

THIRD WORLD *Economics*

TRENDS & ANALYSIS

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MC11 yields meagre harvest

After a fraught run-up both at and off the negotiating table, the WTO's Eleventh Ministerial Conference (MC11), held in Buenos Aires on 10-13 December, ended up delivering little in the way of substantive outcomes. No consensus decisions were reached either on longstanding concerns of many developing countries such as the holding of public food stocks or on new issues championed by developed countries such as electronic commerce.

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MC11 fails and ends in disarray

Faced with entrenched differences between member states and with a stonewalling US delegation, the Eleventh Ministerial Conference of the WTO concluded with little more than a bare-bones outcome. The following two articles survey what went down – and failed to go down – at the Buenos Aires meet.

by Chakravarthi Raghavan

GENEVA (14 December): The World Trade Organization's Eleventh Ministerial Conference (MC11), which took place in Buenos Aires on 10-13 December, ended in complete failure and some disarray.

In some famous last words at Buenos Aires, WTO spokesperson Keith Rockwell, who was asked at a media briefing on 12 December how he would compare MC11 with other WTO Ministerials, and hard put to present a positive gloss to a conference heading to complete failure, highlighted the hospitality of the Argentine government as a fantastic success of the conference!

He had earlier pointed to a draft joint declaration on "gender equality" sponsored or supported by many delegations, as also the great support of business, ministers and leaders. That draft declaration was among many not adopted, India having blocked it as extraneous to the WTO remit and Doha Development Agenda (DDA) negotiations.

On electronic commerce (an issue deeply dividing the WTO membership but one which his boss, Director-General Roberto Azevedo, promoted at a side-event in Buenos Aires as beneficial to small enterprises, despite their organizations in various developed and developing countries declaring it as inimical to their interests), Rockwell said there is a digital divide. The proponents, he added, have been saying without equivocation that they need technical assistance to help close the digital divide at the same time.

The failure of MC11 was inevitable perhaps from the outset, as host country Argentina and the WTO leadership attempted to ignore mandates and the interests of the vast majority of members. From the start, the conference chair, Argentine Minister Susana Malcorra, rode roughshod over the rights of members at plenary, not giving them the floor to voice any contrary views to her proposals but gavelling consensus where none existed.

Both the WTO leadership and host

Argentina were intent on burying the DDA negotiations (as the US and the EU wanted to be able to resile on their treaty commitments). Instead, negotiations on controversial new issues were sought, some not even in the ambit of trade and the WTO, but all aimed at foreclosing any likely competition to existing developed-country dominance of markets.

With the US adamantly refusing to agree to any permanent accord on public stockholding (PSH) programmes for food security in developing countries (even as the US and the EU were determined to block any scrutiny of their own agricultural subsidies), the conference saw open, bitter clashes between the US on the one side and, on the other, India, China, South Africa and others which demanded a permanent solution for their PSH programmes.

As a result of all this, the Argentine government – which had expended huge amounts to host the conference (and promote its own neoliberal, neo-mercantilist economic agenda) and had alienated global civil society and public opinion by banning scores of NGOs and denying visas for many more – ended with little or nothing to show for its efforts.

Even its hopes of staging the signature ceremony of an EU-Mercosur free trade agreement as a side-event were not apparently realized. The EU-Mercosur meeting was only able to agree on a common statement and press release on continuing their efforts!

Plurilateral initiatives

At the conclusion of MC11, a positive spin was sought to be given to the conference through reference to several announced initiatives for plurilateral negotiations and accords on new issues not on the WTO's mandate. Several of them have even been listed on the WTO website, although it was clear that some were or were likely to be illegal under the WTO remit.

In a Twitter comment on talk of possible future plurilateral agreements,

Simon Evenett, professor of international trade and economic development at the University of St. Gallen in Switzerland, said it felt more like a case of “back to the future.” Seeking plurilateral instead of multilateral deals reminded him, he said, of the Tokyo Round trade negotiations in the 1970s.

In terms of the Marrakesh treaty which established the WTO, there can be no plurilateral agreement (with conditional rights and obligations applicable to signatories) in areas already covered by existing agreements [under the General Agreement on Tariffs and Trade (GATT) or the General Agreement on Trade in Services (GATS)].

Any such agreement involving changes to the current GATT or GATS schedules of members has to be agreed to by all members by consensus, and any benefits in such schedules have to be extended unconditionally to all non-signatories of the plurilateral accord which are WTO members.

As for a plurilateral agreement in areas of trade not covered by any existing agreement, and that would need to be included in Annex IV of the WTO Agreement, it would require consensus of a Ministerial Conference on the basis of a request from signatories of that plurilateral accord.

Total failure

In a leaked recording of her remarks at a closed plenary of the WTO membership, the EU Trade Commissioner Cecilia Malmstrom said that MC11 has been a total failure. “We failed to achieve all our objectives,” Malmstrom said in a closed-door meeting of delegation heads, according to the audio recording as reported by US media outlet POLITICO.

“We did not achieve any multilateral outcomes,” Malmstrom was cited as saying. “The sad reality is that we did not even agree to stop subsidizing illegal fishing. I hope all delegations here reflect carefully about the message this sends to our citizens, to our stakeholders and to our children. It says a lot about the WTO.”

Malmstrom spoke about “the deficiencies of the negotiating functions of the WTO”, and in an effort to cast the blame (without naming them) on India, South Africa and a few others, she accused some member countries of “cynical hostage-taking” in the multilateral negotiations.

The EU Trade Commissioner’s re-

marks blaming others for deficiencies in the WTO negotiating function were rather rich, considering that in the WTO’s 22-year history, it has been the EU and the US that have engaged in “hostage-taking” and blocked developing-country demands that they deliver on their Marrakesh treaty commitments and correct the glaring asymmetries in the system. The US and the EU have been blocking DDA compromise accords in order to be able to continue subsidizing and protecting their own domestic markets (including heavy subsidies to their farm-

ing sector) and ensure oligopolistic control by their corporations in the global market.

Judging by media reports, it would appear that the attempts by the EU, Azevedo, Malcorra and others to shift the blame for the failure of MC11 to India and a few others have failed. Most reports blamed the US for its blocking of all efforts at several key decisions, such as a permanent accord on PSH programmes, a ministerial declaration or any reference to the DDA negotiations. (SUNS8597) □

US blocks outcomes, collapsing MC11 like house of cards

by D. Ravi Kanth

BUENOS AIRES (14 December): The WTO’s Eleventh Ministerial Conference collapsed here on 13 December like a house of cards, after the United States single-handedly blocked outcomes on mandated decisions and a ministerial declaration, several trade ministers told the *South-North Development Monitor* (SUNS).

MC11 did, however, pave the way for accelerating work on fisheries subsidies based on the draft texts. The decision agreed at Buenos Aires on fisheries subsidies says: “Members agree to continue to engage constructively in the fisheries subsidies negotiations, with a view to adopting, by the Ministerial Conference in 2019, an agreement on comprehensive and effective disciplines that prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU [illegal, unreported and unregulated] fishing recognizing that appropriate and effective special and differential treatment for developing country members and least developed country members should be an integral part of these negotiations.”

The trade ministers gathered in Buenos Aires also endorsed South Sudan’s request for joining the WTO.

Extension of the moratorium not to impose customs duties on e-commerce transmissions (which was further clarified in a footnote following objections raised by Indonesia), extension of the moratorium on TRIPS non-violation and situation complaints, and a decision on the work programme for small and vulnerable economies were also approved at the meeting.

While the document posted on the WTO website [WT/MIN(17)/W/6] on e-commerce transmissions as of the moment of writing does not have any footnote, the Indonesian minister and their chief trade official, Iman Pambagyo, said the WTO Director-General had told them that he is attaching a footnote clarifying that “electronic transmissions does not include trade in goods and trade in services.”

Besides extending the moratorium, the ministerial decision on e-commerce seeks to “reinvigorate” work based on the existing mandate based on the 1998 work programme. It instructs the WTO General Council to hold periodic reviews in July and December 2018 and July 2019 based on the reports submitted by the relevant WTO bodies (Council for Trade in Goods, Council for Trade in Services, Committee on Trade and Development, and TRIPS Council) and report to the next session of the Ministerial Conference.

Unable to secure consensus at Buenos Aires on their proposals for establishing a working party/working group and horizontal discussions on e-commerce, the proponents opted for a plurilateral initiative (see following article).

Failure to deliver

Barring the above decisions, MC11 failed to deliver “final substantive agreements”, admitted WTO Director-General Roberto Azevedo.

