

Double Issue

THIRD WORLD *Economics*

TRENDS & ANALYSIS

Published by the Third World Network KDN: PP 6946/07/2013(032707) ISSN: 0128-4134 Issue No 680/681 1 – 31 January 2019

Addressing concerns of double standards in the WTO

Amid the deadlock in making appointments to the Appellate Body (AB) that has focused attention on the WTO's dispute settlement system, it is worth recalling that this system for resolving trade disputes between member states has adopted some questionable decisions in the past. Remedying this as well as other apparent deficiencies in WTO operations that have weighed against developing-country interests now needs to be a matter of priority, along with ending the AB impasse.

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THIRD WORLD ECONOMICS is published fortnightly by the Third World Network, a grouping of organisations and individuals involved in Third World and development issues.

Publisher (1990-2019): S.M. Mohamed Idris; **Editor:** Chakravarthi Raghavan; **Editorial Assistants:** Lean Ka-Min, T. Rajamoorthy; **Contributing Editors:** Roberto Bissio, Charles Abugre; **Staff:** Linda Ooi (Administration), Susila Vangar (Design), Evelyn Hong & Lim Jee Yuan (Advisors).

• **Annual subscription rates:** Third World countries US\$75 (airmail) or US\$55 (surface mail); India Rs900 (airmail) or Rs500 (surface mail); Malaysia RM110; Others US\$95 (airmail) or US\$75 (surface mail).

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Printed by Jutaprint, No. 2, Solok Sungei Pinang 3, Sungai Pinang, 11600 Penang, Malaysia.

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The WTO, its secretariat and bias against the South

Developing-country members of the WTO have long found the deck stacked against them in the operations of the trade body and its dispute settlement regime, points out *Chakravarthi Raghavan*.

GENEVA: Almost from its inception, with Renato Ruggiero (of Italy) as WTO Director-General (DG) from May 1995, the double standards of the WTO, its leadership and secretariat began to become evident.

This initial bias has steadily increased over the years, with every DG making his predecessor look better. It has now reached a stage where current DG Roberto Azevedo and senior officials of the WTO secretariat not only openly side with the US to promote its ever-changing agendas and stances, but are also publicly commended for it by the US, without any disclaimers from the secretariat.

Before Ruggiero became DG, there was a short interlude, from 1 January (when the WTO came into being) to 30 April 1995, when the late Peter Sutherland, the DG of GATT 1947 (during whose tenure the Uruguay Round trade negotiations were successfully concluded, with the Marrakesh Agreement establishing the WTO signed in April 1994), had functioned during the transition from the GATT to the WTO. During that brief tenure of his, the secretariat had functioned on behalf of all member states. But since then, it has been openly partisan.

Those that concluded the Uruguay Round negotiations which established the WTO had taken the correct and wise decision that in a member-driven, rules-based organization like the WTO with contractual rights and obligations for members, there could be no scope for any initiative from the head of the independent secretariat. In fact, it was the US at that stage that had vehemently opposed any such role for the WTO DG.

Ensuring that the WTO DG and the secretariat he/she leads strictly abide by their independent mandate, and ending the present impasse in filling vacancies in the WTO's Appellate Body (AB) in or-

der to secure a fully functioning and binding dispute settlement system, are among the highest priorities now facing the WTO-MTS (multilateral trading system) and its members.

The solutions might need amendments to the Marrakesh Agreement. If the US does not agree to abide by and implement the amendments to the treaty in good faith (if the amendments are carried out against its wishes), it should be invited to withdraw from the WTO.

In the feudal Middle Ages, the sovereigns of Europe saw themselves as law-givers but as being above the law themselves. But after two sovereigns of that era (Charles I in Britain and Louis XVI in France) "lost their heads" in the wake of revolutions, this doctrine slowly gave way to rule of law.

There is no time-machine to take us back a few centuries that would enable the US to function like sovereigns of that era. Otherwise, with a "transactional" US President and a US Trade Representative who wants a dispute settlement system that applies to all others but not the US, the WTO-MTS will be broken beyond repair.

And whether any amendment to the Marrakesh Agreement is needed and carried out or not, if the US continues as now, the rest of the membership have to make up their minds whether to acquiesce or ask the US to withdraw from the WTO. Without an amendment, the US cannot be compelled to withdraw, but such a request nevertheless will be in the spirit of the second sentence in Article X.5 of the Marrakesh Agreement.

This too is among the hard choices that the WTO and its members face.

WTO bias

The bias against the South at the WTO and the dancing to the tune of the US became evident as early as the first

year of the WTO's establishment, in the process for selecting the initial slate of seven AB members.

During that process, candidates from 23 countries were interviewed and the selection from among them was made by a small committee made up of DG Ruggiero and the respective chairpersons of the Dispute Settlement Body (DSB) (Australia), Council for Trade in Goods (Japan), Council for Trade in Services (Sweden) and Council for TRIPS (Hong Kong, then a separate customs territory under the UK).

WTO members were "consulted" and views ascertained on their preferred candidates and why, on the basis of "criteria agreed by the DSB". However, the US was effectively given the "privilege" of objecting/vetoing names (an option that was not posed to others).

Though that initial slate was accepted by consensus at the DSB, India and Switzerland, while not blocking the consensus, announced that they were not joining, and made statements on the record. Switzerland complained that the selection committee had not followed the criteria agreed upon and had taken a "restricted view" of the European entity. India detailed how one member alone had been given the option of saying "no" to individual candidates. The EU, while joining the consensus, also expressed its dissatisfaction. (For more details on this, see "WTO establishes Appellate Body", <http://www.sunsonline.org/trade/process/followup/1995/11300095.htm>.)

As a result, the AB became known as "pro-American". Everyone involved in that process must be held responsible, but the major ones were the DSB chairperson and the WTO DG; the two had enabled the Americans to exercise such a "privilege".

Since then, in several of its rulings, the AB "interpreted" the WTO accords to be cumulative, increasing the obligations of developing countries and reducing to nullity some rights they thought they had secured in the Marrakesh treaty. Those rights arose from the decisions of GATT Contracting Parties (functioning in their collectivity under GATT Art. XXIII) in disputes raised by the US and/or the EU under GATT 1947 and were thus part of the GATT acquis incorporated into

GATT 1994 (in Annex 1A of the Marrakesh Agreement). In these several rulings, the AB opened up the markets of developing countries to the transnational corporations of the US.

Dubious decisions

Some egregious examples of questionable dispute settlement rulings (by dispute panels as well as the AB) are worth recalling:

1. In the *Indonesia vs US, EU and Japan* disputes (WT/DS54, DS55, DS59 and DS60), the panel ruled that when a number of international agreements are entered into by the same parties at the same time, there has to be a presumption that there are no conflicts. This is despite the fact that a plain reading of the texts of Annex 1A and its general interpretative note, which is couched in mandatory "shall prevail" language, shows that conflicts had been envisaged by the negotiators of the agreements.

The panel arrived at its conclusion through circuitous arguments, ruling the Agreement on Trade-Related Investment Measures (TRIMs) to be a full-fledged goods agreement and making a specious distinction between the obligations of GATT 1994 (including its Art. III) and the Agreement on Subsidies and Countervailing Measures (SCM), but not as between the TRIMs and SCM Agreements.

For this last, the reference to GATT Art. III in Art. 2 of the TRIMs Agreement was ruled to be a reference not to the Article as such, but only to its substantive contents! What "Art. III" would mean without its contents was known only to the panellists (and the secretariat that "serviced" the panel), and not spelt out for the DSB and its members.

In no judicial, quasi-judicial or administrative proceedings anywhere in the world can the title of a law without its contents be cited as law or given any meaning.

Indonesia did not appeal the panel ruling but implemented it, bowing to the conditionalities attached to its then loan from the International Monetary Fund (IMF). The cumulative outcome of the ruling and a much-circulated photograph of Indonesian President Suharto

signing the IMF loan agreement under the stern gaze of the IMF Managing Director, sealed Suharto's fate and brought about regime change.

There was a similar run of rulings against other developing countries, welcomed by the US. But when some rulings went against the US itself, particularly in relation to its anti-dumping measures (aimed at protecting specific industries and enterprises), it began to cry foul. This reached a crescendo in its veto of the reappointment to the AB of Seung Wha Chang of South Korea for his alleged role in rulings against the US.

2. In another set of rulings, despite its own so-called "collegiality" rule (whereby the AB empowered itself to have consultations at all stages between the three members of a division bench hearing an appeal, and the four other AB members), there were two different views in AB rulings on the same wording in two different accords in Annex 1A. These were more or less contemporaneous disputes.

In the *Turkey vs India* dispute (WT/DS34 – import restrictions by Turkey over textile and clothing products), the Uruguay Round Understanding on Article XXIV (on customs unions and free trade agreements) was involved. In the *India vs US* dispute over India's quantitative restrictions (QRs) imposed on balance-of-payments (BOP) grounds, the Uruguay Round Understanding on Art. XVIII.B was involved.

Both Understandings, in identical language, ensured that the right of members to raise disputes under Art. XXII and XXIII "with respect to any matters arising from" Art. XXIV and XVIII.B was preserved.

In the *India QR* dispute, this language in the Understanding was ruled to provide jurisdiction to both the WTO's BOP Committee and dispute panels to hear and decide. This, when the US alone in the BOP Committee had blocked consensus on accepting India's contentions and programme for phasing out QRs, and then, with such a not-so-clean hand, invoked the provisions in the Dispute Settlement Understanding (DSU) to raise a dispute.

In the *Turkey vs India* case, the AB handed down a ruling contrary to this

view on the same wording in the Understanding on Article XXIV. The AB ruled that the issue of compliance of a customs union with Art. XXIV was for the relevant WTO body to decide, but that a panel or AB could go into the dispute only with respect “to any matters arising from the application of these provisions relating to customs unions ... or free trade areas.”

Moreover, in the *Turkey vs India* dispute, in *obiter dicta* on points of law not raised in appeal by either India or Turkey, the AB opened the way for customs unions to depart from GATT obligations other than in the MFN provision in GATT Art. I, but gave no ruling, merely expanding its own jurisdiction to decide in future cases!

3. In a dispute raised by India, Malaysia, Pakistan and Thailand against the US over restrictions on shrimp imports [WT/DS58/AB/R – see *South-North Development Monitor (SUNS)*, No. 4301, dated 14 October 1998], the AB:

(a) Cleared the way for non-governmental organizations (NGOs) to file *amicus curiae* briefs and intervene. In effect, it ruled that the panel’s right to “seek” information also enabled it to use information it did “not seek” – thus making “seek” and “receive” synonyms in the WTO’s dictionary. Despite its initial view promising to provide detailed reasons, the AB failed to do so.

While the DSU enables panels to “seek” information from any source, there is no such provision in relation to the AB, which is only mandated to decide “all points of law raised by parties” in the appeal.

Nevertheless, in a subsequent dispute on anti-dumping and subsidy issues vis-a-vis the US steel industry, the AB applied this to itself (accepting a brief filed by the US steel industry). This placed *amicus curiae* briefs from non-members of the WTO on a superior footing. Under the AB’s own rules of procedure, only third parties to a dispute, giving notice to the AB, can file briefs. Other WTO members don’t even have this right.

The AB even made the rather extraordinary claim that the DSU rules and procedures did not prohibit the AB from doing so, and hence it could! In the rules-based WTO system, one of its creations,

the AB, thereby claimed the right to thus function, as if enjoying “residuary powers” that are not prohibited (See *SUNS* Nos. 4654, 4655 and 4666 for rulings and discussions; for the AB’s claims, see “Ruleless Appellate Body and powerless DSB”, *SUNS* No. 4684, 9 June 2000.)

(b) Imported and expanded the scope of Art. XX of the GATT on “exceptions” to set aside the panel ruling in the shrimp dispute as a “serious error” of legal reasoning, for not examining the ordinary meaning of Art. XX.

There was no discussion (unlike in the *Indonesia* dispute ruling above) whether this meant the “substance” or the entire Art. XX, nor on the application of the Art. XX measure.

Rather, the AB focused on the “design” of the measure and “a particular situation” where a member has taken unilateral measures which, by their nature, “could put the multilateral system at risk.”

The AB held that the treaty interpreter must interpret the treaty in the light of “contemporary concerns” of the community of nations about protection and conservation of the environment.

While Art. XX of GATT 1947 (reflecting the understanding at that time on mineral and living resources) was not modified by GATT 1994 in the Uruguay Round, the AB conceded, the Marrakesh Agreement had “the objective of sustainable development” in its preamble, and the term “natural resource” used in Art. XX(g) of GATT 1994 was not static but “by definition, evolutionary.”

As a matter of fact, the 1992 UN Conference on Environment and Development (UNCED) had addressed a whole range of environment, conservation and development issues. Among others, UNCED adopted the UN Framework Convention on Climate Change, witnessed nations signing the Convention on Biological Diversity, and adopted other decisions and recommendations under the title “Agenda 21”. However, the US and some others resisted any and all reference to these in the Marrakesh treaty and its annexed agreements including GATT 1994. Only the objective of “sustainable development” was allowed into the preamble of the treaty.

And yet, in the space of about five

years, the WTO saw an “evolution” – a born-again Charles Darwin at the AB!

4. In a ruling (DS163/R) against South Korea in a dispute raised by the US on the plurilateral Government Procurement Agreement (see *SUNS* No. 4670 dated 18 May 2000), a dispute panel chaired by Michael Cartland, former Hong Kong representative to the GATT/WTO, gave an expanded interpretation of the rarely invoked “non-violation” clause in GATT Art. XXIII.1(b), on the impairment or nullification of benefits to the US.

The panel spoke of impairment to the US arising out of “reasonable expectation of an entitlement” to a benefit that had accrued “pursuant to the negotiation”, rather than “pursuant to a concession exchanged in the negotiations,” the traditional view of public international law [the *pacta sunt servanda* principle codified in Art. 26 of the Vienna Convention on the Law of Treaties (VCLT)].

This enabled the panel to further find lack of “good faith” in negotiations or “treaty error” on the part of South Korea that could invalidate a part of the treaty (Government Procurement Agreement). This “treaty error”, the panel said, could be rectified by substituting the invalidated part of the treaty with a suitably worded DSB recommendation (adopting a panel ruling), and by this process a party would be enabled to withdraw reciprocal concessions.

This expanded view of *pacta sunt servanda* was achieved by delving into the negotiating history not of the Government Procurement Agreement, but of the VCLT itself, citing the statement of the International Law Commission when transmitting the draft VCLT to the UN General Assembly that adopted the VCLT. (See *SUNS* No. 4670 dated 18 May 2000.)

Strangely, the only relevant negotiating history of the VCLT – the initial mandates to the International Law Commission and discussions leading to it in the Sixth Committee of the UN General Assembly or the General Assembly itself, or the discussions on the Commission’s recommendations in the same Sixth Committee – does not seem to have figured in the panel’s discussion.

However, in the end the panel ruled

against the US on the ground that the US had not exercised "due care" in the negotiating process! The US did not appeal, and the panel report was adopted, putting the DSB/WTO imprimatur on this expanded interpretation of the scope of "non-violation" complaints, "good faith" in negotiations, and the ability of panels to remedy "treaty error" and "lack of good faith".

A legal high-wire act, without the normal safety net!

