

Global trade slows in last half of 2022, says UNCTAD

Global trade reached more than US\$32 trillion in 2022, but its growth turned negative during the last quarter of the year, and is expected to continue to stagnate in the first quarter of 2023. However, a more positive outlook is forecast for the second half of 2023. Defying the downward trend, trade in environmentally friendly goods such as electric and hybrid vehicles and wind turbines continued to rise throughout the second half of 2022.

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Published by Third World Network
Bhd (198701004592 (163262-P))

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THIRD WORLD ECONOMICS

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

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Views expressed in these pages do not necessarily reflect the positions of the Third World Network.

Global trade growth slows in last half of 2022, says UNCTAD

While global trade hit a record US\$32 trillion in 2022, its growth slowed in the last half of the year.

by Kanaga Raja

PENANG: Global trade reached more than US\$32 trillion in 2022, but its growth turned negative during the last quarter of the year, the UN Conference on Trade and Development (UNCTAD) has said.

In its latest Global Trade Update, UNCTAD said that developing countries' trade was particularly weak during Q4 of 2022, with East Asia and Latin America underperforming.

UNCTAD said its “nowcast” suggests continuing trade stagnation for Q1 2023, but the outlook is more positive for the second half of 2023.

While manufacturing trade declined, trade in environmentally friendly goods continued to increase throughout the second half of 2022, it added.

According to UNCTAD, defying the downward trend, trade in such goods grew by about 4% in the second half of the year.

Their combined value hit a record US\$1.9 trillion in 2022, adding more than US\$100 billion compared to 2021, it said.

UNCTAD said that among green goods that performed especially well were electric and hybrid vehicles (+25%), non-plastic packaging (+20%) and wind turbines (+10%).

Global trade trends

According to UNCTAD, global trade reached a record US\$32 trillion in 2022.

It said trade in goods was about US\$25 trillion (an increase of about 10 per cent from 2021) and trade in services totalled about US\$7 trillion (an increase of about 15 per cent from 2021).

“Those record levels are largely due to robust growth in the first half of 2022. Conversely, trade growth has been sub-par during the second half of 2022, especially in the last quarter of 2022,” it added.

UNCTAD said in Q4 2022 trade in goods declined by about US\$250 billion relative to Q3 2022, while trade in services remained virtually constant.

The UNCTAD nowcast for Q1 2023 indicates global trade in goods to increase by about 1 per cent, while trade in services is expected to increase by about 3 per cent on the same basis, it added.

It said despite the decline in the value of trade in goods, trade volumes kept increasing during Q4 2022 and are expected to further grow during Q1 2023.

“Growth in the volume of international trade suggests a resilient global demand for imported products.”

Despite rising geopolitical tensions, global trade has proven to be remarkably resilient during 2022, it added.

“However, deteriorating economic conditions, the lifting of zero-COVID policies, and renewed concerns about inflationary pressures have resulted in a significant trade slowdown during Q4 2022.”

While the economic outlook has improved, global trade growth is expected to remain subdued in 2023, with the possibility of a pick-up in the second half of the year, said UNCTAD.

Overall, UNCTAD said although the outlook for global trade remains uncertain, the positive factors are expected to compensate for the negative trends.

Positive and negative factors

The positive factors affecting international trade patterns cited by UNCTAD are:

1. Improved economic outlook in major economies: The China Purchasing Managers Index has increased by more than 5 percentage points since

December 2022, indicating strong manufacturing and services activity and softening concerns about disruptions in global supply chains. Additionally, growth forecast has been revised upwards, as it is likely that the European Union and the United States economies will now avoid a recession in 2023.

2. Decreasing shipping costs: Logistics bottlenecks have largely been resolved, and shipping capacity has increased during the last year. The Shanghai containerized freight rate index has returned to pre-pandemic levels and is expected to remain low throughout 2023.
3. Weakening of the United States dollar: After high levels during 2022, the United States dollar index fell almost 7 per cent between November 2022 and February 2023. As most trade is denominated in dollars, a weaker dollar would result in increased demand for traded goods.
4. Increase global demand for services: Global commercial services are expected to further grow in 2023, primarily driven by a rise in demand for information and communication technology services, and by further recovery in travel and tourism sectors.

The negative factors highlighted by UNCTAD are:

1. Geopolitical factors: Geopolitical tensions, including the Russian Federation's conflict with Ukraine, remain the biggest risks negatively impacting international trade during 2023.
2. Inflation, commodity prices and interest rates: Interest rates are expected to remain relatively high in many economies due to persisting inflationary concerns. Commodity prices are expected to remain above pre-pandemic averages, especially regarding energy, food, and metals.
3. Concerns of debt sustainability: The current record levels of global debt, coupled with high interest rates, will continue to negatively affect the macroeconomic conditions of many countries.

UNCTAD also cited other factors affecting international trade patterns, such as reshaping of the global supply

chains, and trade policies for the green transition.

It said that the emphasis on improving the resilience of supply chains, in addition to policies that promote the re-location of production processes closer to target markets (near-shoring) or back to home countries (re-shoring), may lead to some degree of decoupling between major economies and result in regionalization of international trade.

The patterns of international trade are anticipated to become more closely tied to the transition towards a greener global economy, it added.

"As countries increasingly integrate climate commitments into trade and industrial policies, concerns regarding possibly restrictive trade practices may lead to changes in the global trade landscape."

Trends in major economies

According to UNCTAD, the global downturn in international trade during Q4 2022 is reflected in the import and export trends of the major economies.

Except for imports by the Russian Federation, trade in goods for all major economies was substantially below levels of the previous quarter, it said.

"China's trade in goods was notably lower compared to both the previous quarter and the same period in the previous year."

The value of trade in goods for the United States and the European Union, while lower relative to the previous quarter, was higher relative to Q4 2021, said UNCTAD.

Pointing out that data on services is only available with a lag of one quarter, UNCTAD said that in Q3 2022, the trade in services for most major economies was higher than in Q3 2021.