Progress on longstanding issues was always going to be difficult and it would require a leap which was not possible at

Buenos Aires, Azevedo maintained. "Multilateralism doesn't mean you will get what you want but it means to get what is possible," he said.

Azevedo, however, remained upbeat about the new "dynamism", particularly the exploratory plurilateral initiatives launched by groups of countries at Buenos Aires on e-commerce, disciplines for micro, small and medium-sized enterprises (MSMEs), and investment facilitation.

The Director-General must take credit for working assiduously with major developed and several developing countries as part of a Plan B to ensure that Buenos Aires gave birth to plurilateral initiatives while eroding the multilateral basis of the WTO.

"There is life after Buenos Aires," said the MC11 chairperson Susana Malcorra, suggesting that Buenos Aires paved the way for addressing "21st-century issues". She welcomed the plurilateral initiatives on e-commerce and MSMEs.

[Though Azevedo and Malcorra hailed the plurilateral initiatives, it seemed clear that these might run afoul of the WTO agreements. Even the WTO's posting and promoting these initiatives on its website and expending its human and material resources on servicing such initiatives may prove problematic without specific General Council sanction (MC11 having provided none). Both Azevedo and secretariat officials involved might find themselves facing problems before the WTO Budget Committee and the General Council that approves budgets on the recommendation of that committee. – *SUNS*]

Crossroads

In the absence of a ministerial declaration, Malcorra issued a chair's statement in which she maintained that the multilateral trading system is at a crossroads. She said the decisions adopted in Buenos Aires will guide members' work in Geneva in the next two years.

South Africa's Trade Minister Rob Davies said "it is a moment of truth" for the multilateral organization, which faces a grave crisis. He castigated the attempts at Buenos Aires to terminate special and differential treatment (S&DT) flexibilities and walk away from all mandated issues while embracing new issues.

The Buenos Aires meeting failed to provide any concrete outcomes on mandated issues such as the permanent solution for public stockholding (PSH) programmes for food security. Azevedo

said the work on PSH will continue along with other unresolved issues in Geneva.

During several meetings – both open-ended and among small groups of countries – on 13 December, the US vehemently opposed many of the items including PSH, the language on agricultural domestic support, particularly cotton, and the special safeguard mechanism (SSM).

"In the run-up to MC11, decisions were expected on a permanent solution on food security and other agriculture issues," India said. Without naming the US, India went on to add: "Unfortunately, the strong position of one member against agricultural reform based on current WTO mandates and rules led to a deadlock without any outcome on agriculture or even a work programme for the next two years."

The facilitator for agricultural outcomes at MC11, Kenyan Foreign Affairs Cabinet Secretary Amina Mohamed, had modified the draft decisions several times to ensure the US came on board to continue work on the unresolved issues. A trade minister from one of the countries in the Cotton-Four (C-4) grouping told *SUNS* that they had lowered their level of ambition on domestic support and market access to enable the US to agree to the language on cotton.

Despite the facilitator's painstaking efforts, the US finally pulled the plug on agriculture at an open-ended meeting of heads of delegation on 13 December afternoon. Once the US rejected the agriculture package, even the language agreed by the C-4 countries fell apart, the trade minister said.

The US also blocked the draft ministerial statement issued by the chair of the conference.

The draft ministerial decision said "we reiterate paragraphs 30 and 31 of the Nairobi Ministerial Declaration, we commit to work towards more effective implementation and enforcement of WTO rules as negotiated and agreed by all and underscore the importance of implementing decisions by members."

India initially blocked the moratorium on e-commerce transmissions on the ground that it could accept the moratorium only after members agreed to the moratorium on TRIPS non-violation and situation complaints and a structured work programme on the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD). But India later agreed to take up the TRIPS-CBD demand at the TRIPS Council.

India also blocked a draft ministerial decision on "policy dialogue" – which was initiated to bring new issues such as gender, trade and labour, and trade and environment – on grounds that it was not part of the WTO mandate.

"There was a view amongst Ministers that the WTO can play an important role in promoting the exchange of comparative experiences and a better understanding of the implications of different policy choices," the draft decision had suggested.

In conclusion, the four-day meeting hosted by the Argentine government amidst protests on the streets of Buenos Aires was a well-crafted attempt to give birth to plurilateral initiatives while burying the bread-and-butter issues of the Doha work programme. The conference will remain as the mother of trade ministerial meetings in terms of eroding the multilateral framework of the WTO, several ministers said. (*SUNS*8597) □

North and allies opt for plurilaterals on e-commerce and MSMEs

Having failed to obtain consensus at MC11 for working towards WTO disciplines on e-commerce and micro, small and medium-sized enterprises, proponents have launched plurilateral talks on these two contentious subjects.

by D. Ravi Kanth

BUENOS AIRES (14 December): The major developed countries and their allies in the developing world resorted to a plurilateral initiative on electronic commerce on 13 December at the Buenos Aires Ministerial Conference after failing to secure multilateral consensus for es-

tablishing a working party on e-commerce, several trade ministers told *SUNS*.

Argentine Minister Susana Malcorra, who chaired the ministerial meeting, welcomed the plurilateral initiative for what she called 21st-century

issues.

Even the United States – which blocked the proposed outcomes on the permanent solution for public stockholding programmes for food security and other issues – immediately embraced the plurilateral initiative on e-commerce.

The 71 countries under the plurilateral initiative decided to “initiate exploratory work” towards future WTO negotiations.

The decision came a day after the proponents had failed to secure consensus on their proposal for establishing a working party/working group to accelerate work on e-commerce with a view to launching negotiations at the next Ministerial Conference in 2019.

The US “is pleased to partner with 70 members to initiate exploratory work on negotiations on electronic commerce issues in the WTO”, said US Trade Representative Robert Lighthizer in a statement. “Initiatives like this among like-minded countries offer a positive way forward for the WTO in future.”

The initiative is not, however, being called “plurilateral” even though it is among a coalition of willing countries, because one member is sensitive to the use of terms like “plurilateral” and “multilateral”, said one of the co-sponsors. Therefore it is being called an initiative of like-minded countries.

The US and the EU are among the sponsors of the initiative, which was announced by Japan, Australia and Singapore. Other members include Albania, Argentina, Bahrain, Brazil, Brunei, Cambodia, Canada, Chile, Colombia, Costa Rica, Guatemala, Hong Kong (China), Peru and many other countries.

In a joint statement, the 71 countries said they “share the goal of advancing electronic commerce work in the WTO in order to better harness [the] opportunities” created by e-commerce.

They added: “We recognize the particular opportunities and challenges faced by developing countries, especially LDCs [least developed countries], as well as by micro, small and medium-sized enterprises, in relation to electronic commerce.

“We also recognize the important role of the WTO in promoting open, transparent, non-discriminatory and predictable regulatory environments in facilitating electronic commerce.”

Many members of the group had circulated several proposals on e-commerce

(continued on page 15)

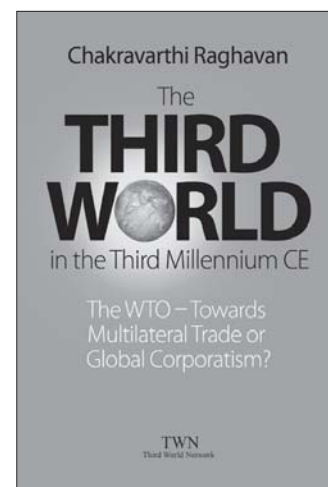
The Third World in the Third Millennium CE

The WTO – Towards Multilateral Trade or Global Corporatism?

By Chakravarthi Raghavan

THE second volume of *The Third World in the Third Millennium CE* looks at how the countries of the South have fared amidst the evolution of the multilateral trading system over the years. Even at the General Agreement on Tariffs and Trade (GATT) gave way to the World Trade Organization (WTO) as the institution governing international trade, this book reveals, the Third World nations have continued to see their developmental concerns sidelined in favour of the commercial interests of the industrial countries.

From the landmark Uruguay Round of talks which resulted in the WTO's establishment to the ongoing Doha Round and its tortuous progress, the scenario facing the developing countries on the multilateral trade front has been one of broken promises, onerous obligations and manipulative manoeuvres. In such a context, the need is for the countries of the Third World to push back by working together to bring about a more equitable trade order. All this is painstakingly documented by Chakravarthi Raghavan in the articles collected in this volume, which capture the complex and contentious dynamics of the trading system as seen through the eyes of a leading international affairs commentator.