The manner in which the WTO dispute settlement process was being invoked and rulings handed down, elicited some criticism at that time from a former GATT law official, Frieder Roessler, a German national who had headed its legal division during the Uruguay Round negotiations and into the WTO.* Roessler later headed the Geneva-based Advisory Centre on WTO Law set up to help developing countries, in particular least developed countries, with legal assistance in disputes.

In a critique of the functioning of the dispute settlement system – in particular the way panels and the AB made use of the procedural rights in the DSU to virtually nullify the substantial rights and obligations of members under the agreements – Roessler said that the competence of panels and the AB could not be determined by themselves exclusively on an interpretation of the DSU, but only in the context of the complex institutional structure of the WTO and the division of decision-making among different organs, as set out in the Marrakesh treaty, reflecting legitimate, negotiated policy objectives.

Dispute panels, Roessler said, should respect the competence and discretionary powers of the political bodies established under the WTO agreements and should not reverse their determinations. And if a competent WTO body had not yet made its determination, panels should not step in and preempt that determination.

The role of panels should be limited to protecting WTO members against an abusive resort to provisions governing, for example, BOP measures and regional trade agreements – against measures that fall outside the discretionary authority of the BOP Committee or the Committee on

Regional Trade Agreements.

The US voiced no criticism of the panels and the AB at that time, when they were siding with it. This "bias" of panels and the AB came into play during the 1996 US presidential election campaign (Bill Clinton vs Bob Dole), in which the WTO, the DSU and "loss of US sovereignty" was an issue: one of the campaign slogans was "Two strikes, and we are out". The panels and the AB seemed to be trying to ensure there was no such opportunity.

5. Appeals against panel rulings in two separate disputes (WT/DS98 and WT/DS121 – one against South Korea and the other against Argentina), both relating to the Agreement on Safeguards, were heard and rulings handed down at the same time by two different division benches of the AB.

Commenting on them critically, trade expert and former Indian ambassador to the GATT Bhagirath Lal Das pointed incidentally to an "extraordinary coincidence" in the two AB reports: six paragraphs in each having the same wording – paragraphs 84, 85, 86, 87 (part), 88 and 89 in the South Korea case report; and paragraphs 91, 92, 93, 94 (part), 95 (part) and 96 in the Argentina case report.

Das said: "The members of the AB divisions in these two cases were two totally different sets of members ... Each of these reports is signed by the respective sets of three members each. It is surprising how these two different sets of persons ended up writing exactly the same language in some parts of their respective reports. The AB is like a judicial body in the WTO. One has to presume that the AB in a case writes its own reports, and does not get it written by some other persons. This presumption seems to be hit by the exact convergence of the language in some parts of the two reports as mentioned above."

After Das's article, WTO officials explained to this writer about the "collegiality" rule under the AB's working procedures. This rule was not in the public domain then. It was only later, during the time of the US veto of a second term for the AB member Seung Wha Chang, that a letter by the six remaining AB members to the DSB chairperson brought it

on public record: the division bench of three hearing an appeal invariably consults and interacts throughout with the four other members of the AB who did not participate in the hearing of the appeal.

(For Das's critique of the AB, on procedures and substance, see *SUNS* No. 4689 dated 19 June 2000.)

Also not on public record then, but known to this writer at that time (after talking to some panel and AB members after their rulings), was the way the secretariat functioned beyond its mandate to service panels. After the hearing of parties and third parties in a dispute, panels, in reaching conclusions, are "guided" by the legal (and substantive) divisions of the WTO secretariat "servicing" the panel. In most cases the secretariat also draws up a draft report.

(Panel members told the writer after their reports were published, that in one or two instances, when they disagreed with the secretariat, they were told they would never again be named to a panel!)

In the case of the AB, the three-member division bench interacts throughout, without the presence of the parties and third parties to the appeal, with other members of the AB, and their reports too are drafted with the AB secretariat's legal assistance.

In any domestic jurisdiction under any system of law, this is enough to make a ruling or decision (judicial, quasi-judicial or administrative) illegal and invalid.

The WTO is a different animal though; thus, part of the DSU review process to be undertaken, in priority to any other negotiations at the WTO, must address and remedy this and any other basic adjudicatory flaws. It is also essential to ensure that adopted rulings at the DSB do not "add to or diminish the rights and obligations provided in the covered agreements" (DSU Art. 3.2).

6. In its ruling on a US vs EU dispute, the AB ruled against the US on countervailing duties under the SCM Agreement, but in the process raised more controversies.

In its notice of appeal, the US had not spelt out the legal grounds and panel decisions thereof, as required under the AB working procedures. When the EU

asked for dismissal of the appeal on this ground, the US said there was no such requirement in the DSU.

Instead of upholding its own working procedures, the AB division “requested” the US to file its grounds of appeal and accepted it, though the time limit for the appeal had expired!

The AB also asserted its right to receive *amicus curiae* briefs, this time from an industry association, but then decided there was nothing in the brief! In the process, it gave NGOs superior rights over WTO members, as third-party members which had not notified their intention to intervene in the appeal or members other than third parties can’t claim any right to be heard.

On substance, the AB turned down US arguments about when a “benefit” is conferred, but refused to provide any authoritative ruling that would end future disputes. (See *SUNS* No. 4666 dated 12 May 2000, and No. 4684 dated 9 June 2000.)

7. In the EC-Canada patent case (DS114/R), the panel used the “negotiating history” of the TRIPS Agreement provided in a note by the secretariat (Annex 6 of its report). This purported to draw up a history of the negotiations “on the basis” of draft legal texts in the negotiating group in the spring of 1990, a secretariat composite text, and the subsequent chairman’s informal text and revisions, as well as (in an appendix to Annex 6) “parallel work” in the World Intellectual Property Organization (WIPO) Committee of Experts on preparations for a Patent Harmonization Treaty.

The secretariat admitted that these texts had not been circulated to the TRIPS negotiating group, but (drawing on its internal notes) still cited them on the ground that WIPO representatives had kept negotiators “informed” of developments! (See *SUNS* No. 4630 dated 21 March 2000, and Nos. 4654 and 4655 dated 26 and 27 April 2000.)

At Marrakesh when all formal documents and reports were derestricted, no report of minutes of various meetings of the Negotiating Group on TRIPS was available even to Uruguay Round delegates; they only had draft minutes (subject to editing and corrections from delegations); the reports were finalized and made public only in 1995 or 1996, long

after the WTO came into being, and thus not part of the cache of documents derestricted in April 1994.

8. While the AB has shown willingness to create law and do what it wants to play to the gallery over NGO briefs, on the sequencing issue – compliance panel first before request for authorization for right of retaliation – on which the Quad (Canada, the EU, Japan and the US) disagreed, the AB noted the lack of clarity and ambiguity, and ruled it was for the members to clarify through inter-

pretation or change of rules! (See *SUNS* No. 4812 dated 12 January 2001.) (*SUNS*8894) □

This article is the fourth in a series on the current AB impasse and other issues related to the WTO dispute settlement system. The first three parts were published in TWE Nos. 676, 677 and 678/79. Part 5 will appear in the next issue of TWE.

Note

* Frieder Roessler (2000), “The Institutional Balance between the Judicial and Political Organs of the WTO”, in M. Brocken and R. Quick (eds.), *New Directions in International Economic Law*, Boston: Kluwer Law International, pp. 324-45.

Delhi meet calls for strengthening WTO-MTS, promoting development

Trade ministers from several developing countries met in New Delhi in May to discuss ways to work towards a more inclusive and development-oriented WTO.

by D. Ravi Kanth

GENEVA: Trade ministers from 17 developing and least-developed countries have called for strengthening the World Trade Organization and promoting “development and inclusivity” in the multilateral trading system (MTS).

In the face of multiple challenges confronting the WTO and its multilateral trading system, the trade ministers and senior officials from the 17 countries – Egypt, Barbados, Central African Republic, Nigeria, Jamaica, Saudi Arabia, Malaysia, Bangladesh, China, Benin, Chad, India, Indonesia, Malawi, Uganda, South Africa and Oman – agreed to “work together” as a like-minded group at the WTO to make the global trade body more effective.

This came in an outcome document issued at an informal ministerial meeting hosted by India in New Delhi on 13-14 May.

But five countries – Brazil, Argentina, Guatemala, Kazakhstan and Turkey – chose not to join the outcome document because of their opposition to building a like-minded group for emphasizing the “development dimension” in the global trading system.

Brazil, which had created the G20 coalition of developing countries for

bringing about equitable and balanced trade rules in agriculture, has now become the chief opponent to building a developing-country coalition to address unilateral and protectionist measures, said an African trade minister who asked not to be quoted.

The five countries also raised several concerns about forming a like-minded group for pursuing multilateral negotiations based on the consensus principle.

Joining hands

India’s commerce and industry minister Suresh Prabhu, who chaired the meeting, emphasized that developing countries must join hands and work as a strong coalition to avert the “existential crisis” facing the WTO. Without a strong WTO based on a development dimension, the developing and poorest countries will not be able to integrate into the global trading system, he said.

Prabhu also said the Appellate Body (AB) is vital for the smooth functioning of the WTO’s dispute settlement system. Without the AB, it would be difficult for developing countries to secure independent and impartial rulings in trade disputes, the Indian minister told his coun-

terparts at the concluding session, according to trade envoys present at the meeting.

Commenting on the “ongoing impasse” at the AB following the decision by the United States to block the selection process for filling four vacancies in the AB, the trade ministers urged “all WTO members to engage constructively to address this challenge without any delay.”

The WTO Director-General Roberto Azevedo, who attended the dinner meeting on 13 May, asked the trade ministers to join the plurilateral initiatives, arguing that they provide flexibility, said a trade minister from Africa who asked not to be quoted. Azevedo also said that he did not know what would happen to the AB after 11 December 2019, the minister said.

(If the impasse in the AB persists, the body will be left with just one member from 11 December, short of the three members required to hear any appeal.)

Several trade ministers and senior officials from China, Barbados, Jamaica, Indonesia, Benin (on behalf of the African Group), Egypt and Nigeria, among others, endorsed Prabhu’s assessment for ensuring the development dimension in the global trading system.

A senior Chinese trade official said that China wants a developmental outcome based on multilateral principles. The official also said that China will host an informal ministerial meeting in November to focus on the need to preserve the multilateral trading system.

The Chinese official said it is important to stay in the joint initiatives on electronic commerce and investment facilitation, as otherwise there is a danger that rules will be crafted without the participation of the developing countries.

Upholding multilateralism

Without naming the US, which has resorted to unilateral protectionist measures by imposing additional duties on steel and aluminum imports, the trade ministers said “an inclusive multilateral trading system based on equality and mutual respect should ensure that all WTO Members abide by WTO rules and abjure any form of protectionism.”

The ministers emphasized that “the core value and basic principles of the multilateral trading system must be preserved and strengthened, particularly with a view to building trust among members.” They urged WTO members “to adopt measures that are compatible with WTO rules to avoid putting the multilateral trading system at risk.”

Against the backdrop of sustained attempts by developed countries to undermine the consensus-based decision-making at the WTO, the developing-country trade ministers stressed that “multilateral avenues, based on consensus, remain the most effective means to achieve inclusive development-oriented outcomes.”

In this context, the ministers said “Members may need to explore different options to address the challenges of contemporary trade realities in a balanced manner.”

As regards the joint plurilateral initiatives that have been launched on e-commerce, investment facilitation, domestic regulation for trade in services, and disciplines for micro, small, and medium-sized enterprises, the trade ministers merely said that “the outcomes of these initiatives should be conducive to strengthening the multilateral trading system and be consistent with WTO rules.”

Commenting on attempts to bring about “differentiation” to deny special and differential treatment to several developing countries in the WTO, the ministers said “special and differential treatment is one of the main defining features of the multilateral trading system and is essential to integrating developing members into global trade.”

More important, “special and differential treatment provisions are rights of developing members that must be preserved and strengthened in both current and future WTO agreements, with priority attention to outstanding LDC [least-developed country] issues.”

In effect, the trade ministers rejected the concept of “differentiation” that the US has sought to introduce in the current and future WTO negotiations.

On the so-called WTO reforms being proposed by the US and other developed countries, the trade ministers emphasized that “the process of WTO reform must keep development at its core,

promote inclusive growth, and fully take into account the interests and concerns of developing members, including the specific challenges of graduating LDCs.”

“The way forward” on reforms, according to the trade ministers, “must be decided through a process that is open, transparent, and inclusive.”

“We agree to work collectively with the aim to develop proposals to ensure that our common interests are reflected in the WTO reform process,” the ministers maintained.

“In order to instill confidence among the Members” in the WTO rules, the trade ministers said, “it is imperative that the Ministerial Conferences of the WTO are organized in a more open, transparent and inclusive manner.”

Without naming the US and other developed countries which are insisting on stringent transparency and notification requirements, including naming and shaming provisions, the trade ministers said “WTO notification obligations must consider the capacity constraints and implementation-related challenges faced by many developing countries, particularly LDCs”.

“In the WTO, a more cooperative and gradual approach is the best way in dealing with the issue of transparency, where many developing Members struggle to comply with their notification obligations.”

The trade ministers also called for removing the “imbalances and inequities” in the WTO agriculture and other agreements. There is a need “to provide adequate policy space to the developing Members to support their farmers through correcting the asymmetries and imbalances” in the Agreement on Agriculture. The ministers underlined the need for flexibilities for LDCs and net food-importing developing countries, and called for expeditious resolution of trade-distorting domestic subsidies in cotton.

The 17 countries also agreed “to consult on various issues of common interest to developing Members, including comprehensive and effective disciplines on fisheries subsidies with appropriate and effective Special & Differential Treatment provisions for developing Members.” (SUNS8907) □

South countries soundly reject US proposal on “differentiation”

Developing countries have spoken out against proposals that would effectively erode the flexibilities they enjoy in the WTO rules.

by D. Ravi Kanth

GENEVA: A large majority of developing and least-developed countries have flatly rejected a proposal by the United States to introduce “differentiation” in availing of special and differential treatment (S&DT) at the WTO.

The developing countries and the LDCs said that the divide-and-rule principle behind the US proposal would undermine the existing WTO architecture for S&DT flexibilities, trade envoys told the *South-North Development Monitor (SUNS)*.

South Africa and many other developing countries also challenged a Norwegian proposal on development that aims to bring about differentiation in a nuanced format.

Discussion on these two proposals dominated the proceedings of the WTO’s General Council on 7 May, with repeated interventions by several countries.

Members also addressed the impasse at the WTO’s Appellate Body (AB) due to the US repeatedly blocking the selection process for filling four current vacancies in the AB. The AB will become dysfunctional by 11 December if the vacancies are not filled.

The US, however, turned a deaf ear to the concerns of members over the AB impasse. Despite repeated concerns voiced about its lack of engagement in the ongoing consultations being held to resolve this issue, the US merely repeated its previous arguments about the AB’s failure to adhere to the WTO rules.

US and Norwegian proposals

Although the US proposal on differentiation had already received a frosty response at various WTO meetings previously, the US Ambassador to the WTO Dennis Shea resubmitted it for consideration on grounds that it had received support from several countries over the past two months. Shea quoted the statement made by Brazilian President Jair

Bolsonaro during his March visit to Washington about Brasilia’s decision to forgo S&DT in current and future trade negotiations.

The US trade envoy argued that Washington’s proposal is not aimed at the LDCs but rather seeks to introduce differentiation among developing countries, insisting it is necessary for the WTO to remain a viable and credible organization.

