

# WTO General Council talks beset by differences

At its final session of the year on 16-18 December, the WTO's governing General Council addressed a raft of issues ranging from food aid and the fight against COVID-19 to electronic commerce and WTO reform. The discussions yielded no consensus on many of the proposals advanced in these areas, laying bare deep-seated divisions among the membership.

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### THIRD WORLD ECONOMICS

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# TRIPS waiver galvanizes members at WTO and outside to combat COVID

Advocates of a suspension of COVID-19-related intellectual property rights have continued to press their case at the WTO, urging all member states to “rise to the collective call of action” and approve a waiver that is “so crucial for saving people’s lives”.

by D. Ravi Kanth

GENEVA: Although some 90 countries at the World Trade Organization (WTO) have supported the proposed temporary TRIPS waiver to combat the COVID-19 pandemic, around a dozen opponents led by Japan, the European Union, Canada and the United States have continued to adopt “diversionary” tactics to stall the progress of the waiver.

They have now changed their arguments from outright opposition to the proposed waiver to supporting the initiatives launched by Gavi, the Vaccine Alliance and the World Health Organization (WHO) as being adequate in tackling the pandemic, trade envoys told the *South-North Development Monitor (SUNS)*.

India and South Africa tabled a proposal in October – which has since been co-sponsored by Kenya, Eswatini, Mozambique, Pakistan and Bolivia – for a waiver from certain provisions of the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) for the purpose of prevention, containment and treatment of COVID-19. The waiver would suspend implementation of the Agreement’s provisions on patents, copyrights, undisclosed information and industrial designs for a defined period, opening the door to more research and development (R&D) as well as production of COVID-19 medical products, including diagnostic kits, medicines for treatment, vaccines and also personal protective gear.

At the WTO’s virtual General Council (GC) meeting on 18 December, the proponents of the TRIPS waiver answered in full measure the questions raised by the opponents about the waiver and its central purpose.

Yet, the opponents continued to stall the passage of the waiver by maintaining that Gavi’s COVAX facility, and WHO’s Access to COVID-19 Tools Accelerator

(ACT-Accelerator) and COVID-19 Technology Access Pool (C-TAP) are sufficient, despite grave doubts being expressed on the implementation of these initiatives and their likely failure to address the pandemic, said a participant who asked not to be quoted.

The opponents have also pointed to existing flexibilities provided under the TRIPS Agreement, such as compulsory licensing, but refused to acknowledge the difficulties that developing countries have faced in the past on the use of compulsory licences, and also the disparities that have emerged from so-called “vaccine nationalism,” the participant said.

At the GC meeting, the chair of the WTO’s TRIPS Council, Ambassador Xolelwa Mlumbi-Peter from South Africa, presented a status report on the discussions over the waiver proposal, according to participants who spoke to *SUNS*. She said delegations have “highlighted the common goal of providing access to high-quality, safe, efficacious and affordable vaccines and medicines for all.” She added that “delegations exchanged views, sought clarifications and provided information on the waiver request but could not reach consensus”.

The chair informed the GC that members “indicated a need for further discussions on the waiver request and views exchanged by delegations.”

“This means that the TRIPS Council has not yet completed its consideration of the waiver request and may not be able to do so within the 90 days stipulated in Article IX:3 of the Marrakesh Agreement,” the chair said. “Therefore, the TRIPS Council will continue its consideration of the waiver request and report back to the General Council as stipulated in Article IX:3 of the Marrakesh Agreement.”

## Need for an effective pandemic response

During the 18 December GC discussions, South Africa's chief TRIPS negotiator Mustaqeem Da Gama spoke about the difficulties faced in making use of the so-called "paragraph 6 system", a special compulsory licensing system for countries lacking domestic manufacturing capacity. The system, established under Article 31*bis* of the TRIPS Agreement, has only been used once since its inception.

Da Gama said the mechanism "is overly cumbersome with too many conditionalities and procedural prescripts to be useful to members with insufficient or no manufacturing capacity in the pharmaceutical sector." It "is too time-consuming and overly burdensome irrespective of the level of development of a country, [and] this has been highlighted by COVID-19".

In the face of the difficulties in availing of the paragraph 6 system, the TRIPS waiver was proposed "to ensure that members can better address COVID-19 through suspension of certain provisions of the TRIPS Agreement", said Da Gama.

"An effective response to the COVID-19 pandemic requires rapid access to affordable medical products including diagnostic kits, medical masks, other personal protective equipment and ventilators, as well as vaccines and medicines for the prevention and treatment of patients in dire need," he emphasized.

"Our joint proposal," said the South African envoy, "requests a waiver to be granted to all WTO members so that they do not have to implement, apply or enforce certain obligations related to COVID-19 products and technologies under Section 1 (copyrights and related rights), 4 (industrial design), 5 (patents) and 7 (protection of undisclosed information) of Part II of the TRIPS Agreement." He emphasized that the proposed waiver "would be applicable only to COVID-19".

He noted that in the previous TRIPS Council meeting, the proponents had explained the underlying rationale for the proposal against the backdrop of "exceptional circumstance that justifies our request for a waiver decision and sets out clear terms and conditions governing the application of the waiver."

In requesting the waiver, said Da Gama, the proponents are "not questioning the role of IP [intellectual property] in

promoting R&D and innovation; our view is that the greatest achievement would be to ensure all countries enjoy the benefits of science equitably, especially in a pandemic such as this."

"The waiver will ensure that vaccines can be secured, that lives can be saved, and a truly global economic recovery accelerated," he argued.

Urging members to support the waiver proposal, Da Gama called for the approval of the waiver request as soon as possible, suggesting that the proponents will conclude their "discussions in the TRIPS Council and wish to return to the General Council for a decision on an urgent basis."

"The WTO cannot afford to be unresponsive at a time of an unprecedented global crisis, when clearly, IP has proven to be a barrier to timely, affordable and equitable access," the South African official emphasized.

"A decision passing this waiver will send a positive message to the world and will indicate that the WTO is committed not only to keep channels of trade open, but also to take decisive actions to save human lives," he said.

He referred to recent studies which showed that equitable access to all tools available for the prevention, containment and treatment of COVID-19, including vaccines, will go a long way in reversing the current loss of global output assessed at \$3.4 trillion annually.

Expressing concern over "self-interest," Da Gama said "rich countries have already bought 90% of likely vaccine candidates, enough to immunize their populations several times over! A similar scenario has been observed with therapeutics as well."

As regards initiatives such as COVAX, Da Gama said that "voluntary multilateral approaches are welcome but fall short of providing universal access needed to address COVID-19." Further, funding issues for implementing the COVAX facility and the ACT-A have now emerged, putting at risk even the modest coverage that such initiatives can deliver, he added.

Da Gama said "funded countries will receive doses to vaccinate only up to 20% of their population." Gavi's decision to secure two billion doses by the end of 2021 will not ensure immunity of the world population.

On C-TAP, to which pharmaceutical companies can voluntarily contribute their IP, trade secrets and knowhow, Da Gama said only "40 countries have

pledged support and none of the pharma companies developing the vaccines have joined."

"The waiver does not undermine but complements the voluntary mechanisms given the limitations of the TRIPS flexibilities," Da Gama said, pointing out that "companies have entered into bilateral agreements for the production of vaccines, yet details of such deals are not public, while restrictive terms limit supply and access."

He reminded the opponents that since "many of these vaccines and therapeutics have benefited from state funding, states should attach strings to how companies can deal with IP rights embedded in such products."