"Quarter-over-quarter growth rates indicate that these positive trends have weakened considerably in Q3 2022."

With regards to regional trends, UNCTAD said that the general decrease in global trade during Q4 2022 hit developing countries harder than developed countries.

Moreover, South-South trade between developing countries was around 6 per cent lower than in the previous quarter, it added.

However, it said that the below average trade performance of developing countries is largely because of negative trade growth for East Asian economies.

"This is more evident when comparing Q4 2022 with the same quarter of 2021, as trade of developing countries (excluding East Asia) was substantially higher than average growth for developing countries."

During Q4 2022, trade declined across most geographic regions, except for Africa and the Pacific regions, which saw an increase in exports, said the UNCTAD report.

The decline in exports was more substantial for the region comprising the Russian Federation, as well as for East Asia and South America, it added.

As for imports, UNCTAD said that the decline was substantially more marked for the South America region.

"Comparing on a year-over-year basis, trade in Q4 2022 was higher in most of the regions, except for East Asia and the region comprising the Russian Federation."

At the sectoral level, UNCTAD said that the trade decline of Q4 2022 affected most sectors, but with some exceptions.

"Trade in the transport and road vehicles sectors saw substantial increases, while trade remained constant for agri-food, pharmaceuticals, and communication equipment."

In comparison with Q4 2021, the value of trade in Q4 2022 was lower for most sectors, but substantially higher in the energy sector, said UNCTAD. (SUNS9751)

"Despite rising geopolitical tensions, global trade has proven to be remarkably resilient during 2022."

Need to remove carve-outs for big subsidizers in Doha fisheries talks

In an email sent to members, the chair of the Doha fisheries subsidies negotiations provided an account of his reflections on the latest round of small-group consultations.

by D. Ravi Kanth

GENEVA: The chair of the Doha fisheries subsidies negotiations, Ambassador Einar Gunnarsson of Iceland, seems to be angling towards the controversial draft text issued by his predecessor concerning the outstanding issues in the crucial overcapacity and overfishing (OC&OF) pillar, said people familiar with the chair's latest email to trade envoys on 27 March.

Despite stating that "many members emphasized the relevance of concepts such as the "polluter pays" principle and the principle of Common but Differentiated Responsibility", it appears somewhat puzzling as to why the chair wants to navigate members on the basis of the previous text, said people who asked not to be quoted.

In his email sent to trade envoys on 27 March, seen by the SUNS, the chair provided an account of his reflections on the small-group consultations, in which he said "everyone came with an open mind and ready to engage in a constructive manner."

Ambassador Gunnarsson said that members who took the floor acknowledged that the mandate is rooted in the United Nations Sustainable Development Goal (SDG) 14.6.

SDG 14.6 states, "by 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to IUU [illegal, unreported and unregulated] fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least-developed countries should be an integral part of the WTO fisheries subsidies negotiation."

However, the draft text crafted by the previous chair of the fisheries subsidies negotiations, Ambassador Santiago Wills of Colombia, is replete with specific carve-outs for the big subsidizers like the European Union, the United States,

China, Japan, and Korea among others, who are allegedly mainly responsible for the global depletion of fish stocks.

In relation to the carve-outs being provided to the big subsidizers in the previous chair's text, both in the scope and in Articles 5.1 and 5.1.1, the special and differential treatment (S&DT) provisions for developing countries seem insignificant.

Though the developing countries did not create the problem of the global depletion of fish stocks, they are being asked to pay much more than the big subsidizers, said people, who asked not to be quoted.

It is against this backdrop that a large majority of developing and least-developed countries have demanded "policy space" to develop their incipient fisheries sector beyond the provision of "appropriate and effective special and differential treatment" during the first "fish week" that took place on 20-27 March, said people, who asked not to be quoted.

In his reflections, the present chair said that "members (developing countries) also noted the significance of all three dimensions of sustainability, namely environmental, social, and economic," suggesting that "some Members expressed the view that they are mutually reinforcing and work in harmony."

Significantly, the chair acknowledged that "several Members emphasized that environmental protection is critical for economic and social development and reasoned that without sustainable fish stocks, there will be no fishermen nor fish-related income."

Against this background, the chair said that "there is a widely held view that the disciplines concerning overcapacity and overfishing should focus on the most harmful subsidies."

"One recurring theme was the need

to target subsidies provided to large-scale industrial fishing, notably by Members that engage in distant water fishing," the chair said.

More importantly, the chair said that "we heard some conceptual ideas on how best to reflect this concern, including commitments based on geographical zones; based on fishing capacity; based on level of subsidization; or based on subsidy intensity measured in relation to the size of the dependent population, the length of the coastline, or the size of the EEZ (Exclusive Economic Zone of around 200 nautical miles)."

The chair said, "we also heard about aligning with recent international developments such as the BBNJ (Marine Biodiversity of Areas Beyond National Jurisdiction under the United Nations Convention on the Law of the Sea) treaty."

The chair acknowledged that "many Members emphasized the relevance of concepts such as the "polluter pays" principle and the principle of Common but Differentiated Responsibility."

In contrast, the big subsidizers seem to have argued that the provision of subsidies should be allowed only if related fishing activities are "sustainable", perhaps to safeguard their carve-outs.

According to the chair, it seems "some underscored that whether a subsidy is harmful or not will depend on the design and operation of the subsidy."

On the controversial issue of fisheries management, the chair admitted that "no Member believes that the WTO is or should be a fisheries management organization."

He suggested that "some Members are of the view that these disciplines should only focus on subsidies, while others view fisheries management as a tool through which Members may achieve the objectives of the rules we are crafting - to discipline harmful fisheries subsidies."

Several big subsidizers who are in favour of regional fisheries management organizations, "consider that incorporating these concepts could incentivize all Members to adopt good fisheries management practices."

The chair said it is obvious that developing and Least Developed Countries (LDCs) "are concerned that incorporating fisheries management considerations into the disciplines could create a major loophole for Members that already have strong fisheries management

capabilities, while making it difficult for many developing and LDC Members to implement the disciplines.”