He defended the four criteria proposed by the US to disqualify WTO members from availing of S&DT, including membership in the Organization for Economic Cooperation and Development (OECD) and in the G20.

The WTO, he added, “needs reform, not sentimentality.”

In its proposal, Norway has argued that “while the principle of S&DT is firmly embedded [in various WTO agreements] and should not be put into question, there is not one single predefined operational S&DT modality that can be applied horizontally to every subject under negotiation.”

“What is practical and possible in one area may not be practical or possible in another area,” Norway said.

“We cannot predefine the result of a negotiation; it has to be negotiated; it has to be negotiated in a specific context; and it cannot be negotiated in the abstract.”

Norway said its proposal should not be interpreted as suggesting “some kind of request/offer process or that access to agreed provisions have to go through some kind of notification and question/answer process of approval.”

Norway said that “the LDCs represent a separate category, and there is consensus that the special treatment of LDCs should be maintained.”

In effect, Norway subtly suggested that the same special treatment hitherto available to the developing countries since 1978 cannot be continued.

While referring to several agree-

ments on S&DT, Norway did not mention the agreement in paragraph 44 of the Doha work programme, said a trade envoy who asked not to be quoted.

Rejected

A large majority of developing and least-developed countries, including India, China and South Africa, flatly rejected the resubmitted US proposal on differentiation.

South Africa, in a sharp critique, pointed to the underlying ramifications/dangers arising from the separate proposals by the US and Norway on S&DT.

It urged members “to respect multilateral mandates by ensuring that debates on development and S&DT do not undermine mandated negotiations.”

It drew attention to paragraph 44 of the Doha Ministerial Declaration that “provides a clear mandate”, and said the Special Session of the WTO Committee on Trade and Development (CTD) was the only mandated body for discussions of this kind.

“We find it highly disturbing that certain Members would object to mandated negotiations in the CTD Special Session only to raise the very same issues in the General Council, a body which has no mandate in this respect,” South Africa said emphatically.

It reminded the chair of the General Council about the key points it had consistently raised on “S&DT in conjunction with the implementation issues.” These issues “remain key to unlocking the development component of the Doha Development Round,” it maintained.

South Africa referred to the remark by former US Trade Representative Robert Zoellick in 2010 that “If 1989 saw the end of the ‘Second World’ with Communism’s demise, then 2009 saw the end of what was known as the ‘Third World’...” South Africa told the General Council that “much like Francis Fukuyama’s false herald of the ‘end of history’, Mr. Zoellick’s premature obituary to the ‘Third World’ suffers from the same defect”.

It reminded the US and other developed countries that “very early on in the GATT era, Contracting Parties took steps to accommodate specific concerns of developing countries prevailing at that time in order to better meet their development needs and objectives.”

“During this time developing coun-

tries sought to emphasize the uniqueness of their development problems and challenges and called for treatment that would be different and more favourable than was provided in the GATT 1947."

Against this backdrop, South Africa said, "it made sense to allow developing countries not to liberalize their own trade and to be granted preferential access to developed country markets, [and] this was no different from exemptions accorded to developed countries from general trade rules, often times to the detriment of developing countries."

South Africa said "in many areas where WTO rules apply, one can detect reverse S&DT in favour of developed countries" and "there is no rationale or justification for the egregious and deleterious consequences that such flexibilities [for developed countries] have had for developing countries in areas where they have comparative advantages."

Broken pledges

On the current debate on S&DT for developing countries under the WTO agreements, South Africa said several questions have been raised "whether developed countries have lived up to the spirit of commitments identified in WTO Agreements."

It reminded members that "the preamble of the Agreement Establishing the WTO calls for the need for positive efforts to ensure that developing and least developed countries secure a share in the growth in international trade commensurate with the needs of their economic development."

South Africa pointed to the pledges that were made to reform agriculture trade more than two decades ago. "For over two decades the pledge to reform agricultural trade has fallen on deaf ears, market access for developing countries is still undermined by application of unclear and non-transparent tariff protection, tariff escalation, high domestic support and stringent sanitary and phytosanitary measures," South Africa said.

The failure to bring about credible reforms in global farm trade enabled the developed countries to avail of "special treatment through large bound Aggregate Measures of Support (AMS), more affectionately known as 'trade-distorting domestic supports', whilst developing countries bound their AMS to zero,"

South Africa pointed out.

Consequently, the developing countries can only provide AMS limited by their *de minimis* support. "This was not a voluntary choice on the side of developing countries since at that time they did not provide this kind of support and were otherwise constrained by structural adjustment conditions," South Africa said.

"Clearly, a lack of capacity was a main driver of this kind of outcome; yet we are now asked to make the same kind of commitment in fisheries subsidies negotiations where capping proposals bear an uncanny resemblance to *de minimis* outcomes under domestic support," said South Africa.

"Such an outcome will tend to lock in the level of subsidies that big subsidizers provide, even if certain cuts are undertaken, whilst most developing countries are locked into an absolute ceiling with no flexibility to sustainably increase their subsidies over time in order to address their development needs," South Africa maintained, calling this "manifestly anti-development and unfair".

South Africa emphasized "the importance of the principle of self-selection which in itself is an expression of the principle of sovereignty" as "more than two-thirds of the WTO Members are developing countries." (SUNS8903) □

WTO GC gets progress report on process to resolve AB crisis

The WTO General Council meeting also took stock of ongoing efforts to break the deadlock in appointing new members to the Appellate Body.

by Kanaga Raja

GENEVA: The WTO General Council

(GC), at its meeting on 7 May, heard a progress report from Ambassador David Walker of New Zealand, the facilitator of the informal process initiated under the Council's auspices to find ways to resolve the current crisis in the Appellate Body (AB).

The United States has been repeatedly blocking, at various meetings of the WTO Dispute Settlement Body (DSB), the selection process to fill four current vacancies on the AB, arguing that its concerns over the functioning of the AB remain unaddressed.

The US has so far not tabled any proposal of its own, nor engaged meaningfully on any of the proposals tabled by other members in an effort to address its concerns.

In his progress report, the facilitator touched upon the issues of the 90-day rule for appellate review, the question of municipal law, advisory opinions by the AB, binding precedent, and alleged "over-reach" by the AB. These are some of the concerns that the US had highlighted at various meetings of the DSB.

In his report, Walker said that he had attempted to capture what had been said

by the members. It was clear that the process was not going to be easy, and that there was a need to keep trying and to find a way forward, he added.

Walker's remarks came under the agenda item of the informal process on matters related to the functioning of the AB. Four proposals were submitted for discussion under this agenda item: a proposal from Brazil, Paraguay and Uruguay on guidelines for the work of panels and the AB; a proposal from Chinese Taipei on guideline development discussion; a proposal by Japan, Australia and Chile on the informal process on matters related to the functioning of the AB; and a proposal from Thailand on a General Council decision on the dispute settlement system of the WTO.

Solution-oriented

According to participants at the meeting, in his progress report, Walker said a series of meetings had been held since the previous General Council meeting in February, including an open-ended meeting that took place on 9 April. Five other meetings were held in smaller

groups, comprising members who had either tabled written proposals, raised concerns or made oral proposals.

He said that there were two objectives to these meetings, namely, to have a constructive review of the concerns that had been raised, and to try and encourage members to put forward more proposals or raise more concerns or ideas. This was a solution-oriented spirit, Walker said, adding that in the meetings in March, there was a lot of discussion on AB "over-reach", the issue of precedent, and the distinctions between law and fact.

In April and May, four proposals had been put forward, and these had been the focus of the discussions for the last few weeks. Walker said that these proposals were horizontal in nature and that they were seeking to frame the issues in a way that could produce results.

His assessment was that a great deal of energy had gone into this process. There was a great deal of understanding about the urgency, and it was clear that it would not be easy.

On the 90-day rule for appellate review, Walker said there were no divergences on this issue, in that 90 days meant 90 days. Some of the proposals suggested that if there is a very complex case, the AB could flag this early on and then meet with the parties to the dispute to suggest an extension and, if so, whether it should be a time-limited extension.

On the question of municipal law, members said that it was very important to ensure that fact-based findings by the dispute panel were not the subject of review. According to Walker, there was a convergence among the members to ensure that there was not going to be any unnecessary appeal of facts by parties to the dispute.

On the issue of advisory opinions by the AB, Walker said there was concern that parties should not be putting forward for appeal anything that might not be relevant to solving the dispute and that the AB needed to focus strictly on those areas that were indeed relevant to solving the dispute. If they were not issues raised by either of the parties, the AB should not be taking them up.

On the issue of binding precedent, the facilitator agreed that there was nothing in the Dispute Settlement Understanding (DSU) that said the precedent

set by other AB rulings should be the basis for future or current rulings. On the other hand, he added, it was important to have a degree of consistency.

Walker said the issue of AB "over-reach" was the most complex, and the popular notion that had been advanced on how to deal with this issue was to perhaps hold annual meetings between the DSB and AB members.

Walker said he had attempted to capture what had been said by the members. It was clear that the process was not going to be easy, and that there was a need to keep trying and find a way forward. He said that he would continue to report at the next General Council meeting.

Vital importance

Introducing the proposal by Brazil, Paraguay and Uruguay, Brazil highlighted the vital importance of the dispute settlement mechanism for all members. It said it was important not to alter the DSU in any way but to provide guidance. There was a clear pathway ahead but engagement was needed.

Chinese Taipei said that its proposal was a guideline approach. Procedural considerations were something that should be applied in terms of the existing rules. This was guidance and it was the preferable way to address the problem, it said.

Japan introduced the proposal by Japan, Australia and Chile, saying that their idea was to build on other proposals. It said the AB should not add to or diminish the rights and obligations of members, and there should be regular meetings of the DSB with AB members.

Thailand introduced its proposal and mentioned, among others, Rule 15 of the Working Procedures for Appellate Review, the 90-day rule, and the issue of precedent. It also said that regular annual meetings between the DSB and the AB would be important.

Korea, the European Union, Mexico, Canada, Switzerland, Ukraine, Singapore, Colombia, Nigeria, Jamaica [on behalf of the Africa, Caribbean and Pacific (ACP) Group], the Philippines, Argentina, Benin (on behalf of the African Group), Guyana, India, Egypt, China, Chad (on behalf of the least-developed countries), Malaysia, Peru, Indonesia, Vietnam, Bolivia, Turkey, Hon-

duras and the United States then took the floor under this agenda item.

According to participants at the meeting, the US was called upon by many members to either put forward its specific concerns or put forward a different proposal (than those of the other members).

Korea said the informal process was a good channel for ensuring that the proposals could be discussed. It noted that 11 proposals were now on the table. It was of the view that the EU proposal (co-sponsored by the EU, China, Canada, India, Norway, New Zealand, Switzerland, Australia, Korea, Iceland, Singapore, Mexico, Costa Rica and Montenegro) was the most comprehensive, and the proposal by Thailand was complementary to this. Now was the time to progress, it said, so that these proposals could be analyzed and a compilation put together that enabled members to get a clear view of what was out there, it said.

The EU expressed support for the informal process, saying that solving the crisis was urgent and should be a matter of the highest priority. This was why the EU and many others had made sincere efforts to address the concerns of a single member (the US), it said. It said that its proposal took account of all the concerns raised by this single member.

The EU also called on all members, especially the only one that had blocked the AB selection process, to engage.

Canada agreed that the engagement of all members was required. It called on the US to either comment on these proposals or propose solutions. All stakeholders would be affected if the dispute settlement system became paralyzed, it added.

Switzerland welcomed the new proposals. Some referred to guidelines, it said, while others referred to amendments to the DSU. It called for a pragmatic approach and for all members to engage constructively.

Singapore said it was encouraged to see that members had not given up hope. It was important for the members to work together with the facilitator, and for all members including the US to help find a landing zone.

Jamaica, on behalf of the ACP Group, welcomed the report by the facilitator, saying it was still considering a number of the proposals. It added that

the dispute settlement system was essential to the primacy of the multilateral trading system and that its independence and impartiality must be respected. It was very important that no actions by the dispute settlement system add to or diminish rights and obligations of members, it stressed.

Speaking on behalf of the African Group, Benin said that the discussions must take up the views of the developing countries. It said that the African Group would be tabling a proposal soon.

Guyana said there was concern that the discussion might become circular and never-ending without a solution. There was a need, it said, to settle the impasse in the AB and look at the question of reform as well.

India said it was extremely important to find a solution to the AB impasse. It noted that many members had submitted proposals and that there were commonalities in these proposals. Some issues, including a dialogue between the DSB and the AB, seemed to be gaining traction, it said, but there should be a system of dialogue that does not in any way threaten the independence of the AB or apply any undue pressure on AB members. It added that all WTO members must adhere to the commitments to appoint AB jurists.

China welcomed the proposals, saying that this was another example of members committing themselves to addressing common concerns. In this case, they were addressing the US' concerns. The ball was now in the US court, it said. The US would need to meet members halfway by engaging in consultations, making specific comments on the proposals or tabling an alternative proposal.

Chad, on behalf of the LDCs, said that even though the LDCs were not common users of the dispute settlement system, this was very important to them. The impasse in the AB must be resolved as soon as possible, it said. There could not be any solution that calls into question the rights and obligations of members or the independence of the AB.

Repeating what it had said at the December General Council meeting, the US said that the WTO was responsible for upholding the rules-based multilateral trading system. The AB must follow the rules that all members agreed to, it said, adding that 90 days (the time limit for appellate review) was supposed to be

90 days.

The AB had not been able to stick to the rules that had been put forward by the members, the US claimed. The AB may not change a member's significant rights and obligations. It could not add to or diminish members' rights or obligations.

It said this issue was not something it had been concerned about for 16 days

or 16 months, but for 16 years, through multiple administrations. It wondered why members were now coming around to seeing that there were these problems (with the AB) and why the DSB and other members had not addressed this.

The US said that it would not negotiate a further weakening of the rules or diminish the accountability of the AB. (SUNS8903) □

South denounce efforts to hijack Doha talks on e-commerce, agriculture

The positions of WTO member states on such issues as electronic commerce, agriculture and WTO reform are still far apart, as reflected in a recent meeting of delegation heads.

by D. Ravi Kanth

GENEVA: Trade envoys from a large majority of developing and least-developed countries on 3 May denounced efforts by the United States and other developed countries to hijack the multilateral talks on electronic commerce and agriculture of the Doha Work Programme at the WTO.

The sharp reactions and warnings came at an informal heads-of-delegation (HOD)-level meeting of the WTO's Trade Negotiations Committee (TNC).

The large majority of developing countries, including India and China, also warned against the proposed "reforms" of the WTO mooted by the US, the EU and other developed countries to introduce "differentiation" among developing countries in availing of special and differential flexibilities.

Venezuela and Cuba severely criticized the US for its unilateral actions, including trade sanctions and the proposed enactment of the condemned Helms-Burton Act. Both Cuba and Venezuela also expressed their frustration over the WTO's failure to address their existential concerns.

A large majority of developing and developed countries charged the US with refusing to engage in resolving the crisis at the WTO's Appellate Body (AB) and continuing to block the selection process for filling four vacancies at the AB.

The US, in its remarks at the HOD meet, however, remained silent on the AB crisis, while demanding immediate notifications of subsidies and countervailing measures by 30 June, par-

ticularly on fisheries subsidies.

