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Formal WTO talks on investment facilitation blocked

No formal discussions will take place at the WTO on the controversial issue of investment facilitation. This was announced by the chairperson of the WTO General Council following consultations held after India had opposed inclusion of the subject in the agenda of a Council meeting on 10 May.

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India and others ensure IF can't be discussed formally at WTO

Formal discussion in the WTO on the contentious topic of investment facilitation has been blocked following opposition spearheaded by India.

by D. Ravi Kanth

GENEVA: India along with several other developing countries on 18 May ensured that investment facilitation (IF) cannot be discussed formally at the World Trade Organization, dealing a huge setback to China, Russia, Brazil, Argentina and others which had sought to sneak into the global trade body the failed OECD-mediated Multilateral Agreement on Investment in a new avatar, trade envoys told the *South-North Development Monitor (SUNS)*.

The sponsors of IF – China, Russia, Brazil, Argentina, MIKTA (Mexico, Indonesia, Korea, Turkey and Australia) – can now only discuss their proposals informally without seeking any outcome either at the WTO General Council (GC) or at the upcoming eleventh WTO Ministerial Conference in Buenos Aires this December.

Effectively, India and other developing countries – South Africa, Uganda, Ecuador, Cameroon, Cuba and Venezuela, among others – served notice to the IF sponsors that they will continue to oppose the issue of investment on grounds that it is not part of the WTO mandate.

Chair's statement

India had blocked the proceedings of the GC on 10 May due to the inclusion in item 5 of the agenda of five proposals under the banner of trade and investment facilitation. The GC chairperson, Ambassador Xavier Carim of South Africa, then suspended the meeting and subsequently held consultations with the sponsors of the IF proposals and India to break the impasse.

The two sides agreed to a chair's statement which stated unambiguously that the proponents of IF will only discuss the issue at their informal meetings without seeking any decision or negotiated outcome at the GC. The breakthrough finally came on 17 May, said trade envoys familiar with the development.

At the reconvened GC meeting on 18 May, GC chair Carim read out a state-

ment on his own responsibility.

The statement said that agenda item 5 was reformulated as "Communications on MIKTA Workshop and Informal Dialogue on Investment Facilitation" to allow for an exchange of views on the initiatives that some members have had, or plan to have, in respect to informal dialogues on investment facilitation.

[The draft agenda item 5 for the 10 May GC meet had read: "Trade and Investment Facilitation – Communication from Mexico, Indonesia, Korea, Turkey and Australia (MIKTA, Job/GC/121) – Joint Communication from the Friends of Investment Facilitation for Development (Job/GC/122 and Job/GC/122/ADD.1) – Communications from the Russian Federation (Job/GC/120), China (Job/GC/123), Argentina and Brazil (Job/GC/124).]

Carim's statement also recalled the 2004 GC Decision (as contained in document WT/L/579) as well as paragraph 34 of the Nairobi Ministerial Declaration to emphasize that trade and investment were removed from the Doha Development Agenda (DDA) negotiations and that the Nairobi Ministerial Declaration has made it unambiguously clear that new issues cannot be negotiated unless there is consensus among members.

Further, the GC chair has stated that "the proponents [of investment facilitation] seek to share information on informal dialogues on investment facilitation, and that the communications do not constitute proposals for negotiations. Proponents believe that informal dialogues on investment facilitation are important."

The language has made it clear that IF can only be discussed informally outside without any specific WTO mandate.

The chair's statement also included language proposed by India that "some Members believe that investment facilitation does not lie within the scope of the WTO and hence the General Council".

Therefore, "pursuant to rules 2 and 4 of the Rules of Procedure for the General Council, we note that the General Council is not required to take any decisions under this item of the agenda," the

chair's statement said unambiguously.

India reiterated its "strong opposition to discussions in any formal structures of the WTO on Investment Facilitation, as this subject we believe is outside the scope and ambit of the Marrakesh Agreement establishing the WTO."

It praised the GC chair's consultation and stated that India's opposition to the discussion on IF in the WTO is "based on serious, substantive, systemic concerns."

India maintained that such discussion does not fall within the ambit and scope of the WTO and hence the General Council or any of the formal structures of the WTO since investment facilitation does not concern "multilateral trade relations".

It took a potshot at the sponsors which sought to sneak in their proposals on IF in the GC agenda, with the remark that "discussions" in the WTO do not occur without a context and that context is setting enforceable multilateral disciplines or rules.

"Therefore, any discussions or negotiations in the formal structures have significant repercussions and implications," India cautioned.

India reminded the sponsors that "'investment' itself covers a wide range of assets or enterprises that are subject to a separate universe of bilateral obligations." Further, "investment issues, including investment facilitation, are much more deep-rooted within the domestic regulatory mechanisms and complex in nature as compared to tariff issues which often can be controlled by taking border measures."

"Therefore, regulation of investment involves measures which are specific to national circumstances, involving multiple stakeholders and complex processes," India argued.

India spoke about the need for "policy space" by emphasizing that "specific criteria for investment policy making would have to be consistent with national development objectives and a state's constitutional authority and obligations."

"Therefore, a multilateral trade organization like the WTO does not have the authority or competence to discuss investment related issues, including investment facilitation," India emphasized.

India challenged the view of IF sponsors that IF would result in attracting foreign direct investments. "The importance of investment facilitation and attracting foreign investment for development are

substantially different from the need for discussing or negotiating disciplines on investment facilitation at the WTO," India said.

"Investment facilitation is not directly related to multilateral trade relations and the WTO hence is not the appropriate forum to have this discussion," India maintained.

And "merely because trade and investment have a complementary role in a nation's development, this ipso facto does not justify the relevance of the WTO to discuss or make rules in this respect," India argued.

India told the sponsors that they are free to hold their informal consultations only "outside the formal structures of the WTO."

The rephrased agenda item 5, according to India, is only limited to having "informal dialogues on investment facilitation."

No mandate

Several developing and least-developed countries joined India in making it clear that they cannot agree to IF on the grounds that it is not part of the DDA and Nairobi Ministerial Declaration.

South Africa raised serious objections to IF, saying that bringing another controversial issue will make it difficult for the eleventh Ministerial Conference

to achieve any outcomes. It said there is "neither a mandate nor an agreement to discuss or negotiate on investment in the WTO," according to people present at the meeting.

Ecuador, Bolivia, Cuba and Venezuela said IF has no place in the Doha agenda as per the 2004 July Framework agreement.

Uganda, which is a coordinator for the least-developed countries (LDCs), regretted that IF had been put on the draft agenda. It said the Marrakesh Agreement had made it clear that only existing issues in the WTO rulebook can be negotiated or improved. Investment is not "within the scope of the WTO," Uganda said, emphasizing that it cannot "promote a process that seeks to play by the rules for purposes of expediency."

China, which is the leader for the friends of the IF proposals, said that it has a mutually reinforcing role. China suggested that IF must be discussed while avoiding controversial subjects.

Russia said it is keen on discussing IF informally.

In conclusion, India has put the brakes on IF at the WTO for the time being and much would depend on how developing countries get their act together in securing developmental outcomes of the DDA at the Buenos Aires meeting, trade envoys said. (SUNS8466) □

Investment facilitation proposals and India's objections

India had objected to WTO General Council discussion of investment facilitation on the grounds that the subject lies outside the WTO's ambit.

by Chakravarthi Raghavan

GENEVA: The several proposals put forward (in Job documents) for inclusion in the WTO General Council agenda for 10 May, with a view to securing some "deliverables" on investment facilitation at the WTO Ministerial Conference in Buenos Aires this December, have been modified now – in the GC chair's compromise statement – to be merely "communications" without calling for any GC decisions.

However, there is a view that these could be brought up by proponents (with some help from the WTO secretariat) at the GC and/or the Ministerial Conference for decision at some point, thereby forcing opponents (like India) to be alert

and to object every time and continue to deny consensus, according to trade observers.

While having "facilitation" in their title, the Job items go far beyond this, incorporating rights and obligations for members in an area not within the WTO remit, and with scope for their further development and expansion to encompass market access and treatment for investments.

A recent memo by the developing-country think-tank South Centre has summarized succinctly, under various heads, the proposals in the Job documents of several members. And in two interventions (full texts below) at the

outset of the 10 May General Council meeting, the Indian Ambassador to the WTO Anjali Prasad clearly set out why the proposals could not be on the agenda.

Elements of IF proposals

The elements of the investment facilitation proposals in the Job documents of Russia, China and Brazil / Argentina are varied and wide-ranging – going far beyond what “facilitation” means in normal usage – and have been summarized in the South Centre memo as follows:

Objectives: Creation of a “transparent, stable and predictable regulatory and administrative framework for investors, without questioning the rights of the Members to regulate...” (Russia)

Transparency:

- “provisions for transparency for relevant regulations” (Russia);

- “make publicly available all investment-related laws and regulations, enquiry points”;

- “notification; applicable screening guidelines and clearly-defined criteria for investment assessment” (China); “shall notify to the WTO all laws relating to investment policy issues of general application and regulatory issues of a cross-cutting nature” (Brazil); “to the extent practicable ... opportunity to comment” (China; Brazil – “whenever possible”).