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CSOs disappointed over MC11 failure to deliver on PSH, development

The outcomes and non-outcomes of MC11 were met with a mixture of disappointment and relief by civil society organizations.

by Kanaga Raja

GENEVA (14 December): A global network of civil society organizations (CSOs) has expressed deep disappointment over the failure of the Eleventh WTO Ministerial Conference to bring about outcomes amongst others on a permanent solution for public stockholding (PSH) programmes for food security, a workable Special Safeguard Mechanism (SSM), and on addressing WTO constraints to development.

In a final statement issued following the conclusion of MC11 on 13 December, the CSOs, grouped under the Our World Is Not for Sale (OWINFS) network, said that they were deeply disappointed that WTO members once again

missed a crucial opportunity to address fundamental problems in the global trading system.

At the same time, however, they were relieved that the push by giant technology corporations for an agenda to expand WTO rules over the future digital economy failed to garner support from a majority of members.

The CSOs said that despite a mandate to find a permanent solution for PSH at MC11, members failed to remove WTO constraints on countries' ability to feed their hungry populations and improve farmers' livelihoods; on a workable SSM; and on disciplining subsidies that distort trade and damage farmers'

livelihoods around the world.

Likewise, said the CSOs, members made no progress on the key issue of addressing WTO constraints to development, having completely ignored the G90 country grouping's development proposals.

"Fortunately, given that there was no Ministerial Declaration, previous affirmations of the development agenda still stand."

It was unfortunate, the CSOs pointed out, that members were not able to agree to discipline fish subsidies, but given that some members opposed preserving development policy space in fisheries, it was better that members continue consultations in Geneva.

In their statement, the OWINFS network welcomed that the majority of WTO members saw clear that it is far too premature for the WTO to begin negotiations on the digital economy, and simply reaffirmed the existing working programme for discussions on e-commerce.

CSO reps voice their views

Some 80 civil society representatives from 34 countries were in Buenos Aires as part of the OWINFS network delegation, with several of them providing some reactions at the end of MC11:

Jane Kelsey, Law Professor, University of Auckland, New Zealand: "Powerful countries that became used to dominating the WTO have discovered that they can no longer control the outcomes of ministerial conferences. Rather than accept the reality that the majority of the world's countries and people want the WTO to address their urgent development realities, a self-selected group of mainly rich countries have clubbed together to set up their own process. Doubtless they plan to bully developing countries back in Geneva and at the next ministerial meeting. Doing so will simply deepen the WTO's crisis of legitimacy."

Sachin Kumar Jain, Right to Food Campaign, India: "It is sad that WTO members could not reach a permanent, acceptable, pro-people solution on public stockholding. We were hoping that developed countries would at least now give prominence to human lives over agribusiness and profiteering food

business."

Sylvester W. Bagooro, Third World Network-Africa, Ghana: "The outcome of MC11 from Africa's perspective could be viewed in two ways. On one breath Africa has not accepted any further onerous obligations but also has not gotten anything from this Ministerial. So Africa returns home empty handed. It is time for Africa to look within for solutions to the continent's problems judging from the posturing of developed countries over the years."

Ruben Cortina, President of UNI Americas, UNI Global Union (which represents more than 20 million workers from over 900 trade unions in the fastest-growing sectors in the world – skills and services): "Again the international system is at a crossroads: change the agenda to focus on peoples' interests and multilateralism will begin to work; keep it as it is now and no matter how many police you put in the streets and how many civil society members you deport, things still won't work. The international trade union movement is vital for a fair and inclusive future."

Christina J. Colclough, Director of Platform and Agency Workers, Digitalisation

and Trade, at UNI Global Union: "The joint statement on e-commerce, signed by 42 countries plus the European Union, is a far cry from the hopes of the countries who had aimed to create a WTO 2.0 on e-commerce. The collapse is good news. We will push back against any attempts to continue this agenda. Let's be clear: the free flow of data does not equal the free and equal access to data. It won't benefit you and I. What these e-commerce proponents were pushing for would benefit Big Tech at the expense of all others and not least workers."

Prerna Bomzan, Third World Network, Nepal: "We are once again disappointed that least developed countries' concerns were ignored during the Ministerial Conference in Buenos Aires. The LDC package is long overdue and we continue to demand an immediate, binding deliverable to enable the inclusion of the most marginalized countries into international trade."

Georgios Altintzis, Trade Policy Officer, International Trade Union Confederation (which represents 181 million workers in 163 countries and territories and with 340 national affiliates): "Inserting new issues prematurely [into] the WTO has largely been avoided. The global trade union movement remains vigilant on further developments, particularly on e-com-

Likewise, the majority of countries agreed that countries' sovereign right to regulate in the public interest should not be further limited by the WTO, and that "domestic regulation" disciplines are not necessary, and thus no new rules on "domestic regulation" were agreed.

Likewise, most members realized that new negotiations on investment facilitation are unwarranted, and decided against a new mandate on this issue.

Other issues like micro, small and medium-sized enterprises (MSMEs) and "gender and trade", the CSOs said, are "Trojan Horses" for sneaking in new issues like e-commerce, and represent the wrong agenda of further benefits for corporations at the expense of jobs and development.

The CSOs noted that a declaration against the appropriation of gender to further liberalization was signed by over 164 groups in 24 hours during the week of MC11. Likewise, myriad MSME associations raised objections to the e-commerce agenda and against the so-called

"MSME work programme" that is against their interests.

The OWINFS statement continued: "Despite many of our representatives from civil society having been unjustly, and without due process, banned from participating [in MC11], those of us who were allowed in have raised our voices about the negative impacts of existing WTO policies on workers, farmers, the environment, development, and the public interest, calling for fundamental transformations to the existing trade system."

"We believe in a democratic, transparent, and sustainable multilateral trading system, and do not want to see the WTO depart even further from that ideal, and will continue our call on governments not to expand the failed model of the WTO to new issues," the CSOs underscored.

Bully

According to the CSOs, it seems that the United States came to Buenos Aires

with an agenda of rejecting the consideration of development concerns in trade. The US attempted to bully its way into shaping an outcome in its interests, but the majority of developing countries – having faced the brunt of negative WTO policies for so many years – resisted this pressure.

"We are just as disappointed at the EU, since it failed to play a constructive role at the Ministerial. While claiming to build consensus, it stuck with a discredited approach of expansion of WTO trade rules, deregulation, increasing market access, while refusing to repair the existing WTO rules which are harmful to developing countries."

The CSOs however recognized the leadership of the African Group, India, the ALBA group of Latin American countries, and other countries in defending that multilateral trade policy should foster, rather than constrain, development prospects.

"No matter the outcome, the WTO as an institution continues to exist and

merce in non-multilateral settings."

Parminder Jeet Singh, IT for Change, India: "We are happy that attempts by the US and its allies to bring e-commerce to the WTO as a way of liberalizing 'everything' through the backdoor, and ensuring entrenching of business models of GAFA (Google, Amazon, Facebook, Apple) based on monetizing our data, have failed ... Developing countries must now focus on building their domestic digital industry, through appropriate digital industrial policies. They should work together on this, developing best practices."

Helene Bank, Norwegian Trade Campaign, Norway: "Rich countries have undermined the multilateral trading system by totally overloading the WTO agenda and never accommodating developing countries' needs. We as civil society need policies that protect societies, welfare, workers and human rights, ecosystems and common resources, NOT sell out to big corporations. Our societies need international systems that call for regulation of trade and the economy, NOT the WTO push for deregulation and undermine just rules."

Nick Dearden, Global Justice Now, United Kingdom: "The collapse of the WTO ministerial was 'the best outcome possible' given the position of rich coun-

tries at this week's summit. We criticize the continued intransigence of rich countries like Britain who have no interest in solving the fundamental injustice of current WTO rules, and instead want to turn the whole world into a corporate playground."

Timothy A. Wise, Researcher, Small Planet Institute and Tufts University, USA: "Intransigence by the United States has again prevented the WTO from taking steps to allow developing countries to protect their farmers from unfair trade practices such as dumping. Public stockholding for food security should be allowed without interference, to protect farmers from dumping and to feed the hungry."

Nabil Abdo, Arab NGO Network for Development: "The WTO failed again to deliver on development, and put the needs of people, farmers, workers, and vulnerable people at the centre of its concerns. The MC11 failed due to the insistence of some powerful developed countries to prioritize corporate profit and tech giants over food security and sovereignty, the ability to design national policies, and most importantly the interests of people."

Petter Titland, ATTAC Norway, Norway: "The TiSA countries are pushing the agenda of the big data extraction firms like Google, Facebook and Amazon with-

out a public debate about the future of our economy and digital industrial policy. Nigeria is the only African country supporting negotiations on e-commerce in the WTO. All the other African countries want to develop their own digital industrial policy, and we must support them."