The European Union came out for the first time to caution about the dangers posed by the proposed US-China agreement to the multilateral trade order at the WTO. It argued that "any arrangement between these members [the US and China] might further undermine the WTO, if implemented in a discriminatory manner, setting harmful precedent that undermines the basic tenets of the rule-based order."

While countries expressed support for accelerating the negotiations on fisheries subsidies, many developing countries expressed alarm over attempts to dilute special and differential treatment (S&DT) for developing countries.

E-commerce concerns

At the informal HOD meeting, India, the Africa, Caribbean and Pacific (ACP) Group of countries, Benin on behalf of the African Group, the least-developed countries, Bolivia, Cuba and Venezuela, among others, derided attempts to pursue the plurilateral negotiations on e-commerce and domestic regulation for trade in services.

On e-commerce, India reminded the sponsors of the plurilateral negotiations that there was a multilateral programme on e-commerce agreed to by ministers at the WTO's eleventh Ministerial Conference in Buenos Aires in 2017.

"In our view," said India, "going against this exploratory mandate [established in 1998] and starting negotiations

on e-commerce [at the plurilateral level] strikes at the very roots of the multilateral system."

Most developing countries, according to India, were not ready for binding rules on e-commerce.

India said it was finalizing a national e-commerce policy that "seeks to use India's data for its own development rather than allow its value to be appropriated by others."

New Delhi will preserve "flexibility of imposing customs duty on electronic transmissions to protect domestic industry and leverage technology for creating jobs and wealth, by ensuring competition and a level playing field," India said.

It asked members at the WTO to "assess the extent of sacrifice of revenue involved [in imposing a moratorium on customs duties on electronic transmissions], and the distribution of this loss among Members, when new technologies like additive manufacturing will result in electronic transmissions cascading and many dutiable goods being manufactured by digital printing."

Attacking the so-called plurilateral Joint Initiative on e-commerce launched by Japan, Australia and Singapore among others, India said some of the proposed plurilateral rules would have a serious impact on "existing trade rules, particularly the GATT [General Agreement on Tariffs and Trade] tariffs, which protect our industry, and GATS [General Agreement on Trade in Services] schedules that provide us useful flexibilities."

"Both the GATT and GATS could wither away due to the onslaught of the so-called 'high standard' e-commerce elements" as proposed in the Joint Initiative proposals," India warned.

The ACP Group said it was now "more than ever convinced that the work under the current mandate of the 1998 Work Programme on Electronic Commerce has not been exhausted and that there is much more that needs to be done under the development dimension."

The ACP Group, which consists of more than 90 countries, said that the current moratorium on customs duties on e-commerce would have revenue implications.

Members of the Group were concerned about "the loss of policy space" because of the plurilateral negotiations on e-commerce.

Benin, on behalf of the African Group, expressed sharp concern over the

ongoing efforts to undermine the 1998 multilateral work programme on e-commerce.

Several other developing and least-developed countries warned about the implications of the plurilateral negotiations on e-commerce.

Agriculture imbalance

Commenting on agriculture, the ACP Group reminded the big subsidizers that "the current imbalance in entitlement to the use of domestic support provisions is having a serious negative impact on ACP countries' productive capacity and international competitiveness."

As agriculture "remains one of, if not, the most difficult areas of the Doha Work Programme", the ACP Group urged WTO members to "accord due priority to advancing the negotiations."

Any outcome in agriculture, said the Group, "must be in line with the mandate of Paragraph 13 of the Doha Declaration and subsequent mandate issued by Ministers, especially as it relates to the special circumstances of developing countries and LDCs as well as NFIDCs [net food-importing developing countries]."

India demanded an outcome on mandated issues like finding a permanent solution for public stockholding for food security. It cautioned against attempts to raise extraneous demands "for additional information and endless debates, with the objective of wriggling out of past commitments." Such a strategy by the US and the Cairns Group of countries, India warned, "is clearly a recipe for failure."

As regards WTO reforms, India called for "a balance in the reform agenda by addressing some of the longstanding demands of developing countries." It said that it was ready to work with other like-minded members to make specific proposals to facilitate work on WTO reforms. Members must pursue a reform agenda that is balanced and inclusive so as to solve the problems being faced at the WTO rather than imposing "additional burdensome obligations," India argued.

India called for paying "urgent and undivided attention" to "getting the Appellate Body on its feet and preserving the independent dispute settlement system of the WTO".

Trade envoys from many develop-

ing countries expressed alarm on several WTO reform proposals that have been tabled.

The ACP Group, for example, pointed out that the paramount importance of WTO reforms must be to preserve "an independent, impartial and well-functioning dispute settlement system", which is a sine qua non for "preserving the legitimacy and credibility of the multilateral trading system."

"The continuing impasse in the appointment of the Appellate Body members," said the ACP Group, "poses the real threat of eroding the effectiveness of the WTO as a rule-making institution and undermines the adjudicating function of this House."

Commenting on the transparency and notification proposals of the US, the EU and Norway on behalf of the so-called Ottawa Group, the ACP Group maintained that developing countries face significant capacity constraints in complying with the notification requirements.

On attempts to truncate special and differential flexibilities and differentiate among developing countries in availing of S&DT, the ACP Group expressed sharp concern about discussing the S&DT issue at the General Council instead of the Doha negotiating body on trade and development. The S&DT discussion was not being conducted under paragraph 44 of the Doha Work Programme, the Group maintained.

Moreover, "arbitrary classification of WTO Members and the suggestion that some developing members are not entitled to S&DT or are excluded from claiming flexibilities, deviate from the S&DT provisions enshrined in the Marrakesh Agreement [which established the WTO]," the ACP Group argued.

The choice of self-declaration for availing of S&DT flexibilities must be left to the developing countries to decide, the ACP Group said.

"The basic principles of inclusivity, transparency, development and particularly S&DT for developing countries and LDCs must be fully adhered to," it demanded.

China cautioned that the paralysis over the selection process for filling the AB vacancies posed "the most severe crisis" at the WTO.

It also said most members did not

support any punitive approach for complying with notification provisions.

Without naming the US proposal on differentiation in availing of S&DT flexibilities, China said “we don’t agree to continue the unproductive and polarized discussions on differentiation or graduation of developing members.”

“Nor we will accept the explicit or implicit case-by-case approach to erode the unconditional special and differential treatment for developing members,” China said.

The only pragmatic way out, accord-

ing to China, was “to encourage developing members to contribute according to their capacity to do so, instead of requiring them to prove the case upfront by themselves”.

In short, the HOD meeting exposed the deep divide between the developing countries on the one side, and the developed countries on the other over the plurilateral negotiations on e-commerce, the proposals on S&DT and WTO reforms, trade envoys told the *South-North Development Monitor (SUNS)*. (SUNS8901) □

China tables comprehensive proposal on WTO reform

China has proposed “necessary reform” of the WTO to address the trade body’s “existential crisis” and enhance its relevance, efficiency and inclusiveness.

by Kanaga Raja

GENEVA: China has tabled a comprehensive proposal on WTO reform that, among others, calls for resolving what it says are the crucial and urgent issues threatening the existence of the WTO and enhancing the inclusiveness of the multilateral trading system.

Among the urgent issues that need to be resolved, the Chinese proposal said, is the appointment process of Appellate Body members, which should be initiated without delay so as to ensure the effective functioning of the dispute settlement mechanism.

China also said WTO members should act in good faith and exercise restraint in invoking provisions on national security exceptions.

It is also necessary to effectively curb unilateralist measures of raising trade barriers and imposing import tariffs in an arbitrary way and without authorization from the WTO, said China.

In its eight-page proposal circulated on 13 May, China said that the necessary reform of the WTO should cover the following four areas for concrete actions: resolving the crucial and urgent issues threatening the existence of the WTO; increasing the WTO’s relevance in global economic governance; improving the operational efficiency of the WTO; and

enhancing the inclusiveness of the multilateral trading system.

China said it supports necessary reform of the WTO so as to overcome its existential crisis, enhance its authority and efficacy, and increase its relevance in terms of global economic governance.

To this end, China said it put forward in November 2018 the following three basic principles on WTO reform:

First, the reform shall preserve such core values of the multilateral trading system as non-discrimination and openness, with a view to creating a stable and predictable environment for international trade.

Second, the reform shall safeguard the development interests of developing members. In particular, said China, it is imperative to eliminate the development deficit in the existing WTO rules, resolve the difficulties encountered by developing members in their integration into economic globalization and help attain the UN Sustainable Development Goals.

Third, the reform shall follow the practice of decision-making by consensus. The specific issues subject to reform, work agenda and final results should be agreed upon after extensive consultations on the basis of mutual respect, broad participation and dialogues on an

equal footing.

China said it believes that the multilateral process is the most desirable channel to promote liberalization and facilitation of trade and investment on a global scale. At the same time, opportunities and challenges have been brought about by the new wave of the science and technology revolution and transformational power of the digital economy.

“In this context, we may consider an open, transparent, inclusive, pragmatic and flexible approach to explore a new set of rules on international trade and investment, responding to the developments of the times and the needs of business communities. In this process, the interests and capacity constraints of developing Members should be taken into full account,” China suggested.

Challenges facing the multilateral trading system

In its communication, China said the world’s economic landscape is undergoing profound changes. With the rise of unilateralism and protectionism, economic globalization is encountering twists and turns. The authority and efficacy of the multilateral trading system are facing severe challenges.

Against this backdrop, China said it supports “efforts to make necessary reform to the WTO, in order to help it tackle the current crisis, respond to the needs of our times, safeguard the multilateral trading system and promote the building of an open world economy.”

International trade is an important engine for growth of the global economy. The multilateral trading system, with the WTO at its centre, is the cornerstone of economic globalization and free trade. As an important pillar of global economic governance, the WTO has, since its inception, made remarkable contributions to expanding international trade, promoting full employment, stimulating economic growth and raising standards of living, said China.

In the past 24 years, the membership of the WTO has kept increasing, with the total trade volume of its members accounting for 98% of the world’s total, which fully demonstrates the representativeness of the multilateral trading system and its appeal to the membership.

World merchandise exports have increased from \$4.3 trillion in 1994 to \$17.7 trillion in 2017, lifting hundreds of millions of people out of poverty around the world and significantly raising the living standards of citizens of relevant countries and regions.

In the fields of trade liberalization and facilitation, the WTO has made a number of important achievements, said China. The conclusion and full implementation of the Agreement on Trade Facilitation are expected to reduce the costs of global trade by 14% and would generate \$1 trillion in additional global trade each year. The full elimination of agricultural export subsidies is conducive to levelling the playing field for agricultural trade. The elimination of tariffs on information technology products has increased the export of the products covered from \$549 billion in 1996 to \$1.7 trillion in 2015. All these have contributed tremendously to the recovery and growth of the world economy, said China.

It noted that in the field of dispute settlement, 574 dispute cases have been filed with the WTO dispute settlement mechanism by the end of 2018. The mechanism has been playing an important role in resolving trade disputes, preserving the balance of the rights and obligations of the members under the WTO agreements, and providing security and predictability to the multilateral trading system.

In the area of trade policy review and monitoring, more than 430 trade policy reviews have been conducted, covering 155 of the 164 WTO members. These reviews have significantly increased the transparency of members' trade policies and deepened their understanding of each other's trade regime.

However, said China, the recent trend of rising unilateralist and protectionist practices has dealt blows to multilateralism and the system of free trade.

"The enduring blockage of the appointment process of Appellate Body members risks paralyzing the Appellate Body by the end of 2019, which will significantly affect the effective operation of the dispute settlement mechanism," it warned.

The abuse of the national security

exception, unilateral measures inconsistent with the WTO rules, as well as misuse or abuse of existing trade remedy measures have severely damaged the rules-based, free and open international trade order.

Moreover, such practices have adversely affected the interests of the WTO members, especially the developing members, and undermined the authority and efficacy of the WTO. "As a consequence, the Organization is facing an unprecedented existential crisis," said China.

It pointed out, however, that the WTO itself "is not impeccable."

The objectives set out in the Marrakesh Agreement Establishing the World Trade Organization have not yet been fully attained. As for its function of negotiations, progress has been slow on issues such as agriculture, development and rules, although it has been 17 years since the launch of the Doha Development Round. In China's view, such new issues as electronic commerce and investment facilitation that reflect the reality of international economy and trade in the 21st century have not been timely addressed. By contrast, remarkable progress and achievements have been made in the field of trade liberalization and facilitation through bilateral and regional trade agreements.

As for the WTO's function of trade policy review and monitoring, transparency of trade policies of its members awaits enhancement, while the operational efficiency of the WTO stands in need of improvement.

Existential concerns

According to China, among the crucial and urgent issues threatening the existence of the WTO that need to be resolved is breaking the impasse in the appointment process of Appellate Body members.

As a pillar of the WTO, the dispute settlement mechanism plays a crucial role in providing security and predictability to the multilateral trading system, it said. If the blockage of the appointment process of Appellate Body members continues, there will be only one Appellate Body member left in office by December 2019. "Such a situation would severely

threaten the proper functioning of the dispute settlement mechanism and therefore pose an imminent and institutional risk to the Organization," it said.

The appointment process of Appellate Body members should be initiated without delay to fill the vacancies so as to ensure the effective functioning of the dispute settlement mechanism, China said.

China noted that together with some other WTO members, it had submitted joint proposals on Appellate Body reform, urging members to actively participate in the informal process under the auspices of the General Council and engage in substantive text-based discussions. These efforts are made to address the concerns of certain members such as on the transitional rules for outgoing Appellate Body members, 90-day timeframe for appellate proceedings, the status of municipal law, findings unnecessary for dispute resolution and the issue of precedent. The proposals also emphasize the need to preserve and reinforce the independence and impartiality of the Appellate Body and to initiate the appointment process of the Appellate Body members without any further delay.

China also called for tightening disciplines to curb the abuse of the national security exception, saying that a certain member (in reference to the United States) has imposed unwarranted tariffs on steel and aluminium products and threatened to raise tariffs on auto and auto parts to protect its domestic industries, using national security as a pretext. It has also improperly extended the coverage of export control measures and administered such measures in a non-transparent or unjust manner.

"These actions have disturbed the international trade order and international market, impeded normal technological exchanges and applications, impaired the interests of Members concerned and undermined the relevant rules of the WTO," said China.

The WTO members should act in good faith and exercise restraint in invoking provisions on national security exceptions. Such provisions need to be further clarified and regulated within the WTO framework, China suggested.

It is also necessary to enhance the

notification requirements on measures such as imposing import tariffs on the ground of national security exceptions, and carry out multilateral reviews on such measures. "Meanwhile, WTO Members whose interests have been affected should be entitled to take prompt and effective remedies, so as to maintain the balance of their rights and obligations under the WTO."

China further called for tightening disciplines to curb unilateral measures inconsistent with the WTO rules.

It said that a certain member (again in reference to the United States) has taken unilateralist measures of raising trade barriers and imposing import tariffs in an arbitrary way and without authorization from the WTO. In addition, it has imposed economic sanctions on other countries and extended "secondary sanctions" to overseas business activities of third-country nationals or companies, without authorization from the United Nations or legal basis under international treaties.

Such actions have severely violated international commitments and the WTO rules, said China. Although such unilateralist measures are manifestly WTO-inconsistent and have caused serious consequences, the current WTO rules offer no timely or effective discipline and remedy.