Reflections on S&DT

In reflecting on S&DT, the chair said that “all Members acknowledge that this is an integral part of our work,” adding that “there was also a general call to safeguard the livelihood and food security of small-scale and artisanal fishers.”

The issue of policy space also cropped up during the discussions on S&DT.

The chair said that “I noticed that while some Members (big subsidizers like the EU and the US) see SDT as the means to help developing and LDC Members comply with substantive disciplines, others (many developing countries) are of the view that SDT should provide such Members with policy space to develop their fishing sectors and exploit their own marine resources.”

Ambassador Gunnarsson said that “many Members stated that they do not seek policy space to pursue subsidies that undermine sustainability, and some made suggestions for ways to ensure this.”

Interestingly, the big subsidizers seem to have cautioned that “SDT in the form of blanket exemptions should be avoided, to prevent undermining the broader sustainability objective of the OC&OF disciplines. In this view, SDT should be needs-based and limited to the overall objective of our mandate.”

According to the chair, “some Members stressed the need to look at SDT through the lens of a Member’s capacity to fish and level of subsidization” and “some said that SDT should end when a Member no longer needs it.”

Another dimension that emerged in the discussion on S&DT is the question of sequencing, the chair said, adding that “on the one hand, some Members see merit in discussing the disciplines and SDT in tandem, given that some of the policy space concerns could be addressed through the disciplines themselves.”

“On the other hand,” said Ambassador Gunnarsson, “some see merit in discussing the substantive disciplines first, and on that basis determine the nature and level of SDT.”

Next steps

Under the heading of “Next steps” in his email to trade envoys, the chair

said that during the second “fish week” beginning on 25 April, he intends “to follow the approach that we used this week.”

He said that “the second fish week will begin and end with plenary meetings, with a number of small group meetings over the course of the week interspersed with time for delegates to consult with each other and with me.”

“For the small groups,” the chair said that “we will maintain the same approach that Members seemed to appreciate this week, where all delegations can listen to the sessions to which they are not invited as speakers.”

Ambassador Gunnarsson said that he plans to send to members “some questions to help to stimulate your reflections in preparing for the second fish week.”

In terms of the broad theme for the work during that week, the chair said, “I have seen this first week as devoted to discussing what or why.”

In other words, he asked, “what do we want to get out of this second wave of negotiations, bearing in mind the Ministerial mandate instructing us to continue negotiations based on the outstanding issues in documents WT/MIN(21)/W/5 and WT/MIN(22)/W/20.”

By apparently reverting to the previous chair’s text, the chair may find it difficult to garner consensus, said people, who asked not to be quoted.

In his email, the chair said that “as the next logical step, I see our second fish week as the beginning of our discussions

of how to get to the result we want.”

“While in my view it would be most productive to maintain a somewhat conceptual focus in those discussions, I also think that it could be helpful for all of us to have as a reference one sheet of paper pulling together the elements in W/20 and W/5 that are not somehow reflected in the Agreement that Ministers adopted at MC12.”

Therefore, the chair said that his “idea is to attach this sort of “extraction” of those elements to the communication that I will send convening the second fish week.”

“Let me make it clear that this will be a simple “copy and paste” exercise of those elements from W/20 and W/5 not covered by the current agreement,” he added.

According to Ambassador Gunnarsson, “I noted that some Members are considering new formulations”.

He urged members “who wish to bring in any such elements to do so as soon as possible so that those ideas could also inform our conceptual discussions during the April fish week.”

In conclusion, the upcoming second “fish week” may reveal the broad trend of where the negotiations are heading - an agreement that removes the carve-outs being provided to the big subsidizers or extracts a high price from developing countries, as had happened in the Uruguay Round’s asymmetrical Agreement on Agriculture. (SUNS9755)

India exposes “double standards” of farm-exporters in agriculture talks

A recent meeting of the WTO’s Committee on Agriculture saw India exposing the “double standards” of nine farm-exporting countries that had raised a series of questions on New Delhi’s public stockholding programs for food security.

by D. Ravi Kanth

GENEVA: India has apparently exposed the “double standards” adopted by nine farm-exporting countries including the United States, Canada, Thailand, the European Union, Australia, Uruguay,

and Paraguay among others on issues pertaining to New Delhi’s public stockholding (PSH) programs for food security at a meeting of the WTO’s Committee on Agriculture (CoA) on 27-

28 March, said people, who asked not to be quoted.

Apparently, the nine farm-exporting countries engaged in a “naming and shaming” exercise against India over the oral replies that it had provided during the consultations held with it, said people, who preferred not to be identified.

The farm-exporting countries seemed rather unnerved over India's refusal to provide written answers to oral replies given by New Delhi during the consultations on India's public stockholding programs under paragraph 6 of the Bali Ministerial Decision on public stockholding (WT/L/913).

The farm-exporting countries apparently attempted to corner India in several ways at the CoA meeting, said participants familiar with the discussions.

As reported in SUNS #9752 dated 29 March 2023, surprisingly, some of these very same countries had refused to provide written answers to the questions raised by India and South Africa during the consultations on the schedules of specific commitments submitted by 35 members of the controversial plurilateral Joint Statement Initiative (JSI) on domestic regulation in services.

Meanwhile, as regards public stockholding, according to paragraph 6 of the Bali “peace clause” of December 2013, “a developing Member benefiting from this Decision shall upon request hold consultations with other Members on the operation of its public stockholding programmes notified under paragraph 3.a.”

Paragraph 3.a. of the Bali “peace clause” states: “A developing Member benefiting from this Decision must have notified the Committee on Agriculture that it is exceeding or is at risk of exceeding either or both of its Aggregate Measurement of Support (AMS) limits (the Member's Bound Total AMS or the de minimis level) as result of its programmes mentioned above.”

India had informed the WTO's Committee on Agriculture that it has exceeded its de minimis commitment twice for rice during 2018-19 and 2019-20.