"Any vaccines and therapeutics developed through or benefitting from state funding should be considered public goods," Da Gama argued.

Noting that the COVID-19 pandemic is costing the global economy to the tune of \$375 billion every month, Da Gama said "passing this waiver will not only be a shot in the arm of every patient but will also be a shot in the arm of the world economy so that all of us can resume normalcy in the shortest possible time by reopening the world economy."

## "A test of our humanity"

In his intervention at the GC meeting, India's trade envoy Brajendra Navnit said "more than half of WTO membership" have expressed support for the waiver, as have various organizations and multilateral agencies. "Rarely has an issue being dealt with in WTO, united so many divergent groups of society across developed, developing and least developed countries in delivering a clear message," he said.

Navnit said that "while discovering vaccines was a test of science, making them accessible and affordable is going to be a test of our humanity."

"Now that we can see the silver lining in terms of emerging successful vaccines, it is in every member's interest, economic or otherwise, that this pandemic is brought under control as early as possible by providing an equitable, affordable and timely access to vaccines for all," he stressed.

"All of us witnessed the shortages of essential COVID-19 items, like PPE kits, gloves, sanitizers etc. at the start of the pandemic," he said, but "the world was

able to upscale the manufacturing of these items by pooling resources and production capacities." At present, "we need the same pooling of IP rights and knowhow for scaling up the manufacturing of vaccines and treatments, which unfortunately has not been forthcoming, necessitating the need for the waiver."

He emphasized that the waiver proposal "is not a proposal only for India but for the global community at large." Even if India has the required manufacturing capacity and the national legislation to cater to its needs, he said, "in a global pandemic, where every country is affected, we need a global solution."

Navnit said the "global community should not be looking inward at this juncture," commenting that members "repeatedly heard that no one is safe until everyone is safe." Further, the "most optimistic scenarios today cannot assure access to vaccines and therapeutics for all, even by the end of 2021".

The WTO, the Indian envoy said, "has responsibility to ensure that any of its agreements including TRIPS do not become a barrier to accessing vaccines, treatments or technologies in the global response to COVID-19."

"Our waiver proposal," said Navnit, "is a targeted and proportionate response to COVID-19, as it seeks waiver for a limited period from four specific sections of the TRIPS Agreement." The waiver "will ensure that the intellectual property rights do not restrict rapid scaling up of manufacturing of COVID-19 products".

While welcoming the global cooperation initiatives including COVAX and ACT-A, the Indian envoy argued that "these initiatives are inadequate to meet the massive global needs of the 7.8 billion people of this world."

He added that "while the proponents encourage the use of TRIPS flexibilities, the same are time-consuming and cumbersome to implement," and the use of compulsory licensing is not a viable option in the context of the COVID-19 pandemic. He narrated the difficulties arising from the use of compulsory licences, as these licences are issued "on a country-by-country, case-by-case and product-by-product basis, where every jurisdiction with IP would have to issue separate compulsory licence, practically making collaboration among countries extremely onerous."

Navnit said that in the TRIPS Council discussions, the proponents of the waiver

have "provided substantive answers including evidence-based answers to the questions raised by some members, with the spirit of constructive engagement."

He said it is "important to keep in mind that how the WTO membership chooses to respond to this pandemic today will be remembered for years to come." He underlined the need for "time-bound action now" to "prove to the world that WTO can indeed deliver in times of crisis."

He said that "history is being written today" and "it is up to the members to choose which side of history they would like to be." He hoped that "all WTO members will rise to the collective call of action and can achieve consensus for the waiver that is so crucial for saving people's lives."

Pakistan, another of the proponents of the TRIPS waiver, urged members to put

human lives before the IP system, arguing that Big Pharma's profits and IP rights should not trump human lives.

Around 30 developing countries, including Turkey, Indonesia, Tunisia, Mongolia and Mozambique, intervened to support the waiver proposal.

But the outliers such as Japan, the EU and Canada among others said they are adhering to the COVAX facility and the TRIPS Agreement, suggesting that there is no need for the waiver.

In conclusion, the waiver proposal has galvanized the developing countries at the WTO and international civil society groups to a fight to the finish to ensure that there is a credible and effective multilateral mechanism at the WTO for fighting the COVID-19 pandemic, said trade envoys who asked not to be quoted. (SUNS9259)

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## No consensus for proposal on export restrictions

The WTO General Council could not agree to ban export curbs on purchases by the World Food Programme, due to unresolved concerns over the food security impact on supplying countries.

by D. Ravi Kanth

GENEVA: Singapore and other supporters of a proposal on removing export restrictions on the supply of foodstuff to the World Food Programme (WFP) suffered a major setback at the WTO on 18 December, after they failed to answer questions raised by other members on the proposal.

Four developing countries – India, Pakistan, Tanzania and Botswana – refused to join the consensus on the proposed multilateral decision to help the WFP, as the proponents of the proposal chose not to answer their questions, trade envoys told the *South-North Development Monitor* (SUNS).

At the WTO General Council (GC) meeting on 18 December, the proponents led by Singapore expressed concern that their proposal was not agreed upon,

insisting that they would now issue a joint statement.

Singapore, which spearheaded the campaign for the GC decision, said history was being written today, and argued that the third revised draft proposal had taken into consideration all the points raised by some members, according to participants present at the GC meeting.

The third revised draft proposed that "the General Council, in view of the critical humanitarian support provided by the World Food Programme, made more urgent in light of the COVID-19 pandemic and other crises, decides as follows: Members shall not impose export prohibitions or restrictions on foodstuffs purchased for non-commercial humanitarian purposes by the World Food Programme."

The United States, the EU, Japan, Australia and several other countries called for the adoption of the proposal.

However, Singapore and Mexico, among others, failed to address specific questions raised by India about the linkages between the proposal and the Bali decision on public stockholding programmes for food security.

Mexico said it was unfortunate that the negotiating discussion had been leaked outside, which was a breach of confidentiality, said a participant who asked not to be quoted.

However, the issue of not imposing restrictions on procurement of foodstuffs by the WFP has been part of the Doha agriculture negotiations, and earlier, Singapore and Norway had raised the issue under the banner of transparency as part of the outcome on a permanent solution for public stockholding programmes for food security at the WTO's eleventh Ministerial Conference in Buenos Aires in

2017. Further, the "friend of the chair" for the Buenos Aires meeting, former Kenyan Ambassador Amina Mohamed, had included the item in the draft agriculture decision but the US had blocked it, causing the collapse of that meeting, said a South American participant.

In a hard-hitting statement, India protested the manner in which Singapore and the other proponents had "manufactured" the draft decision, pointing to "the effort made by other members during this week to arrive at consensus text incorporating food security aspect of supplying member, which unfortunately has not found acceptance from the main proponents."

The Indian trade envoy told Singapore that "when we speak about being on the right side of history with respect to access to medicines and the TRIPS waiver proposal, the closest example that we can think of on a similar scale for food security and eliminating hunger was the Bali

interim solution on public stockholding for food security purposes."

India asked whether the main co-sponsors of the draft decision, "with their avowed commitment to reaching SDG [Sustainable Development Goal] 2 and 'Zero Hunger'", were as committed to "delivering on the clear ministerial mandate to make the Bali interim solution on public stockholding into an effective and permanent solution by MC12 [the WTO's 12th Ministerial Conference, which is scheduled to take place next year]."

"That would be a defining test on how history judges the WTO when it comes to delivering on food security," India argued.

