

THIRD WORLD *Economics*

TRENDS & ANALYSIS

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Trade war would exact heavy toll

US actions and threats on the trade front have sparked fears of an all-out trade war. Among the potential casualties of such a conflict would be export-oriented developing economies – and even the US itself.

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WTO investment facilitation activities deferred

Decisions relating to the WTO secretariat's undertakings in the area of investment facilitation have been put off amid questions surrounding its work on this contentious topic.

by D. Ravi Kanth

GENEVA: The chairperson of the WTO General Council, Ambassador Junichi Ihara of Japan, on 26 July informed members that all decisions concerning the activities and technical assistance projects being pursued by the WTO secretariat on investment facilitation "are deferred".

This announcement came following a firestorm of opposition from India, South Africa and several other countries on violations said to have been committed by the secretariat in undertaking projects that lack multilateral approval, trade envoys told the *South-North Development Monitor* (SUNS).

In a decision read out at the General Council meeting, Ihara said several decisions indicated in documents No. WT/BFA/W/450 and WT/BFA/W/454 (which deal with investment facilitation) would not be considered at the meeting and were being deferred to be considered in subsequent meetings of the Council, said a trade envoy who asked not to be quoted.

Concerns over secretariat work

Earlier, on 25 July, WTO Director-General Roberto Azevedo, who is head of the secretariat, had denied that the secretariat had abrogated rules laid out in the Marrakesh Agreement Establishing the WTO by pursuing projects on investment facilitation without multilateral approval.

Serious charges of the secretariat's failure to conduct business as per the Marrakesh Agreement and financial impropriety were raised at the WTO's Committee on Budget, Finance and Administration (CBFA) meeting on 25 July.

India and South Africa, among others, challenged WTO Deputy Director-General Karl Brauner and the chair of the CBFA, Ambassador Juan Esteban Aguirre Martinez from Paraguay, to come clean on how the secretariat pursued workshops and programmes on

investment facilitation that was blocked at the General Council last year.

According to a trade envoy who attended the CBFA meeting, the WTO secretariat informed members that the proposal to undertake technical assistance programmes was "approved on a fast-track basis by DG [Director-General] and has not been procedurally put up to the CBFA, as laid down in the regulations for reporting and review, though it was approved in November 2017 and the expenditure on the project was incurred last year".

Several members – Korea, Japan and Turkey, among others – pressed Brauner to provide all the details of an agreement reached between the Director-General and China on a trust fund for investment facilitation. Members also sought to know whether the secretariat conducted a workshop in Abuja with funds provided by China on investment facilitation.

But the secretariat refused to provide information, saying the agreement was a confidential document.

Members protested that the secretariat's failure to provide basic information raises serious issues of transparency and financial impropriety. They argued that the secretariat has blatantly violated Article VII of the Marrakesh Agreement, which lays down that the CBFA will review the WTO annual budget and financial statement as well as frame the financial regulations.

Article VI of the Marrakesh Agreement states that the secretariat "shall not seek or accept instructions from any government or any other authority external to the WTO. They shall refrain from any action which might adversely reflect on their position as international officials."

In a member-driven multilateral organization, it is improper for the secretariat to generate resources or decide its own policies in areas of work for which

there is expressly no mandate and consensus, members argued.

India said the proposals drawn up by the secretariat “go much beyond justifying approval for projects already undertaken without reporting to the membership” and “they raise serious systemic issues, questions regarding the role of the secretariat, by engaging in activities in non-mandated areas without review or reporting, the consensus (decision-making) principle, allowing any member or group to set policies and objectives for the WTO with contributions even on non-mandated areas”.

“Since this [secretariat’s] proposal is also embedded in the WTO 2017 Financial Performance Report, we would also request the discussion on this report,” India maintained.

Asked at a 25 July briefing convened by the United Nations Correspondents Association whether he or the secretariat violated or abrogated rules of the

Marrakesh Agreement, Azevedo said, “No, it [the question] was not correct.”

He said “there is a discussion now on how to make the process better and I’m all for that”.

When asked again whether what the secretariat did on investment facilitation amounted to violating the Marrakesh Agreement, Azevedo said it was not correct, “but what I cannot allow in any circumstances is that one or two countries or groups of countries decide what technical assistance should be, it is something that they have to decide, and I can’t make determinations on the basis of some groups of countries.”

