

WTO members remain in disagreement

Deep differences continue to dog the WTO with its member states still split over the proposed TRIPS waiver, regulation of fisheries subsidies, plurilateral Joint Statement Initiative talks and several other issues.

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COVID-19 crisis exacerbating inequalities,
undermining human rights

Developing countries struggling to cope with COVID-19

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Members sharply divided on WTO reform, fisheries subsidies and JSIs

Faultlines among the membership were in stark evidence as the WTO met on 25 February to oversee discussions concerning the various subjects on its agenda.

by D. Ravi Kanth

GENEVA: Members of the World Trade Organization remain sharply polarized in their respective narratives on the structure, scope and objectives of proposed WTO reforms, disciplines for curbing fisheries subsidies, and the legal status of the informal Joint Statement Initiatives (JSIs).

At an informal Doha Trade Negotiations Committee (TNC) meeting held virtually on 25 February, the developed countries led by the European Union largely aligned their statements with the priorities set out for the WTO’s 12th Ministerial Conference (MC12) by the new WTO Director-General Ngozi Okonjo-Iweala, said trade envoys present at the meeting.

Okonjo-Iweala, in her acceptance speech at a WTO General Council meeting on 15 February after being appointed DG, had emphasized: (1) the need to accelerate work on JSIs for reaching possible outcomes at MC12 on electronic commerce, investment facilitation, disciplines for micro, small and medium enterprises (MSMEs), and domestic regulation in trade in services; (2) voluntary withdrawal by major developing countries from availing of special and differential treatment (S&DT); (3) enhanced transparency and notification requirements; and (4) starting negotiations on trade and environment.

In sharp contrast, a large majority of developing countries spelled out “development and inclusive” reforms that include: (1) strengthening S&DT; (2) an urgent decision on the proposed TRIPS waiver to combat the COVID-19 pandemic; (3) common but differentiated responsibilities in the disciplines on prohibiting harmful fisheries subsidies; (4) restoring the WTO’s Appellate Body to ensure that the two-stage dispute settlement system remains functional; and (5) the need to reassess the moratorium on customs duties on electronic transmissions, because of its negative impact on revenues and digital development in developing

countries.

In effect, the “development and inclusive” reforms proposed by the developing countries seemed diametrically opposed to Okonjo-Iweala’s priorities that are apparently tilted in favour of the Northern trade agenda, said several participants after the informal TNC meeting.

Even on the most burning issue of the day, i.e., the COVID-19 pandemic and what the WTO can do to address the worsening crisis, Okonjo-Iweala and the industrialized countries stood on one side by propagating the ACT-Accelerator (Access to COVID-19 Tools Accelerator) and COVAX facility as well as trade liberalization measures to tackle the pandemic, said participants who asked not to be quoted.

However, most of the developing countries demanded an urgent decision to temporarily suspend several provisions of the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) relating to copyrights, industrial designs, patents and protection of undisclosed information, in order to ramp up production of diagnostic equipment, therapeutics and vaccines to combat the pandemic, the participants said.

Significantly, the US did not make any statement at the TNC meeting.

Okonjo-Iweala, who would take office on 1 March, did not make any statement either but apparently watched the proceedings from Washington.

The outgoing WTO Deputy Director-General Alan Wolff made a detailed statement on the priorities listed out by Okonjo-Iweala in her acceptance speech, which he said “presented a worthy and ambitious agenda for the members of this organization”.

Wolff, whose tenure will be decided by the new DG, said one of Okonjo-Iweala’s priorities was “to act with a sense of urgency to assist in controlling

the COVID-19 pandemic through the nexus of trade and public health” and “by broadening access to new vaccines, therapeutics, and diagnostics by facilitating technology transfer within the framework of multilateral rules.”

Other major important challenges announced by the new DG, according to Wolff, included:

- To swiftly conclude the fisheries subsidies negotiations, and thus pass a key test of the WTO's multilateral credibility while contributing to the sustainability of the world's oceans;
- To build on the new energy in the multilateral trading system from the JSIs attracting greater support and interest, including from developing countries;
- To address more broadly the nexus between trade and climate change, using trade to create a green and circular economy, to reactivate and broaden negotiations on environmental goods and services, to take the initiative to address the issue of carbon border adjustments as they may affect trade;
- To level the playing field in agricultural trade through improving market access and dealing with trade-distorting domestic support, exempting from export restrictions the World Food Programme (WFP)'s humanitarian purchases;
- To strengthen disciplines on industrial subsidies, including support for state-owned enterprises;
- To defuse the divisions over S&DT; and
- To develop a work programme for restoring two-tier dispute resolution, to be agreed no later than MC12.

Chairs' reports

At the TNC meeting, the chairs of the different Doha negotiating bodies provided an account of the work being conducted in their respective bodies. Apparently, the new DG had held a virtual meeting with all the chairs on 23 February.

The chair of the Doha rules negotiating body, Ambassador Santiago Wills from Colombia, made a long statement about the current impasse on several issues in the ongoing fisheries subsidies negotiations, especially the textual proposals on the disciplines for prohibiting subsidies for overcapacity and overfishing. (For more on these negotiations, see the article “Tug of war’ over fisheries subsidies” in this

issue.)

The chair of the Doha trade and development negotiations, Ambassador Kadra Ahmed Hassan from Djibouti, explained about the focused negotiations that were launched on 8 February on the 10 S&DT proposals submitted by the G90 group of developing and least-developed countries.

The 10 proposals relate to: (1) Agreement on Trade-Related Investment Measures; (2) Article XVIII of GATT 1994 dealing with safeguard issues, particularly sections A and C; (3) GATT Article XVIII, section B, dealing with the balance of payments; (4) Agreement on the Application of Sanitary and Phytosanitary Measures; (5) Agreement on Technical Barriers to Trade; (6) Agreement on Subsidies and Countervailing Measures; (7) Agreement on Customs Valuation and decision on minimum values; (8) the 1979 decision on differential and more favourable treatment, reciprocity and fuller participation of developing countries, or commonly referred to as the Enabling Clause; (9) Article 66.2 of the TRIPS Agreement dealing with transfer of technology; and (10) accession.

Hassan has already taken up two of the issues, the Enabling Clause and accession. While developing countries encouraged the chair to press ahead with the dedicated sessions on the remaining eight issues, the industrialized countries remained indifferent to engaging on the 10 proposals, said a participant who asked not to be quoted.

The chair of the Doha agriculture negotiations, Ambassador Gloria Abraham Peralta from Costa Rica, presented a mixed report of the work being conducted on different issues on the Doha agriculture agenda.

Developed-country interventions

The new DG's agenda for MC12, according to the statements made by the EU, Switzerland and several other industrialized countries, has inspired members as it sets the ground for accomplishing positive outcomes, said a participant who asked not to be quoted.

The EU, which recently unveiled an expansive and ambitious trade agenda, spoke about building on global rules, including WTO reforms. The EU said its ambition for MC12 includes an outcome on fisheries subsidies, the trade and health initiative which was launched by Brussels

along with other members of the Ottawa Group, trade and environment, restoration of the two-stage dispute settlement system, and JSIs, according to participants who asked not to be quoted.

Without naming India and South Africa, which have challenged the legal status of the JSIs and the overall status of plurilateral negotiations, the EU said it wants to address the negotiating function for incorporating the plurilaterals at MC12.

Switzerland, which is expected to convene MC12 in Geneva later this year, spoke about the recent informal trade ministerial meeting chaired by its President Guy Parmelin. (Kazakhstan, which had been slated to host MC12 in Nur-Sultan in June, has since informed members that it will be difficult to convene the meeting as scheduled due to the COVID-19 pandemic.) Switzerland said its priorities for MC12 include a significant agreement on fisheries subsidies, full restoration of the two-stage dispute settlement system, and a JSI outcome on domestic regulation for trade in services.

Australia presented a report on the JSI work on electronic commerce, suggesting that there has been an agreement on spam, and that by the summer there will be clear progress on 10 potential agreements, including on source code and artificial intelligence.

However, the JSI negotiators have not been able to address the crucial issue of scope and definition of what would constitute electronic transmissions, said a participant who asked not to be quoted.

Uruguay presented a report on the JSI work on MSMEs, and the coordinator of the investment facilitation JSI also presented a report.

“Development and inclusive” reforms

The developing countries spoke about their respective priorities on “development and inclusive” reforms.

On behalf of the largest group of developing and least-developed countries at the WTO, namely the African, Caribbean and Pacific (ACP) Group, Jamaica issued a strong statement touching on the issues of fisheries subsidies, agriculture, services, intellectual property and WTO reforms.

On fisheries subsidies, Jamaica said, “an outcome should be an effective policy tool in the global fight against IUU [illegal, unreported and unregulated]

fishing and global fish stock depletion.” It emphasized the need to target the “major subsidizers and large-scale industrial fishing” as they are the central priorities of the negotiations.