Pakistan said that the WFP issue had been raised for the past 10 or more years under different names. However, it was linked to other issues on food security, Pakistan said, stating that it could not join the consensus. (SUNS9259)

## Proposal on promoting "development and inclusivity" gathers momentum

The African countries, Cuba and India have put forward a proposal for inclusive, development-centred reform in the WTO.

by D. Ravi Kanth

GENEVA: A proposal by the African Group, Cuba and India on "strengthening the WTO to promote development and inclusivity" has gathered momentum at the WTO with support from many developing countries.

However, the United States and the European Union among others opposed the proposal on differing grounds in that they prefer plurilateral initiatives and the discontinuation of the consensus principle in decision making, trade envoys told the *South-North Development Monitor* (SUNS).

### Development orientation

At the WTO General Council (GC)

meeting on 17 December, the African Group, Cuba and India introduced their 10-page proposal, which calls for developmental orientation in WTO reforms to address the imminent challenges arising from the COVID-19 pandemic as well as the systemic crises created by some major developed countries.

"In the last two years, some Members have suggested a broad range of reforms at the WTO including a slate of new rules, even though existing mandates from the DDA [Doha Development Agenda] remain unaddressed," the proponents said. "WTO reform" does not mean accepting either inherited inequities or new proposals that would worsen imbalances, they emphasized, arguing that "reforms

must be premised on the principles of inclusivity and development and respond to the underlying causes of the current backlash against trade and the difficulties that developing Members continue to face vis-a-vis their industrialization challenges."

The proponents argued that "inclusivity would require, at a minimum, preserving consensus decisions in the WTO." They said the priorities for the reform at the WTO must include:

On the negotiating function of the WTO:

- Strengthening the multilateral character of the WTO. Critically, this must include the preservation of consensus decision-making and respecting Article X of the Marrakesh Agreement on amendments with regard to new rules.
- Addressing the unilateral and protectionist actions taken by some members.
- Reaffirming the principle of special and differential treatment, which is a treaty-embedded, non-negotiable right for all developing countries in the WTO; and promoting inclusive growth, widening spaces for states to pursue national development strategies

in the broad framework and principles of a rules-based system.

- Keeping development at the core through delivering on the long-promised development concerns, in particular the outstanding development issues of the DDA; as well as addressing the asymmetries in WTO agreements such as those on agriculture, subsidies, trade-related investment measures and the related GATT articles (Articles III and XI), intellectual property and other areas; continuing with the ongoing multilaterally mandated negotiations; and reinvigorating the discussions in the 1998 e-commerce work programme, particularly looking at the moratorium on customs duties on electronic transmissions and the issues of digital divide.

On the WTO's dispute settlement function:

- Restoring the Appellate Body and the two-tier dispute settlement system.

On the monitoring function of regular WTO bodies:

- Reaffirming existing commitments and not adding more obligations in the areas of transparency; specific trade concerns and the functioning of regular bodies. The WTO must also allow for different economic models rather than push for one form or another.

On COVID-19:

- Responding to the COVID-19 pandemic, including through introducing a moratorium on trade measures and providing sufficient flexibilities on intellectual property disciplines for developing countries. Such a moratorium will be in place for the duration of the pandemic for governmental action taken to directly respond to the pandemic. Unlike developed countries, developing countries without deep pockets must be more creative, including by using trade policy measures to provide medicines, diagnostics and health equipment, and to address the serious balance-of-payments crises many developing countries now find themselves in.
- To address COVID-19, developing countries should not be asked to relinquish their required trade policy space such as through the permanent liberalization of tariffs or an agreement to end the use of export restrictions.

### Balanced reform

The African Group, comprising more than 50 developing countries, said that the joint reform proposal seeks to “identify the issues that must be addressed if the WTO is to be strengthened in a balanced manner.”

It said that “in some areas, no change was required but simply a reinforcement of existing rules and architecture as some of the existing foundational WTO rules are currently being sought to be changed or adjusted.”

The African Group reiterated that “multilateral avenues, based on consensus, remain the most effective means to achieve inclusive development-oriented outcomes.”

Referring to imbalances in the Uruguay Round rules, which created problems even before the onset of the COVID-19 pandemic, as well as the unprecedented pandemic that exerted a “radical and abrupt effect on both supply and demand,” the African Group said the developing countries are “disproportionately affected.”

The African Group said “special and differential treatment (S&DT) remains an important part of the multilateral consensus reached previously,” adding that it is a treaty-embedded and non-negotiable right for all developing members.

Moreover, the Group said, the pursuit of S&DT does not mean that developing countries are seeking unlimited carve-outs from the multilateral trading system, as they have made a contribution to international trade commensurate with their level of development. The Marrakesh Agreement has recognized the contribution made by the developing countries in delivering on the wide mandate of the Uruguay Round, including significant measures of economic reform and autonomous trade liberalization.

Emphasizing that the developing countries need “policy space,” the African Group warned that “any unilateral action depriving developing Members including LDCs [least developed countries] of treaty-embedded rights would be inconsistent with Members’ obligations, and would in fact erode the foundation of the multilateral trading system which functions on the basis of being ‘rules-based’”.

The African Group also said “the long-awaited outstanding ‘development’ issues from the Doha Round continue to be

paramount and include implementation issues, cotton, public stockholding, special safeguard mechanism and agriculture domestic supports,” and that the development components in fisheries subsidies and e-commerce discussions under the 1998 work programme must be resolved.

In her intervention at the GC meeting, South Africa’s Ambassador to the WTO Xolelwa Mlumbi-Peter highlighted the following points focusing on strengthening the multilateral character of the WTO:

- the preservation of consensus decision-making and respecting Article X of the Marrakesh Agreement on amendments;
- addressing the unilateral and protectionist actions taken by some members;
- preserving policy tools to promote economic recovery, providing policy flexibility with a view to rebalancing global rules and national economic development imperatives, and ensuring that trade rules support production-led growth, jobs and structural transformation;
- reaffirming the principle of S&DT;
- keeping development at the core of the WTO through delivering on the long-promised development concerns, including reinvigorating the discussions in the 1998 e-commerce work programme, assessing the implications of the e-commerce moratorium and addressing the digital divide.

Mlumbi-Peter said “a functioning, independent and effective dispute settlement system is indispensable for preserving the rights and obligations of all WTO Members and for ensuring that the rules are enforced in a fair and even-handed manner.” She said “a sine qua non for strengthening the WTO system is the restoration of the Appellate Body,” stating that this is an urgent priority “since without such a system, the rationale for negotiating new rules or to undertake reforms remains questionable.”

Intervening on behalf of the African, Caribbean and Pacific (ACP) Group, Jamaica thanked the co-sponsors of the proposal for their “very insightful submission,” saying that “it sheds light on the myriad of issues confronting developing countries and that would have to be a part of our discussions on the future of S&DT and WTO reform.”

The ACP Group said the reform

proposal is “a good first step and an important effort to capture the relevant issues at stake that require reflection by all.”

“If we are serious about having a discussion on WTO reform and the future of S&DT, the agenda cannot be pre-determined by a small group of members, when the implications of reform affect and the rationale for reform is the business of all members,” the ACP Group said.

The Group said “the WTO is not an organization immune from democratization,” pointing out that the Group “continue to request an open, transparent and inclusive discussion on the rationale, parameters, scope and elements of reform.”