At the CoA meetings on 27 and 28 March, the farm exporters raised a series of questions on India's additional support for rice, and its price support and PSH programs among others, under the CoA's review process, especially the review of

notifications.

Subsequently, the nine farm-exporting countries seem to have pressed ahead with identical questions against India, this time under the implementation of ministerial outcomes.

Apparently, each member of the food exporting bloc individually raised one question each with the same chapeau, said people who were familiar with the questions.

The questions on PSH, for example, revealed what India had said during the confidential consultations.

Three questions

The first question posed to India is as follows:

“In September 2022, several WTO Members provided India with several questions to facilitate the consultation process under the Public Stockholding for Food Security Purposes Ministerial Decision of 7 December 2013.

For transparency purposes, the following question, which represents part of the conversation held under that process, is submitted for the full Committee:

In notification G/AG/N/IND/27, it is noted that the information on the Current Total AMS in Table DS:1, public stockholding for food security purposes in Supporting Table DS:1, product specific AMS for rice in Supporting Table DS:4, market price support for rice in Supporting Table DS:5, and all data for MY 2020/21 in the Statistical Appendix includes a footnote “Based on the available provisional data”.

However, the value of production data provided in footnote 2 of Supporting Table DS:4 does not include any reference to provisional data.

In response to AG-IMS ID 101087, India noted that the data for Value of Production is provisional data and would be updated only if there is “any significant difference” in the final data.

Please indicate, of all notified data in Table DS:1, Supporting Table DS:1, Supporting Table DS:4, Supporting Table DS:5, and the Statistical Appendix, which is provisional data and which is final data.

a. Please indicate when any relevant final data will be notified.”

The second question posed by another member says:

“In September 2022, several WTO

Members provided India with several questions to facilitate the consultation process under the Public Stockholding for Food Security Purposes Ministerial Decision of 7 December 2013.

For transparency purposes, the following question, which represents part of the conversation held under that process, is submitted for the full Committee:

Recognizing unique and unforeseen challenges in 2020 and 2021, it is noted that between MY 2018/19 and MY 2019/20, in the Annex and Statistical Appendix to India's most recent Table DS:1 notifications, the notified value of rice purchases by the government of India increased by over USD 3 billion, annual purchases in the quantity of rice increased by more than 7 million tonnes, the quantity released to beneficiaries in MY 2019/20 dropped by 1 million tonnes, and the quantity released for open-market sales doubled, increasing by almost 800,000 tonnes. It is noted that annual purchases, quantities released to beneficiaries, and open-market sales increased in MY 2020/21.

b. Given the large decline in beneficiaries in MY 2019/20 and the subsequent result of open market sales doubling between MY 2018/19 and MY 2019/20, what is the reasoning behind the 7 million tonnes increase in annual purchases of rice under India's public stockholding programme in MY 2019/20?

India remains the world's largest exporter of rice, and in 2020, India's number one export position grew substantially; India now exports more than twice as much rice, by value, than its second closest competitor. Noting the also sizable increase in open-market sales, there are concerns about the impact government stock releases have on India's export position, directly or indirectly.

c. In response to AG-IMS ID 97049, India stated “open market sale is arrived at on the basis of a number of factors including MPS, handling cost, freight charged, etc.”. We thank India for this overview, but repeat the request for a copy of or specific URL(s) for the requested information on price methodology for open-market sales of food grains from public stocks noting that the URL provided by India at the 98th CoA directs to an inaccessible webpage.

d. What steps is India taking to ensure

that open-market sales from government stocks are not crowding out domestic sales by the private sector, which must then turn to export markets to sell their products?”

The third question says:

“In September 2022, several WTO Members provided India with several questions to facilitate the consultation process under the Public Stockholding for Food Security Purposes Ministerial Decision of 7 December 2013.

For transparency purposes, the following question, which represents part of the conversation held under that process, is submitted for the full Committee:

In AG-IMS ID 101038, WTO Members had requested India’s annual quantitative figures for current, historical, and pre-determined levels of wheat and rice stocks since 2010, to which India replied that such information was already duly noted in its domestic support notifications.

In that same question, WTO Members also inquired if India publishes summaries of consultative meetings between the government and the Food Corporation of India (FCI), which are held to assess the availability of wheat and rice for procurement at Minimum Support Prices (MSP) in order to meet the food security requirements of citizens, to which India replied that such information could also be found in its domestic support notifications.

Please recreate the requested information here as it was not obvious where such information could be found in India’s domestic support notifications.”

Not only did each country with the same chapeau read out different questions for which India answered during the confidential consultations, but also apparently attempted to “name and shame” India that it is not forthcoming with full answers, said people, who asked not to be quoted.

In response to around nine questions, India seems to have provided the same answer at the meeting: “we have taken note of the question.”

The United States said it is disappointed with the answer provided by India, while Costa Rica suggested that India’s reply to the questions raises systemic issues.

Uruguay read out a long six-page statement chronicling when each question was posed, said people, who asked not to

be quoted.

India raises three points

With the alleged “double standards” being adopted by the nine farm-exporting countries ostensibly on transparency grounds, India said that for the sake of transparency:

- 1) Some of these countries, who committed breaches in their domestic support programs, must provide clear data and answers, which they failed to do till now;
- 2) If countries are raising systemic issues about not providing written answers to the questions raised in the consultations, how is it that some of these very same countries also refused to provide written answers to the questions raised in the JSI services domestic regulation consultations; and
- 3) It drew attention to how the farm-exporting countries blocked an outcome on the permanent solution for public stockholding programs for food security at the WTO’s 11th

ministerial conference (MC11) in Buenos Aires in December 2017, and at the 12th ministerial conference (MC12) in Geneva in June last year.

The CoA meeting also witnessed sharp exchanges on the EU’s proposal concerning deforestation, China’s alleged failure to inform the CoA of its subsidy notifications, and the domestic support provided by the US, said participants, who asked not to be quoted.

Meanwhile, in a separate meeting of the CoA on 29 March, the United Nations Food and Agriculture Organization (FAO) presented its findings on the need to implement food security programs as well as the differences in the implementation of these programs.