“An outcome should provide adequate policy space for developing countries and LDCs [least-developed countries] to develop their fisheries sector responsibly and sustainably, at their own pace, without WTO scrutiny, as well as facilitate the narrowing of the development divide between the fisheries sectors in developed and developing countries,” Jamaica said.

It said the “ACP Group cannot accept transition periods alone with technical assistance and capacity building, neither can we accept that Article 5.2 [of the rules chair’s second revised draft text] provides enough policy space for developing countries, when that provision is a disguised exemption for large subsidizers.”

On agriculture, Jamaica said “an outcome package at MC12 should include PSH [permanent solution on public stockholding programmes for food security], SSM [special safeguard mechanism for developing countries], cotton and trade-distorting domestic support, particularly as it relates to eliminating AMS [Aggregate Measurement of Support] above *de minimis*.”

Commenting on the devastating impact of the pandemic on services, particularly travel and tourism services, Jamaica said “the ACP Group looks forward to presenting the submission during the next [negotiating session of the WTO Council for Trade in Services] and to continuing our positive engagement with other WTO members, particularly on the sectors identified in our communication.”

On the strengthening of S&DT, Jamaica said that “we prioritize an outcome for MC12” given the importance of S&DT in assisting developing countries and LDCs to enhance their integration in the global economy and global value chains.

Commenting on intellectual property issues, Jamaica said “the WTO has an important role to play in facilitating swift, timely, affordable and equitable access to the vaccines and therapeutics to combat the pandemic.” It thanked South Africa and India for proposing the TRIPS waiver, emphasizing that it agrees with its general objectives. “The ACP Group urges constructive dialogue and flexibility to arrive at an outcome on this very critical issue.”

Given the structural and institutional constraints faced by the LDCs in the application of the TRIPS Agreement, Jamaica said the ACP Group will “support an extension of the transition period for LDCs under Article 66.1 [of the TRIPS Agreement], and call for special consideration to be given to recently graduated LDCs.”

As regards WTO reform, Jamaica called for “a comprehensive dialogue on the structure, scope and objectives of WTO reform”, cautioning that “the piecemeal, one-sided approach in which the discussions are being undertaken fuels an atmosphere of distrust and a feeling that the process is neither transparent nor inclusive.”

Moreover, Jamaica said, “the process and substance of reform should undergird the development dimension of international trade, accelerate the attainment of the Sustainable Development Goals, be pursued in a fair, transparent and equitable manner, and, importantly, reinforce the core development principles framed in the Marrakesh Agreement [which established the WTO].”

Jamaica also said that it is time to resolve the Appellate Body impasse, arguing that “a two-tier, transparent, independent dispute settlement system, as envisaged by the [Dispute Settlement Understanding], is critical to the functioning and credibility of the WTO.”

“Deep divisions”

India said “the continued impasse of the Appellate Body and our inability to agree on a package of meaningful measures to address the pandemic is symbolic of the deep divisions.”

India emphasized the need to find “practical solutions that are needed during a pandemic to save human lives, livelihood, bring back consumers’ confidence and arrest the losses in world output and thereby restore growth in trade.”

On the TRIPS waiver proposal, India said that “there is no difference of opinion on ramping up manufacturing of COVID-related products including vaccines.” “The proposal for temporary waiver from the provisions of TRIPS Agreement is first on our priority list,” it reiterated, adding that members “need true vaccine internationalism and the waiver is an effective and pragmatic way to achieve it.”

Stressing the urgent need to approve the TRIPS waiver, India said “all sectors

of economy are equally important for growth; therefore, interest of [a] few [pharmaceutical] companies to the tune of tens of billions of dollars should not come in the way of restoring trillions of dollars of world output and saving hundreds of thousands of human lives.”

India assured members that the “temporary waiver of certain provisions of TRIPS Agreement by following due process does not mean that members have given up on the principle of intellectual property rights.”

India also called for “ensuring easier cross-border movement of healthcare professionals,” including a multilateral initiative on this at MC12. It added that the “resolution of the crisis in the Appellate Body is another priority.”

India also drew attention to document WT/GC/W/778/Rev.3 presented by the African Group, Cuba and India at the December 2020 General Council meeting that seeks to encompass “the priorities of developing countries including LDCs regarding an inclusive and balanced reform agenda for the WTO.” The joint proposal, India said, “emphasizes how S&DT is central to the founding principles of the WTO”. It strongly supported the G90’s 10 S&DT proposals and called for an outcome at MC12.

On the joint submission by India and South Africa on the legal status of JSIs, India said “members would find it useful and timely.” “Seeing the responses from members today, we are thankful that it has generated such interest and attention within a few days of its introduction.”

Commenting on agriculture, India said its priorities include finding a permanent solution on PSH and addressing the “reverse S&DT” that is availed of by the major providers of farm subsidies.

On fisheries subsidies, India reiterated that “common but differentiated responsibility and the ‘polluter pays’ principle should be applicable in any agreement relating to sustainability.” It said “those who have provided huge subsidies leading to overfishing and overcapacity should take higher cuts in subsidy and capacity.”

“We will not accept an outcome that favours those with advanced fisheries conservation and management measures while putting at a disadvantage developing countries who have to catch up on these measures,” India said.

“Fishing nations with large number of industrial vessels should set the example

by voluntarily reducing their harmful subsidies and capacity, and repay their overdue 'debt' in proportion to what they owe," India argued. It added that the "S&DT in the final outcome must be effective and appropriate, having regard to the development needs, livelihood and food security concerns of millions of small fishers of developing countries including LDCs."

On electronic commerce, India said "the pandemic has shown that the need of the hour is to build capacity in areas such as digital skills and digital infrastructure, rather than negotiating binding rules on e-commerce." It also said that "it is time to bring clarity on the scope of the moratorium on custom duty on electronic transmission, its potential impact on the sustainability of the domestic industry and negative impact on job creation and revenue generation". It called for reinvigorating the mandated work under the WTO's 1998 work programme on e-commerce in various WTO councils.

Agenda for inclusive economic recovery

In its intervention, South Africa said it looked forward to "the DG's facilitative role as Chair of the TNC on the mandated issues which need to be prioritized especially in the context of the upcoming Ministerial Conference."

It said the pandemic "has devastating socio-economic implications for all our countries, with a disproportionate impact on developing countries." Therefore, members need to define the agenda, carefully informed by the unprecedented challenges presented by COVID-19, and such an agenda "must promote inclusive economic recovery."

"The time is ripe for a conversation about the nexus between trade and development and the contribution of the WTO in achieving the goals set in the Marrakesh Agreement," South Africa said, adding that "the agenda we set must be realistic, be responsive to the current context and recognize the strategic vulnerabilities exposed by the pandemic."

Cautioning that "economic recovery depends on our ability to deal with the pandemic", it said "a solution-oriented conversation is urgently needed on securing timely, affordable and equitable access to vaccines and therapeutics, and we must find a balanced outcome on the TRIPS waiver."

On agriculture, South Africa said "substantial reform of domestic support is urgent and we must have an outcome at MC12," arguing that "a food security agenda is going to be critical." "This can start with a contribution to the WFP, to be complemented by a permanent solution for PSH and preserving support to resource-poor farmers under Article 6.2 [of the Agreement on Agriculture, concerning special and differential treatment]."

Commenting on fisheries subsidies, South Africa said that "the aim of the negotiations is sustainability, therefore the concept of common but differentiated responsibility is key."

"The outcome in fisheries subsidies must ensure that members that provide harmful subsidies cannot continue to do so," South Africa said, arguing that "importantly, the management aspects should not be brought into the WTO."

Joining the ACP Group and India, South Africa said "disciplines must target large-scale industrial fishing and safeguard food security and livelihoods of small-scale fisheries."

"The outcome must deliver on all the pillars of the mandate, including S&DT", and "S&DT should be meaningful and cannot be limited to transitional periods," South Africa said.

South Africa thanked the chair of the Doha negotiating body on trade and development for convening the first in a series of substantive discussions among members on the G90 proposals on S&DT. "S&DT is a treaty embedded right and the mandate is to make it precise, effective and operational," it emphasized.

Touching on the legal status of the JSIs, South Africa said that "any group of members may discuss any issue informally. However, when such discussions under JSIs turn into negotiations and their outcomes are sought to be formalized into the WTO framework of rules, it can only be done in accordance with the rules of procedure for amendments and decision-making as set out in the Marrakesh Agreement." It reiterated "the importance of consensus decision making which remains a cornerstone for the multilateral trading system."

Commenting on e-commerce, South Africa said "the multilaterally mandated work is the work programme and we must reinvigorate the work through the various bodies of the WTO."

"The outcome on the e-commerce moratorium at MC12 will depend on

clarifications with regard to the scope and definition of [electronic transmissions]," added South Africa.

Highlighting that the "dysfunctionality of the [Appellate Body] is a systemic issue that undermines the enforcement function of the WTO," South Africa said it "renders the negotiations pointless and must be resolved as a matter of urgency."