It said “we already have a number of papers on the table giving various perspectives on WTO reform and S&DT and more are being prepared”, adding that there are “important questions to reflect on as we move forward”. These questions include:

- How do we plan to bridge divergences on the issue of reform and S&DT in the WTO?
- Do we leave these issues to be handled in the current exclusive groups that lack representivity? If so, what implications will this have for the future of the WTO and the principles it is known to espouse?
- Are we guided by the unique circumstances of members of the WTO or are we pursuing narrow agendas?
- How do we ensure that previous Ministerial Decisions are streamlined into our discussions on reform?
- How do we ensure that reform accommodates unforeseen shocks to the trade and development of developing countries and LDCs, especially in light of the impact of the COVID-19 pandemic?
- And how do we ensure that our ministers are placed in a position to provide clear guidance on how we move forward with these issues at the next WTO Ministerial Conference?

The ACP Group cautioned that “the WTO can only be sustainable if the needs of all its members are taken into account.”

### **“Backward-looking and unhelpful”**

The US Ambassador to the WTO Dennis Shea said Washington disagrees with the vast majority of the proposal paper, describing it as “backward-

looking and unhelpful, and disconnected from where this organization and the international business community are today.”

Shea said “the heart of this paper continues to directly call into question whether Members share a common understanding that WTO rules, and the implementation of those rules, are helpful to development and economic growth”, as it maintains that “the framework of WTO rules is onerous, unfair, and anti-development.”

Also, the proponents reckon that S&DT is a means for self-declared developing countries to disconnect from various WTO rules, the US envoy argued, maintaining that “for Members who hold this view, the common rules of this house are rules for others – not themselves.”

“They want the opportunities that WTO membership offers, but they no longer want to contribute to creating those opportunities through the full implementation of existing WTO rules,” Shea said, calling on the proponents “to return to the premise that we believe in the rules, and in their full implementation.”

“Without this common understanding,

it is hard to understand how reform efforts can succeed,” he said.

The EU’s Ambassador to the WTO Joao Aguiar Machado said that while Brussels would agree that members should pursue their efforts in finding multilateral solutions, it urged members to constructively engage on WTO reforms on the “three areas of negotiating function of the WTO; the dispute settlement function; and the monitoring function of regular bodies”.

Aguiar Machado said that “without departing from the objective of advancing multilateral rulemaking, the EU is supportive of an open plurilateral track of negotiations with a view to preparing multilateral outcomes,” indicating ambiguously its preference for the plurilateral route.

He said that “developing countries should be allowed assistance and flexibilities when justified,” implying that S&DT has to be on a needs-based framework. He said “to grant open-ended block exemptions to two-thirds of the membership is no longer a viable model.” (SUNS9259)

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## EU-led initiative on trade and health suffers major setback

An EU-led plan to liberalize trade in medical products has received limited support at the WTO, with several members saying it does not address issues central to tackling the COVID-19 pandemic.

by *D. Ravi Kanth*

GENEVA: A trade and health initiative proposed by the European Union and the Ottawa Group of countries suffered a major setback at the WTO General Council on 17 December, after several developing countries as well as the United States argued that the proposal fails to address the health crisis arising from the COVID-19 pandemic.

The proposal covers “export restrictions, trade facilitation, technical regulations, tariffs, transparency and review”, and calls for the WTO to “enhance its cooperation with other relevant international

organizations, such as WHO, WCO, OECD as well as G20, given the context of the on-going evaluations of the global response to COVID-19.”

The EU Ambassador to the WTO Joao Aguiar Machado insisted that the proposed actions are “not intended to be prescriptive and do not cover the universe of possible measures that could support trade in essential medical goods,” suggesting that they “reflect emerging best practices and should provide sufficient flexibility to be adapted to differing national circumstances.”

Emphasizing that “multilateral outcomes generate the greatest possible common good,” the EU proposed a two-step process in the form of a joint statement of all members to be adopted in early 2021, followed by starting negotiations on “new WTO commitments, which, ideally, could be concluded at the 12th Ministerial Conference [which is scheduled to be held later in 2021].”

The EU said that some of the signatories to its proposal have “signalled an interest in exploring commitments relating to tariffs in the healthcare sector and liberalization of relevant logistics, distribution and transport services, among others.”

The Ottawa Group members include Canada, Australia, New Zealand, Switzerland, Korea and Norway among others.

### Members’ responses

Intervening in the discussion, the US challenged the proponents, saying that the latest Trade Monitoring Report by the WTO secretariat included the following assessments:

- i. “Members have generally expressed and followed a commitment to ensure that trade could flow freely during the pandemic.”
- ii. “Most of the COVID-19 related measures taken on goods since the outbreak of the pandemic were trade-facilitating.”
- iii. “In the services sectors heavily impacted by the pandemic, most of the 124 COVID-19 related measures adopted by WTO Members appeared to be trade-facilitating.”

Against this backdrop, the US Ambassador to the WTO Dennis Shea said, “it’s not clear what problem the co-sponsors aim to solve, nor how the proposed measures would solve that problem.”

The US called for “deeper reflection,” suggesting that “supply chain resiliency doesn’t seem to be about lowering tariffs, or increasing secretariat monitoring, or encouraging vague cooperation between the WTO and other IOs [international organizations].”

Amid the worsening COVID-19 pandemic, the US questioned “the prudence of asking Members to put new constraints on their rights under the WTO Agreement – not to mention on their duty – to undertake measures to protect human health and life.”

The US asserted that “WTO rules may not have been drafted with a pandemic at front of mind, but our initial observation is that the WTO Agreement seems fit for purpose.” It said that the balance of rights and obligations in the WTO rules, if adhered to by members, “will continue to provide stability and predictability as we navigate this very difficult period and, finally, recover.”

In its response to the proposal, India suggested that the “co-sponsors take concrete steps in ensuring that pharmaceutical companies who own the IP [intellectual property] rights and related know-how in C-TAP (COVID-19 Technology Access Pool) share [them] without any hurdles.”

*“The biggest constraint to combating COVID-19 is not trade but equitable and timely access to the vaccine and therapeutics to prevent, combat and treat COVID-19.”*

India’s WTO Ambassador Brajendra Navnit said while India encourages the use of TRIPS flexibilities and voluntary licensing initiatives, members need to recognize that these fall short of addressing the massive demand for therapeutics and vaccines.

South Africa’s deputy trade envoy Mustaqeem Da Gama cited an analysis by the WTO secretariat which shows that Germany, the US and Switzerland supply 35% of medical products, while China, Germany and the US export 40% of personal protective products. Further, “breathing apparatus, including respirators and ventilators, are supplied by a small number of members, notably, Singapore which has 18% market share, followed by the US with 16%, Netherlands 10% and China 10%.” Da Gama said this shows that “trade in the products to be liberalized is concentrated among a few players.”

While agreeing with the proponents that a global health crisis requires a coordinated global response for the common good, the South African trade negotiator argued that “the actions advanced by the proponents will not result in equitable outcomes in the long run.” Instead, “the effective global cooperation that will promote a common good is one that ensures that the treatment for COVID-19 is accessible and affordable to the world as a public good.”

Da Gama said “the WTO can start by ensuring that IP is not a barrier to this objective,” adding that “over-dependence of Africa on imports of medicinal and pharmaceutical products subjects African healthcare systems to serious vulnerabilities, which is further exacerbated by overwhelming social and economic consequences of COVID-19.”

He said that from past experience, “while in the middle of a health crisis, the critical success factors are speed, sharing knowledge and know-how as well as supporting global solutions that are equitable, inclusive and timely.”

He said that “discussions should rather focus on how the WTO can promote within its mandate, equitable access and sharing of vaccines, diagnostics, therapeutics and other technologies and medical products so as to ensure that no one is left behind.”