China said that it is necessary to effectively curb such unilateralist measures, reinvigorate the efficiency and authority of the WTO, safeguard the rules-based multilateral trading system and protect the legitimate rights of the WTO members.

"Such unilateralist measures should be constrained through, inter alia, enhancing the multilateral review mechanism, authorizing the Members affected to take prompt and effective provisional remedies in cases of urgency and accelerating relevant dispute settlement proceedings."

Raising WTO relevance

China also proposed several actions with respect to increasing the relevance of the WTO in global economic governance. These include rectifying the inequity in the rules on agriculture; improving the trade remedy rules; accelerating

negotiations on fisheries subsidies; advancing the joint (plurilateral) initiative on the trade-related aspects of e-commerce in an open and inclusive manner; and promoting discussions on new issues.

On agriculture, it said that significant inequity, imbalance and unfairness persist in current rules on agriculture, in particular the provisions regarding the Aggregate Measurement of Support (AMS). A number of developed members enjoy high levels of AMS and therefore are able to provide much higher levels of support than their *de minimis* level with respect to a number of specific products, seriously distorting agricultural production and trade. By contrast, the majority of developing members have no entitlement to AMS. Furthermore, they could not implement domestic public stockholding programmes necessary for food security purposes.

It is necessary to rectify the inequity in rules on agriculture so as to promote agricultural trade and create a level playing field for developing members. It is also necessary to enhance their abilities to safeguard food security and livelihood security so that they could benefit more from the multilateral trading system, said China.

The AMS entitlements of developed members should be eliminated in gradual instalments. In the meanwhile, members should reach an agreement on the permanent solution for public stockholding for food security purposes, it suggested.

On the issue of improving the trade remedy rules, China noted that at present, there exist a number of gaps and ambiguities in the existing rules. Misuse and abusive application of trade remedy measures abound. Discriminatory practices based on country of origin and enterprise type have been on the rise. The special situations of developing members and small and medium-sized enterprises (SMEs) as well as the public interest are not accorded adequate or appropriate consideration. As a result, trade remedy rules have failed to exert their due functions or respond to the needs of the development of the multilateral trading system to the detriment of the normal course of international trade.

It is necessary to further clarify and

improve relevant WTO rules on subsidies, countervailing measures and anti-dumping measures. "We should curb the misuse and abuse of trade remedies, eliminate discriminatory rules and practices, and give consideration to the special situations of developing Members and SMEs as well as public interests," China suggested. In this way, the spirit and principles of relevant agreements of the WTO could be more faithfully honoured and free trade and levelling the playing field better safeguarded. Such improvements of rules could answer to the needs of the world and the WTO members for sustainable development.

Firstly, China proposed that the provisions on non-actionable subsidies should be reinstated and their coverage expanded.

Secondly, efforts need to be made to clarify and improve relevant rules on and relating to price comparison in anti-dumping proceedings, improve the rules on sunset review and explore the possibility of harmonizing the rules on anti-circumvention.

Thirdly, the subsidies and countervailing rules relating to subsidy identification, calculation of benefits conferred and application of facts available should be clarified and improved to mitigate abusive applications of countervailing measures.

Fourthly, transparency and due process of anti-dumping and countervailing investigations should be improved and the assessment of their effectiveness and compliance reinforced.

Fifthly, more consideration should be given to the special situations of developing members and SMEs as well as public interests.

In calling for accelerating the negotiations on fisheries subsidies, China said that the negotiations are among the areas where the WTO could help achieve the Sustainable Development Goals. Swift conclusion of the negotiations is important.

It is necessary, it said, to conclude the negotiations on fisheries subsidies in accordance with the decision adopted by the 11th WTO Ministerial Conference. The agreement to be reached should provide comprehensive and effective disciplines to prohibit certain forms of fisheries subsidies contributing to overcapac-

ity and overfishing and to eliminate subsidies contributing to illegal, unreported and unregulated fishing.

On advancing the joint initiative on trade-related aspects of e-commerce, China said e-commerce has created unprecedented opportunities for international trade and economic growth. Meanwhile, the digital divide still needs to be bridged. Issues such as cybersecurity and data security have gained in prominence. Members, particularly developing members, have their own challenges in developing e-commerce. And they have diversified interests and concerns with respect to international rules on e-commerce. However, in the past two decades, the WTO did not launch the rule-making process on trade-related aspects of e-commerce.

China maintained that business communities have made a strong call for e-commerce rules. It is important for members to work on pro-multilateral rules. Such efforts will be conducive to bolstering inclusive trade, revitalizing the WTO negotiating function and enhancing the relevance of the multilateral trading system. These rules, once agreed upon, would create new opportunities of international trade for members, particularly developing members, as well as SMEs, women and youth. With these rules in place, e-commerce will generate more benefits for businesses, consumers and the global economy.

China and 75 other WTO members had issued a joint statement on e-commerce confirming their intention to commence negotiations on trade-related aspects of e-commerce on the basis of existing WTO agreements and framework.

China proposed the following actions: First, conduct the rule-making process in an open, transparent, inclusive and flexible manner, and welcome participation of all members.

Second, uphold the development dimension and focus on cross-border trade in goods enabled by the Internet, as well as on such related services as payment and logistics services; and establish rules on cross-border e-commerce facilitation, electronic signature, electronic authentication and online consumer protection etc.

Third, formulate provisions on development cooperation so as to

strengthen technical assistance and capacity building for developing members, particularly least-developed country members.

Fourth, respect members' right to regulate and accommodate specific concerns of developing members.

Fifth, strike a balance between technological advances, business development and such legitimate public policy objectives as Internet sovereignty, data security and privacy protection, so as to reach a balanced and pragmatic outcome acceptable to all through equal consultations.

Sixth, continue in-depth discussions in relevant WTO bodies pursuant to the 1998 work programme on e-commerce.

On promoting discussions on new issues, China said that trade and investment are closely interlinked in today's world, underlined by the in-depth development of global value chains. Investment facilitation measures play an increasingly important role in improving business environment, attracting inbound cross-border investment and promoting trade and sustainable development.

However, said China, cross-border investment by businesses is still hindered by opaque policies and government inefficiencies. Micro, small and medium-sized enterprises (MSMEs) make significant contributions to job creation and technology innovation but are confronted with challenges in connecting to global value chains, such as limited access to information and high costs of trade financing.

It is crucial to meet the development needs of business communities and to promote inclusive trade, so as to ensure the multilateral trading system keeps pace with the times, said China. "Continued efforts should be made to bring the discussions on relevant issues into a new phase while adhering to the principles of openness, transparency and inclusiveness."

On investment facilitation, a dedicated mechanism should be established to enable members to carry out efficient policy coordination and explore the establishment of a multilateral framework. This process should focus on such elements as improving transparency, streamlining administrative procedures

and enhancing international cooperation, while paying due respect to members' right to regulate.

With the process centring on development, developing members will benefit from technical assistance and capacity building.

On MSMEs, those enterprises could better participate in and benefit more from international trade with improved access to information, easier corporate financing and reduced trade costs.

Operational efficiency

China also called for improving the operational efficiency of the WTO, in particular improving compliance with notification obligations, and improving the efficiency of the WTO's subsidiary bodies.

On improving compliance with notification obligations, China said at present, members' overall fulfilment of notification obligations still falls short of the requirements under various WTO agreements. Due to their limited capacity and other constraints, some members could not submit the notifications on time. Meanwhile, the quality of counter-notifications submitted by some members still needs further improvement.

"It is imperative to enhance the transparency of Members' trade policies. Greater transparency will help create an open, stable, predictable, equitable and transparent international trading environment, and raise Members' confidence in the multilateral trading system," said China.

Among the actions proposed by China in this regard are that, firstly, developed members should lead by example in submitting comprehensive, timely and accurate notifications. Secondly, members should improve the quality of their counter-notifications. Thirdly, members should increase exchange of their experiences on notifications. Fourthly, the WTO secretariat needs to update the Technical Cooperation Handbook on Notifications as soon as possible and intensify training in this regard. Fifthly, developing members should also endeavour to improve their compliance with notification obligations. Technical assistance and capacity building should be provided to developing

members, in particular LDCs, if they are unable to fulfil notification obligations on time.

On improving the efficiency of the WTO subsidiary bodies, China said that the potentials and functions of these bodies have not been fully tapped. Some issues on the agenda of the regular meetings have not been resolved despite prolonged discussions for years. There is considerable room for improving the operational efficiency of the subsidiary bodies.

It is important to elevate the WTO's role in global economic governance, said China. In this regard, its subsidiary bodies and the secretariat should find ways to better respond to the interests and needs of members. Viable options should be explored to improve the efficiency of the WTO in the following areas, among others: First, improve the rules of procedures of the subsidiary bodies. Second, adjust the frequency of regular meetings in light of the specific situation of each body. Third, encourage the secretariat to conduct more research on important economic and trade issues, enhance cooperation with other international organizations, and help developing members address and resolve specific trade concerns at regular meetings. Fourth, further improve the representation of developing members in the secretariat and steadily increase their share in the staff.

Inclusiveness

China further proposed strengthening the inclusiveness of the multilateral trading system. In this context, it underlined the need to respect the right of special and differential treatment (S&DT) of developing members.

It said the development issue is at the centre of the WTO work. The WTO agreements have set forth S&DT provisions for developing members. However, most of these provisions are best-endeavour clauses in nature and their implementation leaves much to be desired.

Furthermore, some members are challenging the entitlement of developing members to S&DT, disregarding the systemic gaps between developing and developed members. They even request some developing members to assume the same obligations as those of developed

members.

Development remains an important theme of the times. It is crucial for the WTO to safeguard the rights of developing members to S&DT and make S&DT provisions more precise, effective and operational, said China. "This will be conducive to reducing the development deficit in trade rules and contributing to the achievement of the Sustainable Development Goals of the United Nations 2030 Agenda."

China, together with some other WTO members, had submitted a joint proposal on S&DT and called for continued preservation of the rights of developing members to S&DT.

China said that it further proposes the following: First, enhance the implementation and monitoring of existing S&DT provisions, particularly the implementation of duty-free and quota-free treatment and preferential treatment to services and service suppliers of the LDCs.

Second, provide more targeted and concrete technical assistance to ensure the integration of developing members into the multilateral trading system and global value chains.

Third, advance the negotiations on S&DT provisions in accordance with the Doha Ministerial Declaration.

Fourth, accord adequate and effective S&DT treatment to developing members in future negotiations on trade and investment rules.

Fifth, encourage developing members to actively assume obligations commensurate with their level of development and economic capability.

China also called for adhering to the principle of fair competition in trade and

investment, saying that state-owned enterprises (SOEs) engaged in commercial competition are equal players in the market as other types of enterprises. However, some members have come to set differentiated rules on the basis of ownership of enterprises, it said. For example, they label indiscriminately all SOEs as "public bodies" within the meaning of the Agreement on Subsidies and Countervailing Measures, set forth additional transparency requirements and disciplines for SOEs, and discriminate against SOEs in foreign investment security reviews. "Such practices are detrimental to creating an institutional framework for fair competition and, if left unchecked, would give rise to more discriminatory rules in the future," it said.

It is imperative to respect the diversity of development models among members and promote fair competition in the fields of trade and investment, said China. Such efforts would strengthen the inclusiveness of the multilateral trading system. Actions should be taken in the WTO to uphold the principle of fair competition, so as to ensure that enterprises of different ownership operate in an environment of fair competition.

China proposed the following: First, during discussions on subsidy disciplines, no special or discriminatory disciplines should be instituted on SOEs in the name of WTO reform. Second, foreign investment security reviews shall be conducted in an impartial manner and follow such principles as transparency and due process. Non-discriminatory treatment shall be given to like investment by enterprises with different ownership structures, it said. (SUNS8908) □

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Trade tensions, policy uncertainty weakening growth

A UN outlook report sees a decelerating world economy as persistent trade tensions hurt countries' growth prospects.

by Kanaga Raja

GENEVA: The global growth outlook has weakened amid unresolved trade tensions and elevated international policy uncertainty, with growth projections for 2019 downgraded across both developed and developing countries, a United Nations report has said.

In its *World Economic Situation and Prospects (WESP)* mid-2019 report, the UN said while looser monetary conditions have contributed to some stabilization in global financial markets and capital flows, the world economy continues to face considerable downside risks arising from persistent trade tensions, the build-up of financial imbalances, and intensifying climate change.

Against this backdrop, it said, world gross product growth is now expected to moderate from 3.0% in 2018 to 2.7% in 2019 and 2.9% in 2020, reflecting a downward revision from its forecasts released this January.

The *WESP* mid-2019 report, which updates its earlier report released in January 2019, said in the face of these multifaceted challenges, tackling the current growth slowdown and placing the world economy on a robust path towards the 2030 Agenda for Sustainable Development require more comprehensive and well-targeted policy responses. This should include a combination of monetary, fiscal and development-oriented measures, said the report.

"It is increasingly clear that policies to promote sustainable development will need to look beyond GDP growth and identify new and more robust measures of economic performance that appropriately reflect the costs of inequality, insecurity and climate change," said Elliot Harris, UN Chief Economist and UN Assistant Secretary-General for Economic Development.

According to the *WESP* report, the weaker growth outlook across most regions is attributable to a confluence of

external and domestic factors.

On the external front, persistent trade tensions and higher tariffs have weighed on the trade performance of many developed and developing countries. Rising barriers to trade have not only directly impacted global trade flows but have also increased uncertainty, affecting business and consumer confidence. As a result, global merchandise trade volume growth has slowed more sharply than expected, particularly in late 2018 and early 2019.

Data from the United States Census Bureau showed that bilateral merchandise trade between the United States and China has declined by more than 15% since September 2018, when the second round of tariffs came into effect. This has also impacted global value chains in East Asia and other trading partners, said the report.

Elevated trade-related headwinds have been compounded by continued volatility in global commodity prices, it added. Oil prices have recovered from the recent lows in December 2018, with the Brent spot price reaching \$75 per barrel in April 2019. The UN said that the assumptions underlying the economic forecasts in its report are for Brent spot prices to average \$65.5 in 2019 and \$65 in 2020. However, these assumptions are subject to high uncertainty. With global oil demand expected to decelerate and United States crude oil production growing, an effective extension of the OPEC-led production agreement is a key determinant of crude oil prices in 2019. Significant supply disruptions and a spike in oil prices due to geopolitical factors remain possible, given the situation in Iran, Libya and Venezuela.

Among other commodities, agricultural commodity prices are generally expected to remain weak in the near term. However, localized spikes of food prices in parts of Western Asia and Af-

rica due to weather-related shocks and conflicts cannot be ruled out, said the report.

Growth projections for 2019

According to the *WESP* report, growth projections for 2019 have been revised downward in all major developed economies.

In the United States, the growth momentum is projected to moderate as headwinds from trade policy are compounded by the waning effects of fiscal stimulus. Economic sentiment indicators in the United States deteriorated in early 2019, as tangible impacts from tariff hikes and trade tensions materialized, and consumer confidence was buffeted by the longest federal government shutdown in history. The Congressional Budget Office estimates that the five-week shutdown, which impacted 800,000 federal employees, reduced the level of GDP in the first quarter of 2019 by 0.2%, although much of this will be recovered later in the year.

The United States' GDP is projected to grow by 2.3% in 2019 – down from 2.9% in 2018 and a projection of 2.5% (in the forecast released in January) – as the effects of fiscal stimulus measures wane and export growth is hampered by ongoing trade disputes. In 2020, GDP growth in the United States is expected to moderate further to 2.1%.