In relation to WTO reform, South Africa said members "must safeguard the multilateral character and preserve the key principles of the WTO, as well as ensure an inclusive [multilateral trading system] that promotes equitable growth and development. Importantly, WTO reform must support the structural transformation of our economies, employment and improving living standards."

In its intervention at the TNC meeting, Mauritius, on behalf of the African Group, called for an urgent decision on the TRIPS waiver. It expressed regret that "there is no agreement as yet" on the waiver, saying it remains open to "all proposals that will improve public health globally," as "financial aid of its own would not be sufficient to meet the target of equity in vaccines."

"We need to produce more and produce faster as variants come to further challenge our capacity to provide adequate vaccines, and indeed other medication for the global population," Mauritius said, underscoring the "need to address this issue head-on alongside other proposals. And as part of a balanced outcome at MC12."

Mauritius also said S&DT "remains essential for developing economies, including LDCs and small island developing states." It expressed confidence that "the G90 document provides a good basis for discussions on the operationalization of the 10 carefully identified S&DT provisions."

"Without effective and operational S&DT, existing or new trade rules would have little meaning for African countries as our rightful development aspirations will remain elusive," Mauritius said.

Mauritius also emphasized that agriculture is "an area of utmost priority" and that the African Group "looks forward to a balanced and concrete outcome which would include a permanent solution on PSH and SSM for developing countries especially LDCs and NFIDCs [net food-importing developing countries], and which would address inequities arising from trade-distorting domestic support, including for cotton."

On fisheries subsidies, Mauritius expressed the African Group's "concern over the lack of progress and persisting divergences on the approach to disciplining subsidies that contribute to overcapacity and overfishing." It called for "a balanced outcome on fisheries subsidies that would embed sustainability in WTO rules. In so doing, the sovereign rights of members in managing their marine resources should remain untouched. The

acceptance of the principle of common [but] differentiated responsibility should guide us in successfully concluding the negotiations."

On e-commerce, Mauritius underscored the need to reinvigorate the 1998 work programme with a view to comprehensively addressing the development aspects of e-commerce facing African countries.

On WTO reforms, Mauritius

said the WTO "should adapt itself to changing conditions" and that "reform is a continuous process". "Unfortunately, reform proposals have sometimes been discussed outside the context of any specific mandate." It called for "inclusive, transparent, realistic [negotiations] and more importantly, enhance the development role of the organization." (SUNS9295)

Two-thirds of WTO members issue call for a TRIPS waiver

A proposal to suspend COVID-19-related intellectual property rights in order to better tackle the pandemic has received the backing of a large majority of WTO member states but faces continued opposition from major developed countries.

by D. Ravi Kanth

GENEVA: More than two-thirds of the World Trade Organization's 164 members have issued a clarion call to support the proposed temporary TRIPS waiver to combat the COVID-19 pandemic by ramping up production of diagnostics, therapeutics and vaccines to ensure equitable and affordable access worldwide.

The waiver seeks to temporarily suspend provisions in the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) relating to copyrights, industrial designs, patents and protection of undisclosed information until the pandemic is brought under control.

The proponents and supporters of the TRIPS waiver have underscored the need to put billions of human lives before the profits and patents of Big Pharma. At a TRIPS Council meeting held virtually on 23 February, the large majority of developing and least-developed countries pressed for entering into text-based negotiations for reaching an immediate

outcome on the waiver, amid a groundswell of support from international civil society organizations, said a participant who asked not to be quoted.

Yet, major developed countries – the United States, the European Union, Japan, Canada, Switzerland, Norway and Australia – continued to adopt "diversionary" tactics to stall progress towards text-based negotiations. The opponents of the waiver changed their stance from outright opposition to engaging in interminable dialogue without any outcome, the negotiator said.

Significantly, 57 developing countries and least-developed countries (LDCs), including South Africa, India, Kenya, Eswatini, Mozambique, Pakistan, Egypt, Bolivia, the African Group and the LDC group, have so far co-sponsored the waiver proposal. Sixty-two countries, including the African, Caribbean and Pacific (ACP) Group, Afghanistan, Argentina, Bangladesh, Cambodia, Sri Lanka, Honduras, Cuba, Nepal, Nicaragua, Nigeria, Indonesia, Tunisia, Mali and

Mauritius, strongly support the proposal.

The proponents of the TRIPS waiver said that unless the international community deals with the pandemic on a war footing by suspending intellectual property rights with a view to ramping up production of vaccines and therapeutics, the virus will continue to wreak havoc globally, said participants after the meeting.

However, industrialized countries that are able to procure vaccines vacillated over the waiver proposal on extraneous grounds, merely saying that they were prepared to continue the dialogue, said participants familiar with the development.

Norway, which is likely to chair the TRIPS Council from March, has sought a revised proposal to discuss the scope and duration of the waiver.

Continued discussions

At the 23 February meeting, the chair of the TRIPS Council, Ambassador Xolelwa Mlumbi-Peter from South Africa, issued a short report saying that "at the meeting of the TRIPS Council on 15-16 October 2020, India and South Africa introduced document IP/C/W/669, requesting a waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19, which had been circulated on 2 October 2020 and has since been co-sponsored by the delegations of Kenya, Eswatini, Mozambique, Pakistan, Bolivia, Venezuela, Mongolia, Zimbabwe and Egypt."

"The Council continued its discussions under that agenda item at informal meetings on 20 November and 3 December,

as well as at its resumed meeting on 10 December 2020. Following the status report to the General Council on 16-17 December 2020, the Council continued its consideration of the waiver request at informal meetings on 19 January and 4 February 2021, and at its formal meeting on 23 February 2021.”

“At those meetings,” the chair said, “delegations highlighted the common goal of providing timely and secure access to high-quality, safe, efficacious and affordable vaccines and medicines for all.”

The chair said that “delegations exchanged views, asked questions, sought clarifications and provided replies, clarifications, and information, including through documents IP/C/W/670, IP/C/W/671, IP/C/W/672, IP/C/W/673 and IP/C/W/674, on the waiver request but could not reach consensus, including on whether it is appropriate to move to text-based negotiations.”

Further, “delegations indicated a need for further discussions on the waiver request and views exchanged by delegations,” she said.

“This means that the TRIPS Council has not yet completed its consideration of the waiver request. The TRIPS Council will therefore continue its consideration of the waiver request and report back to the General Council as stipulated in Article IX:3 of the Marrakesh Agreement,” the chair explained.

According to several participants, the chair reminded members that the single most important priority of the global community is to stop the COVID-19 pandemic, halt its rapid transmission, reduce the risks of the virus variants, and reverse the trend of consequential global crises.

The chair quoted the recent statement of the new WTO Director-General Ngozi Okonjo-Iweala that in order to reverse the current downturn in the global economy and return to sustained growth, the global community, particularly the rich countries that have huge stocks of COVID-19 vaccines at their disposal, must share vaccines, therapeutics and diagnostics on an equitable and affordable framework, said participants.

Mlumbi-Peter underscored the need for frank, candid and good-faith discussion on what is required to scale up global production in these unprecedented times of public health crisis. She emphasized the need for a solution-oriented process for boosting productive capacity to

manufacture products that are essential to deal with COVID-19 globally, stressing that the WTO members must demonstrate their commitment to overarching goals of universal and equitable access to COVID-19 medical products not only in words but through deeds, said participants who asked not to be quoted.

Failure of “business as usual”

South Africa’s TRIPS negotiator Mustaqeem De Gama said that the increasing number of sponsors of the waiver proposal “demonstrates the growing importance” of the proposal and “the need to scale up access in order to ensure equitable and timely access to COVID-19 medical products, including vaccines, therapeutics, diagnostics and other equipment.”

“Moving forward,” he said, “discussions cannot continue to be mired in the evidentiary loop that we have been engaged in over the last few months. We want to move to text-based discussions, we stand ready to discuss the scope and duration of our proposal in light of comments and observations that members have made.”

De Gama said that “a pandemic like COVID-19 has not been seen in a century, and much remains unknown and evolving about the situation and the virus that causes it,” adding that “while many regard the virus as a sort of black swan, it was not entirely unexpected and was preceded by several other viruses and semi-global pandemics in recent times.” He warned that “as much as we may hope that something like this will not happen again, the probability is that the next event may be even more cataclysmic.”

Given the uncertainty, he said, “people are notoriously unwilling to make sacrifices for others when the benefits are uncertain.” He cited the example of “vaccine nationalism, which denotes self-prioritization to the exclusion of others, as many rich governments have done on the assumption that individual action can yield results on its own.”

“However, this is not the case, the idea that a vaccine rollout will be the *deus ex machina* is misplaced, we cannot put the virus back into its bottle, we just cannot go back to the old normal.”

The South African negotiator said data suggests that the US, the UK and the EU account for about 50% of the over 200 million vaccines administered globally as at 22 February. “Countries opposing the

TRIPS waiver proposal account for 60% of the globally administered COVID-19 vaccines,” he said, adding that “reportedly just 10 countries have administered 75% of all COVID-19 vaccines.” In contrast, more than 130 countries have not received a single dose.