Domestic regulation (Russia)/administrative procedures relating to investment (China) (overlaps with transparency):

- “Criteria – encourage the establishment of clear and consistent criteria and procedures for investment screening, appraisal and approval...” (China); “procedures and requirements for obtaining necessary permits are reasonable ... all relevant information, including exhaustive lists of requirements, is publicly accessible” (Russia);

- “Fees and charges – reason for such fees; commensurate with costs of services rendered by such authority (Russia; China – “to the extent possible...”);

- “Processing of applications – a common set of principles for investment screening and licensing, stable, predictable and efficient framework for investors” (Brazil); timeframes for administrative actions are reasonable and predictable (Russia); “streamline investment-related licensing and qualifications requirements and procedures...” (China); “single window” (Russia); single electronic window (Brazil); “one-stop” approval institution where possible (China);

- No investor-state dispute settlement (ISDS) clause: Dispute prevention and resolution within a member’s jurisdiction (Russia); National Focal Point or Ombudsperson to help prevent disputes between members (Brazil);

- Special and differential treatment: “Levels of development, development needs, technical assistance and capacity building” (Russia, China, Brazil); obligations in three categories of implementation schedules (as in Trade Facilitation Agreement) (Brazil); “LDCs not required to implement” (Brazil); priority consideration to needs of LDCs (China);

- Other elements: “Facilitate personnel relating to investment” (China); “endeavour to accord investors easy access to basic public infrastructure” (China); “a Committee for Investment Facilitation” (Brazil); “corporate social responsibility – voluntary by investors” (Brazil, China);

- Clear link with market access: Brazil acknowledges that these rules would make it easier for investors “to establish, maintain and expand their investments in host countries” (Brazil);

- Future elements: The rules should include elements for their future development and expansion to regulating market access and treatment for investments (Russia).

Indian opposition

At the General Council meeting of 10 May, Indian Ambassador Prasad made two interventions to object to inclusion of the investment facilitation item on the agenda.

In her first intervention, she said: “India would like to express its reservations on the inclusion of the proposed agenda item on ‘Trade and Investment Facilitation’ at today’s General Council meeting. While we thank the proponents for the various submissions and proposals, we believe that the so-called subject – Investment Facilitation – does not lie within the purview of the General Council, and the WTO itself. We could elaborate on the reasons for this position if so desired. Procedurally, as per Rule 6 of Procedure for Meetings of the General Council, the first order of business for each General Council meeting shall be the consideration and approval of the agenda proposed. If there is no consensus on the inclusion of any proposed item on the agenda, the item cannot be included in the agenda. Hence at this stage we object to the inclusion of item 5 in the agenda and express inability to join consensus on the adoption of the agenda as proposed. We could, however, support

adoption of proposed agenda with the exclusion of item 5.”

In her second intervention, explaining in detail India’s objections, Prasad said: “India believes that investment as a subject does not lie within the scope of discussions or negotiations at the WTO. We all acknowledge the strong legal structure and rule-based member-driven character of this Organization. An essential element of the strong legal structure of the WTO is that the functions and responsibilities of the WTO are informed by the Marrakesh Agreement establishing the WTO [WTO Agreement] and the other Multilateral Trade Agreements.

“There are two broad functions of the WTO under the WTO Agreement – first, facilitating implementation of existing agreements and second, providing the forum for negotiations among Members concerning their ‘multilateral trade relations’. Article III:1 of the WTO Agreement states that the WTO shall ‘facilitate the implementation, administration and operation and further the objectives of this Agreement and of the Multilateral Trade Agreements’. What is being referred to as Investment Facilitation does not fall within the ambit of implementation, administration and operation and furthering the objectives of any of the Multilateral Trade Agreements. In this context, it is to be noted that General Council shall carry out functions assigned to it by the WTO Agreement. Thus, the General Council cannot function outside the ambit of the Agreement establishing the WTO.

“Further, Article III:2 of the WTO Agreement states that the WTO shall provide a forum for negotiations among its members concerning their multilateral trade relations. ‘Investment Facilitation’ which supposedly deals with facilitating ‘investment’ does not pertain to ‘multilateral trade relations’. Investment per se is not trade. It may or may not result in cross border trade which is the subject of multilateral trade relations. ‘Investment’ covers a wide range of assets or enterprises that are subject to a separate universe of bilateral obligations. We all are aware of the multitude of Bilateral Investment Treaties that cover aspects of facilitation, protection and dispute settlement in varying degrees. The so-called investment facilitation or protection cannot therefore be characterized as addressing ‘multilateral trade relations’ and the contours of the two are totally different. Therefore India does not believe that it has relevance in the context of multilateral trade relations. Because trade cannot occur without investment and therefore investment is part of multilateral

trade relations is too farfetched an argument.

"As far as the existing Multilateral Trade Agreements are concerned, the Agreement on TRIMs and GATS already deal with trade related investment aspects in the areas of goods and services respectively. The TRIMs Agreement deals with 'investment measures' that can cause trade restrictive and distorting investment measures. Any such discussion on such investment measures should take place in the TRIMs Committee. The GATS deals with supply of services through commercial presence in the territory of any other Member which is related to 'trade in services' and not purely investment. However, neither the TRIMs Agreement nor the GATS provide the context for a general discussion on policies, rules and regulations surrounding investment.

"Further, the work towards negotiations on the relationship between trade and investment issues which was outlined in paras 20-22 of the Doha Ministerial Decision has been stalled under para 1g of the July Framework which clearly mandates that these issues will not form part of the Doha Work Programme and therefore no work towards negotiations on this issue will take place within the WTO during the Doha Round.

"More recently, para 34 of the

Nairobi Ministerial Declaration notes that while some members wish to identify and discuss 'other issues' for negotiations, others do not. This indicates clearly that there is no consensus on the identification and discussion of these so-called 'other issues' for negotiations – the so-called Investment Facilitation is one such issue that is identified by a few as a 'new issue' but India does not subscribe to this identification and need for discussion.

"India, therefore, objects to the inclusion of investment issues, including so-called Investment Facilitation in the WTO and is not in a position to agree to the inclusion of the agenda item 'Trade and Investment Facilitation' in the regular agenda of the General Council.

"Of course, Members who have an interest in this subject are entitled to take up informal discussions on this or any other subject outside the formal structures of the WTO. We have seen the MITKA [group comprising Mexico, Indonesia, Turkey, Korea and Australia] take this up in structures outside the formal bodies of the WTO.

"Mr. Chairman, to conclude, we are not in a position today to agree to the adoption of the agenda with item 5 included in it as India opposes inclusion of investment related issues at the threshold." (SUNS8466) □

US, India-South Africa nix move for investment facilitation accord at G20

Proponents of the investment facilitation issue had earlier suffered another setback at the G20 major economies forum when attempts to push through a draft agreement in this area were opposed by the US, India and South Africa.

by D. Ravi Kanth

GENEVA: A sustained push by Germany to revive the failed Multilateral Agreement on Investment (MAI) under the banner of an investment facilitation agreement foundered on 5 May at a G20 technical experts' meeting in Berlin.

The German attempt at the meeting of the G20 Trade and Investment Working Group (TIWG) failed after the United States, and India and South Africa blocked the draft agreement on different grounds, participants told the *South-North Development Monitor* (SUNS).

The US at the meeting also opposed attempts to strengthen trade monitoring and trade measures for resisting protectionism, and trade assistance.

The US made it categorically clear that it is not in a position to consider the three issues at this juncture, said several participants who took part in the deliberations.

Germany – which currently holds the presidency of the G20 – along with Japan, Canada, Australia, China and Brazil, among others, have worked hard to prepare the deliverables on these three issues at the level of technical experts so as to finalize them for the G20 sherpas meeting later in May. The sherpas meeting is to be followed by the meeting of G20 leaders in July.

After two days of discussions that began on 4 May, Germany held a meet-

ing with the US, India and South Africa to see whether the three were ready for a much-watered-down text on investment facilitation.

The US stuck to its hardline stance that it was not in a position to agree to any outcome, while India and South Africa said that even a non-binding outcome on investment facilitation as proposed by Germany would undermine policy space for developing countries to pursue their developmental policies.

The two developing countries made it clear that they could only agree to some broad messages on investment facilitation but not a deliverable based on a non-binding outcome, according to participants who took part in the meeting.

Against this backdrop, Germany was forced to cancel the meeting a day before the scheduled end on 6 May.

Draft package

Despite fierce opposition from the US, which asked Germany to drop the consideration of investment facilitation at a G20 experts' meeting in April, Germany along with several developed and a few developing countries had gone ahead to negotiate the draft agreement that was circulated prior to the meeting.