In Europe, while the effects of auto production disruptions are expected to dissipate, economic activity will be dampened by weaker confidence, softer external demand and prolonged uncertainty surrounding the Brexit developments.

The EU is projected to expand by 1.5% in 2019 and 1.8% in 2020. This constitutes a downward revision compared with the previous forecast, as the trade-related downside risks attached to the last baseline forecast have started to materialize. By contrast, private consumption remains relatively robust. Solid labour market conditions underpin upward wage pressure, which together with subdued inflation rates supports household purchasing power and private consumption spending.

The report said that the postponement of the United Kingdom's exit from the EU without clarification as to the way

forward has increased the risk of a disorderly separation. This could have severe negative consequences in the form of a disruption or even breakdown in trade flows to and from the United Kingdom.

In Japan, weak external demand has weighed on investment in the manufacturing sector, while household consumption remains sluggish. Japan's growth forecast for 2019 has been revised down from 1.4% to 0.8%, with the revision reflecting weakening external demand.

For the economies of the Commonwealth of Independent States (CIS), external conditions, including demand from major economies and prices of non-oil commodities, are less supportive in 2019. Growth is expected to moderate, especially as fiscal policies are largely growth-neutral and several countries have tightened monetary policy. The aggregate GDP of the CIS and Georgia is expected to increase by 1.9% in 2019 and 2.3% in 2020.

The growth outlook for many developing economies has also weakened, said the report.

Southern Africa, Western Asia and Latin America and the Caribbean have seen particularly large downward revisions for growth in 2019.

The economic outlook for Africa remains challenging. While growth is estimated to pick up, the region faces difficulties in embarking on a robust and sustained growth trajectory, amid a global slowdown, tepid commodity prices and protracted fragilities in many commodity exporters. Aggregate GDP growth for the region is projected at 3.2% in 2019 and 3.7% in 2020, after an estimated expansion of only 2.7% in 2018.

The weaker prospects for Southern Africa are attributable to the devastation caused by Cyclone Idai, coupled with a subdued outlook for South Africa's economy, which is severely hampered by power shortages.

In Western Asia, growth in Saudi Arabia is projected to slow amid oil production cuts, while Turkey will only gradually emerge from recession following a sharp contraction in domestic demand in the second half of 2018.

The downward revision of the outlook for Latin America and the Caribbean reflects weaker-than-expected activity in

the region's largest economies – Argentina, Brazil and Mexico – and a further severe contraction in Venezuela. GDP for the region is projected to expand by only 1.1% in 2019 and 2.0% in 2020, following growth of 0.9% in 2018.

In contrast, growth prospects remain favourable in other developing regions, most notably East Africa and East Asia.

In China, recent policy stimulus measures will largely offset the adverse effects from trade tensions. Growth in China is projected to moderate gradually from 6.6% in 2018 to 6.3% in 2019 and 6.2% in 2020. Recent monetary and fiscal stimulus measures are expected to bolster domestic demand, partially offsetting the adverse impact of trade tariffs on overall growth. Nevertheless, these measures could also exacerbate domestic financial imbalances, raising the risk of a disorderly deleveraging process in the future.

Despite downward revisions, growth in India remains strong amid robust domestic demand. The Indian economy expanded by 7.2% in 2018. Strong domestic consumption and investment will continue to support growth, which is projected at 7.0% in 2019 and 7.1% in 2020.

According to the report, in the second half of 2018, gross fixed capital formation growth moderated, including in several large developing and transition countries.

The prolonged period of high uncertainty in the global policy environment has hampered business sentiments and weighed on capital spending, particularly in trade-oriented sectors.

"A sharper and more protracted downturn in international trade activity could significantly impact the medium-term growth outlook of trade-dependent economies," said the report.

In many developing countries, investor confidence has also been adversely affected by elevated domestic policy uncertainties, amid persistent structural challenges.

In several large economies, such as Brazil, Mexico and South Africa, the inability to achieve a sustained revival in investment could weigh on already weak long-term productivity growth, further impeding their sustainable development prospects.

Economic projections for the least-developed countries (LDCs) have also been downgraded (from the forecasts released in January). After expanding by 4.8% in 2018, GDP growth in LDCs is projected to decline slightly to 4.6% in 2019, before improving to 5.8% in 2020. Thus, Sustainable Development Goal 8.1 (at least 7% annual GDP growth in the LDCs) remains distant, said the report.

In the near term, living conditions in countries such as Afghanistan, Angola, Burundi, Haiti and Lesotho are expected to improve only slightly. In addition, Cyclone Idai has caused a humanitarian crisis in Mozambique, a country that already faces extremely difficult economic conditions, amid a prolonged debt crisis and political instability. Against this backdrop, there are concerns over the capacity to manage mounting public health and food security challenges, and to mobilize financial resources for reconstruction.

Monetary and fiscal policy stances

According to the report, the slowdown in global economic activity has triggered a shift towards easier monetary policy stances across many developed and developing economies. This shift is taking place in an environment of subdued global inflation, amid weakening demand and a moderate outlook for global commodity prices.

Among the developed economies, headline inflation generally remains below central bank targets. Across the developing regions, including Africa and Latin America, inflationary pressures have also eased, in part reflecting more stable exchange rates and improved agricultural production.

In March, the United States Federal Reserve (Fed) lowered its expectations from two rate hikes to none in 2019, while maintaining the target range for the federal funds rate at 2.25-2.50%. The Fed will also begin to slow the pace of its balance sheet normalization.

In efforts to boost credit growth, the European Central Bank (ECB) recently launched a new series of targeted longer-term refinancing operations and delayed any increase in interest rates until at least 2020.

Meanwhile, the People's Bank of

China further lowered the reserve requirement ratios for banks in early 2019 to improve domestic liquidity conditions.

Given increased uncertainty over growth prospects, a few large developing economies, including Egypt, India and Nigeria, have also reduced their key policy rates.

Recent monetary policy shifts have helped stabilize global financial conditions and pushed up asset prices. After significant financial pressures in the second half of 2018, capital flows to emerging economies recovered in early 2019, with a modest increase projected for the rest of the year. However, financial markets remain prone to abrupt shifts in investor sentiments and risk assessments. Furthermore, emerging economies continue to face the challenge of translating capital inflows into productive domestic investments.

"The easing of monetary policy may have reduced some short-term risks, but is unlikely to significantly boost domestic demand in countries with highly leveraged household and corporate sectors," said the report.

Moreover, high policy uncertainty, particularly surrounding unresolved trade disputes and the Brexit process, may also limit the effectiveness of monetary policy.

For many economies, said the report, a more protracted period of monetary accommodation could exacerbate financial imbalances, thus raising medium-term risks to financial stability.

As monetary policy space remains limited, more countries worldwide are adopting easier fiscal policy stances to bolster growth, said the report. For many economies, however, their ability to introduce large-scale fiscal stimulus measures is limited, given persistent fiscal deficits and elevated public debt levels. For commodity-dependent economies, fiscal space remains constrained as commodity prices are still well below levels seen before 2014.

The report said the extended period of low global interest rates fuelled increasing borrowing by governments. Many countries have seen a significant rise in interest burdens, undermining governments' capacities to utilize fiscal policy to pursue development objectives. In 2018, interest payments alone exceeded 20% of government revenue in

several countries in Africa, Latin America and South Asia. These countries are also particularly vulnerable to shifts in financial conditions, via a rise in borrowing costs, currency depreciations or commodity price shocks. Of particular concern is the rising number of low-income countries that are either already facing difficulties in servicing their debt or at a high risk of debt distress.

Given increasing downside risks to growth and limited fiscal resources, policymakers in many countries face the challenge of simultaneously supporting short-term economic activity and preserving fiscal sustainability. In this environment, said the report, there is a risk that policymakers would delay structural reform measures necessary to address sustainable development challenges, including eradicating poverty, tackling rising inequality and enhancing climate change resilience.

For most countries, there is a need to improve the efficiency of fiscal spending, channelling expenditure towards measures that will promote more inclusive and sustainable growth prospects. In addition, measures to improve fiscal management are also important to strengthen public finances and preserve confidence. These measures include improving the allocation of expenditure, expanding the tax base and ensuring that public borrowing is channelled towards productive investment, said the report.

Major downside risks

According to the *WESP* report, the baseline scenario rests on the assumption that current economic and financial conditions will not deteriorate further. However, with major downside risks prevailing, there is a significant possibility of a sharper slowdown or more prolonged weakness in the global economy that could impact development progress, it cautioned.

A further escalation of trade disputes among the world's largest economies poses a significant risk for both short- and medium-term global growth prospects. Alongside unresolved trade tensions with China, the United States recently signalled its intention to impose additional tariffs on the European Union, primarily targeted at the aircraft and food industries. This is in addition to the im-

position of steel and aluminium tariffs that are already in place.

"The impact of a spiral of additional tariffs and retaliations would not only dampen growth of these large economies, but also have severe spillover effects on the developing economies, particularly those with high export exposure to the impacted economies," the report warned.

The report also cautioned that in addition to rising global trade tensions, the effectiveness of the present rules-based multilateral trading system is under threat. The WTO's dispute settlement process may become constrained by member states' failure to fill the vacancies of the Appellate Body (AB) which makes the final binding decisions on appeal cases. As of 1 April 2019, only three AB members remained, the minimum number for a quorum to review a case. Since two serving members' terms end on 10 December, failure to secure new appointments to the AB would leave the WTO without an appeal function by the end of 2019. "Paralysis in the Appellate Body would critically weaken the rules-based multilateral trading system, at a time when the number of active trade disputes has risen significantly."

The report also said that recent shifts towards more accommodative policies may have lifted investors' sentiment in the short term. However, the impact on asset prices and risk-taking behaviour could increase financial risks in the medium term. Prolonged loose financial and lending conditions – including lower expectations over the federal funds rate in the medium term – will fuel search-for-yield behaviour, contributing to a further build-up of debt.

The high level of indebtedness has become a prominent feature of the global economy. The global stock of debt is nearly one-third higher than in 2008 and more than three times the global GDP. Elevated levels of debt are not only a financial risk in themselves, but also a source of vulnerability in case of an economic downturn. If the slowdown in the global economy becomes more acute, firms and households may struggle to roll over debt, triggering a disorderly deleveraging process, large corrections in asset prices and spikes in risk aversion.

In this context, a particular risk stems from the recent upsurge of lever-

aged loans in the corporate sector in some developed countries. The global leveraged loan market has grown to about \$1.3 trillion, more than double its size a decade ago. In the United States, it now exceeds the size of the high-yield corporate bond market. Rising investor demand, coupled with firms' willingness to take on more debt, has led to a deterioration in underwriting standards and credit quality of these loans.

The report noted that in 2018, the average global temperature was the fourth highest since 1880. The 20 warmest years on record have occurred in the past 22 years amid continuously rising carbon dioxide levels. The degree of warming during the past five years has been remarkable, both on land and in the ocean. The last five years now hold the record for the hottest period since modern measurements started. The year 2019 might prove to be warmer still, given forecasted El Nino conditions.

In 2019, the level of carbon dioxide in the atmosphere is projected to witness one of the largest ever increases in 62 years of measurements. A large proportion will remain in the atmosphere for thousands of years, said the report.

The Atlantic hurricane season this year is predicted to be slightly below average, but the impacts of long-term global warming are increasingly present. Last year's season was the third in a series of above-average seasons, causing damages of about \$51 billion. There were also devastating floods in India and a major typhoon in the Philippines. The 2018 wildfire season included California's largest and deadliest wildfire yet and an extremely rare event when wildfires broke out north of the Arctic Circle in Scandinavia. These and other severe costly events made 2018 the fourth-costliest year in terms of insured losses since 1980. Three insurance and re-insurance firms (Aon, Munich Re and Swiss Re) estimate the economic cost of natural disasters in 2018 at \$155-225 billion, with only \$79-90 billion insured.

The report also said that the number of conflict-related forcefully displaced persons, including refugees and internally displaced people, is estimated to have continued to rise in 2018. According to the United Nations High Commissioner for Refugees, the number of refugees under its mandate exceeded 20 million in June 2018, while the conflict-related internally displaced population

stood at 39.7 million. Existing political instabilities and social tensions could lead to a further increase in forcefully displaced people in 2019.

About 95% of conflict-related forcefully displaced persons are hosted in developing countries, pressuring fiscal balances. Despite financial support from the

international community, many host countries divert substantial financial resources from already-strained budgets to support forcefully displaced residents. This may impinge on other social provisions as well as on the policy space available to react to external shocks, said the report. (SUNS8913) □

Number of commodity-dependent countries reaches 20-year high

There has been a rise in the number of countries dependent on commodity exports, especially in the developing world, finds a UN agency report, rendering these countries vulnerable to negative commodity price shocks and price volatility.

by Kanaga Raja

GENEVA: The number of commodity-dependent countries increased from 92 in the period 1998-2002 to 102 in the period from 2013 to 2017, reaching its highest level in 20 years, the UN Conference on Trade and Development (UNCTAD) has said.

In its *State of Commodity Dependence Report 2019*, released on 16 May, UNCTAD said that more than half of all countries – 102 out of 189 – and two-thirds of developing countries are commodity-dependent.

According to UNCTAD, a country is considered to be export-commodity-dependent when more than 60% of its total merchandise exports are composed of commodities.

"Given that commodity dependence often negatively impacts a country's economic development, it is important and urgent to reduce it to make faster progress towards meeting the Sustainable Development Goals (SDGs)," said UNCTAD Secretary-General Mukhisa Kituyi.

According to the UNCTAD report, in the period 2013-17, 102 out of 189 countries (54%) were commodity-dependent.

By region, 89% of sub-Saharan African countries are commodity-dependent, compared with two-thirds of the countries in the Middle East and North Africa, half of the countries in Latin America and the Caribbean, and half of the countries in East Asia and the Pacific.

On the other hand, only a quarter of countries in South Asia and in Europe and the Central Asia region are consid-

ered commodity-dependent, while there are no commodity-dependent countries in North America.

UNCTAD said that commodity dependence is almost exclusively a developing-country phenomenon. Only 13% of developed countries are commodity-dependent, compared with almost two-thirds (64%) of developing and transition economies.

Commodity dependence is particularly concentrated in the least developed and most vulnerable country groups: 85% of least-developed countries (LDCs), 81% of landlocked developing countries (LLDCs), and 57% of small island developing states (SIDS).

Using the World Bank country classification by income groups, UNCTAD found that 91% of low-income countries are dependent on their commodity exports, compared with less than one-third of high-income countries.

The number of commodity-dependent countries increased from 92 in 1998-2002 to 102 in 2013-17. However, UNCTAD said, the number of countries dependent on the export of agricultural products declined from 50 to 37 between these two periods, while the number of mineral-dependent countries steadily rose, from 14 to 33, and the number of energy-dependent countries increased from 28 to 32.

UNCTAD also pointed out that commodity dependency is a persistent problem. During the period 1998-2017, the dominant export product groups (agriculture, minerals, energy, or non-commodities) of 142 countries out of the 189

in the sample (75%) remained unchanged.

Commodity prices increased substantially between 1998-2002 and 2008-12, but fell in 2013-17, although they remained significantly higher than the prices registered in 1998-2002 or even in 2003-07.