Effectively, members must focus on how to foster “cooperation and coordination to ramp up production and promote local manufacturing of essential medical supplies, devices, or technologies, including diagnostics, medicines, and vaccines – on reasonable and affordable terms.”

Expressing grave concern over the proponents’ goal to advance a “trade liberalization agenda in the midst of a crisis, when many countries are grappling with the effects of the crisis that has exposed the strategic vulnerabilities of many developing countries,” Da Gama stressed that “a one-size-fits-all approach is not suitable nor appropriate.” Ultimately, countries should decide what the best course of action should be, based on their needs, he said.

He said that if the EU and the co-sponsors are concerned with public health, they should support the TRIPS waiver proposal currently discussed by the TRIPS Council. “This is the most effective and practical mechanism to deal with COVID-19 expeditiously,” he maintained.

“The biggest constraint to combating

COVID-19 is not trade but equitable and timely access to the vaccine and therapeutics to prevent, combat and treat COVID-19," he said.

The South African official emphasized that sharing of information, technologies and know-how is critical in ramping up production and ensuring availability of medical products and vaccines to the world population of 7.8 billion. "For this to happen, the WTO must ensure that IP will not be a barrier by suspending certain provisions of the TRIPS Agreement for the prevention, combating and treatment of COVID-19," he concluded.

Indonesian Ambassador Syamsul Bahri Siregar said that the substantial problem governments face during these challenging times is the lack of global solidarity in ensuring "equitable, affordable and timely access" to essential medicines.

Pakistan and Fiji opposed the EU's joint proposal, saying that it simply fails to address the central problems arising from the COVID-19 pandemic.

Pakistan, which is a co-sponsor of the TRIPS waiver proposal, said the waiver could address the main problems arising from the pandemic.

While the EU failed to gain consensus on its proposal at the General Council meeting, Brussels and its partners will have another go to promote their proposal, said participants present at the meeting.

### Proposal on LDC graduation

Besides the EU-led proposal, the 17 December General Council meeting also discussed a proposal tabled by the group of least developed countries (LDCs). The proposal calls for "an effective procedure supporting the smooth transition of graduated LDCs towards their new status, through the gradual phasing out of LDC-specific trade-related support measures over a reasonable period of time."

The LDCs propose the following:

1. Support measures available to LDCs shall be extended to an LDC member for a period of 12 years after the entry into force of a decision of the UN General Assembly to exclude the member from the LDC category.
2. The support measures covered shall include:
  - i. All special and differential treatment measures and exemptions available to an LDC under existing and future WTO Agreements, Understandings, Ministerial, General Council and other

relevant Decisions;

- ii. All LDC-specific technical assistance and capacity-building programmes and facilities provided under the WTO system;
  - iii. Any other relevant measure in favour of LDCs.
3. If a decision of the UN General Assembly to exclude an LDC member from the LDC category enters into force during a transition period for LDCs provided under any existing or future WTO Agreements, Understandings, Ministerial, General Council or other relevant Decisions, the member shall be entitled to utilize the remaining period of delay provided for LDCs.
  4. Developed and developing countries granting unilateral trade preferences to LDCs shall establish procedures for extending and gradually phasing out their preferential market access scheme over a period of 12 years after the entry into force of a decision of the UN General Assembly to exclude a country from the LDC category.
  5. After the transition period provided for support measures, a graduated LDC member shall automatically benefit from the most favourable special and differential treatment granted to other developing-country members.

### Greater clarity sought

In response to the LDC proposal, the developed countries, led by the US, raised several questions.

The US trade envoy Dennis Shea called for more clarity from the LDC group about the "mechanics" of the 12-year extension for support measures. The US wanted to know whether the 12-year period overlaps with the nine-year graduation process at the UN, or whether it would begin after the nine-year graduation process.

Shea also said Washington "would like to better understand whether the LDC Group is pursuing changes to the graduation process that would address its goals."

He asked whether the LDC Group had considered a scenario where a newly graduated LDC could have similar or even higher development indicators than some non-LDC developing countries, and the graduating LDC would receive more benefits at the WTO than the similarly situated non-LDC developing countries.

The European Union and Switzerland also raised several questions on the LDC

proposal, seeking more consultations next year.

However, many developing countries supported the proposal, according to participants present at the General Council meeting.

China lent its support, saying that the LDCs still face "tremendous challenges and high vulnerability even after graduation, and their economic and social development cannot be accomplished overnight."

China's WTO Ambassador Zhang Xiangchen said that Beijing "acknowledges the significant importance of the principle of smooth transition of graduated LDCs introduced by the UN General Assembly." He said "the WTO has a central role to play in providing a sound policy environment and regulatory framework for the sustainable development of the vast number of developing countries, especially the least developed ones."

China, he said, "supports that more care and greater attention should be given to developing countries suffering difficulties in fostering development and economy transformation, including exploring a way forward to realize smooth transition of the graduated LDCs and further integrate into the multilateral trading system", as requested in the LDCs' proposal.

The African Group said that it fully supported the LDC proposal. It said "LDC graduation helps elevate a least developed country a step further to integrate into the multilateral trading system." Graduation, it added, is also "a continuous process and gradually every LDC will be included in the process", and "in this connection, every LDC should be prepared to face the future post-graduation challenges, sooner rather than later."

It cited a report by the UN Conference on Trade and Development (UNCTAD) which suggested that "graduation itself should not be the primary focus of LDCs and their development partners, but should rather be viewed as one milestone in LDCs' longer-term sustainable development".

The African Group said "after leaving the category, LDCs would normally lose access to all trade-related support measures and flexibilities granted to them." This "will put LDCs in a difficult situation, not least given their economic vulnerabilities and their limited negotiating capacity."

"An incomplete and fragile graduation, without specific support mechanism, may lead LDCs after graduation to more

difficulties in addition to the existing multi-pronged challenges they face at present,” the African Group warned.

Moreover, “the shock created by the COVID-19 pandemic on LDCs will be huge and the impact is yet to be measured,” the African Group said, arguing that “the LDCs will need reinvested and

comprehensive support from the WTO members.”

The Group said what the LDCs propose is “logical” and will introduce “a comprehensive and effective smooth transition mechanism for graduating LDCs under the WTO system.”

Jamaica, on behalf of the African,

Caribbean and Pacific (ACP) Group, supported the LDC submission, saying that it looks forward to further productive engagement on the matter in order to support LDCs, including graduating LDCs, in their developmental aspirations and their efforts to integrate into the multilateral trading system. (SUNS9258)

## US, Japan and Brazil fail to secure support on market-oriented conditions

A push spearheaded by the US for “market-oriented conditions” in world trade has met with opposition from many developing countries in the WTO.

by D. Ravi Kanth

GENEVA: The United States, Japan and Brazil have once again failed to secure support from many developing countries for their proposal on advancing market-oriented conditions in the global trading system, which has already been rejected in the previous WTO General Council meeting in October.

Presenting the proposal at the General Council meeting on 17 December, US Ambassador Dennis Shea said that “market-oriented conditions are essential to solving the problems we face.” Washington, he said, sees that “the WTO is an appropriate place for members to work to address these problems of non-market conditions that undermine fair trade.”

“To say that the WTO is not the place to discuss these concerns is really to assert that the WTO is and should be irrelevant,” Shea said.

He said that “the elements and criteria identified in our joint statement with Brazil and Japan are essential to ensuring that market-oriented conditions exist across sectors – not just in steel – so that all market participants compete on a level playing field.”