Sophia Murphy, Senior Advisor, Institute for Agriculture and Trade Policy, Canada: "The multilateral system can only work on the basis of trust and compromise. By refusing to meet any country part way in Buenos Aires, the Trump Administration has squandered an opportunity for Americans to be part of building a trade system that starts to tackle the real challenges of the 21st century: inequality and the fragility of our planet's resources."

Maruf Barkat, COAST Trust, Bangladesh: "Our analysis of the proposals and their progress in the WTO's MC11 is that true 'development' has been ignored. The proposed e-commerce rules will not help MSMEs even though MSMEs are a commonly cited justification for the proposed e-commerce rules. MSMEs need WTO members to agree to the G90 special and differential treatment proposal. The proposed MSME work programme would limit the policy space to help MSMEs." □

continues to have rules that are detrimental to developing countries, workers, farmers, the environment, and the public interest generally. These rules need to be fundamentally transformed as we have outlined in the Turnaround Agenda, endorsed by hundreds of civil society organizations from around the world, which is similar to the objectives of the developmental aspects of the Doha Development Round,” said the CSOs.

Meanwhile, the CSOs added, the WTO’s dispute settlement mechanism will continue to enforce asymmetrical rules against developing countries and public interest regulations. Moreover, its effectiveness depends on the complaining country’s ability to retaliate, making it useful for powerful countries but less so for developing countries.

With or without agreements at MC11, the CSOs said, the new paradigm of plurilaterals and the continuation of bilaterals are used by neoliberal trade negotiators in different countries to impose their agenda of further expanding trade and investment rules. Such new trade rules further restrict the ability of countries to pursue public policy objectives such as the promotion of health, education and employment, as well as the protection of the environment and labour rights.

“We support the conclusion of the development aspects of the Doha Development Round, but we oppose the expansion of liberalization trade rules – be they through bilaterals or plurilaterals or multilaterally in the WTO,” the CSOs underlined.

Positive non-outcomes

The CSOs applauded the majority of developing countries at MC11 which held firm against massive pressure, led by Japan, Australia and Singapore, to launch negotiations on e-commerce in the WTO.

A series of proposals on e-commerce tabled since mid-2016, initially by the US and then pursued by Japan and the EU, were designed for, and largely by, the Big Tech companies.

The CSOs noted that a Joint Statement on Electronic Commerce issued late morning of the final day of MC11 was supported by a minority of the 164 WTO members. The signatories plan to hold “exploratory work towards future WTO negotiations” even though there is no mandate from the Ministerial Conference to take e-commerce any further than the “discussions” that are currently autho-

rized.

“We see this electronic commerce statement as a repeat of the tactics used in the Trade in Services Agreement (TiSA). A self-selected group of countries took it upon themselves to rewrite the trade in services rules of the WTO in ways that intrude deeply on nations’ right to regulate and without any development dimension. TiSA had no WTO mandate and in theory was conducted outside the WTO, but the Secretariat was complicit by facilitating its meetings. The same must not happen with e-commerce.”

The joint statement seems carefully to avoid the word “plurilateral”, presumably to play to Trump sensitivities, but the United States is on the list of participants, the CSOs pointed out.

“It is not clear why electronically transmitted products should not contribute to the tax base while products that are traded through traditional mechanisms usually do. However, it is a positive outcome that the moratorium on TRIPS non-violation complaints, which is essential to ensure lifesaving medicines for millions of people, was approved, although it should have been approved on a permanent basis.”

On the subject of investment, the CSOs said that existing investment rules have given new rights to corporations to profit in countries while putting taxpayers on the hook for millions in payouts for upholding public interest regulations. Even if the proposals in the WTO focus on investment facilitation (IF), this is not a trade issue per se and the United Nations Conference on Trade and Development (UNCTAD) is already the primary multilateral agency working on investment. “No new work programme on IF is a positive outcome of MC11,” the CSOs said.

With regard to the services sector, the CSOs noted that the Sustainable Development Goals (SDGs) agreed by all WTO members include a focus on expanding access to and quality of many public services, as well as other key services like financial services and telecommunications. The proposed rules on domestic regulation (of services) would severely undermine the regulatory sovereignty of countries.

Governments – not trade panels – should have the authority to decide community issues that are inherently subjective. Foreign companies should not have “rights” to input on measures proposed by local or national authorities before they are decided domestically. WTO

members have not yet agreed whether disciplines on these measures are “necessary.” “No disciplines on domestic regulation is a positive outcome for MC11,” the CSOs said.

Turning to the issue of fisheries subsidies, the CSOs said there is a clear mandate for a pro-development and pro-environment outcome on disciplining fishing subsidies. But existing industrial fishing nations are insisting on rules that would undermine the future developmental aspirations of developing countries and harm existing artisanal fisherfolks’ livelihoods.

“The developmental and economic policy space of developing countries must be maintained whilst those nations that have contributed most to the problem of IUU [illegal, unreported and unregulated fishing] and overfishing must agree to eliminate harmful subsidies. Since policy space for development was not protected, it is better that members agreed to continue negotiations on fish.”

What should have been on the agenda

According to the CSO statement, there remains an urgent need to transform existing WTO rules which are constraining policy space for job creation and development, including achievement of the SDGs.

“The Doha Work Programme on development must be concluded as soon as possible, rather than permanently shelved in favour of a big business agenda of WTO expansion.”

Agriculture rules in the WTO must be transformed. A permanent solution for public stockholding that is workable for all developing countries, and a workable SSM should have been agreed as the top priority of MC11, said the CSOs.

Current inappropriate proposals on agricultural subsidies fail to take into account the huge dumping impact of domestic subsidies on exported products while calling on developing countries to cut subsidies.

The top priority for a genuine development agenda would be transforming the current rules on agriculture, said the CSOs. Rich countries, not the poor, are currently allowed to subsidize agriculture under WTO rules – even in ways that distort trade and harm other countries’ domestic producers. It is unfortunate that members did not agree to reduce the subsidies of developed countries under “domestic support” – including in the “Green Box” category of sub-

sidies when these actually have trade-distorting impacts.

Subsidies that the US and the EU provide to cotton producers enrich a few thousand there, but have unfairly decimated production of hundreds of thousands of cotton farmers in Africa. "It is deeply disappointing that members did not decide to significantly reduce or eliminate developed countries' domestic supports for cotton at MC11."

Given the existing subsidies, developing countries should also be able to protect domestic production when facing import surges. An outcome on SSM – unconditioned on further tariff cuts – would have greatly enhanced developing countries' ability to achieve food security and promote rural development and farmers' livelihoods, the CSOs said.

By contrast, most developing countries are only allowed minuscule subsidies. But the SDGs entreat countries to increase investment in sustainable agriculture. Also, there is growing acceptance of the "right to food" as a human right. One of the international best practices for supporting farmers' livelihoods, ensuring food security and promoting rural development is public stockholding. But these programmes in dozens of developing countries often run afoul of WTO rules, even though the agriculture supported is not traded in global markets.

The CSOs noted that supports by China and India to farmers on a per capita basis remain minuscule – only a few hundred dollars per farmer, as compared with tens of thousands for the United States. Supports in African and many Middle Eastern countries and least developed countries (LDCs) should be increased even if they don't have existing programmes.

"Members had a commitment to deliver a positive resolution on the public stockholding issue that would have allowed all developing countries to implement food security programmes without onerous restrictions that are not demanded of developed countries' trade distorting subsidies, and it is deeply disappointing that they did not resolve this issue," the CSOs said.

Along with transforming the global rules governing agricultural trade, developing countries have long advocated for other changes to the existing WTO rules to increase flexibility for them to enact policies that would promote their own development, noted the CSOs.

The G90 proposals for changes to

existing WTO rules would remove some WTO constraints on national pro-development policies. These would allow developing countries to promote manufacturing capabilities, stimulate the transfer of technology, promote access to affordable medicines, and safeguard regional integration.

"It is deeply disappointing that the G90 proposals, without being conditioned on further market access concessions, and the Para 44 mandate to con-

tinue post-MC11, were not agreed at MC11."

The CSOs called on WTO members to return to Geneva to reaffirm multilateralism and fundamentally transform the existing trading system – along the lines of the Turnaround Agenda endorsed by CSOs around the world – so that it can be an engine for development and shared prosperity rather than a platform for expansion of a big business agenda. (SUNS8597) □

Azevedo accountable to General Council on e-commerce initiative

WTO Director-General Roberto Azevedo has lent enthusiastic backing to a high-powered venture to promote e-commerce, but does his involvement in the project fall in line with WTO rules?

by Roberto Bissio

BUENOS AIRES (20 December): The public endorsement by WTO Director-General Roberto Azevedo of the "Enabling E-commerce" initiative and his active participation at its launch during the Eleventh Ministerial Conference of the WTO is a drastic departure from his stated policy and may be "illegal" or contrary to explicit WTO rules, according to observers and some trade delegations.