The German draft package called for reaffirming "the Principles for Global Investment Policy Making endorsed in the Hangzhou communique and encourage policymakers to use them as reference and guidance."

"Investment plays a central role in promoting inclusive economic growth and sustainable development through the creation of jobs and the dissemination of skills and technology," it argued, suggesting that, at a time when foreign direct investment flows are volatile and not sufficient to induce economic growth, there is an urgent need for facilitating investment.

Therefore, it suggested language to the effect that G20 leaders agree that "investment policies should be transparent, efficient, predictable and consistent – also with international obligations."

"To maximize the beneficial impact of investment, we are committed to encouraging investment that is sustainable from an economic, social and environmental perspective and to promoting good corporate governance as well as responsible business conduct."

Further, "to complement the G20 Guiding Principles for Global Investment Policy Making and facilitate their implementation we endorse the attached non-

binding G20 Investment Facilitation Package,” read the draft.

The “non-binding G20 Investment Facilitation Package” would include the following objectives:

(i) reaffirming and complementing the G20 Guiding Principles for Global Investment Policy Making;

(ii) fostering open and transparent business climates that are conducive to investment;

(iii) promoting inclusive economic growth, sustainable development and a level playing field for all investors, including small and medium-sized enterprises.

To achieve these objectives, the draft listed four actions for investment facilitation: (a) transparency, (b) predictability and consistency, (c) efficiency, and (d) stakeholder relations.

No consensus

While technical experts from Japan, Canada, China, Russia, Brazil and Australia, among others, started discussing each element in the German draft, the US simply refused to engage in the discussions.

On 11 April, the US had sent a communication to Germany and other members of the G20 that it “does not believe that G20 TIWG negotiation of detailed policy prescriptions in this area [investment] is necessary or helpful at this time, nor that TIWG should seek to prioritize policy actions in certain areas of investment over others, including with respect to which issues should be on the agenda of separate bilateral, plurilateral, and multilateral negotiations.”

Japan, on its part, sought robust provisions on investment facilitation, while China, Russia and Brazil insisted that it should guide G20 countries to negotiate the facilitating issues based on the G20 Hangzhou outcome.

India and South Africa raised several objections on investment facilitation, insisting that while there was no need for any outcome at this juncture, their demands – right to regulate, policy space, respecting developmental needs of developing countries, and without prejudice to discussing it in other international fora – must be incorporated.

As the talks proceeded for two days, it became clear that there were formidable obstacles to arriving at a meaningful deliverable on investment facilitation. Faced with a grim impasse, Germany convened a meeting with the US, India

and South Africa on 5 May to determine whether the three countries were prepared to consider a watered-down text.

The US said that it was not in a position to join consensus. India and South Africa maintained that they were not in a position to incorporate the document as a recommendation of the TIWG but were willing to consider only some key messages or broad signals for invest-

ment, according to people who took part in the meeting.

The writing on the wall is thus unmistakably clear that investment facilitation will not be able to make progress at the WTO given the fierce opposition from the US on one side, and India and South Africa on the other, said a trade envoy who asked not to be quoted. (SUNS8458) □

G33 insist on unambiguous outcomes at MC11 on food security

In the face of the push for investment facilitation and e-commerce talks, the G33 developing-country coalition are confronted with the uphill task of securing development-friendly reforms to agricultural trade at the coming WTO Ministerial Conference.

by D. Ravi Kanth

GENEVA: Developing countries with hundreds of millions of resource-poor and livelihood farmers face a do-or-die battle, ahead of the WTO’s eleventh Ministerial Conference (MC11) in Buenos Aires in December, to secure a permanent solution for public stockholding programmes for food security and a simple and effective special safeguard mechanism in agriculture trade, trade envoys told the *South-North Development Monitor* (SUNS).

Perhaps Buenos Aires is the only chance for the G33 group of developing and least-developed countries to secure unambiguous outcomes on the permanent solution for public stockholding programmes, the special safeguard mechanism and other developmental issues, said a trade envoy who asked not to be quoted.

This is more so, at a time “when the WTO Director-General Roberto Azevedo and a group of developing countries led by Brazil and Argentina are making a concerted effort to shift the focus of the eleventh ministerial meeting to e-commerce and investment facilitation among others, instead of securing the developmental outcomes as set out in the Doha Work Programme”, the envoy said.

“The Buenos Aires meeting is being prepared as a venue for launching the so-called 21st century issues, such as e-commerce and investment facilitation, by two countries – Brazil and Argentina – which had till now insisted that agriculture and other unresolved developmental issues of the global trading system of the 20th century must remain at the centre,” the envoy said.

The Director-General – who has been all over the place with Alibaba Group’s chairman Jack Ma extolling gains from e-commerce – is queering the pitch for both e-commerce and investment facilitation as though it is a WTO secretariat-driven process, the envoy suggested.

In the face of such an unprecedented effort by the WTO secretariat under the leadership of Azevedo and by neoliberal governments in Brazil and Argentina, the G33 not only faces an uphill battle but, in all probability, could well be asked to make a heavy payment even for securing less-than-credible outcomes on the permanent solution for public stockholding programmes for food security and the special safeguard mechanism, the envoy maintained.

G33 submission

Against this backdrop, the G33’s submission “Reaffirming Development – MC 11” circulated on 25 April assumes importance.

The group renewed the “longstanding calls for global trade reforms that address inequities and imbalances in the Uruguay Round Agreement on Agriculture (AoA) so that all WTO Members would be governed by a multilateral trading system (MTS) under the WTO which is not only open, transparent, and market-oriented but also, more importantly, development-oriented, fair and provides a level playing field.”

It is well established by several studies that the Uruguay Round was a sweetheart deal between the then two major

agriculture subsidizers – the United States and the European Union – which was poetically concluded at Blair House in Washington in 1990.

Attempts to address the inequities arising from the Uruguay Round were started by Brazil, which created the G20 group of developing countries in 2003. On the eve of the WTO's fifth Ministerial Conference in Cancun in 2003, the US had reversed course from its longstanding focus against EU agricultural policies and joined hands with the EU to accommodate each other's policies and mount a joint assault on the agricultural markets of developing countries. In response to this, Brazil had then reached out to India and China to form the G20, much to the chagrin of the EU which denounced the move at the WTO.

But the G20 is now dead for all practical purposes and is hardly interested in addressing the inequities at this juncture, in the face of opposition from the US and the EU.

The G33 pointed out in its submission that “developed Members have expansive flexibilities in the AoA, which make their farmers and exporters artificially competitive. These flexibilities include, amongst others, high AMS [Aggregate Measurement of Support] entitlements with no product specific caps on AMS; very high levels of total per capita domestic support; non-transparent and complex tariff-rate quota (TRQ) and non-ad valorem tariff systems including tariff peaks and escalation; and highest entitlements to the special safeguard provisions (SSG), among others.”

Agricultural tariffs in the developing countries, the G33 argued, “have not been able to match these wide-ranging flexibilities causing periodic import surges and almost permanent market distortions in agriculture trade to the disadvantage of developing Members where agriculture is characterized by small subsistence farming and market failure”.

Despite the WTO Agreement's built-in agenda of continuing the reform process in agriculture trade, which was exhaustively negotiated and clarified in the 2001 Doha Work Programme as well as the revised draft agriculture negotiating modalities of December 2008, attempts are now being made to kill those developmental commitments once and for all.

In the face of these developments, the developing countries can achieve a development-oriented outcome only if they remain solidly united to ensure that “the negotiations must continue towards

and after the 11th Ministerial Conference (MC11) at Buenos Aires, building on the various Ministerial decisions / declarations and the development framework we have agreed to date since 2001.”

A credible and balanced outcome

The G33 maintained that it is ready to “engage constructively and contribute to a credible and balanced outcome, which withstands the test of development at MC11 at Buenos Aires and beyond”.

It maintained that “as part of the balancing and S&DT [special and differential treatment] instruments, the G33 has long been calling for meaningful Special Products (SP), an accessible and effective Special Safeguard Mechanism (SSM) and a permanent solution on Public Stock Holding (PSH) for food security purposes.”

Further, “these tools,” the G33 argued forcefully, “are needed for sustaining investments in agriculture for food security, livelihood security and rural development, as well as addressing the destabilizing and crippling effects of import surges and downward price swings in the increasingly volatile global agricultural markets largely due to huge subsidies in productions and exports by the developed Members.”

It said “there should be a permanent solution on public stockholding for food security purposes and a Special Safeguard Mechanism for developing Members as mandated. There is a clear mandate to arrive and adopt a permanent solution on Public Stock Holding (PSH) for food security purposes by 2017.”

“The Nairobi Ministerial Decision on SSM for developing Members has reinforced and strengthened the mandate in the Hong Kong Ministerial Declaration to establish both price and volume-based SSM,” the G33 maintained.

The G33 urged WTO members to “constructively and meaningfully engage on the two most important issues of SSM and PSH with a view to deliver them in MC11 so that developing Members are equipped with these tools to counterbalance some of the inequities built into the WTO rules in favour of the developed Members.”