Shea said “the continued relevance of the WTO will depend on whether it can

deliver on the promises of a world trading system based on open, market-oriented policies.” He added that “the success of our reform efforts will depend on our ability to ensure the fundamental premise of free, fair, and mutually advantageous trade remains intact”.

### “Empty talk”

While several developed countries such as the European Union, Canada, Australia and other members of the Ottawa Group lent support to the US-led proposal, there was a strong pushback by several developing countries, including China, India and South Africa, said participants who asked not to be quoted.

China’s Ambassador Zhang Xiangchen criticized the joint proposal by insisting that what needs to be discussed in today’s world are “(1) Who is actually going against this common sense?; (2) Who is undermining the common rules of the international market, such as the ‘Most-Favoured-Nation’ principle?; (3) Who is artificially altering and impeding the international flow of production factors?; and (4) Who is bringing WTO back to the ages of ‘might is right’?”

Commenting on the US trade envoy’s

earlier mention of the recommendations contained in the Report of the Global Forum on Steel Excess Capacity, Zhang said “the question [that] immediately comes to my mind is, who is taking measures in the name of national security to distort normal trade in steel sector?”

He said “if we cannot have a clear answer to these questions, and if we, as WTO members, cannot take effective measures to undo the damages and prevent future disruptions to the system, empty talk about market orientation is nothing but a quixotic quest that leads us to nowhere.”

The Chinese envoy said the “market-oriented conditions” in the proposal are nothing new. He said that the proposal is “an extension of the ‘non-market economy’ standard in countervailing investigations under the US domestic law.” “These unilateral actions have made a lot of companies both from China and other developing members suffer from unjust duties, affecting millions of jobs.”

South Africa’s Ambassador Xolelwa Mlumbi-Peter said, “While as a principle, we agree with the importance of promoting market-oriented policies, we reiterate that most if not all WTO members have mixed economies and intervene in the economy to achieve a developmental mandate.”

She cited the regulatory failures that occurred in the 2008 financial crisis, arguing that “whilst the role of the market is important, government policies are required not only to address market failures but to also achieve development objectives.”

The South African trade envoy pointed out that “in the context of COVID-19, many governments have stepped in to support businesses as well as give direction, incentives and subsidies regarding production decisions.” She said that “in some cases governments had to step in

and direct companies to produce much-needed equipment such as ventilators,” and “some governments also have laws that give them authority to control the allocation of supplies, as well as order manufacturers to boost production.”

Mlumbi-Peter said the WTO, which

consists of diverse countries at different levels of development, national challenges and development priorities, “was never conceptualized as a forum that will define nor change economic models of members.”

“In view of the peculiar challenges

facing each country, the WTO should not attempt to define the economic model that countries should follow,” and “this is not its role nor an area it should venture into”, she said. (SUNS9258)

## Sharp differences on e-commerce at WTO

The WTO membership are at odds over how to advance discussions on electronic commerce, including the contentious moratorium on levying customs duties on electronic transmissions.

by D. Ravi Kanth

GENEVA: Sharp differences have come to the fore between the developing-country proponents of the multilateral 1998 WTO work programme on electronic commerce, and the opponents who are participants of the non-WTO-mandated Joint Statement Initiative (JSI) group on e-commerce, trade envoys said.

At a WTO General Council (GC) meeting on 16 December, the JSI participants opposed a request from a large majority of developing countries that the 1998 e-commerce work programme be placed as a regular standing item on the GC agenda, several participants told the *South-North Development Monitor* (SUNS).

Ahead of the GC meeting, South Africa and India had jointly submitted a proposal for reinvigorating the 1998 work programme and for the GC to oversee the work on the work programme from all trade-related dimensions.

Speaking at the meeting, India's trade envoy Ambassador Brajendra Navnit said it is important to understand the unfolding digital revolution from the complex and multifaceted dimensions of e-commerce. He said the effects of e-commerce on competition and market structure, and issues related to transfer of technology, data storage and automation

among others need to be explored.

Navnit said continuing work on the multilateral 1998 work programme is more important now in the face of the new challenges emerging from e-commerce. Moreover, the impact of the existing moratorium on customs duties on electronic transmissions must be properly assessed. The extension of the moratorium from December 2019 to the WTO's 12th Ministerial Conference (MC12) means an extension of almost 24 months due to the delay in the convening of MC12, he said.

Navnit drew attention to the joint proposal submitted by South Africa and India, which calls on the GC to ensure that the 1998 work programme remains under “continuous review through a standing item on its [the GC's] agenda” and to “take up consideration of any trade-related issue of a cross-cutting nature” as entailed in the work programme.

In their joint proposal, South Africa and India call for “structured thematic discussions in the General Council through various platforms” focusing on:

- 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.

### Adverse impacts of moratorium

In his intervention at the GC meeting, South African trade counsellor Mustaqeem Da Gama said the moratorium was agreed in 1998 “without clarity on how the scope, definition and implications of the moratorium would unfold with the digital revolution.” Countries had agreed to it “without a clear indication of the fiscal and industrial developmental implications.”

“The lack of clarity makes the continuation of the moratorium difficult as it amounts to unlimited market access in perpetuity for a few members that are dominant in digital trade,” he said.

The moratorium, said Da Gama, “will not only negatively impact the efforts of many developing countries to industrialize digitally but could also undermine their existing industries.” “This is due to the fact that physical exports are subject to duties, while digitized products, in which many developing countries are net importers, are not subject to tariffs, thus creating an uneven playing field.”

“Even from a trade policy perspective, issues have not been adequately explored, and where further discussions were held, these discussions barely scratched the surface,” the South African official said.

Indonesia's trade envoy Ambassador Syamsul Bahri Siregar stressed that members need to make progress on the 1998 work programme, suggesting that it is an important tool for economic development.

He said there is an urgent need to clarify the scope of electronic transmissions under the moratorium, and also the impact of the moratorium

on fiscal revenues, competition and work creation.

The African Group said that some countries have used policy tools such as data localization requirements, internet filtering and technology transfer requirements (e.g., disclosure of source code) to promote domestic digital firms and allow them to catch up with the leading multinational firms. It highlighted the glaring need to bridge the digital divide. COVID-19, it said, has led to more concentration in the digital marketplace. "If left unchecked, this concentration will make the digital divide permanent," it cautioned.

"There is a need for new policies and regulations to ensure a fair distribution of gains from the digital economy, with a focus on technology transfer, capacity building and targeted aid for trade measures," the African Group said.

In its intervention, Jamaica, speaking on behalf of the African, Caribbean and Pacific (ACP) Group, said that it "takes the 1998 e-commerce work programme seriously and expresses appreciation of all members having not only contributed to the work in the General Council, but also the other bodies charged with examining the issue."

The ACP Group called for deepening members' "engagement and understanding of a wider range of issues – not only the question of the customs duties moratorium – as we progressively move toward MC12."

"In conducting our diagnosis of the moratorium, we recognized that some of the other areas of interest to our countries include the costs to developing country and LDC consumers and businesses and discrepancies between traditional goods or products and electronic equivalents, and the application of internal taxes on electronic transmissions," the ACP Group said.

Noting that a number of issues raised in the work programme are under negotiation in the JSI group, the ACP Group said "it is important that the work programme yield a result that does not create a subterranean set of rules under one roof."

The Group urged members to "take a pragmatic approach to discussing within the context of the existing 1998 work programme the issues of source code, [data] localization and the impact on data flows, as well as consumer protection."