In a similar vein, the World Food Programme (WFP), for the first time, presented data on the procurement of its food products from different countries.

Interestingly, in the face of a considerable dip in the supply of wheat due to the drought in Canada, Australia, and Argentina, members praised India for supplying 3 million tonnes of wheat to the international market. (SUNS9754)

JSI members on services domestic regulation “frustrate” India & South Africa

Attempts are being made by members of a controversial plurilateral initiative on domestic regulation in services to ostensibly “frustrate” India and South Africa who have raised objections to the schedules of specific commitments submitted by these members.

by D. Ravi Kanth

GENEVA: Attempts seem to be underway by members of the controversial plurilateral Joint Statement Initiative (JSI) on domestic regulation (DR) in services, including the United States and the European Union, ostensibly to “frustrate” India and South Africa who have raised technical and systemic objections to the schedules of specific commitments submitted by the 35 JSI members, by

refusing to give written replies to their objections, said people familiar with the development.

India and South Africa raised several objections - both technical and systemic - arising from the notifications of specific commitments under the modification of schedules as contained in document S/L/80.

The two countries concluded

meetings with the 35 JSI members by 20 March.

While South Africa held meetings with all 35 JSI members in one go on 10 March, India held consultations with each member by 20 March.

The JSI members who participated in the consultations with South Africa and India were Albania, Argentina, Bahrain, Canada, Chile, China, Costa Rica, the European Union (which includes 27 member countries), Georgia, Hong Kong, China, Iceland, Japan, Kazakhstan, Korea, Liechtenstein, Mauritius, Mexico, Moldova, Montenegro, Nigeria, North Macedonia, New Zealand, Norway, Paraguay, Peru, Singapore, Switzerland, Chinese Taipei, Thailand, Ukraine, United Arab Emirates, the United Kingdom, the United States of America, the

Russian Federation, and Saudi Arabia.

Following the meetings, the two countries apparently sought written replies to the oral answers provided by the JSI members in order to gain certain legal clarity/certainty, said people familiar with the consultations.

JSI members adopt “tactical” stand

However, the three co-conveners of the JSI on domestic regulation in services - Costa Rica, the European Union, and Australia (though Australia is yet to submit its notification) - simply refused to provide their replies made during the consultations in writing to India and South Africa, compounding the problem of them making a proper assessment.

“Nothing obliges us to give the answers in writing,” said a JSI participant, preferring not to be quoted.

The participant claimed that there are no rules in the WTO’s General Agreement on Trade in Services (GATS) that requires members seeking modification in their services schedules to give their replies in writing to the objections raised by any member.

Further, the JSI participant argued, under Article XVIII of the GATS concerning additional commitments, “members may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI or XVII, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Member’s Schedule.”

According to another JSI participant who took part in the consultations, under Article XXI of the GATS concerning modification of schedules: “(a) A Member (referred to in this Article as the “modifying Member”) may modify or withdraw any commitment in its Schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article; (b) A modifying Member shall notify its intent to modify or withdraw a commitment pursuant to this Article to the Council for

Trade in Services no later than three months before the intended date of implementation of the modification or withdrawal.”

In the worst-case scenario, the JSI participant said, the 35 JSI members could potentially raise a fresh trade dispute under the GATS provisions that are allegedly being violated by India and South Africa.

It appears that the JSI members seem to be adopting a “tactical” stand by allegedly attempting to “frustrate” India and South Africa in their efforts to come to any proper conclusion soon, said participants, who asked not to be quoted.

If the prevailing situation continues without any response from India and South Africa, then the JSI participants could further modify their specific commitments under the provisions of document S/L/84.

Document S/L/84 states that “modifications in the authentic texts of Schedules annexed to the GATS not resulting from action under the procedures for the implementation of Article XXI of the GATS (modification of schedules) adopted by the Council for Trade in Services on 19 July 1999, which consist of new commitments, improvements to existing ones, or rectifications or changes of a purely technical character that do not alter the scope or the substance of the existing commitments, shall take effect by means of certification.”

However, it says that “at the end of the 45-day period, if no objection has been raised, the Secretariat shall issue a communication to all Members to the effect that the certification procedure has been concluded, indicating the date of entry into force of the modifications.”

More importantly, it emphasizes that: “Any Member wishing to object to the certification shall submit a notification

to that effect to the Secretariat for circulation to all Members. A Member making an objection should to the extent possible identify the specific elements of the modifications which gave rise to that objection. The objecting Member(s) and the modifying Member shall enter into consultation as soon as possible and shall endeavour to reach a satisfactory solution of the matter within 45 days after the expiry of the period in which objections may be made. When an objection has been notified, the certification

procedure shall be deemed concluded upon the withdrawal of the objection by the objecting Member or the expiry of the period in which objections may be made, whichever comes later. Such a withdrawal shall be communicated to the Secretariat. When more than one objection has been raised, the certification procedure shall be deemed concluded upon the withdrawal of the objections by all objecting Members or the expiry of the period in which objections may be made, whichever comes later. The Secretariat shall issue a communication informing all Members of the withdrawal of the objection(s) and the conclusion of the certification procedure, indicating the date of entry into force of the modifications.”

“Talking past each other”

In a way, the JSI members are attempting to address only the “technical” issues concerning their services domestic regulation-specific commitments while deliberately ignoring the “systemic” issues raised by India and South Africa over their schedules, said participants, who asked not to be quoted.

The consultations seem to have become an exercise of “talking past each other” without addressing all the issues - both technical and systemic - raised by the two developing countries.

Yet, the JSI participants seem to have “turned a deaf ear” to the objections raised by India and South Africa over the systemic issues, said participants, who asked not to be quoted.

India and South Africa had complained that the WTO is a multilateral organization that allows multilateral negotiations that some have allegedly taken illegally out of its formal structure to conclude the JSI on services domestic regulation, said a negotiator, who asked not to be quoted.