This can happen only if the developing countries remain united in thwarting the “stonewalling” and “diversionary” tactics adopted by the US and the EU, aided by the WTO Director-General and Brazil, said several envoys who had participated in the Nairobi Ministerial Conference in 2015.

The recent appointment of a new WTO agriculture negotiating chairperson, in which the Director-General played a major role, has only revived memories of the manner in which the Nairobi outcomes were finalized, said several African and Asian envoys who asked not to be quoted.

The new chair, Ambassador Stephen Karau from Kenya, said on 26 April that he is capable of overseeing the negotiations given his role in overseeing the discussions on finalizing the Nairobi Ministerial Declaration in 2015.

Unless the G33 wages a do-or-die battle to secure its two goals at Buenos Aires, however, the writing on the wall is anything but encouraging, several trade envoys said. (SUNS8452) □

India's TFS proposal gets little support

India's proposal for launching talks at the WTO on trade facilitation in services has sparked concern among developing countries which contend that it is too wide-ranging and not covered by a WTO negotiating mandate.

by D. Ravi Kanth

GENEVA: Members of the African Group and least-developed countries on 3 May raised several systemic concerns over India's draft negotiating proposal for facilitating trade in services at the WTO.

In raising their concerns, these members conveyed unmistakably that it was difficult to discuss the proposal due to lack of a mandate as well as in the pre-

vailing international political climate, services negotiators told the *South-North Development Monitor* (SUNS).

Major developed countries such as the United States, the European Union, Australia and Canada among others also expressed skepticism in varying degrees over the trade facilitation in services (TFS) proposal, suggesting that the provisions in the proposal are not ripe for

discussion at this juncture, said several participants who asked not to be quoted.

Two countries – Turkey and Switzerland – welcomed India's proposal for starting discussions, while Korea reminded India that there could be many more trade facilitation elements such as e-commerce and investment facilitation.

India however remains opposed to WTO discussions on both e-commerce and investment facilitation as sought by China, Brazil, Argentina, Korea and Australia among others.

“Lively discussion”

In an unusual development rarely witnessed during a negotiating session, the chair of the Doha negotiating body for services, Ambassador Hector Marcelo Cima from Argentina, gave the floor to the head of the WTO secretariat's services division, Abdel-Hamid Mamdouh, to comment on India's TFS proposal.

Despite sharp concerns raised by many developing and developed countries on the proposal, Mamdouh apparently praised the proposal, saying “we have not seen lively discussion like this for some time,” according to participants present at the meeting.

“From an institutional point of view, it [India's TFS proposal] is very refreshing,” Mamdouh said, suggesting that “a lot of issues have been raised of which there is a factual background within the secretariat,” and “in situations like this, [as] in prep[aration] for the Uruguay Round, the *acquis* to this kind of discussion is having an open mind and avoiding an all-or-nothing approach.”

“A lot of rich elements [in the Indian proposal] are here; and what helps is finding the right methodology – and structure of a discussion – and taking this on a thematic basis helps to clarify a lot of the conceptual gaps that are there [in the proposal],” the WTO official maintained.

“There is a lot of energy – very important but I would suggest this would not be seen as the end of the line,” Mamdouh said.

During the three-hour special negotiating session, convened to discuss India's TFS proposal, an Indian official maintained that the proposal, which is modelled along the lines of the Trade Facilitation Agreement (TFA) for goods, is not about new market access.

India said the proposal, which was being introduced for the third time after it was discussed during meetings of the WTO Working Party on Domestic Regulation and the Council for Trade in Services, contains issues on facilitation that

ought to apply to all sectors even if members have not taken prior commitments.

TFS, India argued, should not be construed as a vehicle for market access and services liberalization but as an attempt for ensuring that existing commitments are meaningful, according to those present at the meeting.

In the face of increasing linkages being drawn in the Indian proposal for simplifying cross-border services in Mode 1 of the WTO's General Agreement on Trade in Services (GATS), India said the improvements sought in cross-border services are not about e-commerce.

The Indian official also suggested that the use of the word “immigration” by some members was misleading as the TFS proposal is seeking only improvements in Mode 4 of temporary movement of short-term services providers.

Concerns

On behalf of the African Group, Rwanda raised three broad concerns: (i) lack of mandate, (ii) overly ambitious scope, and (iii) lack of balance.

The Indian proposal, according to Rwanda, contains few issues that are covered by the mandate and includes many new issues which do not fall under the Doha mandate. The scope of the TFS proposal is extremely broad, while the TFA is limited to customs procedures that cannot be extended to the entire new services agreement. More importantly, on balance, the African Group said, the core issue is agriculture given its important role in employment generation.

“In the absence of a discernible progress on elimination by developed countries of harmful subsidies that distort market prices – which undermined agriculture in Africa since many decades – and a lack of progress on the permanent solution for public stockholding programmes for food security, we take a pragmatic view that there are extremely minimal realistic prospects for taking up the TFS,” Rwanda said emphatically, according to a negotiator who asked not to be quoted.

The African Group also maintained that there is little or no chance of the TFS proposal delivering on Mode 4 in the current international climate.

Bolivia said that the TFS proposal will raise systemic concerns, suggesting that there is no mandate to discuss issues in Mode 1 concerning cross-border services.

Canada issued a mixed comment, viewing TFS as a bold concept and suggesting that the TFA was about trade in goods and domestic regulation (DR) is

about services. India wants to apply both the TFA and DR, Canada suggested. Canada said sectoral approaches would be better at this juncture.

South Africa concurred with Rwanda on the overly ambitious scope and lack of mandate for discussing India's TFS proposal at this juncture. Apparently, South Africa said it is not in a position to agree with the Indian proposal given the commitments it undertook during the previous Uruguay Round negotiations under an apartheid regime. Further, the proposal will widen the differences in commitments and obligations as it would reduce the scope for applying the right to regulate issues that fall in the domain of domestic policymaking.

South Africa reminded India that the Doha Development Agenda was launched on the promise of helping developing countries to integrate into the global trading system. The developing countries were promised that the existing inequities, particularly in agriculture, would be addressed. But after 16 years of negotiations, there is no serious attempt to remove or reduce seriously trade-distorting domestic agricultural subsidies, South Africa said, adding that its participation in the services negotiations will hinge on the outcomes in agriculture, particularly in the reduction of trade-distorting domestic subsidies.

South Africa said it continues to have profound concerns about the Indian proposal as it goes well beyond the Doha Development Agenda, including the provisions in Article 19 of the GATS as well as Annex C of the Hong Kong Ministerial Declaration.

Moreover, at a time when countries remain opposed to both investment facilitation and e-commerce, the Indian proposal is raising these same new issues in a different context, South Africa said. The proposal, according to South Africa, includes Modes 2 and 3 as well as elements of e-commerce. It reminded India about paragraph 34 of the Nairobi Ministerial Declaration which has acknowledged that some members do not agree to identify or discuss new issues for negotiations.

South Africa said that while it would consider improvements in Mode 4 as part of a development round, the improvements sought in Modes 1, 2 and 3 in the Indian proposal and by including new issues lack an overall mandate.

On behalf of the least-developed countries (LDCs), Uganda raised fundamental concerns on India's TFS proposal while welcoming the improvements in

Mode 4.

Uganda said “trade rules are primarily designed to ensure market access and not directly defined to promote efficiency or social welfare,” suggesting members are concerned about adoption of disciplines that are highly intrusive in the domestic domain.

Uganda said the LDCs, which are the weakest members of the global trading organization, will only adhere to ministerial decisions, declarations and mandates. It said what is proposed by India on TFS has no “mandate”, suggesting that the LDC group seeks improvements in Mode 4 for assisting its services providers. But the Indian proposal could initiate negotiations on e-commerce “with neither an explicit mandate from our ministers, nor consensus from all members,” Uganda said.

For LDCs, issues such as duty-free and quota-free market access, rules of origin, cotton and the services waiver as contained in the mandate, along with trade-distorting domestic subsidies in agriculture, are vital, and not TFS that has no mandate, Uganda said.

Several other countries such as Cuba and Venezuela also expressed the same

concerns, while Kenya asked India to clarify how the TFS issues could be negotiated without a mandate, according to participants present at the meeting.

Argentina and Brazil welcomed India’s proposal, suggesting that they are ready to discuss the provisions, while China sought clarifications on technical issues.

The US, the EU and Australia, among others, made ambiguous statements on the Indian proposal. The US acknowledged that the current environment has made known sensitivities harder to achieve, arguing that India’s proposal will take a long time for any resolution.

In crux, India has made itself vulnerable by introducing the TFS proposal in the Doha services negotiating group after adopting strong positions on e-commerce and investment facilitation. By raising TFS at this inappropriate time, India is unwittingly undermining the likely outcomes on the permanent solution for public stockholding programmes for food security and the special safeguard mechanism for developing countries, trade negotiators said. (SUNS8456) □

The face-off with the chair reached boiling point when Uganda insisted that there should be no record of an informal meeting that was convened without any prior notice. But the chair chose to overrule Uganda’s objections and gave the floor to the proponents to make clarifications on their proposals raised during the last formal meeting on 14 March.