Calling for prioritization of these issues, the Group said these issues "will begin to not only match, or exceed, the perceived impact the moratorium may have on our regimes but to treat our ability to make greater use of e-commerce to earn revenue, become producers of higher level technological advancements and to improve the basic way of life for our people."

### Opposing views

In the face of massive support for placing the 1998 work programme under the direct review of the General Council, the sponsors of the JSI negotiations on e-commerce chose to cast doubts on the progress that could be made under the work programme, and also called for the moratorium to be made permanent, participants said.

Australia, Canada and the European Union among others did not accept the request for a standing item on the GC agenda to accelerate work on the work programme. The EU also argued that the moratorium provided predictability in e-commerce.

Responding to the points raised by India and South Africa, the US trade envoy Ambassador Dennis Shea said the discussions must "continue on the same

basis that they have to date." "We do not see a need to establish any new standing agenda items for the General Council or in the sub-bodies," he said. He added that the moratorium has supported the rapid growth of digital trade.

In a concluding statement, India asked the JSI proponents "whether they are willing to promote competition or destroy competition." "Any rule-making process by the existing players will obstruct the level playing field and it will undermine successful innovators," it said.

India said that while some of the JSI proponents raise questions on special and differential treatment (S&DT) for developing countries in the fisheries subsidies negotiations, they want to continue with S&DT in e-commerce. "The same proponents are in favour of S&DT in digital trade vis-a-vis physical and conventional trade of goods."

"It would be interesting to know how long, in a fast and developing digital trade sector, the proponents would need S&DT or crutches of the moratorium on customs duties," India's Navnit remarked.

He urged members to agree on a standing item in all WTO committees to explore the issues and enable the GC to play a central role in accelerating work relating to the 1998 work programme. (SUNS9257)

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## WTO members address notification, cotton and MC12 issues

The WTO General Council on 16 December also looked into issues concerning members' compliance with notification requirements, development of the cotton sector and the holding of the WTO's next Ministerial Conference.

by *D. Ravi Kanth*

GENEVA: The General Council meeting on 16 December saw sharp differences on the question of notification requirements. During the discussion on the agenda item on the implementation of the Bali, Nairobi and Buenos Aires Ministerial Conference outcomes, the EU expressed concern that

India, after invoking for the first time the Bali decision on public stockholding programmes for food security purposes, has so far not answered some six questions, according to participants present at the meeting.

The EU's trade envoy Ambassador

Joao Aguiar Machado asked India to fulfil its transparency obligations and sought substantial answers to assess India's conformity with the Bali decision.

Aguiar Machado said "the EU is far from convinced that India has respected the [Bali] decision", suggesting that India must submit information for rice, wheat and coarse grains among others.

He also said that around two developing countries have not yet submitted their ratification of the Nairobi ministerial decision on export competition, adding that it is regrettable even as the Bali decision on the under-fill mechanism for tariff-related quotas was not implemented.

In response, India reminded members that a permanent solution on public stockholding programmes for food security ought to have been concluded at the WTO's 11th Ministerial Conference in 2017. India said the permanent solution is imperative for achieving the United Nations Sustainable Development Goals 1 and 2, arguing that the WTO must deliver on this issue which is being supported by a large majority of developing countries.

Responding to the EU's specific criticism, India said, as a responsible member of the WTO, it has consistently complied with its notification requirements. It said its transparency and compliance is much better than several countries since 1995, including "those members who are calling for enhanced transparency obligations".

India's trade envoy Ambassador Brajendra Navnit said while it is not his intention to point fingers at any member, "our expectation is [that] members practise what they preach."

India pointedly criticized the EU for not submitting so far its domestic support figures for the marketing year 2018-19. Even in complying with the notification of domestic support for 2017-18, the EU took more than 19 months. Moreover, the EU has so far not notified new standards or maximum residue limits (MRLs) and its constantly changing sanitary and phytosanitary (SPS) measures, India said.

Navnit urged "the EU and other members to lead by example by implementing their notification commitments before proposing ever-growing new obligations standards, and compelling other members to follow."

Intervening in the debate on Bali, Nairobi and Buenos Aires implementation issues, Indonesia's Ambassador Syamsul Bahri Siregar said that the WTO needs to

make significant progress to achieve the permanent solution on public stockholding programmes for food security and a comprehensive and balanced outcome on the special safeguard mechanism. He called for redoubling work to advance the mandated issues in the context of agriculture reform, saying that reform measures must remain balanced in outcome.

On fisheries subsidies, Siregar urged members to adhere to the Buenos Aires mandate in prohibiting certain forms of subsidies that contribute to overcapacity and overfishing. "It is not our duty to encroach on other organizations' mandate concerning fishery management and sustainability issues," he added.

### **Cotton by-products**

A large number of developing countries and least developed countries (LDCs) overwhelmingly supported a draft General Council decision on cotton proposed by the C-4 group of cotton-producing countries (Burkina Faso, Benin, Mali and Chad). The proposed action plan calls for:

- 1) Increased engagement of public and private sector stakeholders in commercial initiatives to add value to cotton by-products.
- 2) Enhanced capacity of cotton farmers, including women farmers, to collectively engage in value-addition activities for cotton and its by-products.
- 3) Strengthened capacities of farmer representative groups to negotiate appropriate remuneration for produced fibres and by-products.
- 4) Enhanced capacity of cottonseed processors to improve oil recovery rates and market by-products effectively, including through modern, cost-competitive production techniques and technologies.
- 5) Improved capacity of policymakers to formulate evidence-based policies and ensure policy coherence in support of the development of cotton by-products.
- 6) Identifying the means to contribute to increased revenues for cotton producers and processors as well as for poverty reduction, including through the creation of sustainable and resilient industrial and trade-related infrastructure to the benefit of cotton producers and processors.

7) Promoting consideration of ways in which economic operators in cotton value chains can be supported through appropriate assistance.

8) Engagement with existing mechanisms and programmes for promoting transfer of technology and building capacity to add value to cotton by-products through technology transfer measures and technical and financial cooperation under Article 66.2 and Article 67 respectively of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The US said that it has undertaken "a preliminary review of this proposal and has some initial questions we intend to share with the proponents."

The US said that it wants "direct engagement from the proponents in order to ensure that any potential outcome in this area reflects a shared view of the expected outcomes from this Action Plan and that any future engagement in the Consultative Framework be consistent with the goals and competencies of the organization."

The EU said it is working closely with the C-4 countries for the development of the cotton sector and to address their core problems.

The African Group supported the proposed action plan to enhance support for cotton by-product development in LDCs. "Through such an Action Plan, we trust that resources can be mobilized to support the implementation of projects and programmes envisioned therein," it said, calling for immediate approval by the General Council.

South Africa's Ambassador Xolelwa Mlumbi-Peter said that cotton is a predominant cash crop for many African LDCs, providing income to over 3.5 million farmers and their families, and with 17% of those lead farmers being women.

She said that sub-Saharan African countries export more than 90% of the raw cotton lint they produce. "Many African agriculture producers are confined to producers and exporters of primary products due to trade distortions in agriculture," she said, pointing out that "trade-distorting domestic support for cotton by WTO members distorts prices and disrupts international cotton markets, with severe consequences for the economy and social lives in African cotton-producing countries, especially

least developed countries.”

Thus, “given that cotton production is one of the most important sources of livelihood of these smaller economies, a sustainable solution to the challenges faced by many cotton farmers is the urgent resolution of the TDDS (trade-distorting domestic support) and the implementation of the Cotton Nairobi Ministerial Decision.”