De Gama urged members to consider the warning by the World Health Organization (WHO) Director-General: “The longer it takes to suppress the virus everywhere, the more opportunity it has to change in ways that could make vaccines less effective – an opportunity to mutate.”

De Gama said that “many of the opposing WTO members, under pressure from their pharmaceutical industry, have for more than two decades been known to dissuade developing countries from incorporating TRIPS flexibilities in their national law and using such flexibilities to promote access, and yet now insistently assert that such sufficient flexibilities exist, although we have presented concrete arguments against it.”

Unsurprisingly, these same WTO members stress on “business-as-usual voluntary licensing” as the way out of the pandemic and yet one year on, this “business-as-usual” approach premised on voluntary, secretive, limited and restrictive licensing has failed to leverage global expertise and capacity to scale up manufacturing and deliver equitable access.

“These ‘business-as-usual’ approaches championed by opposing countries [are] not the global solution but really the root cause of why to date we have vaccinations that are ‘wildly uneven and unfair’ as pointed out by the UN Secretary-General,” according to the South African negotiator.

“At the current vaccination rate, it will take an estimated 4.8 years to cover 75% of the population with a two-dose vaccine, according to Bloomberg, on the path to immunity around the world,” De Gama said.

He said the co-sponsors of the waiver proposal have often called for the open sharing of vaccine manufacturing technology, intellectual property and know-how through the COVID-19 Technology Access Pool (C-TAP), and welcome the Access to COVID-19 Tools (ACT) Accelerator and COVAX facility. But sadly none of these mechanisms “can deliver what is required in developing and least developed countries.”

Given the reality that “demand-

side requirements outstrip supply-side constraints, irrespective of the amount of money any of the donor countries may throw at the problem, the model of donation and philanthropic expediency cannot solve the fundamental disconnect between the monopolistic model it underwrites and the very real desire of developing and least developed countries to produce for themselves," he argued.

Against this backdrop, the waiver proposal "constitutes a very real compromise that will immediately enable countries to tap into unused production capacity by accessing spare capacity in the developing world which will satisfy the ongoing demand for COVID-19 vaccines (including therapeutics and diagnostics) and will also negate the need for any donations from rich countries," he said.

He said that the co-sponsors are ready to go to a text-based discussion in order to arrive at an immediate solution. "This will not only save lives but also enable us to return to a situation of relative normalcy. No one is safe until everybody is safe."

As regards the question posed by Norway on having a revised proposal from the co-sponsors (see below), De Gama said "the reason we called for a text-based discussion is because this will help us to understand direct questions that members have on our proposal." The co-sponsors, he said, want delegations to "raise particular concerns on elements they may have concerns about and suggestions as to how we can arrive at a common landing zone, including at the regular TRIPS Council meeting of 10 March 2021 and subsequent informal and formal meetings."

De Gama debunked claims made by the European Union (see below), saying that the EU "does not support the waiver proposal, nor does it take any action to ensure technology sharing and transfer by companies operating in the EU." The EU "does not commit that it will no longer suppress developing countries from using compulsory licence and other flexibilities as it did in its IP enforcement in a third country report".

De Gama charged the EU with not following through its rhetoric of treating vaccines as a global common good but rather continuing its "inward-looking strategies in vaccine access including activating an export authorization scheme."

Responding to statements made by Switzerland and Singapore about the sharing of technology with the Indian

vaccines company the Serum Institute of India, De Gama referred the two countries to an interview that the company's chief executive officer Adar Poonawalla gave to the Politico news agency. According to the Politico report, "Poonawalla believes that the sheer urgency of the virus – and the fact that coronavirus anywhere is a threat to people everywhere – should prompt a reassessment of patent and intellectual property laws that limit access to immunizations in the developing world, while simultaneously jacking up their price in wealthier countries."

"That's become very evident today in the COVID crisis," Poonawalla said in the interview. "If you don't allow, for example, an Indian producer to sell in the US because of some stupid rules and regulations, even though the product is identical to a US product, you're going to have a supply situation. And guess what. When you've got low supply and high demand, what happens to the price? It skyrockets."

Addressing supply bottlenecks

With over 130 countries not having received a single dose of the COVID-19 vaccine, India warned: "If the virus is allowed to spread like wildfire in the global South, it will mutate again and again and this can prolong the pandemic significantly, enabling the virus to come back to plague the global North."

India said the proponents of the TRIPS waiver had cautioned about the dire situation that the world is facing now, and that they made the proposal "for removing IP barriers temporarily to ramp up rapid global manufacturing." However, "our apprehensions, subsequently supported by evidence, were dismissed as hypothetical as the vaccines were yet to arrive at that time."

"We are not feeling happy about being proven right in raising concerns in advance," India said. "Today our fears have not only proven to be true but the very members who dismissed our argument in this Council that there would be shortages of vaccines if manufacturing remains limited, are themselves facing shortages in their jurisdictions even after having successfully negotiated advance purchase agreements of volume way beyond their need."

"That the situation could be this worse, even the proponents of the waiver did not predict," India said, pointing out that it

had supplied 28.84 million vaccine doses to 26 countries as on 21 February under its Vaccine Maitri (Vaccine Friendship Initiative) and that it will supply vaccines to 40 more countries.

India said that the proponents "answered all questions posed in various sessions of the TRIPS Council, yet certain delegations have this tendency to ask further questions and delay the start of text-based negotiations."

It said that "after the first emergency use authorization of vaccines, we need to close the evidentiary loop and get down to textual negotiations that can further refine the waiver proposal that we tabled." It expressed concern over the repetition of similar questions in the last few meetings, suggesting that "maybe answers to some of those questions lie in text-based negotiations."

"Moving to a text-based negotiation may appear to be yielding from the high moral ground of being the sole protectors of IP [intellectual property] rights for some members, but not doing so means a willingness to stand by a poor choice, devoid of ground realities and just opposite to what is the need of the hour," India cautioned.

"The delegations that oppose the waiver have argued on one hand that the waiver, if granted, will not result in augmenting the manufacturing capacity, and on the other hand, they argue that the waiver will impact the commercial interests of existing IP holders as a lot of manufacturing could come into play without agreement with the IP holders," India said. But if the waiver "will not lead to increase in manufacturing capacity, meaning, no new manufacturers will enter into production of COVID products even with the proposed waiver in place, then how will the commercial interests of existing IP holders be impacted? On the other hand, if manufacturing is going to increase significantly and thereby impacting commercial interests of IP right holders, then are we not agreeing that the final objective in the present scenario is to increase manufacturing?"

India also cited the recent statement by the WHO Director-General that "the ACT Accelerator and COVAX facility were created to increase equity, but with every passing day, that goal is at risk". It said the WHO chief underscored the need to scale up manufacturing to increase the volume of vaccines.

India said that "there is no alternative

to augmenting manufacturing to address supply-side constraints of goods critical for prevention, containment and treatment of COVID-19, and allocation of money alone for securing such supplies would not suffice. The waiver proposal, which seeks to address supply-side bottlenecks, will thus further help the COVAX mechanism to achieve its goal."

India said that while the TRIPS Agreement has been in force since 1995, never in the recent history of medical science have vaccines been "developed in such a short span of time of less than one year." "This proves that it is not the IP system alone that has delivered, but also the public funding, the institutional support in terms of research contributions by public universities, the global collaboration in sharing of genome sequencing data and public health information that [have] led to the development of successful vaccines in record time."

India said the waiver proponents respect intellectual property rights and their value as incentives for innovation, "but COVID-19 pandemic being unprecedented as it is, where research and innovation has mostly been spearheaded by massive public funding, expedited regulatory approvals and global collaboration, we need to put lives before private profits."

To questions on how manufacturing can be increased under the waiver, India said "once the waiver is in place, the existing manufacturing capacity worldwide can be put to immediate use for production of COVID products."

India reiterated that the proponents are seeking a temporary waiver, with the time period to be negotiated by members in the TRIPS Council. "Moreover, waiver, once granted, will be reviewed annually by the [WTO] General Council," and "the duration could be some fixed number of years together with conditional criteria for termination," India said.

The proponents "want to have frank discussions on the text of the waiver, relating to both its duration and scope, in order to find answers to these questions and to find a landing zone to operationalize the waiver in the shortest possible time," India said.

"We cannot continue to engage in endless discussions while millions of lives are lost to the coronavirus pandemic," India argued, underscoring the need for concerted efforts by all WTO members to ensure that the WTO makes a meaningful contribution to defeating COVID-19.

"COVID-19 has shown that our fates are inextricably linked," India said, cautioning that "whether we win or lose, we will do so together."

IP barriers

In its intervention, Pakistan said "it is a known fact that much of the vaccine and monoclonal antibody technology and know-how is protected by intellectual property, particularly patents and trade secrets. Lifting IP monopolies around technology and know-how will facilitate the sharing of such technology, expedite production, and also give potential manufacturers legal certainty and freedom to operate." Pakistan added that "it is important to ask whether the regulatory agencies of the developed countries are ready to share the vaccine regulatory dossiers to scale up vaccine production."