Proposals

The proponents on transparency – Australia, Colombia, the EU, Japan, Korea, Mexico, New Zealand and Chinese Taipei, which were all participants in the failed TiSA negotiations – called for incorporating an article on “transparency” to cover elements of domestic regulation related to the transparency of measures within the scope of Article VI.4 of the WTO’s General Agreement on Trade in Services (GATS).

Much of the language in the proposal is drawn from the TiSA negotiating text, said a services negotiator from an African country.

The proposal on transparency has suggested elements of domestic regulation related to the development of licensing requirements and procedures, qualification requirements and procedures, and technical standards which would be addressed through separate proposals on development of measures and technical standards. It has also called for additional elements to be developed to address development, general provisions and institutional provisions.

The proposal says, “Where a Member requires authorization for supply of a service, further to GATS Article III, the Member shall provide the information necessary for service suppliers or persons seeking to supply a service to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorization.”

The information shall include: (a) the requirements and procedures; (b) contact information of relevant competent authorities; (c) fees; (d) technical standards; (e) procedures for appeal or review of decisions concerning applications; (f) procedures for monitoring or enforcing compliance with the terms and conditions of licences; (g) opportunities for public involvement, such as through hearings or comments; and (h) indicative timeframes for processing of an application.

Efforts to import parts of failed TiSA into services DR thwarted

Proposals said to be drawn from failed talks on liberalizing trade in services provoked intense debate at a recent meeting of the WTO body charged with negotiating disciplines on domestic services regulation.

by D. Ravi Kanth

GENEVA: Many developing and least-developed countries on 9 May thwarted attempts by the chairperson of the WTO Working Party on Domestic Regulation (WPDR) to steamroll discussions on proposals apparently incorporated from the failed Trade in Services Agreement (TiSA) negotiations, services negotiators told the *South-North Development Monitor* (SUNS).

The developing and least-developed countries – Cameroon, Rwanda on behalf of the African Group, South Africa, Uganda which coordinates the least-developed countries (LDCs) group, Bolivia, and Cuba – raised procedural and systemic objections over the manner in which the chair, Katarzyna Stecz from Poland, sought to press ahead with informal discussions of the proposals based on requests from the proponents, said services negotiators who asked not

to be quoted.

The proponents, which included the European Union, Australia, Chile, Hong Kong (China), Switzerland, New Zealand and Colombia, sought to clarify their respective domestic regulation proposals on the “administration of measures”, “development of measures” and “transparency”, and introduced their new proposal on “technical standards.”

These proposals, according to developing-country services negotiators, are being incorporated from the failed TiSA negotiating text.

The developing countries asked the chair for clarifications on how she intended to proceed with the discussions in informal mode. Citing procedural and systemic grounds, they told the chair not to prepare an informal summary of the proceedings under her own responsibility.

On “development of measures”, the proponents, which included Hong Kong (China), New Zealand and Switzerland, have suggested that “where a Member adopts or maintains measures relating to licensing requirements and procedures, qualification requirements and procedures and technical standards, the Member shall ensure” that:

(a) such measures are based on objective and transparent criteria;

(b) such measures are not more burdensome than necessary to ensure the quality of the service;

(c) licensing and qualification procedures are reasonable and do not in themselves unduly impair the fulfilment of requirements;

(d) the procedures are impartial, and that the procedures are adequate for applicants to demonstrate whether they meet the requirements, where such requirements exist; and

(e) the competent authority reaches and administers its decisions in an independent manner.

Further, the proponents argued that “in determining whether a Member is in conformity with the obligation under (a), (b) and (c) of this paragraph, account shall be taken of international standards of relevant international organizations applied by that Member.”

Objections

The African countries feel these measures impose huge obligations on them while eroding their policy space for regulatory measures.

Cameroon objected to the manner in which the chair hastily convened an informal meeting to discuss these proposals without giving time for the government to consider them.

The same concern was voiced by Rwanda on behalf of the African Group, Nigeria, Uganda, Kenya, South Africa, Bolivia and Cuba. They said that the informal meeting had been convened at a time when their governments had not even had the time to consider the proposals, two of which were circulated within the last few days.

Further, they maintained that informal meetings cannot be the venue for discussing formal proposals and that any substantive engagement should take place in formal sessions.

Uganda indicated that if members agree to implement these disciplines, there needs to be an account of the nego-

tiating history with all clarifications offered by the proponents put on record.

Rwanda, Uganda, South Africa and Kenya were reluctant to agree to the preparation of an informal chair’s summary of the proceedings since they were not in a position to engage substantively until they had completed their own consultations, and said that a chair’s report would not reflect the realities of the capacity constraints facing smaller delegations.

Many African countries as well as Bolivia, Cuba and Venezuela expressed concern about the proposals undermining the sovereign right of their countries to regulate. They also voiced concern on systemic grounds since the proposals had been incorporated from the failed

TiSA negotiations.

Brazil sought the chair to accelerate the discussions based on a detailed calendar of proceedings. The proponents clarified on several issues that were objected to by members.

The showdown between the African countries and the chair led to confusion even though the proponents proceeded to make their clarificatory remarks, said a negotiator from the African Group. Ultimately, it was not clear why the chair had pursued such an approach at an informal meeting.

The African Group was also sharply concerned over the refusal by the proponents to consider the draft texts issued in 2009 and 2011 by the then chairs of the WPDR negotiations. (SUNS8460) □

Positions unchanged on public stockholding, SSM, HOD told

Member states are still far apart on the issues to be prioritized in the run-up to the WTO’s Ministerial Conference this December, as revealed by deliberations at an 8 May meeting of heads of delegation.

by Kanaga Raja

GENEVA: An informal meeting of heads of delegation (HOD) at the WTO on 8 May showed that members remain sharply divided on the key issues and possible deliverables at the eleventh Ministerial Conference (MC11) in Buenos Aires this December, with a large majority of developing countries insisting that the focus should be based on the Doha Work Programme and Nairobi ministerial decisions, and not on any new issues like e-commerce or investment facilitation.

Reports at the HOD meeting by the chairpersons of the various WTO negotiating groups on their recent consultations have revealed continued differences among the membership on the key issues, in particular on public stockholding for food security purposes and on the special safeguard mechanism (SSM), which are of crucial importance to developing countries.

The meeting also heard the WTO Director-General Roberto Azevedo offering his assessment of the state of play in the negotiations to date.

A number of delegations intervened following the reports by the DG and the various chairs, highlighting their priorities for possible outcomes at MC11.

According to trade officials, in his

assessment, the Director-General said that time is running short with respect to the preparations for MC11. It is important for members to avoid staying in their comfort zones and repeating old positions, he said.

In his comments as posted on the WTO website, Azevedo said: “Members have been very active in recent weeks. They have been exploring different areas and in some of them they are beginning to move towards higher levels of specificity. The Doha negotiating groups have been continuing their work, and some have been particularly active.

“We have seen a number of new papers and ideas being put forward – covering issues such as domestic regulation, trade remedies, services facilitation and investment facilitation. I am informed that other papers and ideas are in the pipeline in areas such as special and differential treatment and SMEs [small and medium-sized enterprises].”

Azevedo added: “My hope is that we can sustain this prevailing momentum and positive engagement,” he said. “Of course this should include steps on development and in support of LDCs [least-developed countries] – as well as steps in those areas where action is mandated at MC11, such as public stockhold-

ing. The forthcoming Aid for Trade Global Review will help to put a very welcome spotlight on some of these issues. Time is passing very quickly. By the summer our preparations for Buenos Aires should be advancing with a much greater sense of clarity and purpose.”

“As I have said before, proponents have a particular responsibility here to build momentum behind their ideas. The Chairs and I will do our part to keep the entire membership on board for any progress that you can collectively achieve,” said Azevedo.

Reports by negotiating chairs

The chairs of the various Doha negotiating groups then reported on their recent consultations.

According to trade officials, the new chair of the Committee on Agriculture in Special Session, Ambassador Stephen Karau of Kenya, reported that he has held 20 consultations including with coordinators of various country groupings. In these consultations, he asked the delegations about their priorities for MC11 and what process would lead to an outcome that they would like to see. On the prospects, he asked members about the main difficulties that might make it difficult for an agreed outcome.

Karau voiced encouragement over the level of engagement of most delegations. The discussions on process are more advanced than on the others.

On the question of priorities, while there are diverging views on what can be achieved on domestic support by MC11, a large number of delegations said that this is one of their priority issues. There are some contextual differences and several countries did put forward what they said were red lines on this issue. Members are more positively ready to identify potential deliverables before the summer break, said the chair.

On domestic support on cotton, the overwhelming majority of members support meaningful outcomes on this issue.