Azevedo had announced the initiative on 11 December in Buenos Aires at a press conference along with Chinese billionaire tycoon and chairman of Alibaba group, Jack Ma, and Rick Samans, a manager of the Switzerland-based World Economic Forum.

Speaking on that occasion, Azevedo claimed: "The vibrant debate on these issues has shown the desire of many WTO members to bridge the digital divide, and to gain a deeper understanding of the challenges and opportunities of e-commerce."

During MC11, some 70 countries (out of 164 members of the WTO), led by Australia, Japan and Singapore, endorsed a statement in favour of e-commerce and "the opportunities it creates for inclusive trade and development". Their statement recognized the "particular opportunities and challenges" faced by micro, small and medium-sized enterprises (MSMEs) in relation to e-commerce. They agreed to "initiate exploratory work together towards future WTO negotiations on trade-related aspects of electronic commerce".

The proposed initiative of the 70-

odd countries is clearly an attempt to circumvent the formal procedures of the WTO (where there is already a working group on e-commerce, but without a negotiating mandate) in order to "explore" and come back to the whole membership with a pre-negotiated agreement.

"Bait"

When MC11 was under way, organizations of MSMEs in both the developing and developed world had issued statements questioning the claimed benefits to them of WTO disciplines on e-commerce. These statements were made available at the conference to delegates, media and NGO participants.

The statements said that e-commerce initiatives and proposed rules and disciplines at the WTO, including on such matters as free flow of data across borders, would disadvantage and perhaps drive out of business MSMEs, and increase oligopolistic control by the three or four US Silicon Valley technology giants.

"The MSMEs are the bait to attract adherence," commented Sally Burch, an Anglo-Ecuadorian expert on electronic communications who was deported from Argentina and not allowed into the Ministerial Conference, even though she had valid WTO accreditation.

Burch argues that the real objectives for GAFA-A (the joint lobby of Google, Apple, Facebook, Amazon and now Alibaba) behind that bait could be the "free flow of data", allowing for the

commoditization of personal information, the ability of foreign e-commerce corporations to operate without a physical presence in the country (and thus escape local civil or criminal jurisdiction for their activities) or not requiring companies offering digital service contracts to open up their source code or to use national software.

Edouard Bizumuremyi, commercial attache at the Permanent Mission of Rwanda in Geneva, concurred with this view: "We have seen texts that were presented containing rules such as the free flow of data [and] no localization requirement."

The African Group of countries, said Bizumuremyi during a panel debate organized by Third World Network, sees the effort at new discussions on e-commerce at the WTO as a disguised manoeuvre to have a mandate on e-commerce, while Africa needs policy space for its digital industrial policy.

Vahini Naidu, counsellor at the South African Permanent Mission to the WTO, said although e-commerce can be used for development and has many benefits, the kind of rules being proposed are not necessarily going to contribute towards development.

Cross-border e-commerce is highly asymmetrical in nature and is very concentrated and dominated by six countries, she said.

The wider digital transformation of which e-commerce is a little part is important but very disruptive, she said. Automation and artificial intelligence also mean job losses and governments need the foresight in terms of adopting innovative policies to address this, she added.

Violation of obligations?

Bangladesh, India and almost all African countries rejected the e-commerce statement issued at MC11, together with other so-called "21st-century issues" that conference chair Susana Malcorra wanted to introduce into the WTO negotiations.

Nevertheless, Director-General Azevedo estimated that the Enabling E-commerce initiative "will provide a valuable resource – bringing a range of stakeholders together to further explore these issues" – and he thanked Alibaba and the World Economic Forum for it.

In doing so, Azevedo may be violating his obligations in terms of Article VI.4 of the WTO's foundational Marrakesh Agreement, which demands that the Di-

rector-General "shall not seek or accept instructions from any government or any other authority external to the WTO".

The next sentence in that paragraph goes on to demand of the Director-General and the secretariat: "They shall refrain from any action that might adversely reflect on their position as international civil servants."

The paragraph also adds: "The Members of the WTO shall respect the international character of the responsibilities of the Director-General and of the staff of the secretariat and shall not seek to influence them in the discharge of their duties."

During the launch of the Enabling E-commerce initiative, Azevedo went on public record to say: "When the eWTP [Electronic World Trade Platform, the organization that Ma was formally representing at the joint press conference] and the World Economic Forum approached us a few months ago with the idea of joining forces on a high-level, public-private dialogue on e-commerce, I didn't think twice. It struck me as an ideal opportunity..."

Isn't that a public confession of having accepted instructions from an external authority and/or undertaking action "that might adversely reflect on their position as international civil servants"?

Aren't the World Economic Forum and Alibaba "external" to the WTO and, by virtue of the billions they mobilize or the billionaires that they gather, an impressive (albeit illegitimate) power or "authority"?

How can the Director-General join them to promote issues that members – whole regions, in fact – reject?

Back in 2014, after having attended the World Economic Forum's annual jamboree in Davos for the first time as WTO Director-General, Azevedo had written in a column for The Huffington Post: "We have learnt a great deal from the failures of the last 18 years ... For example, negotiations have to be undertaken with the participation of all 160 [now 164] WTO Members. The process may be a little slower this way, but reaching a consensus is easier and the final result is more likely to be accepted. Moreover, it's important that all Members benefit from the outcomes they negotiate, especially those countries which are least-developed."

In less than four years, that promise seems to have been forgotten. And in a few weeks, Azevedo is due to take his espousal of the interests of Silicon Valley tech giants and Chinese tycoon Ma's

Alibaba, and promotion of the Enabling E-commerce initiative, to the 2018 Davos symposium – without any authority emanating from the WTO's MC11 or General Council.

After Davos, according to a WTO press release, the initiative will be followed by "other conversations" and "a major event in Geneva later in the year".

The WTO Budget Committee, which has to clear any extra budgetary spending or use of existing resources for such activities, could question Azevedo about those plans, or ask which Ministerial Conference or General Council decisions authorize them.

Relations with NGOs

Further challenging the legality of the joint WTO-Alibaba-World Economic Forum initiative, Professor Robert Howse, who teaches international law at New York University School of Law, commented in a piece posted on the International Economic Law and Policy (IELP) blog that Article V of the Marrakesh Agreement might also be affected.

Article V.2 reads: "The General Council may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO."

In citing this, Howse has asked whether Azevedo will be requesting forthwith the General Council to "make appropriate arrangements" for cooperation with the eWTP and the World Economic Forum.

The law academic also points out that in 1996, the General Council in a decision had clarified what WTO members viewed as appropriate relations with non-governmental organizations (NGOs): "This interaction with NGOs should be developed through various means such as inter alia the organization on an ad hoc basis of symposia on specific WTO-related issues, informal arrangements to receive the information NGOs may wish to make available for consultation by interested delegations and the continuation of past practice of responding to requests for general information and briefings about the WTO."

This means that Azevedo has no authority as Director-General to "consult and cooperate" with the World Economic Forum, which is after all an NGO for all legal purposes, no matter how high the fees it charges CEOs and billionaires to allow them to mingle (and make profit-

able deals on the side) in an exclusive ski resort with global decision-makers – like Azevedo himself – and celebrities.

So, according to Howse, “the first question is this: will Mr. Azevedo be requesting forthwith the General Council to ‘make appropriate arrangements’ for cooperation with Alibaba and the WEF?”

If he does not, but goes ahead (without authority) to participate in the Davos event on e-commerce with Alibaba and the WEF, is it not time for concerned WTO members to convene a special meeting of the General Council (ahead of the Davos event) to ask the Director-General to explain and hold him to account?

Howse has noted that the 1996 decision of the General Council states that “there is currently a broadly held view that it would not be possible for NGOs to be directly involved in the work of the WTO...”

(This is why during Ministerial Conferences like the one in Buenos Aires, NGOs have no access to meeting rooms and, basically, less rights than the media. At MC11, accredited NGO delegates – or at least those allowed by the Argentine

government – could attend press conferences but not ask questions.)

“Unless I am missing something,” concludes Howse, “the common venture between the WTO, the World Economic Forum and the eWTP goes considerably beyond the kind of cooperation with NGOs envisaged so far by the General Council.”