Indonesia said that vaccine nationalism and the vaccine rollouts which are mostly taking place in a few rich countries show that supply for global access will be very much limited. In this context, it said, "we believe the waiver offered by the co-sponsors will be a possible solution of this issue, by eliminating certain IP barriers and scaling up the production."

"The waiver will also defer the possible monopoly created by the IP system and will assure the global access of medical products, especially for developing and least developed countries," Indonesia said.

Chad, on behalf of the LDC group, supported the waiver proposal, saying that IP rights should not constitute an obstacle to timely access to affordable medical products. It questioned the effectiveness of voluntary initiatives, with companies showing no interest in licensing or offering technology transfer for their patented products.

The Holy See, which has observer status at the WTO, made a powerful statement at the TRIPS Council meeting in support of the waiver. It said that "the world is on the brink of a catastrophic world failure, and the price of this failure will be paid with lives and livelihoods in the world's poorest countries."

It pointed a finger at the existing mechanisms for compulsory licensing under the TRIPS Agreement, saying that they contain territorial and procedural restrictions that make the practice of issuing compulsory licences a complex process.

The TRIPS waiver, it said, "will be a strong signal, demonstrating real commitment and engagement, and thus moving from declaration to action in favour of the entire human family".

Achieving global access

The EU intervened twice at the meeting to clarify its positions in the face of mounting criticism over its allegedly hypocritical positions, said a participant who asked not to be quoted.

The EU denied that it exerted pressure on countries seeking to avail of compulsory licensing. It also said that while it could support universal and equitable access to COVID-19 vaccines and treatments, it endorsed the questions raised by Australia, Canada, Chile and Mexico on intellectual property challenges experienced by members in relation to COVID-19.

The EU said the main global mechanism to achieve global access is the COVAX facility, which has just received a major financial boost following a recent meeting of the G7 leading industrial countries where the US, Japan, Canada and the EU pledged solid financial support.

The EU said that the current major challenge is to ensure rapid and predictable production of new vaccines while simultaneously increasing levels of production and maintaining the supply of other medicines and vaccines. It suggested that any available manufacturing capacity anywhere in the world should be used to the full extent.

The EU reckons that the IP system is crucial in providing a legal framework for collaboration and dissemination of any new technology, said a meeting participant who asked not to be quoted.

According to the EU, the objective of an IP system is not merely to create exclusivity for the owner of intellectual property, but also to ensure the publication and dissemination of research results.

The EU said concerns raised by the waiver proponents can be addressed with a combination of, on the one side, licensing and expansion of manufacturing capacity through manufacturing agreements and, on the other side, the framework of the TRIPS Agreement and the flexibilities it offers.

The US, which has all along been blocking the TRIPS waiver proposal, claimed that the Biden administration has pledged to COVAX and is "committed to working with international partners

to end the devastating public health and economic effects of this pandemic.” It said it is ready to work with partners to identify practical ways to catalyze the needed capacity to address the pandemic.

The US stressed the need to collectively increase access to facilitate equitable distribution of COVID-19 vaccines, and to support policies that drive the rapid development of new vaccines and medicines. It said that it looks forward to engaging in further discussions on the questions that a number of members have raised about the proposal, with the aim of finding multilateral solutions to amplify the public health and humanitarian responses to the ongoing crisis, while bearing in mind the importance of incentives for innovation.

(Meanwhile, a group of US lawmakers from the Democratic Party are seeking to persuade President Joe Biden to agree to the waiver proposal. US House Representative Jan Schakowsky “is circulating a letter to President Biden for signature by her colleagues urging him to reverse the Trump Administration’s opposition to the waiver”, according to a report in the *Washington Trade Daily* on

19 February.)

In its intervention, Switzerland said suspending large parts of the TRIPS Agreement would be counterproductive as it would undermine currently ongoing efforts to scale up manufacturing to achieve global access. It said that never before had such novel and highly complex biotech vaccines been made available to the whole of the world population in such a short time, and this has been possible due to protection provided to intellectual property rights.

Canada said that it is interested in understanding the specific nature and scope of any concrete IP challenges experienced by members related to or arising from the TRIPS Agreement in their responses to COVID-19, and expressed hope that concrete consensus-based solutions can be found. It also acknowledged that production of COVID-19 diagnostics, therapeutics, vaccines, devices and equipment has been and remains extremely challenging including in view of limited production capacity, among other logistical challenges.

Norway said it agrees that “nobody’s safe until everybody’s safe”, and that

ensuring a fair and equitable distribution of vaccines, diagnostics and medicines should be of highest priority. It said it is working hard to make this happen through various international cooperative efforts.

“As to the issue at hand,” said Norway, “we have listened carefully to the views expressed by members in both formal and informal settings. In this context, we have taken note of statements from proponents that they are willing to discuss the scope and duration of the waiver.”

Norway asked the proponents whether they are considering presenting a revised proposal as a basis for further deliberations, said a participant who asked not to be quoted.

Other opponents of the waiver, such as Singapore, Japan, Australia and the United Kingdom, were of the view that IP rights have played a key role in fostering an ecosystem that promotes continuous innovation by allowing the key stakeholders such as governments, researchers and pharmaceutical companies to collaborate in developing and producing COVID-19 vaccines. (SUNS9293)

“Tug of war” over fisheries subsidies

WTO member countries negotiating rules to govern the provision of fisheries subsidies are at odds over a proposed exemption allowing for the continuation of subsidies seen as depleting global fish stocks.

by D. Ravi Kanth

GENEVA: The Doha rules negotiations on prohibiting certain forms of fisheries subsidies remain at an impasse at the World Trade Organization over a blanket carve-out extended to major subsidizers to continue with subsidies which contribute to overcapacity and overfishing (OCOF).

At an informal Doha Trade Negotiations Committee meeting on 25 February, the chair of the Doha rules negotiations, Ambassador Santiago Wills from Colombia, admitted that there is a

“tug of war” going on between countries seeking a complete prohibition of subsidies contributing to the OCOF problem on the one side, and countries that want to retain the subsidies with appropriate marine conservation measures on the other side, according to a person present at the meeting.

The chair said that the “tug of war” has been going on for years, adding that it is clear that one side will not be able to convince the other.

He said he has advanced a hybrid approach, arguing that members must find a common ground.

At the February cluster of meetings of the Doha rules negotiating body that ended on 19 February, members failed to make any progress and remained far apart on the architecture and proposed disciplines in the OCOF pillar, said negotiators who asked not to be quoted.

At the heads-of-delegation (HoD) meeting held on 19 February to review the state of play in the discussions, sharp differences came into the open on the OCOF disciplines as laid out in Article 5 of the chair’s second revised draft consolidated text. The text was issued by the chair in his own capacity last December and remains in brackets indicating lack of consensus.

The major subsidizers supported the proposed language in Article 5, particularly the controversial Article 5.2 on the continuation of the subsidies subject to adopting marine management measures.

However, the large majority of developing and least developed countries, including India, Indonesia and South Africa, called for removing the asymmetries in the OCOF disciplines, said a negotiator who asked not to be quoted.

According to the chair, negotiators need to start reflecting on an outcome that they can live with in order to conclude the negotiations to save the fish and oceans.

However, the chair must recognize that his proposals in the draft text are asymmetrical and that they fail to address the core issues concerning prohibition of subsidies in the OCOF pillar, said a negotiator who asked not to be quoted.

Carve-out

The standoff over the OCOF disciplines centres on whether to allow the major subsidizers to continue with what are being considered as harmful subsidies that have led to the rapid depletion of global fish stocks, the negotiator said.

At issue is the specific carve-out given to the major subsidizers – China, the European Union, the United States, Canada, Japan, South Korea and Chinese Taipei among others – to continue with their subsidies in Article 5.2 of the second revised draft text.

In Article 5.1, the chair proposes: “No member shall grant or maintain subsidies to fishing or fishing related activities that contribute to overcapacity or overfishing.” Article 5.1.1 then provides a list of these subsidies.

However, in Article 5.2, it is proposed that “Notwithstanding paragraph 5.1, a member may grant or maintain subsidies referred to in paragraph 5.1 if it demonstrates that measures are implemented to maintain the stock or stocks in the relevant fishery or fisheries at a biologically sustainable level.”

A footnote clarifies that “a biologically sustainable level” is “the level determined by a coastal Member having jurisdiction over the area where the fishing or fishing related activity is taking place, using maximum sustainable yield (MSY), or alternative reference points such as [level of depletion, or level of or trend in time series data on catch per unit effort, commensurate with the data available for the fishery]; or by a relevant RFMO/A (regional fisheries management organization/arrangement).”

Differences have also emerged on the “appropriate and effective” special and

differential treatment being sought by the developing countries, particularly their demand for policy space to assist their hundreds of millions of fishermen who do not engage in industrial-scale fishing but depend on fishing for their livelihood.