But price increases varied by commodity group: the prices of energy and minerals increased much more than those of agricultural and manufactured goods. Therefore, said UNCTAD, relative price changes among these different commodity groups and relative to the price of manufactures contributed to changes in the dominant product groups exported.

For example, during the period 2008-12 when energy prices peaked, non-commodity-exporting countries with a sizeable energy sector, such as Egypt and Indonesia, became temporarily energy-export-dependent. Similarly, some countries switched from being dependent on agricultural exports in 1998-2002 to energy- or mineral-dependent (e.g., Bolivia and Mozambique) in 2008-12 as energy and mineral prices soared.

Vulnerability

UNCTAD further said that commodity-dependent developing countries (CDDCs) are vulnerable to negative commodity price shocks and commodity price volatility. The average commodity price levels in the period 2013-17 were substantially below their peak of the 2008-10 period. For example, energy prices fell by 23.5%, mineral prices by 13.7% and agricultural prices by 12.8%.

The negative terms-of-trade shock, together with other factors, both external and domestic, contributed to an economic slowdown in 64 commodity-dependent countries, with several of them registering a recession in 2013-17. As their economies slowed down, the fiscal situation of many CDDCs deteriorated, resulting in the accumulation of public debt, often in the form of an increase in external debt.

Indeed, said UNCTAD, the external debt of 17 CDDCs increased by more than 25% of GDP between 2008 and 2017, with a large proportion of them (82.3%) being either mineral- or energy-dependent countries. These 17 countries are Kazakhstan, Djibouti, Uganda, Ghana, Azerbaijan, Gabon, Niger, Montenegro,

Senegal, Mauritania, Tajikistan, Kyrgyzstan, Zimbabwe, Armenia, Mozambique, Papua New Guinea and Mongolia.

During commodity price booms, the sudden inflow of additional public revenues provides resources to finance increases in public consumption, said UNCTAD. However, such increases, fuelled by a temporary increase in public income, may be difficult to contain or reverse after sudden declines in commodity prices. For example, it said, public consumption grew in Mozambique and Zambia during the period 2011-16 when aluminium and copper prices stagnated or fell.

Diversification

UNCTAD also found that in some energy-export-dependent countries, such as Egypt, Iran, Oman, Saudi Arabia, and Trinidad and Tobago, the share of chemicals (manufactured products downstream from their main exports) in total merchandise exports increased by more than five percentage points between 1998-2002 and 2013-17. Oman increased the share of chemicals in its exports from 1% to 9.5% during this period, mainly due to the increase in its exports of fertilizers and other derivatives. Trinidad and Tobago increased the share of chemicals in its exports from 19.4% to 27.7%.

Some countries such as the United Arab Emirates, Qatar and Saudi Arabia significantly increased their refining capacity and production of processed petroleum and gas products. Some of these countries and a few others like Bahrain also took advantage of their abundant energy resources by diversifying into energy-intensive aluminium production.

However, UNCTAD said that in some energy-export-dependent developing countries, value-added in downstream activities stagnated or fell. For example, in Azerbaijan, Nigeria and Venezuela, production of petroleum derivative products fell. Similarly, production of aluminium fell in energy-dependent developing countries such as Azerbaijan and Venezuela and stagnated in others such as Nigeria.

UNCTAD said that despite higher commodity dependence, some CDDCs managed to expand their manufacturing exports. For example, in Brazil, the share of commodity exports increased from 44.3% in 1998-2002 to 62.8% in 2013-17.

While its non-commodity exports, notably its auto industry, grew by 160% and accounted for 29.1% of the growth of exports, its agricultural exports grew even faster, at 390%, and accounted for 42.8% of the increase in export value during this period. In Colombia, commodity export dependence increased from 66.5% in 1998-2002 to 80.6% in 2013-17, mainly due to a large increase in the value of energy exports (petroleum and coal). Its non-commodity exports also grew, by 110%, and accounted for 14% of the increase in the country's total exports during this period.

UNCTAD said some CDDCs dependent on energy and mineral exports also diversified their exports by boosting agriculture. For example, Rwanda has become a mineral-export-dependent CDDC over the last 20 years. However, it has also boosted its agricultural exports, which explains 34.2% of the increase in export value. Especially dynamic have been its exports of tropical beverages (coffee and tea) and other agricultural products. Cameroon has remained an energy-export-dependent CDDC, but its agricultural exports have increased significantly in value terms over the past 20 years. Their increase accounted for 38% of the increase in the country's total export value during the period. This was due, in particular, to the dynamism of its cocoa exports and, to a lesser extent, some agricultural raw materials, fruits and nuts, said UNCTAD.

UNCTAD also found that in some CDDCs dependent on energy and mineral exports, the agricultural sector contracted, and export concentration increased. In Chad, for example, the value of its exports boomed after oil extraction started in 2003. However, cotton exports fell by 40.3% in value terms between 1998-2002 and 2013-17, resulting from a large reduction in their production and area under cultivation. Despite some increases in exports of oilseeds and gum Arabic, the value of Chad's agricultural exports fell by 16%. This led to the share of agricultural exports in total exports shrinking from 92.5% to 5.8%. In Equatorial Guinea, petroleum production started in 1994 and peaked in 2004. The cocoa sector, which had been important before the oil boom, registered a fall in production of 93.9% between 1990 and 2017. By 2013-17, energy accounted for 91% of exports, mostly in the form of crude petroleum. (SUNS8910) □

A new multilateralism for a global green new deal

Decrying the ills of present-day “hyperglobalization”, a report by two development experts frames an agenda for a more balanced international economic order that would deliver greater stability, shared prosperity and environmental sustainability.

by Kanaga Raja

GENEVA: A renewed multilateralism is required to provide the global public goods needed to deliver shared prosperity and a healthy planet, to cooperate and coordinate policy initiatives demanding collective action, mitigate common risks, and ensure that no nation's pursuit of these broader goals infringes on the ability of other nations to pursue them.

This is the main conclusion highlighted in a recent report, *A New Multilateralism for Shared Prosperity: Geneva Principles for a Global Green New Deal*, by the Global Development Policy Center at Boston University and the UN Conference on Trade and Development (UNCTAD).

The report was authored by Kevin P. Gallagher, professor of global development policy and Director of the Global Development Policy Center at Boston University, and Richard Kozul-Wright, Director of the UNCTAD Division on Globalization and Development Strategies.

In the report, the authors outline a set of “Geneva Principles for a Global Green New Deal.” These, they say, advance an urgent research and policy agenda for a New Multilateralism that rebuilds the rules of the global economy towards goals of coordinated stability, shared prosperity and environmental sustainability, while deliberately respecting the space for national policy sovereignty (see below).

“We once had a version of multilateralism that permitted nations to regulate international markets and to pursue strategies for equitable prosperity and development. This system reflected the fact that leaders who believed in managed capitalism and full employment were put in charge after WWII,” said Gallagher and Kozul-Wright.

With their experience of the Great

Depression and defeating fascism, these leaders aimed for a value-driven and rules-based global economy. “The system was far from perfect, yet its core principles did provide a rough template for a more balanced form of prosperity in a globally interdependent world,” said the authors.

That system began to break down in the late 1970s, when giant global banks, corporations and their allies in government regained the reins of power that they had temporarily lost in the Great Depression and the War. “Once power was recaptured, these actors rewrote the rules of the global system. The system later became an instrument for the diffusion of a neo-liberal order that has triggered crises of financial instability, inequality, and climate change,” the two leading economists said.

Balanced multilateralism

According to Gallagher and Kozul-Wright, multilateralism once promised a value-driven and rules-based international economic order, tasked with promoting coordinated actions to deliver shared prosperity and mitigate common risks. The initial goals of the Bretton Woods institutions created after World War II were to promote full employment, regulate capital and prevent imported deflation and austerity. The system was intended to prevent beggar-thy-neighbour policies that could upset the stability of the global economy. It provided institutional and ideological support for governments to raise living standards of their populations, leaving policy space for sovereign states, at all levels of development, to pursue their particular national priorities.

“In practice, multilateralism in the three decades after Bretton Woods never

lived up to this ideal,” said the authors. Managed capitalism coexisted with a persistent and widening technological divide between North and South, wasteful military spending under a tense East-West divide with proxy wars crippling economic prospects in many developing regions, colonialism and lingering racial prejudice, unequal trade relations that inhibited productive diversification in many countries, and carbon-heavy growth that was heedless of the environmental cost.

Yet its core principles did provide a rough template for a more balanced form of economic development in an interdependent world. The goal, as stated by Henry Morgenthau, the US Treasury Secretary at the time of Bretton Woods in 1944, was a “New Deal in international economics” based on the fundamental principle that “prosperity, like peace, is indivisible.”

The pursuit of multilateral principles was possible because of a particular political alignment. At the geopolitical level, there were contending systems in East and West which each sought to demonstrate superior results for citizens. In the West, most governments of the era recognized and remembered that the earlier laissez-faire policies privileging capital above all else had led to instability, inequity, depression, mass unemployment and, ultimately, violent conflict.

A new generation of political leaders from the South endeavoured to break the bondages of colonialism and create new economic opportunities for their rapidly growing populations. They were also willing to challenge the rules of the multilateral game when they stymied those efforts.

Laissez faire

But, following the dislocations of the 1970s, private capital and financial elites reclaimed political power, and set about using the multilateral system to re-enthronize and universalize laissez faire. These elites, both in national governments and in the financial and corporate sectors, have pursued the expansion of global markets and cross-border financial flows as ends in themselves.

Under the umbrella of the World Trade Organization (WTO), with the ac-

tive engagement of the International Monetary Fund (IMF) and the World Bank, and through a plethora of trade and investment treaties, they have put in place a set of enabling norms and rules that allows footloose finance and firms to move freely within and across borders and into ever-expanding spaces for profit-making through privatization of previously (and properly) public functions.

Concomitantly, these norms and rules restrict national policies that might limit the opportunities for capital to generate larger rents. They outlaw many bona fide regulatory actions that governments could take to steer trade and investment towards broader goals and to mitigate divergence between private returns and societal costs.

What is more, these norms and rules are actively enforced by a combination of market disciplines, privatized regulatory systems, and “investor-state dispute resolution systems” where the interests of foreign investors carry undue weight.

“Today we live in a more interconnected world, where trade and foreign direct investment have grown by orders of magnitude,” the authors said. Most striking, however, is the “hyper” growth of global finance and, behind this, financial actors, institutions, markets and motives. But while financialization has reigned supreme over the global economy, the big promise that this would generate a dynamic investment climate has not materialized.

There has been a surge in financialization over the past three decades but a reduction in real investment in productive capital formation, they said, adding that economic growth was both stronger and more stable in the era of multilateral managed capitalism.

Moreover, as footloose private capital has moved production and investment around the globe, the bargaining power of capital has increased greatly compared with that of labour. This has allowed corporations to repress wages and working conditions in both developed and developing countries, except in those few cases where governments have actively intervened on behalf of workers.

Extremes of inequality both within and between many countries have hit

grotesque heights. Investment in public goods, at the global as well as the national level, has stagnated. Growth has become dependent on punishing levels of debt and a pace of resource extraction and energy consumption that is threatening the survival of the planet itself.

These policies produced the global financial crisis, a moment of deep distress that should have discredited hyperglobalization, just as the Crash of 1929 and the ensuing Depression disgraced the sponsors of that era’s *laissez faire*. “But such was the political power of global elites that no fundamental reform ensued. Under the auspices of the WTO, the influence of financial markets and the cajoling by major multinational corporations, pressure has increased – demanding even more intensive uses of global rules to privilege banks and corporate interests, in the financial, digital, pharmaceutical industries, and beyond,” said Gallagher and Kozul-Wright.

While policymakers readily ignored neoliberal strictures against public debt and spending by pumping trillions of dollars into their financial systems, they otherwise left their operations largely intact. After years of proclaiming the impotence of public policy, the hypocrisy of this response has added to a growing popular frustration and sense of distrust of the political and technocratic elite.

“This comes at a moment when economic, social, political and environmental breakdowns demand urgent, ambitious and coordinated political action across borders. Such action requires new global norms and rules to restore a place for diverse policies that allow national autonomy while converging toward the goals of economic stability, widely shared prosperity, development, and decarbonization.”

Achieving such a new approach will require confronting and contesting the furies of hyperglobalization: the beneficiaries in financialized sectors, monopolists, footloose firms and their apologists in the academic and policy realms, said the authors.

Global anxiety

Gallagher and Kozul-Wright argued that the current state of global anxiety has been a long time in the making. As

the system began to erode, nations in payments difficulties and debt distress were obliged to prioritize the demands of private creditors, open up their capital accounts, and pursue austerity and other pro-cyclical policies as a condition of IMF support. Unleashing private entrepreneurship, embracing the discipline of international competition, and allowing markets and businesses to regulate themselves were deemed the only way to regain stability, revive growth and guarantee widely shared prosperity.

The gross flaws of this model were quickly exposed in Latin America’s lost decade of the 1980s and the devastating debt overhang, lasting well into the 1990s, in much of sub-Saharan Africa. In East Asia, following the collapse of the Thai baht in 1997, speculative collapses spread to much of the region. In each case, austerity was the prescribed policy response, “there is no alternative” the accompanying political mantra. Despite significant improvements in research and rhetoric, the IMF promoted virtually the identical austerity formula for adjustment in the case of Greece after 2010, producing similarly catastrophic results.

Over the course of these four decades, financial markets have acquired unprecedented global reach. As obstacles to the free movement of capital have been dismantled, its economic power has been strengthened through new rules (on financial services provision, investment and intellectual property rights) in trade and investment treaties.

In reality, unrestrained finance has aimed less at boosting investment, productivity and jobs, and more at extracting rents through a whole new range of pyramid schemes, toxic products and the buying and selling of existing assets for quick returns.

Financial globalization has been closely associated with “surges” of capital flows when times are good, and sharp reversals or “sudden stops” during difficult times, resulting in financial crises. These surges and slumps have translated to highly uneven patterns of development.

The economic glue keeping all this together has been the creation of and access to debt, both public and private. The pace of credit creation over the last three decades has been truly astounding, with

both developed and developing countries going with the flow.

While a handful of powerful actors have assumed ever greater control of markets and supply chains, they have been far less inclined to use the resulting profits to create decent jobs, deepen the skill base and invest in the local communities where they reside. And the bigger these players have become, the more adept they have become at hiding how and where they make their money.

According to the authors, digital technologies, “which hold out a promise of ending the drudgery of work and enhancing our creativity, are, in practice, reinforcing the drive to monopolization and corporate subterfuge, adding further to polarization pressures.” As robots threaten job security across a widening swath of sectors, as fintech expands the predatory reach of speculative finance, and as platform monopolies gain ever tighter control of our data, “winner takes most” has become the distributional ethos of the “superstar” firms dominating the hyperglobalized world order – looking very much like a crocodile with corporate profits devouring the labour share of income, they argued.

Beginning in the mid-1980s, with the launch of the Uruguay Round, “trade-related” negotiations pretended that normal and defensible forms of national regulation were violations of private property rights and liberal trade norms. The new provisions since that round have extended the neoliberal agenda and locked it in with hard rules.

Established instruments of national development policy, including subsidies, government investment and procurement, and diverse forms of national regulation such as the regulation of private capital flows and environmental safeguards, were redefined as violations of “free trade” and restricted or banned outright.