On the issue of public stockholding for food security purposes, the chair said all members are cognizant of the mandate to find a permanent solution by MC11 but positions have not evolved, most notably on the point of who should suggest ways to address the concerns of the non-proponents.

The chair reported that there has been very little action on the issue of agricultural market access. Some members would like to see an outcome in this area, but others have said that it is very diffi-

cult to see an outcome by MC11.

On the SSM, the chair said that there is recognition on the need to pursue negotiations, but there are divergent opinions on what the outcome would be.

The chair also highlighted the issue of export restrictions.

On the way forward, the chair said that he would hold an open-ended meeting on 1 June, with dedicated sessions on public stockholding and the SSM.

The chair of the Negotiating Group on Rules, Ambassador Wayne McCook of Jamaica, said that there has been a lot of action on fisheries subsidies, with five proposals being tabled to date. All of them refer to Sustainable Development Goal (SDG) target 14.6. Members have begun to talk about specific topics and the idea is to deepen technical discussions on these issues. The chair also noted that China has put forward a new proposal on trade remedies.

The chair of the Council for Trade in Services in Special Session, Ambassador Hector Marcelo Cima of Argentina, reported that the areas of discussion have been domestic regulation, trade facilitation in services, market access and e-commerce.

He maintained that a good number of members have shown an interest in market access and e-commerce but concrete proposals are needed in order to take these issues up. Members are reflecting on what to do but there are currently no proposals on the table, which are needed very soon.

On the issue of domestic regulation, the chair said that there are proposals to deal with the administration of measures, transparency, development issues and technical standards. According to the chair, there is a wide level of acceptance that these issues can go forward. He said that the next steps will be a complete set of proposals on the table before the summer break.

The chair said that there has been a good level of discussion on India's proposal on trade facilitation in services (at the Working Party on Domestic Regulation, the Council for Trade in Services and the Special Session of the Council for Trade in Services). According to trade officials, the chair maintained that members' views differ on this, but there is strong support and there have been positive statements in terms of members' reactions to India's proposal.

The chair of the negotiating group on non-agricultural market access (NAMA), Ambassador Didier Chambovey of Switzerland, said that

nothing has changed since the HOD meeting in December 2016. There has been no movement at all on the issue of tariff cutting. There are those who do not want to cut tariffs in any way, shape or form, those who link the issue to agriculture, those who believe a multilateral approach to tariff cutting is not going to work and prefer a plurilateral approach, and those who say that a tariff cut is not feasible and that the focus should instead be on increasing tariff bindings and reducing “water” in members' tariff schedules. Some members have said that they are keen to cut tariffs but no new proposals have been forthcoming, said the chair.

On non-tariff barriers, the chair said the situation is a little more encouraging but no new proposals have come forward.

The chair of the Committee on Trade and Environment in Special Session, Ambassador Syed Tauqir Shah of Pakistan, said that he has held a series of bilaterals. There is support among the membership but he has not detected any change in positions. No one has come forward with any concrete proposal. Some delegations say that fisheries subsidies should be considered as an environmental contribution as it has a very strong trade and environment dimension. Others would like to see the negotiations restarted on the Environmental Goods Agreement (EGA).

WTO Deputy Director-General David Shark of the United States, on behalf of the chair of the Committee on Trade and Development in Special Session, said that with respect to the proposals on special and differential treatment (SDT), the LDC group and the African Group are looking to shorten the list of proposals and will put forward something very soon.

Fellow Deputy DG Yi Xiaozhun of China, on behalf of the chair of the TRIPS Council in Special Session, said that the situation has not advanced since December 2016. There are differences in substance and scope. Delegations that support moving forward consider that there will be little likelihood of any kind of an agreement on the register of geographical indications (GI) for wines and spirits, as well as an extension of the GI register beyond wines and spirits, he said.

Deputy DG Shark, on behalf of the new chair of the Dispute Settlement Body in Special Session, said that the chair will follow the approach set out by his predecessor. He will be looking at 12 issues that have been identified and will try to

find convergence among them. The idea is to do a stocktaking just before or just after the summer break.

Issues of priority

Following the reports by the DG and the negotiating chairs, a number of member state delegations put forward their views in their respective interventions.

According to trade officials, Cambodia, on behalf of the LDCs, highlighted the issues of priority to the LDC group, namely trade-distorting domestic support in agriculture, public stockholding for food security purposes, SDT and the SSM.

It would like to see an agreement on fisheries subsidies by MC11 covering illegal, unreported and unregulated (IUU) fishing, reduction in subsidies and greater disciplines on fisheries practices that lead to overcapacity and overfishing.

It would also like to see full implementation of decisions on rules of origin and the services waiver for LDCs that came out of the Nairobi Ministerial Conference in 2015, as well as on duty-free and quota-free market access for LDC products.

On e-commerce, the LDCs would like members to stick to the 1998 mandate.

Rwanda, on behalf of the African Group, pointed out that agriculture is key. It would like to see trade-distorting domestic support eliminated. It would also like to see an agreement reached on cotton as well as on public stockholding and the SSM.

The African Group would like to see a multilateral outcome on fisheries subsidies. It highlighted elimination of subsidies for IUU fishing, and disciplines on those subsidies that contribute to overfishing.

The African Group pointed out that SDT is an integral part of all multilateral agreements.

On the issue of domestic regulation in services, the African Group suggested that this seems to be an attempt to narrow developing countries' policy space and impinges on the right to regulate.

Guyana, on behalf of the African, Caribbean and Pacific (ACP) Group, said that the WTO is at a critical point. There is a need for outcomes on the key Doha Development Agenda (DDA) objectives by MC11.

It would like to see the unfulfilled areas of the Nairobi Ministerial Declaration be a priority. It also believes that the issue of fisheries subsidies is critically

important, such as banning IUU fishing. It also wants to ensure that artisanal and small-scale fishing fleets are excluded. It would like to see delivery on this issue as a contribution of the WTO to SDG target 14.6.

On agriculture, it wants to see a substantial reduction in trade-distorting domestic support. It also wants something on cotton, public stockholding and the SSM. It further highlighted the importance of SDT.

On services, it said that the ACP Group is in the process of reviewing the proposals that have been made on domestic regulation. It pointed out that e-commerce is not a DDA initiative and should not replace DDA initiatives.

Nepal expressed support for the LDC statement. It wants to see members build on decisions taken on the LDCs in the Hong Kong, Bali and Nairobi Ministerial Conferences. It was of the view that issues like e-commerce, micro, small and medium-sized enterprises (MSMEs), trade facilitation in services, and domestic regulation are outside of the existing negotiating mandates.

The Philippines, on behalf of the Association of Southeast Asian Nations (ASEAN), said it is in favour of moving ahead on e-commerce and MSMEs.

Respecting mandates

According to trade officials, India recalled that at the last HOD meeting, it had raised some important issues and challenges for the WTO in terms of process and substance. Those concerns remain valid, it said, adding that the notion of mandates is something that members need to respect. It pointed out that many of the proposals put forward do not have an existing mandate. While some members are identifying these issues, these mandates do not exist and there is no consensus on going forward with a multilateral negotiation for e-commerce, MSMEs or investment facilitation. These are highly problematic in terms of any rule-making, it said.

Moreover, said India, the policy implications of these particular proposals have not been fully understood, and it seems as though the principal result of these policies would be to constrain policy space in developing countries.

India noted that there are major divergences on the mandate. A large percentage of the members look to the Doha mandate. Some of the standalone proposals do not provide any kind of balance as the Doha mandate does.

When talking about trade, the ques-

tion to consider is trade for whose benefit, India said. It is very interesting to contemplate what the impact of these kinds of proposals might be on developing countries. India recognized that many developing countries are supportive of these proposals, but it does not believe that there has been an effort to try and understand what the impact of such an agreement might actually be.

India expressed much support for both the public stockholding and SSM proposals, saying that these will level the playing field and aid millions of people in the developing world. It pointed out that there is a deadline of 2017 for public stockholding.

On e-commerce, it said that there is no problem with exploring and discussing the issue, but it will not agree to any rule-making in this area.

On the issue of trade facilitation in services, India is looking at members' comments made in various fora. It will assess these and then decide what to do next.

On the issues of investment facilitation and MSMEs, India underlined that this is completely outside the responsibility of the WTO.

Costa Rica, on behalf of the group of Friends of E-commerce for Development (FED), was of the view that e-commerce is very important for development. It can help bring together the trade, digital and development agendas. It said that the FED has a roadmap recognizing seven key topics. It is convinced that MC11 will be a tipping point for this issue and can lead to more in-depth discussions on e-commerce.

Japan said that collectively there is a need to show that the WTO system is working and addressing challenges for all, including the LDCs and MSMEs. MC11 is an important moment to try and give evidence of this.

There should be different approaches to issues and also to modalities of outcomes, Japan said. If a multilateral approach is not possible, then members can go through a plurilateral approach.

