argues that “increasing public investment ... could help revive economic activity from the sharpest and deepest global economic collapse in contemporary history”.

“Sound finance” vs “functional finance”

Unfortunately, expansionary fiscal policies are often abused by “short-termist” governments of the day little concerned about the long- and even medium-term consequences of increased spending, borrowing and debt.

In response, neoliberals invoke ostensible “sound finance” principles. Sound finance seems desirable when spending abuse, wastage and leakages are widespread. However, it has become a pretext for dogmatically opposing bold fiscal measures, however much needed.

Neoliberals want fiscal rules to straightjacket governments, obliging the authorities to balance budgets annually

or minimize fiscal deficits. Many advocate independent fiscal boards, akin to politically unaccountable “independent” central banks, ostensibly to minimize political influence on government budgetary decisions.

Even when fiscal rules or boards allow some flexibility in times of crisis, or in response to severe shocks, biases towards “fiscal consolidation” and pro-cyclicality run deep, undermining development efforts. Hence, fiscal rules typically hinder rather than help development.

Instead, “functional finance”, proposed by Abba Lerner to mitigate prejudice against fiscal policy activism, is needed. Government spending and taxation policy should instead be consistent with counter-cyclical and developmental fiscal needs.

This was recognized by the Development Committee of the World Bank and IMF in *Fiscal Policy for Growth and Development: An Interim Report*, which observed: “The problem of fiscal policy design is a reflection of the choice of the fiscal deficit as the policy target. The fiscal deficit is a useful indicator ... but it offers little indication of longer term effects on government assets or on economic growth ... There is clearly a need for fiscal policy to incorporate ... the likely impact of the level and composition of expenditure and taxation on long-term growth while also maintaining a focus on indicators essential for economic stabilization.”

Oppose abuse, not more spending

Poorly accountable governments often take advantage of real, exaggerated or imagined crises to pursue macroeconomic

policies to secure regime survival and to benefit politically well-connected cronies and financial supporters.

Undoubtedly, much better governance, transparency and accountability are needed to minimize the likely immediate and longer-term harm due to “leakages” and abuses associated with increased borrowing and spending. There has to be much greater discipline and stricter scrutiny of government borrowings, spending and debt, as well as of government-guaranteed liabilities. Consistently counter-cyclical fiscal policy over the course of business cycles provides useful guidance.

Publics and their political representatives, especially in developing countries, must develop more effective modes of disciplining fiscal policy conduct to ensure space for responsible counter-cyclical and developmental spending. However, that task should not block the efforts urgently needed to finance relief, recovery and sustainable development.

Central banks must support governments’ fiscal stimulus packages for relief, recovery and building a better future. This requires complementary fiscal and monetary policies working in tandem for sustainable development. (IPS)

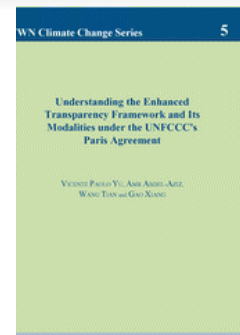
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