Of course, the General Council, which has authority over relations with NGOs, can always change its mind. And if it agrees with Azevedo’s idea of “bringing a range of stakeholders together to further explore these issues”, the critics of the e-commerce initiative should also be invited.

Starting with those accredited by the WTO to attend the Buenos Aires Ministerial Conference but barred by Argentina from doing so ... without any public word of complaint or protest from Azevedo. (SUNS8601) □

Roberto Bissio is a Uruguay-based civil society activist and coordinator of the international secretariat of Social Watch, an international network of citizens’ organizations. He attended MC11 as a WTO-accredited NGO representative.

“Pink-washing” the WTO with draft women’s declaration?

A much-trumpeted declaration on “trade and women’s economic empowerment” released on the occasion of MC11 has been criticized as taking “a very narrow approach to assessing the gendered impacts of trade”.

by Roberto Bissio

BUENOS AIRES (13 December): A non-binding declaration on women and trade signed by 118 countries was made public on 12 December during a press conference at the Hilton Hotel, where the Eleventh Ministerial Conference of the WTO is taking place.

Though released as a “joint declaration” with much fanfare at the press conference, it was denounced by many women’s movements (including grass-roots ones) around the world.

And it remains a draft, one of the many that were tabled at the Ministerial Conference, and will remain so unless the Ministerial Conference adopts it by consensus. (The conference ended without adopting this declaration. – TWE)

The Joint Declaration on Trade and Women’s Economic Empowerment states, without offering evidence, that “international trade and investment are

engines of economic growth for both developing and developed countries, and that improving women’s access to opportunities and removing barriers to their participation in national and international economies contributes to sustainable economic development”.

This is followed by a promise to hold seminars on a range of matters including to identify “barriers” that limit women’s participation in trade, to enhance women entrepreneurs’ participation in public procurement markets and the inclusion of women-led businesses, in particular micro, small and medium-sized enterprises (MSMEs), in value chains. In 2019 a progress report would be issued.

Some 200 women rights groups and “allied organizations” from around the world, mainly from developing countries, circulated a photocopied counter-

declaration objecting to this “pink-washing” of trade rules perceived as unfair to women.

Among the 200-odd women’s groups that came out against the draft joint declaration are the Mahila Dakshata Samiti, National Alliance for Women, Public Advocacy Initiative for Rights and Values in India (PAIRVI), Federation of Women Farmers’ Rights, RITES Forum, Society for Rural Education and Development, Indian Social Action Forum, Tamil Nadu Women’s Forum, and Centre for Research and Advocacy from India; and women’s groups in the US, France, Australia, the UK, Fiji, Nigeria, Kazakhstan, the Philippines, Turkey, Uganda, Sri Lanka, Burundi, Ghana, Pakistan, Bolivia, Rwanda, Senegal, Spain, Argentina, the Netherlands, New Zealand, Bangladesh, Nepal, Mexico, Cambodia, Indonesia, Hong Kong (China), Thailand, El Salvador, Congo, Jordan and Myanmar.

“Gender champions”

The official declaration was initially distributed to WTO members by Iceland and Sierra Leone, but during the press conference, Kenyan Foreign Minister Amina Mohamed credited authorship to Arancha Gonzalez, Executive Director of the International Trade Centre (ITC), the joint agency of UNCTAD and the WTO dedicated to supporting the internationalization of small and medium-sized enterprises.

Gonzalez was Chief of Staff to the then WTO Director-General Pascal Lamy between 2005 and 2013.

An official communication of ITC credits the drafting of the declaration to the Trade Impact Working Group, which is a sub-group of the International Gender Champions initiative. The “gender champions” are some 60 “senior leaders.” Most of them are Geneva-based ambassadors, but the list also includes the UN Secretary-General, the heads of many Geneva-based UN agencies and the Director-General of the WTO, Roberto Azevedo, who thus had two oversight roles (as “gender champion” and as co-boss of ITC) over the advice that he claimed he had officially received on 12 December.

During the press conference, Azevedo promised to “play my whole part in following this guidance from the membership”, since “the WTO is all about taking down barriers”.

He announced his intent to create a Women’s Entrepreneurs Programme

within the action plan on trade and gender of the WTO and a “partnership with the World Bank in generating data and understanding on trade and gender”.

(While Azevedo claimed the declaration was “guidance from the membership” – thus implying he and the secretariat will implement it – legally and in terms of WTO rules and practices and decision-making by consensus, it remains a draft and a suggestion from members, but not the collectivity of the WTO membership.

(Any secretariat activity, and thus expenditure, would need at least the sanction by consensus of the WTO budget committee and, on the committee’s recommendation, that of the General Council. This would in turn require official records of MC11 to the effect that the draft declaration was adopted by consensus.

(At best, the draft is an initiative of functionaries of international organizations and intergovernmental institutions, none of whom had been specifically mandated by their own organizations, with very few grassroots movements behind it. And none of the organizations have acted in their own remit to redress the asymmetries in the international economic system that siphon benefits from the poor to the very rich, with gender inequalities being a symptom of this imbalance. – *SUNS*)

“Trojan horse”

Legal experts following the Ministerial Conference in Buenos Aires noticed the similitude between the proposed “series of seminars” and the “study groups” of the 1990s that led to proposals for WTO negotiations on the so-called “Singapore issues”.

Indian scholar and environmental activist Vandana Shiva commented that “women were the first to show how the WTO was institutionalized capitalist patriarchy on a world scale. We will not allow ‘women’ to be used as a Trojan horse to expand and extend a system that is destroying the lives and livelihoods of women and children, peasants and workers, and the planet”.

Both Arancha Gonzalez and Gudlaugur Thor Thordarson, Minister for Foreign Affairs of Iceland, emphasized that “the declaration is not about rules but to understand the issues better”.

Yet, Argentine Foreign Minister Jorge Faurie said that “we have to do

more to adapt rules and practices”.

Recognizing that “some NGOs say that WTO rules have had negative impact on women”, Ambassador Yvette Stevens of Sierra Leone said that “this precisely justifies what we are trying to do” with the declaration.

Canadian Trade Minister Francois-Philippe Champagne, who was also credited as one of the initial advocates of the initiative, said that “we still need to advocate” to widen the list of signatories to the text that “brings a progressive trade agenda to world stage”.

The counter-declaration of women’s groups argues, instead, that “the declaration takes a very narrow approach to assessing the gendered impacts of trade. Even if the benefits the WTO bestows on the richest 1% of the world’s population were evenly split between men and women, the majority of the world’s women would not benefit.”

“Increasing access to credit and cross-border trade for a few women will not benefit women’s human rights overall. The declaration is a ‘pink herring’, an attempt to obscure the harm WTO provisions have on women while ensuring the WTO can bring in ‘new issues’, likely to deepen inequality.”

It adds that “if governments are genuinely interested in advancing women’s human rights through just trade arrangements, they would allow for pro-poor public stockholding of food, allow any domestic regulations a state deems necessary to advance women’s human rights and the public interest, ensure that states can fully utilize intellectual property flexibilities to provide access to medicines, seeds, technologies that advance women’s human rights, and refrain from entering into any bilateral or multilateral agreements that further restrict the capacity to use domestic regulations in the interests of the public in any way they deem necessary”.

Finally, probably noticing that it is the reluctance of the United States to engage in any multilateral or even plurilateral trade deal that is actually blocking MC11 from reaching any agreement, the civil society signatories conclude that “we do not seek a retreat to combative nationalism in the name of trade protectionism. We support multilateralism. However, multilateralism must be based on solidarity, democracy and human rights, rather than the interests of unaccountable multinational corporations or wealthy states.” (*SUNS8596*) □

Contemplating the unthinkable, a WTO without the US

US intransigence in the WTO, an organization which it helped shape and from which it has benefitted greatly, is threatening no less than a paralysis of the multilateral trading system, cautions *Chakravarthi Raghavan* in this piece written before the Buenos Aires Ministerial Conference.

GENEVA: As ministers and representatives of WTO member countries gather in Buenos Aires for the biennial Ministerial Conference, an issue that is confronting them is the current stance of the United States, under the Trump administration, towards the multilateral trading system (MTS) incorporated in the WTO, in particular towards the workings of the WTO’s integrated dispute settlement system.

Global civil society, media and public interest groups are exercised, and rightly so, over the high-handed action of the host for MC11, the government of Argentina headed by President Mauricio Macri, in denying accreditation and access to the conference for nearly 60 indi-

viduals from about 20 organizations, several of them very respected academic researchers.