According to a joint proposal (WT/

GC/W/819/Rev.1) issued on 28 April 2021, India, South Africa and Namibia argued that the JSIs allegedly violated the following “fundamental principles and objectives of the multilateral system, enshrined in the Marrakesh Agreement”:

1. The multilateral underpinnings of the WTO, including,
 - * Art. II.1: “The WTO shall provide the common institutional framework for the conduct of trade relations among its Members ...”;
 - * Art. III.2: “The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations”;
 - * Consensus-based decision-making, as enshrined in Arts. III.2, IX, X, and also X.9 of the Marrakesh Agreement;
 - * The procedures for Amendments of rules as articulated in Art. X.

India, South Africa and Namibia argued that the new form of “plurilateral(s)” or “Open Agreements” are inconsistent with the WTO’s core principles as set out in the Marrakesh Agreement.

Further, India, South Africa and

Namibia contended that “the Marrakesh Agreement provides that the agreements and associated legal instruments included in Annex 4 to the Agreement are “Plurilateral Trade Agreements””.

“The Ministerial Conference, upon the request of the Members party to a trade agreement, decides exclusively by consensus to add that agreement to Annex 4,” they said, suggesting that there was no consensus either at the WTO’s eleventh ministerial conference (MC11) in Buenos Aires in December 2017 or now.

According to the three countries, “the JSI proponents intend to create a new set of Agreements, which are neither multilateral agreements nor Plurilateral Agreements [as defined in Article II.3 of the Marrakesh Agreement].”

Further, the three countries said the JSI proponents “appear to suggest that when offered on a most-favoured- nation (MFN) basis, no consensus is required for bringing in these new rules into the WTO.”

“This approach, however, is legally inconsistent with the fundamental principles and procedures of the

Marrakesh Agreement ...”, India, South Africa and Namibia said in their proposal.

According to the proposal submitted by the three countries, “a procedure for amending rules is enshrined in Article X of the Marrakesh Agreement. On the other hand, the GATT and GATS contain specific provisions for modifications of Schedules.”

They said that the JSI proponents “have confused amendment to rules and modifications to schedules, and the proposed introduction of new agreements into the WTO to bypass the requirements of Article X of the Marrakesh Agreement. However, new agreements are not amendments to schedules.”

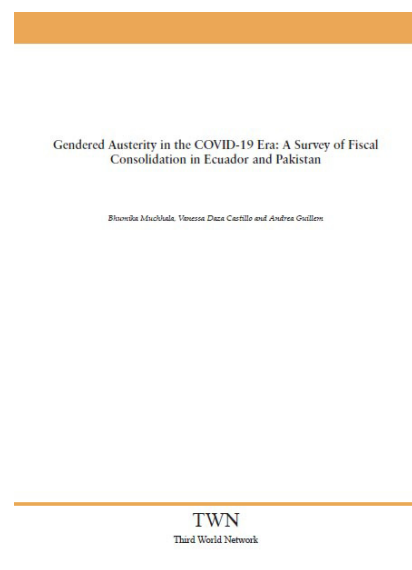
It remains to be seen in which direction the face-off between India and South Africa on one side, and the 35 JSI members on the other, will proceed due to exchanges that appear to be lacking in trust among the two sides, said participants who asked not to be quoted. (SUNS9752)

Gendered Austerity in the COVID-19 Era: A Survey of Fiscal Consolidation in Ecuador and Pakistan

by *Bhumika Muchhala, Vanessa Daza Castillo and Andrea Guillem*

Austerity is gendered in that the power relations that shape the distribution of resources and wealth as well as the labour of care and reproduction turn women and girls into involuntary “shock absorbers” of fiscal consolidation measures. The effects of austerity measures, such as public expenditure contraction, regressive taxation, labour flexibilization and privatization, on women’s human rights, poverty and inequality occur through multiple channels. These include diminished access to essential services, loss of livelihoods, and increased unpaid work and time poverty. This report examines the dynamics and implications of gendered austerity in Ecuador and Pakistan in the context of the fiscal consolidation framework recommended by International Monetary Fund (IMF) loan programmes.

Available at <https://twm.my/title2/books/pdf/GenderedAusterity.pdf>



Indian Patent Office rejects secondary patent on a vital TB drug

In a landmark victory for tuberculosis (TB) patients in the South, the Indian Patent Office in Mumbai on 23 March rejected a patent application relating to bedaquiline, a vital drug used to treat drug-resistant TB.

by Prathibha Sivasubramanian

NEW DELHI: On 23 March 2023, in a landmark victory to tuberculosis (TB) patients all over the developing world, the Indian Patent Office (Mumbai) rejected a patent application relating to fumarate salt of Bedaquiline.

Bedaquiline is a drug used to treat drug-resistant (DR) TB. It is a component of all the short and the most long regimens to treat DR-TB in adults.

Before the introduction of bedaquiline, patients diagnosed with DR-TB had a long and tormenting treatment (20 months) with a combination of medicines including daily injections which had adverse side-effects such as permanent hearing loss, psychosis etc.

The new bedaquiline-based oral regimen has increased the cure rate of DR-TB and replaced medicines causing severe side-effects.

Bedaquiline-inclusive treatment regimen is a boon for DR-TB patients and is used to treat almost every person with DR-TB.

MDR-TB is related to the condition where *Mycobacterium tuberculosis* is resistant to isoniazid and rifampicin.

In early 2018, the WHO published new treatment guidelines establishing a new all-oral, bedaquiline-based standard of care for MDR-TB.^[1]

It is estimated that globally the incidence of DR-TB increased to 450,000 cases in 2021 as compared to 437,000 in 2020.^[2] However, only 36% of patients could access treatment.^[3]

India has a high incidence of DR-TB. In fact, India, China and Russia combined contribute more than half of the multi-drug resistant tuberculosis (MDR-TB) cases globally.^[4]

There is an estimated 130,000 cases of drug-resistant TB in India every year and currently less than 30% of these patients are diagnosed and put on appropriate

treatment regimen.^[5]

The India TB Report 2022 estimates that in 2021, 48,232 patients were diagnosed (laboratory confirmed) with multi-drug resistant TB (MDR/RR-TB) and 43,380 patients were put on treatment.^[6] More than 50% of the DR-TB cases go undetected and untreated in India.^[7]

Currently, the treatment for a six-month course of bedaquiline costs around USD 350 for the Indian Government.^[8] It is expected that the cost would come down with the entry of generic pharmaceutical companies.