Japan said it is prepared to talk about all the issues including agriculture. It said that the issue of domestic support should be discussed as a whole, taking into account as well the proposal on trade facilitation in services put forward by India.

Japan took note of the proposal by New Zealand, Iceland and Pakistan on fisheries subsidies. It wants a fact-based discussion that focuses on all considerations including resource management.

It said it is very important to have a discussion on investment facilitation. It is not yet time to discuss the balance of any package but there should continue to be in-depth, proposal-driven discussions till the summer break, and after that to consider specific modalities for each outcome, and at that point try and assess what the picture may be, said Japan.

Ecuador said that SDT is extremely important. It also highlighted adherence to the 1998 mandate on e-commerce and said that the issue should be dealt with in the context of the existing mandate.

On the issue of domestic regulation in services, it said that while it is important to discuss it, it should not in any way impinge on members' right to regulate.

China said that with respect to its proposal on trade remedies, there is a need to clarify and improve the existing rules. Transparency and due process are key elements.

On fisheries subsidies, China took note of the proposal by New Zealand, Iceland and Pakistan. It believes that fisheries are very important to people's livelihood, but there is a need to make sure that account is taken of fishery management practices.

Trade remedies and fisheries subsidies are both within the framework of rules, China said. It hopes that both can receive equal treatment and move forward in tandem.

Cuba underlined that the DDA is still relevant and there is a need to focus on its core issues. None of these issues have been advanced in the way that it would like.

Agriculture is the yardstick for assessing the overall level of ambition in the negotiations, it said. It also supported the 1998 work programme on e-commerce.

In terms of the way forward, Cuba said there must be a transparent and inclusive process with a bottom-up approach.

The European Union said the issues of fisheries subsidies and domestic regulation are where the most advanced discussions have been taking place.

On domestic regulation in services, it said that all of the building blocks for a consolidated text are already on the table.

On trade facilitation in services, it took note of the Indian proposal and would like to see this taken up as part of the overall discussion on services.

It also supported the FED and would like to see the issue of e-contracts and authorization taken up, as well as consumer protection.

The EU was of the view that progress needs to be made on the issue of trade-distorting domestic support, and that this could probably go hand in hand with an agreement on public stockholding. A very broad segment of the membership is supportive of this, it maintained.

Bolivia stressed the importance of the DDA.

African industrialization

Uganda pointed out that Africa's share of trade has fallen to below 3% of the global total, and 80% of African exports are raw commodities. Only 20% are finished goods. Africa needs to use trade policy instruments to give Africans the industrialization momentum that they need, because they need to add value to their exports. Manufacturing through industrialization could create as many as 5 million new jobs each year.

On the issue of domestic regulation, Uganda said that this is seen as a means of constraining developing-country policy space.

On process, it said that the Nairobi Ministerial Conference was imposed on the membership by a small group and this is to be avoided. There needs to be a discussion involving the entire membership through a bottom-up approach.

Brazil said that there has been a lot of discussion, but there is no common set of goals or even landing zones at the moment. It is essential that development is at the centre of the work that is being done.

It expressed readiness to discuss everything on the table including the new issues. After the summer break, members can begin to discuss the issue of balance.

Agriculture is of paramount importance, it said, adding that the overall level of ambition will be set by what happens in agriculture.

Trade-distorting domestic support is a key issue for Brazil. It is prepared to discuss domestic regulation and trade facilitation in services. E-commerce would be a positive outcome for Buenos Aires if some progress can be made here.

Korea supported the G33 proposals on agriculture. Agriculture is a gateway and public stockholding, the SSM and domestic support are key, it said.

Pakistan said that non-tariff barriers are a key issue. Agriculture is also extremely important – 93% of farmers in Pakistan are subsistence farmers. Domestic support continues to cause trade distortions and must be addressed.

It voiced commitment to public stockholding for food security. It understands that this is important and worthy of consideration but it is important that no food security programme of one member affects negatively the food security programmes of another. It should not lead to trade distortion.

It also favours a solid agreement on fisheries subsidies. There is a need to address the issue of e-commerce at MC11 in a meaningful manner.

Indonesia, on behalf of the G33, said that time is very short and there is a need to deliver on the mandates from the Nairobi Ministerial Conference on public stockholding and the SSM. If negotiations commence on agricultural market access, it would like to see special products as part of that.

On behalf of itself, Indonesia said that fisheries subsidies and domestic regulation may be two issues which are most likely to result in deliverables in Buenos Aires. But special and differential treatment must be an integral part of any outcome.

Mali, on behalf of the Cotton-4 group, said that trade-distorting domestic support is still a problem affecting the region, and affecting cotton in particular. It will soon submit a proposal which would deal with the question of trade-distorting domestic support.

Bangladesh said that there is a need to focus on the issues of importance to the LDCs including duty-free, quota-free market access for LDC products. It also called for decisions on an SSM and public stockholding for food security, which could be used for new programmes, as the current text is limited to existing programmes.

Venezuela noted that there are some proposals being put forward by members which are not in line with the Nairobi Ministerial Declaration. No new topic can be discussed at the expense of the Doha issues, it stressed.

It also highlighted the importance of public stockholding and the SSM.

What is being proposed on domestic regulation would limit policy space, while on e-commerce, what is being proposed goes beyond the existing mandate. There is no mandate on investment facilitation, it said.

Fiji stressed the importance of the issues of agriculture, fisheries subsidies and SDT.

South Africa voiced agreement with the African Group and the ACP Group. It is clear that the difficulties and diver-

(continued on page 16)

Panama urged to deepen reforms on tax evasion

Panama, which was in the global spotlight after the Panama Papers exposed the facilitation of tax abuses in the country, needs to plug gaps in governance and regulation in order to better curb illicit financial flows, says a UN rights expert.

by Kanaga Raja

GENEVA: A United Nations human rights expert has called on the government of Panama to deepen its reforms on tax evasion, focusing amongst others on strengthening governance and incorporating the banking sector in any national strategy towards curbing illicit funds.

Juan Pablo Bohoslavsky, the UN Independent Expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights, made this recommendation at the end of an official visit to the country from 2-10 May.

In an end-of-mission statement, the rights expert noted that illicit financial flows are a global challenge affecting developed and developing countries. They are not accidental or a by-product of the market but often appear to be the result of state-sanctioned practices.

"There is no doubt that these flows can only be effectively addressed and curbed through mechanisms of international cooperation and shared accountability," said the rights expert.

By the same token, responses by one country alone, isolated from structural changes in other jurisdictions or from international efforts to fight opacity, will seldom produce meaningful results.

"This is why I commend Member States of the United Nations for committing themselves to reducing such flows substantially as part of target 16.4 of the 2030 Agenda for Sustainable Development."

Closely linked, the Addis Ababa Action Agenda states that the bulk of the funds needed to reach the Sustainable Development Goals will come from the developing countries themselves through significant gains in domestic resource mobilization.

The reduction of illicit financial flows and other tax abuses and the universally understood need to increase domestic resource mobilization are inherently connected to each other and, of course, to human rights.

While there is a large number of phenomena classified as illicit financial flows and other tax abuses, including illegal tax evasion, clandestine tax avoidance by transnational corporations, bribery, corruption and other criminal activities such as money laundering, trafficking of people, drugs, weapons or child pornography, it has been estimated that the majority of all illicit financial flows are related to cross-border tax-related transactions.

Indeed, said Bohoslavsky, the rationale for international capital movements transferring financial assets or accounting profits to jurisdictions with low (or no) taxation and strong secrecy rules is essentially for reducing tax payments.

Curbing tax-related illicit financial flows ought to include minimizing tax evasion by high-net-worth individuals, commercial tax evasion through trade mis-invoicing and tax avoidance through abusive transfer pricing by transnational corporations.

Global estimates point to a significant amount of wealth held offshore, benefiting from secrecy and the use of financial instruments that have been set in a number of countries, not declared appropriately. Using 2015 estimates available, there is between \$24 trillion and \$36 trillion of unrecorded private wealth invested offshore.

It has been estimated that the relative amount of wealth from developing countries held abroad is much greater than for developed countries, ranging from 20-30% in many African and Latin American countries. It has also been estimated that 85-90% of wealth belongs to fewer than 10 million people – just 0.014% of the world's population.

The rights expert pointed out that there are three main measures that can contribute to overcoming the shadow economy:

(a) abolition of shell companies and anonymous accounts, by imposing a legal requirement for public disclosure of ultimate beneficial ownership informa-

tion of all business entities, including companies, trusts, charities and foundations;

(b) automatic exchange of tax-related information worldwide; and

(c) public country-by-country reporting, mandated by a legal obligation on multinational corporations to submit thorough reports about their assets, profits, revenue, taxes paid and number of employees, their profits and losses in every jurisdiction where they operate rather than presenting a consolidated balance.

"Empty and easily manipulated corporate vehicles, hidden funds with unknown owners, and impunity for designing global corporate strategies to pay zero or near-zero taxes do not deliver inclusive growth."