To add insult to injury, the host (citing its intelligence services, whose abilities, mindset and actions do not appear to have changed much since the days of military dictatorship in the 1970s by a junta headed by General Jorge Rafael Videla) has labelled those excluded as having made “explicit calls for violence on social media.” (See *TWENo. 651/52.*)

These are very serious issues involving multilateral diplomacy, good-faith negotiations, host-country norms, and total transparency and integrity of the international organization concerned and its officials in handling the matter

and ensuring it is resolved for the conference to pay undistracted attention to substantive issues.

Nevertheless, the nations at large and their public need to focus on the issues and the threats to multilateralism in general and international trade relationships anchored in the WTO and its multilateral trading system.

Dispute settlement process stymied

Within the WTO and its annexed agreements that constitute the MTS, the Dispute Settlement Understanding (DSU) is crucial; any impairment of the dispute settlement system has the potential for destruction of the MTS itself.

Advancing some specious reasons, the US has blocked the start of a process for filling three vacancies in the seven-member Appellate Body (AB) of the dispute settlement system, and is now well set to de facto make the AB process non-functional.

At a meeting of the WTO's Dispute Settlement Body (DSB) on 22 November, the US once again rejected proposals for the simultaneous launch of the selection processes to fill the three AB vacancies.

Appeals on issues of WTO law are decided at the AB by a three-member division bench, with members chosen at random. An AB member from a nation that is a party to the dispute usually does not sit on the division bench hearing the appeal.

With the US blocking the filling up of vacancies, it will effectively become impossible for the AB to hear and dispose of appeals. From 1 January 2018, the AB will have only four members.

The US has been giving as the reason for its objection the continued service of former AB members to complete work on appeals they had been hearing while they were members (a procedure that has been in vogue at the AB under its working procedures which became effective after the DSB was notified without objection till now from the US).

In actual fact, it is clear from various remarks of US administration officials (President Trump himself and officials at the US Commerce Department and US Trade Representative's office) that the US is aggrieved that the AB has not been accepting the US positions, particularly in appeals involving anti-dumping disputes, where the US' resort to the "zeroing" approach (in judging imports from competitors as involving dumping)

has been struck down as WTO-illegal.

The US stance thus appears to be "my way or the highway". In effect, the US appears determined to "freeze up" the WTO's dispute settlement system.

How the AB came into being

Under the dispute settlement system of the old GATT 1947 regime – the precursor to the WTO – panel rulings and recommendations had to be adopted by consensus by all member states. In the 1960s and early 1970s, the US was frustrated by this when two panel rulings in disputes brought by the US against the then European Economic Community (EEC) on agricultural trade issues were blocked from adoption by the EEC (now the European Union at the WTO).

One of these disputes related to EEC preferential treatment for Italian pasta producers using EEC supported/subsidized wheat produced in the EEC instead of imported US wheat, and became known as the Italian pasta dispute. The second dispute related to French millers using subsidized French wheat, in preference to imported US wheat, to produce wheat flour for supplying bakeries etc.

Frustrated by the blocking of the dispute panel rulings, it was the US that insisted in October–November 1993, during the final stages of the Uruguay Round negotiations which would result in the establishment of the WTO, that in respect of the dispute settlement process, from the setting up of panels to the adoption of panel rulings, the "negative consensus" rule should apply. Under this rule, a particular decision will be adopted unless there is a "negative consensus" against it, i.e., unless all members agree not to adopt it. In effect, this means that a panel ruling, for example, will almost certainly be adopted, since the member of which the ruling is in favour will withhold the negative consensus.

The EU at that time was extremely reluctant to accept the negative-consensus rule but finally yielded on condition that there be a stipulation that panel rulings could be appealed on issues of law to an Appellate Body. The seven-member AB structure, with each appeal being heard and rulings handed down by a division bench of three members, was the agreed upon outcome. And it was the US and the EU that promoted the AB practice where the members of the division bench hearing an appeal would consult other AB members not hearing the

appeal, in order to ensure collegiality (a concept alien to normal Anglo-Saxon or Napoleonic continental jurisprudence).

Genesis of the WTO framework

During the final stages of the Tokyo Round negotiations in the 1970s, the US and the European Communities had put together a draft code on intellectual property (IP) protection. Their representatives met the then GATT Director-General, Olivier Long, and handed over the draft to him, asking him to put it through a "green room". Long read through the draft and reportedly gave it back to the two with the remark that they should promote it themselves and table it before the GATT Contracting Parties.

According to one of his top aides at that time, Long, a Swiss liberal ideologue, felt that the draft was not a "liberalizing" instrument but one that was restrictive of international trade by ensuring global monopolistic rights. He reportedly told the two, "I have not become GATT DG to wind it up!"

The issue of IP came up again, along with the issue of services trade, during the Uruguay Round negotiations, which were launched in 1986. Initially the US thought its aims of bringing these two issues into the ambit of the multilateral trading system could be achieved by simply defining "trade" in GATT (General Agreement on Tariffs and Trade) to encompass "trade in goods, intellectual property and services".

However, GATT legal experts said that such an amendment would not be feasible since the preamble to the GATT showed that what had been envisaged was "production and exchange of goods", and IP and services, which were intangibles, could not be brought under the term "goods". This forced the US to agree to an institutional framework encompassing trade in goods, services and protection of IP rights.

The US realized (or allowed itself to be persuaded) that such a framework, with its own integrated dispute settlement system, would be the most effective way to safeguard and expand market access rights of its corporations. The dispute settlement system would enable cross-retaliation across sectors by, for example, denying market access in goods to a developing country adjudged to have violated or restricted IP rights or services trade.

This was eventually agreed as the framework for the WTO that came into

being in 1995 following the conclusion of the Uruguay Round, and the US at the time made no secret of its success. Most developing countries, which reluctantly admitted they had gained little from the Uruguay Round agreements, nevertheless pointed to the WTO's dispute settlement system as a win of sorts for themselves [see C. Raghavan (2014), *The Third World in the Third Millennium CE*, Vol. 2, pp. 108-178].

In early rulings under the WTO dispute settlement system, in disputes raised by the US itself against key developing countries (Indonesian car dispute, Indian QRs, Indian TRIPS issues, Brazilian subsidies to aircraft exports) [Raghavan, op. cit., pp. 188-204; also C. Raghavan (2000), *The WTO and Its Dispute Settlement System: Tilting the Balance Against the South*, TWN Trade & Development Series No. 9], the AB began giving "interpretations" – a role which was in fact reserved for the WTO's Ministerial Conference and, in between conference sessions, the General Council. At that time, the US supported and applauded the AB.

It is only now, when anti-dumping rulings are going against the US, that this outcry has begun. Even before the entry of Trump into the White House, the US under previous administrations was aggrieved and did not implement any of the panel or AB recommendations. However, the opposition to the WTO and the AB was not so open, nor did the US threaten to quit the WTO as now.

Only those not aware of this background can allow themselves to be fooled by the current US stance and try to accommodate it vis-a-vis the AB or a catch-all rule for every WTO member, except the US, to comply with!

Hence, it is time perhaps for the WTO members (other than the US) to begin applying their minds to the prospect of an MTS sans the US, and bring the issue out into the open for debate. The US attitude towards the dispute settlement system is an excellent basis for doing so, given that the system is at the heart of the current MTS and is the one feature which distinguishes the WTO from other multilateral institutions. It is also the reason why an IP agreement (the TRIPS Agreement) was negotiated in this forum and why labour rights etc. are sought to be brought into the WTO ambit, namely to use trade sanctions authorized by the dispute settlement sys-

tem as a means of enforcing obligations under the MTS.

The US as hegemon...

For any informed thinking and debate on this, it is useful to place the issue in the context of the seven-decade-old postwar world order rooted in the United Nations Charter and the international economic system envisaged in the Bretton Woods agreements.

The postwar order was conceived and conceptualized by US President Franklin Delano Roosevelt (commonly known as FDR) in his mid-Atlantic Ocean meetings with British Prime Minister Winston Churchill in 1940, which resulted in the Atlantic Declaration, and subsequent wartime meetings between FDR, Churchill and the Soviet Union's Joseph Stalin (the Casablanca, Cairo, Teheran and Yalta meetings) culminating in the 1945 UN Charter (and the Bretton Woods agreements for an international monetary and finance system agreed a year earlier). [See C. Raghavan (2014), *The Third World in the Third Millennium CE*, Vol. 1, pp. 3-50.]

The US has been the hegemon of this order, fashioning and influencing it to benefit its own interests and those of US capital, but also enabling the rest of the world to benefit. However, since the election of Donald Trump to the presidency, the US, following an erratic course over this past year, is threatening to become an outlier, if not an outlaw, of the world order and its rules-based international systems.