The African, Caribbean and Pacific (ACP) Group, India, Chad (on behalf of the LDCs) and Bangladesh among others strongly supported the C-4 action plan, participants said.

### Date and venue of MC12

Also at the General Council on 16 December, the GC chair, Ambassador David Walker from New Zealand, provided an account of his consultations with members about the timing of the WTO’s 12th Ministerial Conference (MC12).

Walker said that the 21-24 June 2021 date for MC12 as proposed by Kazakhstan, which has been slated to host the conference, is becoming unrealistic to use as a working hypothesis due to the COVID-19 pandemic. He indicated the possibility of deferring MC12 to December 2021 (possibly in Geneva).

Kazakhstan, however, indicated that it

is ready to hold the meeting on 21-24 June next year if conditions permit.

Several countries thanked Kazakhstan for taking the initiative to host the meeting subject to normal conditions, but suggested that the date of June 2021 is no longer a realistic goal due to the current state of the pandemic.

Jamaica, on behalf of the ACP Group, said that “any date to be agreed must accommodate the concerns of the WTO’s membership, including the psychological comfort of delegates and the lag effect that the virus would have in our capitals.”

The ACP Group called for “wide consultation on the new date for the conference to ensure that it does not overlap with other major international meetings, such as UNCTAD XV [scheduled for October 2021 in Barbados], that require the undivided attention of our Ministers, many of whom are also in charge of WTO affairs.”

The Group urged the GC chair to begin these consultations as soon as possible, saying that despite “the progress being made in some capitals in respect of the containment of the virus and discovery of vaccines and other medicines, uncertainties continue over the return of normalcy, including in capitals with less resources.” “Hence, it may well be that certain international travel restrictions will continue into 2021.”

The Group said that “any date put forward at this time does not represent a final decision but continues to be a working proposal until we are in a position to adopt it.”

Concurring with the GC chair’s assessment that the June 2021 date is becoming unrealistic, the African Group said that despite promises of a vaccine, it remains unclear whether the COVID-19 pandemic would be contained by that time. “In the event of such an eventuality, we would suggest that consideration be given to returning to a December Ministerial cycle and be held in Geneva,” the Group said.

Further, members also need to factor in delays in finalizing the appointment of the next WTO Director-General, given “the instrumental role the DG plays both on the substance and logistics for the conference”, said the Group. It called for members’ cooperation in finalizing the DG selection process in order to pave the way for preparations for MC12, a call that was echoed by a large number of developing and several developed countries.

However, the US trade envoy Ambassador Dennis Shea remained silent on the appointment of the next DG even as many members expressed concern that the delay in finalizing the appointment will have an adverse effect on work at the WTO. (SUNS9257)

## Rules chair issues second revised draft text on fisheries subsidies

by D. Ravi Kanth

GENEVA: The chair of the Doha rules negotiations, Ambassador Santiago Wills from Colombia, on 18 December issued, under his own responsibility, the second revised draft consolidated text on fisheries subsidies, ostensibly to capture the “progress” that members have made so far in the fisheries subsidies negotiations.

However, a cursory glance at the nine-page text shows that it contains only minor changes and tweaking of language in

various provisions that are not helpful to the developing countries, said a fisheries trade negotiator who asked not to be quoted.

The restricted draft text, said Wills, is the collective work of the “Negotiating Group”.

The chair said that the sources for the text are based on “the facilitators’ work, previous working documents (including document TN/RL/W/274/Rev.6 and the

2007 Chair’s text in TN/RL/W/213) and suggestions and comments made during meetings.”

Wills held that adopting language “from different sources is not always possible as words and phrases have to be adapted to the format and context of the draft consolidated document so that the whole text reads coherently and consistently.”

The chair said that “everything in the draft consolidated document is without prejudice to any Member’s positions or views.”

He emphasized that the entire document is effectively in square brackets and nothing in it can be considered agreed.

Wills said that “each delegation’s view on one issue depends on how other

issues are addressed.” “Therefore, there is no agreement on any provision until there is agreement on all provisions, and everything in the draft consolidated document, whether in square brackets or not, is open for discussion.”

The chair said that “if a certain suggestion that has been made is not reflected in the text, this does not mean it has been rejected. To the contrary, as I explained in my report to the TNC [Trade Negotiations Committee], this simply reflects the need for more thorough discussion to mature those ideas, including in regard to their placement and in relation to other elements, before they can be included in the text.”

Lastly, the chair said that “the eventual form of the new disciplines – the ‘Instrument’ – remains to be decided,” adding that during the last heads-of-delegation meeting on 29 September, “there were different views on whether the new disciplines should be in the form of a standalone agreement or an annex to the SCM [Subsidies and Countervailing Measures] Agreement.”

The chair is planning on convening meetings to discuss the elements of the second revised draft text from 13 January, said a negotiator who asked not to be quoted.

### Individual articles

As regards Article 1 dealing with the scope, the chair said that he made a change that “payments from one government to another government under fisheries access agreement are not within the scope of the Instrument, by clarifying that those

payments would not be deemed to be subsidies under this instrument.”

On Article 2 concerning definitions of what would constitute fish or fish products, the chair said the definition of “fish” was added in the second revised draft. He said the definitions of “fishing” and “fishing related activities” and “vessel” were taken from the Agreement on Port State Measures.

On the disciplines in Article 3 dealing with illegal, unreported and unregulated (IUU) fishing, the chair said the language was sourced from the work of the facilitator for this pillar that was circulated on 10 April.

On Article 4 concerning “overfished stocks” (OFS), the chair said that there have not been major changes due to suggestions from members. Apparently, members said:

- First, many members have pointed to a potential overlap between the disciplines in this pillar and the disciplines on overcapacity and overfishing (OCOF). Thus, they preferred to continue the work to clarify the OCOF pillar before engaging substantively in the OFS pillar;
- Second, the text as it currently stands is relatively clean, with relatively few brackets and clear choices in the form of alternative texts; and
- Third, key substantive issues under this pillar overlap with issues in other pillars that are being discussed.

On Article 5, which deals with OCOF disciplines, the chair said that “some of the more important revisions were made to what are now Articles 5.1 and 5.2.”

The current structure of the discipline,

according to the chair, “reflects the long-standing divergence on the basic approach to the disciplines on OCOF.” “Specifically, some Members prefer a list of subsidies that would simply be prohibited,” while “other Members oppose such an approach on the basis that not all of the listed subsidies would contribute in every instance to OCOF.”

Effectively, the major subsidizers such as China, the European Union, the United States, Japan, Korea and Chinese Taipei “prefer a prohibition based on the contribution of a subsidy to overfishing or overcapacity in a particular fishery, taking into account policies and measures implemented to maintain fish stocks at a sustainable level.”

“In my attempt to find a compromise, in each version of the draft consolidated document, I have put together elements from both approaches,” the chair said.

In short, the chair has continued to provide reverse special and differential treatment (S&DT) to the major subsidizers, said a developing-country negotiator who asked not to be quoted.

On Article 5.7 dealing with S&DT in the OCOF pillar, the chair said that the text remains largely unchanged due to “significant differences in views.”

The remaining articles such as Article 6 (on specific provisions for least developed countries), Article 7 (technical assistance and capacity building), Article 8 (notification and transparency), Article 9 (institutional arrangements), Article 10 (dispute settlement) and Article 11 (final provisions) reveal some significant changes as well as inclusion of new provisions. (*SUNS9260*)

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