Areas for reform in Panama

Bohoslavsky noted that the recent so-called "Panama Papers" (along with information leaks about similar phenomena) drew international attention to the scale and volume of tax abuse and money laundering by business corporations, politically exposed persons and high-net-worth individuals from around the world.

"Whilst the international perception is that this scandal was a turning point in the domestic sphere towards enhanced regulation and more transparency in Panama, I have learnt during this visit that there were already a number of discussions and reforms set in place well before the 'Papers', and that the revelations accelerated their implementation, and gave them a more robust focus."

Among these reforms are new obstacles on corporate shares issued to bearer, establishment of an obligation to companies to keep accounting books of offshore transactions, reinforcement of due-diligence requirements on resident agents who are asked to identify the real owners of the corporate vehicles for which they provide services, and regulation and supervision of non-financial actors (such as casinos, Free Trade Zone of Colon, accounting and legal firms, and real estate, among others) which are now obliged to report suspicious transactions.

"Yet, I am convinced that Panama needs to broaden its understanding of the challenges in terms of financial and fiscal opacity," said Bohoslavsky.

The rights expert said that, firstly, he has learnt that tax evasion is not considered a crime under Panama's criminal

law. Those obliged to report suspicious transactions do not have to pay close attention to whether taxes involved have been paid or not. The entire suspicious transaction reporting system does not seem to grasp the fundamental fiscal dimension of the broader problem of illicit financial flows. In other words, “know your client” currently excludes assessing compliance with tax obligations and status at home or abroad. In his view, this gap needs to be closed in the Panamanian regulation without delay.

Secondly, Bohoslavsky believes that the financial and banking sector still needs to be integrated into the agenda of curbing illicit funds in Panama. The banking sector in the country represents approximately 7% of the gross domestic product (GDP), with 90 banks in operation, most of them licensed to carry out general activities domestically and internationally. This begs the question: what role have the banking and financial institutions played in the flows of funds that the corporate vehicles facilitate?

“While it is true that many financial transactions performed by companies formally created in Panama take place in foreign jurisdictions, given that more than 40% of the financial assets in the Panamanian financial sector are sent/lent abroad, I find it absolutely essential that any national strategy towards curbing illicit funds incorporate the banking sector,” he said.

The rights expert also noted that the overall involvement of financial institutions in abusive tax planning strategies for transnational corporations worldwide is confirmed by the number of cases in which individual financial institutions received specific declared penalties and investigations for a host of infractions, the most widespread of which was helping wealthy clients and corporations engage in tax fraud. Panama cannot consider itself an exception, particularly given its highly connected financial platform.

“I therefore encourage the Panamanian banking regulator to broaden the scope and nature of information that is publicly available to offer the complete file: including any investigations of, and sanctions imposed upon, the institutions it supervises as well as the reasons for such investigations and sanctions.”

Panama needs to strengthen the fiscal dimension of due diligence in the banking sector: beyond the volume of the tax actually evaded from the Panamanian state (given the territoriality principle upon which its tax system is based), there is an extraterritorial obligation not to facilitate adverse fiscal impacts in

other jurisdictions.

Thirdly, said Bohoslavsky, in order to effectively implement reforms towards enhanced financial and fiscal transparency in the country, governance must be strengthened. Clear and robust conflict-of-interest legislation must be put in place so that the autonomy and independence of sectorial supervisors and decision-makers are ensured. It is also crucial to guarantee the independence of the judicial branch, including a more participatory and transparent system of appointing judges on the basis of merit and more stability in appointments and staffing to enhance professionalization.

Beyond all the issues already outlined, this means that all states of origin ought to apply clear regulations that make it illegal to intentionally, incorrectly or inaccurately state the price, quantity, quality or other aspect of trade in goods and services in order to move capital or profits to another jurisdiction or to manipulate, evade or avoid any form of taxation.

The “four Panamas”

Bohoslavsky also pointed out that economic growth in a country with a world-class financial sector should bring substantial reductions in economic, social and political inequalities of its population and massive improvements in the enjoyment of economic, social and cultural rights for the poor and marginalized.

Panama takes pride in the strength of its economic model geared towards services and in the impressive 7.2% average annual growth it has achieved during the last decade – more than double the regional average and among the world’s highest. Around 5.5% growth per year is estimated for the years to come.

In absolute terms, growth has led to a clear reduction of poverty, especially since 2004. Between 2008 and 2014 figures indicate a reduction from 26.2% to 18.7% of poverty, and from 14.5% to 10.2% of extreme poverty.

“While this has meant that more people are now considered ‘middle-income’ in the country, I have repeatedly heard of the ‘four Panamas’: wealth and income continue to be sharply stratified and indicate pervasive inequality and exclusion.”

There is a small wealthy urban group, an urban-poor group, a poorer rural Panama, and the worst-off indigenous peoples in the *comarcas*, indigenous territories where the eight indigenous peoples live. Urban extreme pov-

erty represents about 4%, while rural extreme poverty represents 27%, six times higher. In the *comarcas*, poverty is above 70% and extreme poverty as high as 40%, four times the national average.

The rights expert pointed out that Panama has one of the lowest tax/GDP ratios in the Latin American region (16.2% vs the regional average of 22.5% in 2015). While all the countries in the region have increased this ratio from 1990 to 2015, in Panama it remains practically the same.

The Government’s Strategic Plan 2015-2019 acknowledges that development in recent years has been based on a social, economic and institutional structure with multiple imbalances and gaps. It also explicitly aims at enhancing social inclusion.

“I concur with this diagnosis and aim. In my view, lack of balances and loopholes in taxation impede keeping wealth widely distributed and systemic changes are needed to create a more inclusive, fair and productive society,” said Bohoslavsky.

Tax policy is a powerful tool that governments can use to address exclusion and inequality, and to ensure that no group hoards the benefits of economic growth for itself. More importantly, said the rights expert, taxation must also be understood as an essential element in the implementation of international human rights obligations, notably in balancing disparities.

To exemplify, in the flourishing area of high-end real estate and horizontal properties in Panama, especially in Panama City, a current legislative debate is related to lowering the tax on properties. While some developers have argued that the current tax is too high and the valuation too “subjective”, the government rightly considers that a discontinuation of this tax would be detrimental to the overall tax base.

“In addition, I would highlight that property and land taxes in a rapidly urbanizing country like Panama, with ‘financialization’ of housing as a phenomenon, could be an essential element in the fight against poverty and inequality and would also address possible illicit flows via real estate transactions.”

Bohoslavsky called on the national budget to be rationalized, with better planned and regulated public investment in the social areas, which are sorely needed especially in the poor and marginalized areas.

Another critical dimension of the disproportionate attention given to economic growth in detriment of human development and inclusion can be per-

ceived in the implementation of vast investments in infrastructure, agro-industry and hydroelectric power plants.

Panama's economic capacity, easy access to credit, and its priority geared towards providing services to international markets have captured an uneven emphasis in a series of projects, without a robust consideration for human rights and environmental impact assessment prior to carrying them out, said the rights expert. (SUNS8466) □

(continued from page 13)

gences have not disappeared, it said. Many members support the DDA mandate. Others that oppose it have not offered an approach which is unanimously acceptable to the members. So there is a problem with the issue of mandate.

It believes that while e-commerce is of critical importance, this should be addressed within the existing non-negotiating mandate.

Morocco endorsed the African Group statement. It is important to adhere to the DDA mandate, it said.

The United States said that it adheres to the same views that it had expressed at the last meeting in February. It cautioned against raising expectations for MC11, saying that those views have been reinforced in the past two months by what it has seen, which indicates that there is no significant progress anywhere.

Norway said that there are very clear divergences and very hard work ahead of members. It said that fisheries subsidies, trade-distorting domestic support, public stockholding and domestic regulation are deliverables, with the development dimension also being of critical importance.

Nigeria said that it would like to see disciplines on fisheries subsidies, particularly with respect to IUU fishing and overfishing. It is also very much in favour of building on the Bali and Nairobi mandates on public stockholding and the SSM.

Saudi Arabia, on behalf of the Arab Group, stressed on the centrality of the development dimension.

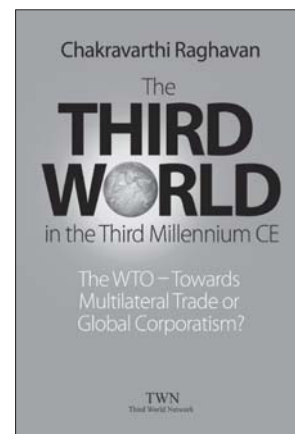
Kenya supported the ACP Group and African Group statements. It stressed the importance of the principle of "less than full reciprocity", and the issues of SDT, public stockholding, the SSM and trade-distorting domestic support. (SUNS8459/8460) □

The Third World in the Third Millennium CE The WTO – Towards Multilateral Trade or Global Corporatism?

By Chakravarthi Raghavan

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