Instability and inequality

The current state of uncertainty and insecurity is the result of inherent financial instability, rising inequality and climate breakdown. Rising inequality and heightened instability are hardwired into the rules of hyperglobalization, in both good and bad times. The global debt

splurge has transformed the business cycle around recurrent (and often intense) episodes of financial boom and bust, best described by economist Hyman Minsky’s stages of fragility.

Even during times of relative stability when growth has picked up, the middle class has felt increasingly squeezed in advanced economies; while poverty remains a blight on the lives of most families in the developing world despite the remarkable achievements of China in reducing levels of extreme poverty.

Households and governments have taken on more and more debt to meet their spending needs, providing fertile grounds for a rampant financial services sector to extend predatory lending practices and further entrench the debt-driven growth model.

Informality and insecurity have become the lot of working people everywhere, even as select skilled workers and professionals, in both the North and South, have achieved more privileged positions on the technological frontier of hyperglobalization.

Growth spurts in the developing world have produced a welcome assault on extreme poverty since the start of the millennium, while the Global South has gained a bigger manufacturing footprint through participation in global supply chains. But, in truth, this story is mostly confined to China and parts of East Asia. And even in China, incremental increases in the designated poverty threshold as well as sharply rising inequality highlight the ongoing policy challenges even for the most successful countries.

Moreover, given the ability of multinational corporations to shift production, the spread of industry is far less stable or reliable than it seems. Too little industry is locally owned and controlled. The offshoring of activities through the spread of global value chains has contributed to deindustrialization and the hollowing out of communities in many parts of the developed world, with concerns growing about the “vanishing middle class”.

Meanwhile, in many developing countries the adverse consequences of “premature” deindustrialization have been only partially hidden by commodity price hikes and easier access to inter-

national debt markets.

According to Gallagher and Kozul-Wright, the problem is that while trade and investment flows have mushroomed under hyperglobalization, the package of accompanying policies, including special processing zones and massive subsidies to attract multinationals, offered by developing countries to encourage processing trade and by local communities in advanced countries desperate to attract jobs, has brought limited benefits.

China’s exceptional status in this regard has rested on targeted industrial and other policies as well as tailored financing mechanisms, aimed at raising domestic value added in manufacturing exports. These are now being presented as a threat by developed countries to their own business interests, with efforts underway to curtail their use.

The authors also pointed out that with global temperatures set to exceed the desired 1.5°C increase by 2030, keeping that increase well below 2°C is now the urgent challenge and a core organizing principle for the world economy. The threat of rising temperatures from high levels of atmospheric carbon levels is in large part due to emissions from the richest 10% of people in the world. But the environmental breakdown is multi-dimensional; species loss, land degradation, extreme weather events, acidification of oceans, etc. are concurrent and compounding.

“That the situation will worsen is not in doubt; the only question is by how much, and whether we will take the threat seriously enough,” they said.

Need for reform

According to Gallagher and Kozul-Wright, the rules and practices of the multilateral trade, investment and monetary regime are in need of urgent reform. These rules are currently skewed in favour of global financial and corporate interests, and powerful countries, leaving national governments, local communities, households and future generations to bear the costs of economic insecurity, rising inequality, financial instability and climate change.

These limitations are now widely recognized and a number of efforts are underway, particularly in the developing

world, to establish policies for reform. The most effective efforts will be those that recognize the systemic nature of the challenge, rather than piecemeal policy tinkering.

"A renewed multilateralism is required to provide the global public goods needed to deliver shared prosperity and a healthy planet, to cooperate and coordinate on policy initiatives that demand collective action, to mitigate common risks, and to ensure that no nation's pursuit of these broader goals infringes on the ability of other nations to pursue them."

The original New Deal, launched in the United States in the 1930s and replicated in distinct ways elsewhere in the industrialized world, particularly after the end of the Second World War, established a new social contract and accompanying development path that focused on four broad components: recovery from Depression, extensive public investment, regulation of finance, and redistribution of income.

While these broad features were consistent with specific policy goals tailored to particular economic and political circumstances, they made job creation, the expansion of productive investment and faster productivity growth common features of successful postwar economies.

"In building a global new deal today, we can learn from those core principles. As before, states require the space to tailor proactive fiscal and public policies to boost investment and raise living standards, supported by regulatory and redistributive strategies that tackle the triple challenges of large inequalities, demographic pressures and environmental problems," said the authors.

However, the original New Deal was neither directed at development of the Global South, nor at global climate change. The specific challenges of inequality and insecurity in the 21st century will require innovative and global approaches.

The Geneva Principles

The Geneva Principles for a Global Green New Deal articulate a set of cohesive principles for the design of a reformed multilateral trade and investment regime.

According to the authors, five broad strategic goals should frame any such deal:

1. A productive global economy built around full and decent employment at livable wages, for all countries.

2. A just society that targets closing socioeconomic gaps, within and across generations, nations, households, race and gender.

3. A caring community that protects vulnerable populations and promotes economic rights.

4. A participatory politics that defeats policy capture by narrow interest groups and extends the democratic principle to economic decision making.

5. A sustainable future based on the mobilization of resources and policies to decarbonize growth and recover environmental health in all its dimensions.

Specific policy programmes and measures will necessarily reflect local circumstances, but there will be a series of initiatives that will likely surface across countries regardless of their level of development.

In this context, the authors called on governments everywhere to end austerity and boost demand in support of sustainable and inclusive economies; make significant public investment in clean transport and energy systems and transform food production, supported by a green industrial policy; raise wages in line with productivity; regulate private financial flows; and curtail restrictive business and predatory financial practices.

At the global level, a new multilateralism is urgently needed to pursue these in a way that maximizes the effectiveness of national development strategies without creating negative global spillovers to partner nations.

A new multilateralism will require the following design principles:

1. Global rules should be calibrated towards the overarching goals of social and economic stability, shared prosperity and environmental sustainability, and be protected against capture by the most powerful players.

2. States share common but differentiated responsibilities in a multilateral system built to advance global public goods and protect the global commons.

3. The right of states to policy space

to pursue national development strategies should be enshrined in global rules.

4. Global regulations should be designed both to strengthen a dynamic international division of labour and to prevent destructive unilateral economic actions that prevent other nations from realizing common goals.

5. Global public institutions must be accountable to their full membership, open to a diversity of viewpoints, cognizant of new voices, and have balanced dispute resolution systems.

Only through extensive reforms can the financial and trading systems support a more stable global economy, help deliver prosperity for all, and backstop the public investment drive needed to move, at the required speed, to carbon-free and inclusive growth paths.

"As things stand, current arrangements fall far short of providing countries with the resources and predictability needed to support a global green new deal," said Gallagher and Kozul-Wright.

The crisis of the multilateral trading system is also an opportunity to redirect it towards the goal of sustainable development.

Reforms to trade and investment rules are perhaps the highest priority, given the laws and regulations in the trade and investment regime now stretch across the global financial, trading and investment system – as well as deep into national policymaking.

Trade and investment rule reform must ensure the maximum space to undertake financial regulations and debt workouts, innovation and industrial policy, and policies for social welfare that are in line with the demands of a global green new deal, including the effective use of subsidies to support structural transformation and the development of alternative energies and to re-engineer the production process of carbon-intensive industries.

Rolling back the numerous free trade agreements and bilateral investment treaties, which have been particularly destructive of policy space, is a priority.

New efforts for reform at the WTO are an opportunity to put these Geneva Principles into forward-looking action, said the two leading economists. (SUNS8896) □

Coping with World Bank-led financialization

Jomo Kwame Sundaram and Anis Chowdhury flag the challenges posed to developing economies by a World Bank development blueprint that unduly privileges private finance.

The World Bank has successfully promoted its Maximizing Finance for Development (MFD) strategy by embracing the United Nations' Sustainable Development Goals, internationally endorsed in September 2015. It has also secured support from the Group of Twenty (G20) biggest economies, and effectively preempted alternative approaches at the third UN Financing for Development summit in Addis Ababa in mid-2015.

As the main show in town, the MFD's implications will need to be addressed by developing countries, which have to respond proactively and collectively to tackle the new challenges it poses.

As the MFD agenda privileges foreign investors and portfolio inflows, multilateral development banks (MDBs) should be obliged to clearly show how developing countries will benefit.

Greater vulnerability and other adverse implications of being more closely integrated into fickle global financial markets, which detract from the ostensible advantages of such integration, are now widely acknowledged.

The International Monetary Fund (IMF) and other international financial institutions (IFIs) should also advise on the efficacy of various policy instruments such as macro-prudential measures, including capital controls, to ensure central bank control of domestic credit conditions.

Although portfolio flows are generally recognized as pro-cyclical, IFIs recommend capital controls reluctantly, and even then, only after governments have exhausted all other monetary and fiscal policy options.

After experiencing repeated boom-bust cycles in capital flows, many emerging markets have learnt that they must manage such flows if they are to reap some benefits of financial globalization while trying to minimize risks.

In fact, many concerned economists

believe that monetary and fiscal policies cannot adequately address such systemic fragilities but may inadvertently exacerbate them. For example, raising interest rates may attract more capital inflows instead of just stemming outflows.

After effectively eschewing capital controls for decades despite its Article VI provisions, recent IMF advice has been inherently contractionary, calling for raising interest rates and tightening fiscal policy instead of judiciously using "smart" capital controls.

Development-oriented governments must include those familiar with changing securities and derivatives markets, who will have to work with central banks on regulating cross-border flows and managing systemic vulnerabilities.

It is difficult for development-oriented governments to be pragmatic and agile when they are subject to the dictates of private finance, especially when these appear to be rules-based, anonymous and foreign.

Financial systems are increasingly being reorganized around securities markets dominated by transnational institutional investors who have transformed financial incentives and banking business models. Many banks have reorganized themselves around securities and derivatives markets where short-term profit opportunities are seen as significantly more attractive than traditional alternatives requiring costly nurturing of long-term, "information-intensive" relations.

Meanwhile international financial liberalization has enabled further capital outflows from most developing countries, depriving them of much-needed resources to develop their economies. The economic fiction that open capital accounts would result in needed net financial flows from "capital-rich" developed economies in the North to "capital-poor" developing countries in the South has been disproved.

Thus, a significant share of the money flowing into global shadow banking (institutional investors, asset managers) comes from developing countries. Such capital outflows are typically due to tax arbitrage and avoidance practices by transnational corporations and wealthy individuals. There is also considerable capital flight by those who have accumulated wealth by corrupt and other dubious means. The illicit sources of such riches encourage storing such wealth abroad.

Effective cooperation to check and return such ill-gotten gains – often siphoned out using illicit means such as trade mispricing and other forms of money laundering – can go a long way. Equitable international tax cooperation would increase financial resources available all round, especially to developing-country governments.

The IMF and others should enable developing-country authorities to effectively implement policies to more successfully mobilize domestic financial resources for investment in developing economies.

Ensuring transparent government guarantees and subsidies

The MFD approach seeks to commit fiscal resources to "de-risking" securities and other financial instruments to attract foreign institutional investments. It is thus reorienting governments to effectively guaranteeing profits for private investors from financing "development" projects, effectively reducing public financial resources available for development projects.

To minimize abuses and to protect the public interest, MDBs should instead ensure the transparency and accountability of the framework by making clear the likely fiscal and other costs, including opportunity costs, of de-risking projects. Public interest agencies, civil society organizations and the media should help governments closely monitor such costs and make the public fully aware of the costs and risks involved. (IPS) □

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

Global inequality is 25% higher than it would have been in a climate-stable world

Climate change has fuelled global inequality over the last few decades and, if unaddressed, will continue doing so in the future.

by Nicholas Beuret

Those least responsible for global warming will suffer the most. Poorer countries – those that have contributed far less to climate change – tend to be situated in warmer regions, where additional warming causes the most devastation. Extreme weather events such as Syria's prolonged drought, South Asia's catastrophic monsoon floods and Cyclone Idai in South-East Africa, the third deadliest cyclone on record, are becoming more likely and more severe.

These events are disproportionately bringing death, displacement and crop failure. As a result of this, projections estimate that the economies of poorer, warmer countries will be gravely harmed by climate change over coming decades, while the cooler, richer countries responsible for the vast majority of the extra carbon dioxide in the air may even benefit in the short term. But as new research reveals, this is not just a future concern – the economic injustice of climate change has already been operating for 60 years.

The study, published in the *Proceedings of the National Academy of Sciences*, compared different countries' GDP per capita – a measure of the average person's economic standard of living – between 1961 and 2010. It then used climate models to estimate what each country's GDP would have been without the effects of climate change. The findings are stark.

Many poorer countries' economies have rapidly grown in the last 50 years, albeit often at great social and environmental cost and to the benefit of the globalized economy. But even that growth has been held back substantially by climate change – the gap in GDP per capita between richer and poorer countries is 25% higher than it would have been in a climate-stable world. And with most richer countries sitting below and poorer countries above the 13°C average annual temperature at which economic produc-

tivity peaks, global temperature rise is an immediate driver of this inequality.

Economic hit

Of the 36 countries with the lowest historical carbon emissions, which are also some of the poorest and hottest countries in the world, 34 have suffered an economic hit compared with a world without warming, losing on average 24% of GDP per capita. The poorest 40% of countries, many of which are located in sub-Saharan Africa, Asia, and Central and South America, have lost between 17% and 31% of GDP in the last half-century.

India, one of the lowest emitters per capita, has been regarded as an economic growth champion in recent decades – but climate change has slowed its progress by 30%. While the country's services sector has boomed, the agricultural sector – which employs half of India's total workforce – has suffered greatly. A three-fold rise in extreme rainfall events and increased severe droughts have reduced crop yields and cause between \$9 and 10 billion in damage per year to the agricultural industry alone.

The same events also regularly bring India's urban economic hubs to a standstill. With 12 million inhabitants, Mumbai has the world's largest population exposed to coastal flooding. Deluges in 2005 and 2014 forced the city's international airport and roads to close, and cost millions in property damage.

Increasingly intense Indian summers that now regularly hit above 45°C reduce productivity, kill thousands and cause thousands more to commit suicide. Add to this the multi-billion-dollar costs of rescue and rebuilding from cyclones such as 1999's Odisha storm, which left two million homeless, and it's easy to see how climate change can stunt the economic growth of India and similarly af-

fected countries.

For the world's wealthiest countries however, climate change has added to the coffers – 14 of the 19 highest-emitting countries now find themselves in a better economic position than they would have been if the planet's temperature had stayed constant, with an average boost of 13%. The US economy has suffered, but by a minuscule 0.2%, while the UK finds itself 10% better off. The 2018 heatwave there posed its own risks to health and crops, but it also provided huge boosts to ice cream sales and tourism.

As is becoming increasingly clear, there are no quick fixes or easy solutions to climate change or inequality. Reducing emissions is, sadly, not enough, and providing yet more high-interest loans to "help" poorer nations adapt to a warmer world will only deepen global inequality. Alongside radically changing the economies of the world's wealthiest nations, we must demand that reparations for past injustices be paid, that the debts of the Global South be cancelled, that privatization of local industries and lands be reversed, and that the brutal border regimes surrounding the world's wealthy nations be torn down. Only then can global inequality truly be tackled. □

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Third World Economics
is also available in Spanish.

Tercer Mundo Económico
is the Spanish edition of
Third World Economics, edited
and published in cooperation with
Red del Tercer Mundo,
Uruguay.

For subscription details,
please contact:

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