At the 19 February HoD meeting, the major subsidizers – the EU, Japan, Canada, South Korea and Chinese Taipei – supported the architecture as proposed in Article 5 with varying caveats.

Canada said finding an agreement on the OCOF disciplines as reflected in Articles 5.1, 5.2 and 5.3, advancing disciplines on illegal, unreported and unregulated (IUU) fishing, and elaborating on a specific list of notifications in Article 8, are imperative, according to people present at the meeting.

The EU is understood to have said that while it can work with the overall architecture, it has raised some concerns about Article 5.1.

Japan has suggested that the overall OCOF architecture is in the right direction but added that no member must grant subsidies under Article 5.7(c), which relates to India’s specific criteria for availing of special and differential treatment.

Speaking on behalf of the African Group, Mauritius’ trade envoy Ambassador Usha D. Canabady expressed sharp concern over the “persisting divergences among members” on the approach to the OCOF disciplines. She said that “these negotiations need to be focused on subsidies and subsidies only.”

She cautioned against the narrative developed by the subsidizers “that have built their fishing capacity over time with the support of the government.”

The African Group, she said, is of the view that “the prohibition of the capacity and effort enhancing subsidies, in particular building more vessels and effort enhancing subsidies, along with the improvement of fisheries management may contribute to more sustainable fisheries globally.”

The African Group said it can support the instrument “that would automatically invite panels to review the evidence of IUU determination or national administrative and judicial procedures or the policy choices and methodologies of fisheries management.”

Jamaica, on behalf of the African, Caribbean and Pacific (ACP) Group, drew several markers on the general architecture and drafting of Article 5 on grounds that

it does not give a clear sense that the main objective in overcapacity and overfishing will be met.

“The largest subsidizers are seeking a permanent carve-out under Article 5.2 which will invalidate the primary prohibition contained in Article 5.1,” Jamaica argued.

Jamaica reminded the chair that “the mandate is to discipline certain forms of subsidies, not fish management”, emphasizing that “appropriate S&DT [special and differential treatment] must be such that is not [conditioned] on inappropriate and burdensome obligations.”

Jamaica also issued a strong message that the S&DT as set out in Article 5.7(c) “cannot be restricted [to] a monolithic transitional period or modalities or technical assistance or capacity building”, adding that the discussions revealed a “clear link between the S&DT and the final disciplines that will be agreed under the OCOF pillar.”

South Africa said the “big subsidizers must take responsibility and show leadership by committing to discontinue the provision of harmful subsidies to their fishing fleets that harm the health of our oceans.”

South African Ambassador Xolelwa Mlumbi-Peter emphasized that “the principle of common but differentiated responsibility must underpin the disciplines.”

She expressed concern over the demands made by the major subsidizers/industrialized countries that “special and differential treatment should be limited for members with level of subsidization to develop their fishing capacity to mere transitional periods and some unspecified technical assistance and capacity building.”

South Africa demanded clear sequencing work and urged the chair to ensure that the proposed small group meetings for advancing the negotiations must be open-ended and representative not only in terms of different categories of members but in terms of different views and not limited to only a few members.

India called for the “polluter pays” principle to ensure that the big subsidizers pay for the damage they had created, suggesting that S&DT in the OCOF pillar must have the “required policy space” to help millions of fishermen. (SUNS9294)

JSIs will erode WTO's multilateral rules-based architecture

Ongoing plurilateral negotiations under the so-called Joint Statement Initiatives risk falling foul of the WTO's core multilateral principles, India and South Africa have warned.

by D. Ravi Kanth

GENEVA: India and South Africa have challenged the legal status of the informal Joint Statement Initiatives (JSIs) on electronic commerce, investment facilitation, micro, small and medium enterprises (MSMEs), and domestic regulation in trade in services, on grounds of their inherent contradiction with the core principles of the WTO's foundational Marrakesh Agreement, as well as their systemic and development implications.

In an eight-page joint proposal circulated on 19 February, India and South Africa systematically exposed the fallacies and flawed arguments advanced by the JSI participants, said a person familiar with the proposal. The proposal will directly challenge the JSI participants to explain what their real intentions are and whether it is appropriate to advance initiatives that lack legal basis, the person said.

Besides, the joint proposal is a subtle reminder to the new WTO Director-General Ngozi Okonjo-Iweala, who has spoken in favour of the JSIs, that the initiatives lack legal status and undermine the core architecture of the WTO as laid out in the Marrakesh Agreement, the person said.

In her acceptance speech on 15 February after being appointed DG, Okonjo-Iweala had said that "plurilateral initiatives have brought new energy in the multilateral trading system."

"Success in the e-commerce negotiations could provide an impetus for reviving more broadly the negotiations on trade in services ... Negotiating work on other joint statement initiatives – domestic regulation and investment facilitation – has continued fairly intensively despite the pandemic," she said, suggesting that an agreement on domestic regulation in services could be concluded at the WTO's 12th Ministerial Conference (MC12) later this year.

Contradiction

Against this backdrop, India and South Africa have argued in their paper that "the Joint Statement Initiatives (e.g. on e-commerce, domestic regulation, investment facilitation etc.) have to be assessed on the basis of the provisions of the Marrakesh Agreement establishing the WTO [which] defines 'Plurilateral Agreements' as the agreements and associated legal instruments that are included in Annex 4 to the [Marrakesh] Agreement. The Ministerial Conference, upon the request of the Members party to a trade agreement, decides exclusively by consensus to add that agreement to the said Annex 4 [emphasis in original]."

"Any group of Members may discuss any issue informally," according to India and South Africa. "However, when discussions under Joint Statement Initiatives turn into negotiations, and their outcomes are sought to be formalized into the WTO framework of rules, it can only be done in accordance with the rules of procedure for amendments as well as decision-making as set out in the Marrakesh Agreement."

India and South Africa pointed to the "contradiction between JSIs and the fundamental principles at the WTO," questioning suggestions that "if the negotiated JSI outcomes are offered on an MFN basis, no multilateral consensus is required for bringing in such results under the umbrella of the WTO, especially if these new rules are appended to schedules."

"Such a proposition," according to India and South Africa, "would be contrary to ... fundamental principles and objectives of the multilateral system, enshrined in the Marrakesh Agreement." These principles are:

- the "multilateral underpinnings of the WTO", including Article II.1 ("The

WTO shall provide the common institutional framework for the conduct of trade relations among its Members ...") and Article III.2 ("The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations...") of the Marrakesh Agreement;

- consensus-based decision-making, as enshrined in Articles III.2, IX, X and also X.9; and
- the procedures for amendments of rules as articulated in Article X.

According to India and South Africa, "a procedure for amending rules is enshrined in Article X of the Marrakesh Agreement", while the General Agreement on Tariffs and Trade (GATT) and General Agreement on Trade in Services (GATS) contain specific provisions for modifications of schedules.

The two countries argued that the "proponents of JSIs have confused amendment to rules and modifications to schedules, and the proposed introduction of new agreements into the WTO to bypass the requirements of Article X of the Marrakesh Agreement. However, new agreements are not amendments to schedules."

Also, "Art. XVI.3 of the Marrakesh Agreement provides that in the event of a conflict between a provision of the Marrakesh Agreement and a provision of any of the Multilateral Trade Agreements, the provision of the Marrakesh Agreement shall prevail to the extent of the conflict," India and South Africa noted.

Further, each JSI is "likely to pose different legal challenges to existing WTO rules and mandates, given the differences in the nature and scope of issues covered under each of these initiatives," said the two countries.

Systemic and development implications

India and South Africa pointed out that "any attempt to introduce new rules resulting from the JSI negotiations into the WTO without fulfilling the requirements of Articles IX and X of the Marrakesh Agreement, will be detrimental to the functioning of the rule-based multilateral trading system."

According to their joint proposal, the following systemic and development implications are likely to arise from the JSIs:

- “erode the integrity of the rule-based multilateral trading system by subverting established rules and foundational principles of the Marrakesh Agreement;
 - create a precedent for any group of Members to bring any issue into the WTO without the required consensus;
 - bypass the collective oversight of Members for bringing in any new rules or amendments to existing rules in the WTO;
 - usurp limited WTO resources available for multilateral negotiations;
 - result in Members disregarding existing multilateral mandates arrived at through consensus in favour of matters without multilateral mandates;
 - lead to the marginalization or exclusion of issues which are difficult but which remain critical for the multilateral trading system, such as agriculture, development, thereby undermining the balance in agenda setting, negotiating processes and outcomes;
 - leave Members with no option other than to choose between remaining outside the discussions or participating on matters that are inconsistent with their economic development priorities, needs, concerns and levels of economic development;
 - fragment the multilateral trading system and undermine the multilateral character of the WTO.”
- India and South Africa further explained that as per the provisions of the Marrakesh Agreement, JSI participants have a number of options for their negotiated outcomes.