Bedaquiline was granted accelerated approval by the United States Food and Drug Administration (FDA) in 2012 as part of a combination treatment in adults with pulmonary MDR-TB.

Conditional marketing authorisation for bedaquiline was subsequently granted by the European Medicines Agency (EMA) in 2013.^[9]

Bedaquiline is not available in the retail market in India. So far it has been rolled out through the National TB Elimination Program (NTEP).

For 50 years, before the introduction of bedaquiline, there were no new medicines for TB.

Around 2005, Bedaquiline was identified by Janssen, a subsidiary of the pharmaceutical company Johnson and Johnson (J&J). However, further development of bedaquiline involved a lot of public funding and contributions from philanthropic organisations.

Academia, non-governmental and humanitarian organisations and governments have played a role in the development of this drug.

In 2009, Janssen entered into an agreement with the Global Alliance for TB Drug Development (TB Alliance), a non-profit organisation, to share resources and expertise for the development of

bedaquiline.^[10]

Consequently, Janssen did not conduct the phase III trials of bedaquiline. Several phase I and II trials conducted prior to the drug registration were sponsored by the US National Institutes of Health/National Institute of Allergy and Infectious Diseases and the TB Alliance.^[11]

The phase III trials to confirm the efficacy of bedaquiline and to identify potential combinations with other TB medicines are being undertaken by other non-profit organisations such as TB Alliance, the Union (previously the International Union Against Tuberculosis and Lung Disease), Medecins Sans Frontieres (MSF), and Partners In Health (PIH).^[12]

Apart from the clinical trial costs, other incentives such as tax rebates, orphan drug status and seven years of exclusivity were granted for bedaquiline.^[13]

Since J&J has obtained multiple patents on bedaquiline in many countries, considering the philanthropic contributions to its development, the company should be obligated to provide access to all MDR-TB patients who need it.

Multiple secondary patents

Currently, J&J has a monopoly in the market due to the primary patent on bedaquiline. This patent is set to expire in July 2023.

Generics can enter the market after July 2023 and provide low-cost versions of bedaquiline. However, J&J has filed multiple secondary patent applications on various forms such as fumarate salt of bedaquiline, dispersible tablet formulation, to treat latent TB, also for a combination of bedaquiline, pretomanid and linezolid - with many of them being granted in some countries.

These secondary patent applications, if granted, will block generic versions of the drug.

Opposition to patent application in 2013

In India, the patent application relating to the fumarate salt of bedaquiline along with the well-known wetting agents like TWEEN20 was filed in 2009 [1220/MUMNP/2009].

In 2013, the Network of Maharashtra

People Living with HIV (NMP+) filed a pre-grant opposition raising objections on novelty and inventive step under Section 3(d) and 3(e) of the Patents Act, 1970.

[A patent is granted only on the satisfaction of three criteria: novelty/new, inventive step (qualitative improvement from a previous product) and utility. These criteria differ for different countries depending on national laws and standards. Some countries lay down a higher standard, resulting in grant of patents to only genuine inventions giving more space for local industries to grow in the particular field of the art. It is set according to the needs of the country. In this regard, the Trade-Related Aspects of Intellectual Property Rights Agreement

(TRIPS) administered by the World Trade Organization sets only minimum standards and does not define these criteria.]

In 2019, two TB patients also filed a pre-grant opposition pointing out that many parts of the patent specification have been copy-pasted from an earlier application relating to an HIV drug, rilpivirine, which the Indian Patent Office (IPO) had rejected.

The second opposition also raised objections on inventive step under Section 3(d) and 3(e) of the Patents Act, 1970. The claims were amended after the oppositions were filed.

After hearing both parties, on 23 March 2023, the IPO rejected the secondary patent application relating to fumarate salt of bedaquiline on the grounds of lack of inventive step in the light of disclosures in prior published documents.

The IPO referred to disclosures relating to bedaquiline and suggestions to make a fumarate salt of bedaquiline in the primary patent (220/DELNP/2005) and also the disclosures in literature about advantages of the salt form over the base compound in terms of bio-availability.

The IPO also took into consideration that the use of TWEEN20 as a wetting agent in pharmaceutical compositions in a particular range is well known in the pharmaceutical field.

The IPO noted that the affidavits filed by the Applicant company in support of the patent application failed to prove that the composition of fumarate salt of bedaquiline and TWEEN20 would show surprising effect over the known composition of bedaquiline disclosed in

the primary patent.

Thus, combining the teachings and suggestions of the prior art, the IPO concluded that the application is obvious to a person skilled in the art

Additionally, the IPO also found that the Applicant had provided data on improved bio-availability to prove Section 3(d).

Bio-availability of drugs indicates the percentage, amount or concentration of drug that reaches into the systemic circulation and is available at the site of action.

However, the IPO observed that this data was insufficient to satisfy the requirement of enhanced efficacy, as bio-availability is not the same as efficacy.

The IPO concluded that “improved bioavailability would not constitute enhancement in therapeutic efficacy of the pharmaceutical composition unless it shows significant enhancement in known therapeutic efficacy in terms of efficacy results.”

The IPO also found that the Applicant has not proved any synergistic effect of the

formulation and considered it as a mere admixture (fumarate salt of bedaquiline and TWEEN20) which is disallowed under Section 3(e) of the Patents Act, 1970.

The Supreme Court of India in *Novartis AG v Union of India* (2013), had ruled that “efficacy”, a term in Section 3(d) of the Patents Act, 1970 means “therapeutic efficacy - effect of the drug on the body”.

It is not the same as bio-availability. The Applicant has to prove that increase in bio-availability should in turn increase the therapeutic efficacy of the drug.