Nowhere has this been more glaring than in the multilateral trading system anchored in the nearly-23-year-old WTO, which replaced GATT 1947 as the governing instrument for international trade relations.

The origins of GATT 1947 itself can be traced to the period around the Havana conference, which began on 21 November 1947 and took up the matter of establishing an International Trade Organization (ITO). The Havana Charter, also known as the ITO Charter, was finally agreed in March 1948, but ratification in some national legislatures proved impossible. The most serious opposition was in the US Congress, even though the US government had been one of the driving forces behind the negotiations on the Charter. In 1950, the US government announced that it would not

seek Congressional ratification of the Charter, and the ITO was effectively dead.

Meanwhile, as part of the preparatory process for the Havana conference, some 15 countries had begun talks in December 1945 to reduce and bind customs tariffs, wanting to give an early boost to trade liberalization at the end of World War II and correct the legacy of the protectionist measures of the interwar years. The group had expanded to 23 countries by the time agreement was reached in 1947 on a framework package of trade rules and some 45,000 tariff concessions affecting \$10 billion or about one-fifth of the then world trade.

The tariff concessions came into effect by 30 June 1948 through a Protocol of Provisional Application, and the General Agreement on Tariffs and Trade (GATT) was born, with 23 founding members (officially "contracting parties"). With the collapse of the Havana Charter, GATT, while formally remaining a provisional arrangement, became the multilateral instrument governing international trade relations until the WTO was established in 1995.

The US has since been the biggest beneficiary of the WTO and its framework for liberalizing goods trade and services trade and providing global monopolistic protection for intellectual property rights.

As alluded to above, the rules of the WTO, including its integrated dispute settlement system, were largely, though not exclusively, fashioned and influenced by the US. The WTO treaty, with all its annexed agreements including the Dispute Settlement Understanding, was negotiated mostly by the US in direct talks with the EU in the second half of 1993, and subsequently forced down on a majority of participating nations in the Uruguay Round.

... and outlier

In effect, the WTO rules reflected the trade and economic power relations of the time against the background of the prevailing international political and security balance and power relationships among the nations of the world. Since then, these power relations (in the areas of politics, security, money and finance, and trade) have changed, with new power centres and actors entering the scene, not as powerful as the US but nev-

ertheless rising powers.

In this emerging multipolar world, the US now accounts for about 13% of world trade in goods and services, compared with its one-third weight in the immediate postwar years. To think it could now achieve better terms is a chimera. However, at the moment, the US is chasing this chimera, flexing its muscles in an effort to enhance its position in the multilateral trading system – and setting off the inevitable clash with the emerging powers.

This has made the US an outlier in the MTS, threatening to withdraw from the WTO and the MTS if it cannot have its way. In the process, it has brought the WTO and the MTS face to face with a crisis that could freeze and paralyze the system.

In this situation, and not knowing whether the US stance is a temporary aberration or a more permanent change, the rest of the world (RoW) is now forced to begin thinking the “unthinkable”: contemplate a WTO and MTS without the US.

However wrenching such an MTS minus the US would be, the alternative facing the RoW, if the US continues on its current path, is a complete paralysis of the MTS and the consequent unleashing of centrifugal forces disrupting and sundering existing trade relations, giving an inevitable impetus to trade and other conflicts in the world. Learning the lessons of the interwar years and the history of the League of Nations, the RoW is understandably anxious to avoid such a situation.

At some point, at MC11 or immediately thereafter, perhaps it may be time for the other members of the WTO to call the US bluff in this WTO poker game. The RoW should take recourse to Article X (on amendments) of the WTO's Marrakesh Agreement and carry out a suitably worded amendment to the DSU (to overcome the US blockage). If the US does not agree or accept such an amendment when it becomes effective, it should be invited to withdraw from the WTO. Such a move would hopefully concentrate minds among US Congressional leaders and corporate and other interests which benefit from the WTO, and bring about a change in the US.

Withdrawal from the WTO would see the US lose the rights it now enjoys, such as IP protection for its Big Pharma and its monopolistic practices, or fran-

chising rights (such as now enjoyed by the Trump organization or Ivanka Trump for her trademark designer clothes), and market access for the US banking and non-banking financial sectors.

It is not something that the RoW seeks, but rather than allow the entire system to be wrecked by the current obduracy and outlier positions of the US, it is better to have a WTO multilateral system minus the US. Such a system will willy nilly be multipolar and cannot be dominated by an EU, China, Russia or India.

(continued from page 5)

in the run-up to MC11 calling for a new mandate to commence work on e-commerce-related issues with the eventual aim of launching negotiations at the WTO. But those proposals failed to garner support beyond those who signed on to it during a meeting of heads of delegation at Buenos Aires on 11 December.

Therefore, the sponsors said in their joint statement: “We, as a group, will initiate exploratory work together toward future WTO negotiations on trade-related aspects of electronic commerce.”

“Participation will be open to all WTO members” regardless of their current proposals. The proponents said their initiative will be undertaken “without prejudice to existing WTO agreements and mandates.”

“Modern trade will increasingly be by e-commerce,” said Australia's Trade Minister Steven Ciobo. His Japanese counterpart Hiroshige Seko said “the world is more interconnected than ever” and the WTO has an important role to play. Singaporean Minister Lim Hng Kiang said: “E-commerce presents developing members and LDCs an opportunity to leapfrog, overcome traditional market barriers, and allow for more inclusive participation in global trade.”

WTO Director-General Roberto Azevedo said the initiative provided new “dynamism” to the organization even though it failed to make progress on the mandated issues.

However, major developing countries such as China, India, South Africa and Indonesia, among others, stayed away from the initiative.

There is still no clarity whether the initiative can be discussed within the WTO when the existing e-commerce work programme based on the 1998 de-

If at a future point the US wants back in, this should be made possible (and made easier than what the Chinese faced in attempting to rejoin GATT), but on the clear understanding that the US will abide by the rules, including implementing adopted dispute panel and AB rulings. (SUNS8590) □

The writer has benefited from comments and suggestions on earlier drafts by: Bal Krishan Zutshi, Indian ambassador to GATT (1989-94) during the Uruguay Round negotiations and their conclusion; and Rammanohar Reddy, Reader's Editor of Scroll.in and former Editor of the Economic and Political Weekly (India).

cision is the basis for work within the organization. “The exploratory work cannot continue within the WTO,” said a developing-country trade envoy.

Informal MSME work programme

In another plurilateral initiative, trade ministers from many developed and several developing countries issued a joint statement for commencing work on disciplines for micro, small and medium-sized enterprises (MSMEs) so as to arrive at “horizontal and non-discriminatory solutions” that will benefit MSMEs in international trade.

In their statement, the proponents led by Chile launched an informal work programme on MSMEs at the WTO. The work programme includes “a comprehensive and strategic discussion on MSMEs in the WTO, as a contribution at the multilateral level to addressing obstacles related to foreign trade operations that represent a significant burden for MSMEs interested in participating in international trade.”

The proponents maintained that the informal group is open to “all members” for accomplishing a multilateral outcome “aimed at establishing a formal work programme for MSMEs at the next Ministerial Conference.”

The informal dialogue will focus on the following issues:

- to provide enhanced access to information for MSMEs;
- ways to promote a more predictable regulatory environment for MSMEs;
- reduction of trade costs, including areas such as trade facilitation;
- shipping and logistics;
- procedures and requirements related to rules of origin;
- better access to trade finance for MSMEs;

- technical assistance.

The informal working group on MSMEs at the WTO, according to the joint statement, will continue to periodically share with the membership information on its work and discussions at the heads-of-delegation meetings, General Council and the Ministerial Conference.

The US, however, opted to stay out of the informal working group because of China's presence in the group, said a proponent who asked not to be identified.

While proponents of these "new initiatives" on e-commerce and MSMEs claim that they will benefit MSMEs especially in the developing countries, organizations of MSMEs across the globe, not only in developing countries but in some European countries too, issued declarations and circulated documents at MC11 denouncing these efforts. They pointed out that the proposed WTO rules on e-commerce would advantage the handful of US Silicon Valley technology giants and secure them free access to the data of individuals across the world, while disadvantaging budding enterprises in developing countries and rendering them uncompetitive.

In conclusion, the Buenos Aires ministerial meeting has achieved its goal of undermining multilateral trade liberalization while paving the way for plurilateral trade liberalization among the coalition of the willing so as to deny the promised developmental benefits of the Doha work programme to developing and poorest countries. (SUNS8597)□

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