Within the WTO framework, the JSI participants can seek consensus amongst the whole WTO membership, followed by acceptance by the required proportion of members according to Article X of the Marrakesh Agreement; or they can get new agreements included in Annex 4 following Article X.9 of the Marrakesh Agreement.

Outside the WTO framework, according to India and South Africa, the JSI initiatives can be concluded in multiple bilateral or plurilateral free trade agreements (FTAs) or regional trade agreements (RTAs).

Finally, the JSI participants can seek to amend Article X of the Marrakesh Agreement to allow for a “flexible multilateral trading system”. (SUN9292)

COVID-19 crisis exacerbating inequalities, undermining human rights

The UN’s rights chief has drawn attention to the ruinous effects of the COVID-19 pandemic on the realization of human rights and called for greater global cooperation to deal with the crisis.

by Kanaga Raja

GENEVA: The unprecedented and multiple crises brought about by the COVID-19 pandemic have had a negative impact on all sectors of society worldwide, exacerbating existing inequalities and undermining the enjoyment of people’s human rights.

This was one of the main conclusions highlighted in a report by the United Nations High Commissioner for Human Rights on the impact of the pandemic on the enjoyment of human rights around the world.

The report was to be presented at the 46th regular session of the UN Human Rights Council taking place from 22

February to 23 March.

According to the report, much of the negative impact of the COVID-19 pandemic has been exacerbated by a failure to address previously existing structural causes of inequality, social exclusion and deprivation, and the inability of many countries, rich and poor alike, to meet the basic needs of a sizeable proportion of their populations.

“The current multi-faceted crisis has unmasked the strong linkages that have existed between race, ethnicity and socioeconomic status, and health outcomes, and which persist to this day,” it said.

The report said emergency measures taken by countries around the world in an attempt to check the spread of the virus, sometimes involving restrictions on the free movement of persons, goods and services, have had serious consequences for human rights at times disproportionate to any of the public health gains made.

“Loss of life and livelihood, disruption of education and health services, and increased violence – particularly violence against women and other vulnerable persons – have undermined the human rights and dignity of millions of people around the world,” it added.

Lack of access to public healthcare

According to the report, as at 1 January 2021, more than 81 million confirmed cases of COVID-19, including 1.8 million deaths, had been reported to the World Health Organization (WHO). A large majority of those deaths were of older persons, who face higher risks owing also to pre-existing health conditions.

The ability of many states to respond to a pandemic of the current magnitude has been compromised by years of under-investment in public health services and a lack of universal access to healthcare, it said.

“Overwhelmed public healthcare

systems have led to disruptions in people's access to healthcare for other non-COVID-19 conditions, both physical and mental, including women's access to sexual and reproductive health services."

The lack of investment in mental health promotion, prevention and care even before the onset of the pandemic has resulted in inadequate responses to the enormous mental health needs generated by the pandemic, given the scale of those adversely affected.

Lack of access to public healthcare has excluded people with limited financial resources from undergoing testing, thus contributing to an acceleration in infection rates.

"The health impact of the pandemic has demonstrated the importance of a strong public universal healthcare system based on the principle of solidarity and protection for all, regardless of a person's ability to pay," said the report.

While recent progress in developing several safe and effective COVID-19 vaccines holds the promise of putting an end to the pandemic, many obstacles must be overcome to ensure their universal availability, accessibility and uptake, it said.

Citing a recent report, the High Commissioner said that in 67 countries, 90% of the population will have no access to a COVID-19 vaccine, while certain wealthy countries have already purchased enough doses to vaccinate their entire populations three times over by the end of 2021 (assuming that all candidate vaccines are given regulatory approval following clinical trials).

"The foremost challenge is to ensure equitable distribution of new-generation vaccines against severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), the virus that causes COVID-19, to the populations of all nations, both rich and poor, without discrimination," said the report.

Inequalities

The pandemic has exacerbated pre-existing inequality in the world, the report emphasized, citing World Bank estimates that found that the pandemic and its associated economic crisis has forced 88 million to 115 million people in the world into extreme poverty, reversing a decade of progress in poverty reduction efforts.

All the while, it said, the world's richest

people and corporations continued to enjoy increased wealth during the pandemic, particularly in the technology and health-related sectors.

The pandemic has resulted in an unprecedented number of global job losses. According to the International Labour Organization (ILO), between April and June 2020 alone, 495 million full-time jobs were lost, with nearly half of the global workforce at risk of losing their livelihoods, the report said.

More than one in six young people have stopped working since the beginning of the pandemic. Workers in the informal economy, a majority of whom are women and who include more than three-quarters of young workers in the world, have suffered significantly from lockdowns and are over-represented in many of the sectors hardest hit by the pandemic, such as hospitality and food services.

The report said COVID-19 and the measures taken to stop its spread have disrupted food production and supply chains, undermining the right to food and exacerbating an already high level of food insecurity. Lack of access to affordable food exacerbates hunger and starvation, and may force individuals into poverty and extreme poverty, while increasing inequality within and between countries and reversing progress towards the Sustainable Development Goals.

The Food and Agriculture Organization of the United Nations (FAO) estimates that, in 2020, the COVID-19 pandemic may add between 83 and 132 million people to the almost 690 million people in the world considered undernourished in 2019.

The High Commissioner said that poor-quality housing and living conditions increase the risk of infection and the spread of the virus, with approximately 1.8 billion people worldwide living in homelessness and inadequate housing, often in overcrowded conditions and lacking access to water and sanitation. "At a time when access to water and sanitation are a key to ending the pandemic, more than 3 billion people worldwide have inadequate access at home to water and soap to ensure basic hygiene."

The report said people in informal settlements – roughly one billion worldwide – are subjected to particularly poor living conditions. As a result, the ability of such populations to protect themselves from COVID-19 is severely

affected.

Although the pandemic has brought into sharp focus the importance of social protections in times of crisis, the human right to social security and protection is not yet a practical reality for most people, said the report.

Around the world, some 71% of people, including almost two-thirds of the world's children, have no social security coverage, or only partial and inadequate coverage. Women working in the informal economy frequently lack social protection.

The pandemic has created a disruption worldwide in access to education, a key enabling right for the realization of human rights more generally. Large-scale school closures have affected nearly 1.6 billion learners in more than 190 countries, said the report.

For those without supportive and well-resourced home environments, including access to the Internet, the impact may be catastrophic, with lifelong effects, as many children may never be able to close the gap in their education caused by the pandemic or, in some cases, even return to school, said the High Commissioner.

Children are faced with higher levels of physical and psychological violence, including maltreatment and sexual abuse. In addition, forced child labour is on the rise, as are forced child marriage, exploitation and trafficking.

"The pandemic has exacerbated the digital divide and its impact in daily life, preventing many disadvantaged children, especially those with special needs, from continuing their education with the help of state-of-the-art distance-learning tools," said the report.

Vulnerable groups

The report said that the pandemic continues to have a disproportionate impact on indigenous peoples, exacerbating structural inequalities with respect to their enjoyment of social and economic rights. "Higher mortality rates of elderly indigenous people due to COVID-19 threaten the culture of indigenous communities, their languages and their traditions."

Gender-based violence against indigenous women and forced or early marriage, and harmful ancestral practices such as female genital mutilation, are reported to be on the increase in some communities.

The report said migrants, people of Asian heritage and other groups have been singled out and targeted as scapegoats during the pandemic because of an unfounded fear that such persons might be carriers of COVID-19.

Ethnic minority communities are disproportionately represented in COVID-19 infection and mortality statistics owing to a variety of factors: over-representation in essential work sectors, socioeconomic disadvantage, poor housing conditions and various other disparities. "In some countries, Latinos, black and indigenous persons are roughly three times more likely than white people to die of COVID-19 and at a younger age."

The impact of the pandemic on migrants, refugees and asylum seekers, as well as on internally displaced persons, has been significant. Border closures have left millions of migrants stranded and many seeking to return to their own countries, said the report. Loss of employment and wages as a result of COVID-19 is leading to a decline in migrant remittances, with a devastating impact on the approximately 800 million people in destination countries relying on such remittances for their economic survival.

The pandemic has also had a disproportionate impact on women and girls. Women are over-represented in the sectors most affected by the crisis, namely the care, retail sales and hospitality and tourism sectors, said the report. Globally, women are exposed to a greater risk of contracting the virus: 88% of personal care workers and 69% of health professionals are female.

Given the preponderance of women in the informal sector – of which the garment sector is a major component, especially in South and Southeast Asia – employment insecurity, wage disparities and a lack of social security have taken their toll on the livelihoods of women during the pandemic, said the report.

Good practices

According to the report, the pandemic has highlighted the need to listen to and learn from affected communities. In this context, the report presented several select good practices of member states in their efforts to deal with the pandemic.

For instance, Algeria has assisted families in need by granting emergency financial assistance (some 2.2 million

people to date). It has also granted longer-term financial aid to craftsmen and other semi-professional workers. In close collaboration with civil society, particular attention has been paid to the needs of older persons, persons with disabilities, women, migrants, refugees, homeless persons and the poor.