The bedaquiline ruling is relevant not only because it disallows “evergreening” of patent monopoly on bedaquiline, but it also sets a good precedent for subsequent oppositions on secondary patents relating to pharmaceutical salts, compositions and tablet formulations.

Further, it encourages the use of public health safeguards such as pre-grant opposition by not only companies or civil society organisations or academicians or scientists, but also patients who are directly affected by the grant of patent monopoly.

This decision is in line with the current WHO guidelines, whereby pretomanid (another new TB medicine) is to be used in combination with

bedaquiline/linezolid/moxifloxacin (BPAL or BPALM regimens) for DR-TB and possibly depending on the outcome of clinical trial results, a combination of bedaquiline/moxifloxacin/ pyrazinamide (BPAMZ regimen).

Once India adopts the new WHO guideline, the Government will have scaled up the production of bedaquiline.

Hence, this order of the IPO is significant as it will reduce the current expensive cost that the Indian Government has to incur to buy bedaquiline.

Rejection of the fumarate salt of bedaquiline is not only important for India but also for other developing countries as it may facilitate the export of generic bedaquiline.

However, MSF reports that J&J has licensed bedaquiline to treat drug-sustainable TB (DS-TB) to the TB Alliance, who in turn sub-licensed it to two generic companies in India - Viartis (formerly Mylan) and Macleods.^[14]

With these sub-licenses in place, these companies could only supply bedaquiline for DS-TB and not DR-TB.

Since these agreements are not available in the public domain, it is not clear whether these licenses have any unbundling clause in the sub-licence. However, other companies who have not entered into licenses are now free to develop the generic bedaquiline.

“Evergreening” of patents must be disallowed

This decision was given by the Mumbai Patent Office. (There are four Patent Offices in India: Mumbai, New Delhi, Chennai and Kolkata).

Ideally this decision needs to be followed by other Patent Offices. However, according to the practice of the Patent Offices, there is no consistency in following precedents.

The decision of the Mumbai Patent Office should be followed by other patent offices in a uniform and consistent manner.

While we celebrate this order, the increased grant of patents to existing drugs by the IPO is still a huge problem.

Lack of uniformity in decisions is a crucial issue which leads to conflicting decisions in the grant of secondary patents to salts, polymorph, compositions etc. For instance, the IPO had granted a patent to the combination of tenofovir

and emtricitabine in May 2022 (IN 201817001590).

Both tenofovir and emtricitabine are known and their combinations were earlier rejected by the IPO.^[15]

Despite the glaring disclosures in the previously published documents, the IPO has granted the patent without applying the inventive step or Section 3(d) appropriately.

Further, a patent for a bilayer tablet^[16] comprising of old HIV drugs - rilpivirine and tenofovir - was granted in 2019 (4424/DELNP/2013).^[17]

Many of these orders granting secondary patents of the existing drugs have no reasoned decision by the IPO.

It appears that the IPO has been lowering the inventive step criteria and granting more and more patents and not implementing the Supreme Court judgement on section 3(d) in their bid to compete with their counterparts in China and the United States.

Apart from the potential benefits in the context of bedaquiline, this recent ruling's significance is broader and deeper.

It is an exemplar of how patient groups can effectively use legal safeguards to oppose frivolous secondary patent applications even when the generic pharmaceutical companies are not part of the process.

EXPLANATORY FOOTNOTES:

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- https://cdn.who.int/media/docs/default-source/hq-tuberculosis/global-tuberculosis-report-2022/global-tb-report-2022-factsheet.pdf?sfvrsn=88f8d76_3&download=true
- The reported number of people started on treatment for RR-TB and MDR-TB in 2021 was 161,746, covering only about one in three of those in need. https://cdn.who.int/media/docs/default-source/hq-tuberculosis/global-tuberculosis-report-2022/global-tb-report-2022-factsheet.pdf?sfvrsn=88f8d76_3&download=true
- World Health Organization Global tuberculosis report 2020. <https://apps.who.int/iris/bitstream/handle/10665/336069/9789240013131-eng.pdf>. [Ref list]
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- <https://www.jnj.com/media-center/press-releases/unique-collaboration-between-tb-alliance-and-tibotec-to-accelerate-tuberculosis-drug-development>
- Evaluation of Early Bactericidal Activity in Pulmonary Tuberculosis With (J-M-Pa-Z) (NC-001) - Full Text View - ClinicalTrials.gov ; Evaluation of Early Bactericidal Activity in Pulmonary Tuberculosis (TMC207-CL001) - Full Text View - ClinicalTrials.gov; <https://clinicaltrials.gov/ct2/show/NCT01341184>; <https://clinicaltrials.gov/ct2/show/NCT00992069>
- <https://msfaccess.org/open-letter-jj-calling-affordable-access-critical-tb-drug-bedaquiline>
- Gotham, D., McKenna, L., Frick, M., & Lessem, E. (2020). Public investments in the clinical development of bedaquiline. *PLoS One*, 15(9), e0239118. <https://doi.org/10.1371/journal.pone.0239118>
- MSF Issue Brief, DR-TB Drugs Under the Microscope 2022, 8th Edition. <https://msfaccess.org/dr-tb-drugs-under-microscope-8th-edition>
- This combination is of tenofovir alafenamide fumarate and emtricitabine; earlier combinations of tenofovir disoproxil fumarate and emtricitabine were rejected few years ago. Patent applications relating to tenofovir alafenamide were also rejected before. Further, the combination of tenofovir alafenamide fumarate and emtricitabine was very obvious in light of the literature and disclosures in the prior art. Basically the active ingredients tenofovir and emtricitabine and their combinations are well known in the art.
- Bilayer tablets, sometimes called double-layer tablets, are a combination of two or more active pharmaceutical ingredients in a single dosage form. It is a technology for controlled release formulation and the use of bilayered tablets is growing in treatments.
- Rilpivirine combination with tenofovir was rejected by IPO (IN687/DELNP/2006). (SUNS9751)

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