In Antigua and Barbuda, telecommunications firms have agreed to waive all fees for calls made to domestic violence helplines.

"The pathway to a stronger, more resilient future requires new levels of global cooperation and international solidarity."

Meanwhile, as part of its National COVID-19 Preparedness and Response Plan, Malawi has extended social security coverage by introducing a programme targeting 172,000 low-income households in urban and peri-urban areas and paying them the equivalent of a minimum wage (\$47) per month for six months via mobile cash transfer.

The Republic of Korea has taken an innovative approach to suicide prevention during the pandemic. The Seoul Youth Guarantee Centre, a government-operated online counselling programme created for the purpose of suicide prevention, has been greatly expanded in response to the 36% increase in the number of women who deliberately harmed themselves during the first half of 2020 as a result of pandemic-related restrictions. The original target number of 700 counsellors has also been doubled, said the report.

Recommendations

"The pandemic has demonstrated clearly how interconnected today's world is, and the extent to which the safety and security of each of us is dependent upon the safety and security of all," said the report.

"The pathway to a stronger, more resilient future requires new levels of global cooperation and international solidarity," it added.

Against this backdrop, the High Commissioner for Human Rights made the following recommendations to member states:

- a) Coordinate economic policies, including monetary policies, to ensure that the recovery of one group of countries is not achieved at the expense of another;
- b) Support the ring-fencing of resources for social spending, and provide international support through loans and grants, especially for the many least developed countries, small island developing states and middle-income countries that have been hit the hardest by the crisis;
- c) Strengthen international cooperation for expanded debt relief and sustainability initiatives for developing countries, in accordance with the relevant commitments in the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda;
- d) Treat COVID-19 vaccines as a global public good, put in place a well-coordinated global approach to the development and distribution of vaccines, and ensure access for all people on a non-discriminatory basis; and
- e) Urgently re-evaluate broad sectoral sanctions in countries facing the coronavirus pandemic, authorize humanitarian exemptions to sanction measures for essential medical equipment and supplies, while countries under sanction measures should provide transparent information, accept offers of necessary humanitarian assistance, and adopt measures to guarantee that national and international organizations can carry out their humanitarian work unhindered. (SUNS9289)

Developing countries struggling to cope with COVID-19

Already beset by preexisting vulnerabilities, developing countries are the hardest hit by the coronavirus pandemic.

by Anis Chowdhury and Jomo Kwame Sundaram

The ongoing COVID-19 pandemic is adversely impacting most developing countries disproportionately, especially the United Nations' least developed countries (LDCs) and the World Bank's low-income countries (LICs).

Years of implementing neoliberal policy conditionalities and advice have made most developing countries much more vulnerable to the pandemic by undermining their health systems and fiscal capacities to respond adequately.

Four decades of neoliberal policy influence have resulted in a "race to the bottom" to cut direct taxes, particularly corporate tax rates, ostensibly to promote investments and spur growth. But most LDCs and LICs were left high and dry as foreign direct investment (FDI) seeks profitable locations considering various relevant criteria besides tax rates. Thus, tax cuts have not induced the promised investments but resulted in net revenue losses.

Revenue loss due to such tax competition could be five times that due to illicit financial flows seeking to evade taxes. Low- and middle-income countries lose \$167-200 billion annually, around 1.2-1.5% of their national incomes, to corporate tax competition. Poor countries' tax bases have narrowed since the 1990s, with sub-Saharan African countries suffering the highest revenue losses as a share of national incomes. More indirect taxes have not compensated for less direct tax revenues.

As the tax system became less progressive, tax cuts also depleted the public coffers in most developing countries. Pressures on governments to pursue fiscal consolidation and austerity grew, with devastating impacts for public health.

Implementing IMF-World Bank structural adjustment programme conditionalities, most sub-Saharan African countries drastically reduced

their healthcare budgets. Per capita public spending on health in LICs fell during 2004-12, while their shares of national income declined during 2004-15.

Years of public sector under-investment seriously undermined public health systems in most developing countries, especially LDCs and LICs. Government provision was deliberately reduced to promote for-profit private healthcare, adversely affecting public service quality, effectiveness, costs and access.

Unsurprisingly, these economies not only lacked fiscal resources to cope with the pandemic, but their fiscal systems had also been made incapable of responding to the challenge. Thus, these poorly funded, inadequate health systems were grossly unprepared for the pandemic.

Uneven impacts

United Nations Secretary-General Antonio Guterres cautioned last July that COVID-19 was making achievement of the Sustainable Development Goals (SDGs) "even more challenging" as many developing countries were already "off track" in 2019, before the pandemic.

On 3 April, International Monetary Fund (IMF) Managing Director Kristalina Georgieva warned that the worst recession since the Great Depression would hit developing countries hardest, as they have "less resources to protect themselves". World Bank President David Malpass also acknowledged that it would "hurt the world's poorest countries the most".

The pandemic has already set back decades of modest and uneven progress in developing countries. The World Bank recently estimated the number of those falling into extreme poverty worldwide in 2020 at between 119 and 124 million people.

And the situation is getting worse.

Rich-country resistance to the developing countries' request for a TRIPS

waiver, vaccine imperialism and the flawed COVAX arrangements are deepening the crisis in poor countries as most remain far behind in the vaccine queue. To boost their profits, vaccine developers restrict greater output. Despite having received various generous government subsidies, they refuse to share research findings needed to massively scale up generic production. Meanwhile, rich countries have secured many times more vaccines than they need.

Before the pandemic, low-income countries already had the largest deficits, higher borrowing costs and more debt relative to government revenue than high-income countries. Thus, they devote ever larger shares of their modest revenues to paying interest.

The pandemic has undoubtedly worsened public finances. Average deficits in LICs increased from -4.0% of GDP in 2019 to -5.7% in 2020, with debt rising from 43.3% to 48.5% of GDP.

Fiscal responses have been influenced by access to financing. Global fiscal support reached nearly \$14 trillion in 2020, comprising \$7.8 trillion in additional spending or forgone revenue, and \$6 trillion in equity injections, loans and guarantees. Nearly \$12 trillion (about a fifth of GDP) was deployed in advanced economies to address the pandemic and its economic fallout. Meanwhile, LICs could afford only \$26.6 billion (1.2% of GDP), as emerging market economies deployed around 5%.

Declining fiscal space

Countries relying on primary commodity production, tourism or manufacturing for transnational supply chains have been most disrupted by the pandemic. More open to the outside world, their government revenue and fiscal space have been more severely affected.

Revenue shortfalls from output drops, concurrent commodity price drops and debt demands have limited many LICs' fiscal capacities. The pandemic is thus more likely to leave lasting impacts, including worse poverty and malnutrition.

The IMF head urged countries not to hesitate to "spend, but keep the receipts", suggesting a major U-turn in IMF fiscal policy advice. Likewise, despite her earlier reputation as a "debt hawk", the World Bank chief economist Carmen Reinhart advised, "First fight the war, then figure out how to pay for it."

But most LICs have little alternative but to rely heavily on foreign aid.

Even before the pandemic, aid from the rich OECD countries only reached 0.31% of their gross national income (GNI), less than half of the 0.7% target agreed to more than half a century ago. Had donors met their LDC aid target of 0.15-0.20% of their national incomes, LDCs would have received an extra \$32 billion annually at least.

Donor-government cuts in bilateral aid commitments by almost 30%, from \$23.9 billion in the first five months of 2019 to

\$16.9 billion during January-May 2020, have only made things worse.

Meanwhile, despite UK premier Boris Johnson's rhetoric about reviving the Commonwealth – i.e., colonial connections – now that Britain has “Brexit”, he plans to cut bilateral aid by 50-70% following the £2.9 billion cut in July 2020. Britain is now paying “COVID bills off the backs of the poor”, even breaching UK law!

Ever clever on the hoof, BoJo may yet donate the excess vaccines he has ordered to the “most deserving” in another typically spectacular, grandiloquent gesture, while

continuing to block much broader access by denying developing countries' TRIPS waiver request. (IPS)

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

The Third World in the Third Millennium CE

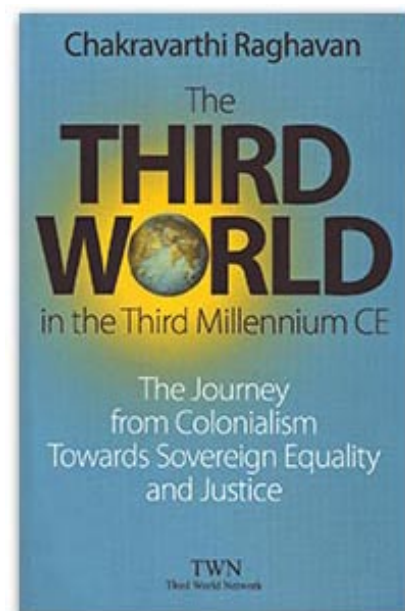
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