“If there is a request for technical assistance we will provide and that determination I’m entitled to do,” he said.

In short, Azevedo defied critics by suggesting that he is going to do what he thinks is right regardless of the rules laid out in the Marrakesh Agreement. (SUNS8731) □

larly the US and the EU, signalled their intention to press ahead with “differentiation”, i.e., ensuring that special and differential (S&D) flexibilities are granted to developing countries only on a case-by-case basis and not uniformly as mandated in the Uruguay Round agreements.

Role of the secretariat

According to trade envoys who took part in the TNC meeting, India drew attention to the manner in which the WTO secretariat is functioning in promoting plurilateral initiatives.

India said the Marrakesh Agreement Establishing the WTO “clearly demarcates and lays down that the primary role of the secretariat is to support and strengthen the multilateral track.”

“Moreover, it lays emphasis on the neutrality and [the] need for the secretariat not to align itself or take positions of particular members or groups,” India said, hinting that the secretariat is throwing its weight behind plurilateral initiatives while turning a blind eye to the regular mandated multilateral work.

“The work of the secretariat should be based on mandates rather than areas for which funds are available,” India said.

On the outstanding Doha issues, South Africa’s trade envoy Xavier Carim said “the African Group reaffirmed the developmental objectives embedded in the Doha mandate as well as the principles of full participation, transparency, inclusive processes and consensus-based, Member-driven negotiations and decisions.”

Malawi, on behalf of the ACP Group, said that it had “proactively submitted proposals in agriculture, fisheries, and with the G90, the Doha Declaration paragraph 44 mandate on special and differential treatment.”

Indonesia, on behalf of the G33, said “members must continue the work based on Article 20 of the Agreement on Agriculture and existing mandates given by Bali, Nairobi and preceding Ministerial Conferences.”

The G33 urged members “to redouble efforts to find acceptable solutions” for the permanent solution for public stockholding programmes for food security and the SSM for developing countries.

India gravely concerned secretariat undermining multilateral issues

Concerns about the WTO secretariat’s role with regard to multilaterally mandated work and plurilateral initiatives had been aired at an earlier WTO meeting where many developing countries also stressed the need for progress in tackling the outstanding Doha Round issues.

by D. Ravi Kanth

GENEVA: At an informal meeting of the WTO’s Trade Negotiations Committee (TNC) on 24 July, India voiced grave concerns over the manner in which the WTO secretariat is undermining “multilateral” issues based on “mandates” while aligning itself with the “positions of particular members or groups” on plurilateral initiatives, trade envoys told the *South-North Development Monitor* (SUNS).

At the same meeting, a large majority of developing and poorest countries led by India, South Africa on behalf of the African Group, and Malawi on behalf of the African, Caribbean and Pacific (ACP) Group expressed their frustration on the failure to address the outstanding Doha issues, particularly in agriculture and development.

Indonesia, on behalf of the G33 group, emphasized the importance of fi-

nalizing mandated outcomes on the permanent solution for public stockholding programmes for food security (PSH) and the special safeguard mechanism (SSM).

Chad, on behalf of the least-developed countries (LDCs), said the failure to address the issues of duty-free and quota-free market access and cotton, which were clearly laid out in the 2005 Hong Kong Ministerial Declaration and the 2015 Nairobi Ministerial Declaration, is causing grave difficulties to the LDCs.

Both developing and developed countries inveighed against the unilateral trade measures imposed by the US under Section 232 of its trade law, and the repeated blocking by the US of the selection process for filling vacancies at the WTO’s Appellate Body.

The developed countries, particu-

"The collective efforts to agree on such policy instruments will also facilitate the achievement of a number of Sustainable Development Goals (SDGs) relating to the elimination of poverty, malnourishment and hunger to which we are all committed," Indonesia maintained.

On agriculture, India said it is "a gateway issue for a large number of members in this organization" and a "must-have" for any accord to come out of the next WTO Ministerial Conference (which will be held in Astana, Kazakhstan, in 2020).

India said agricultural domestic support is full of "asymmetries", pointing out that "the large trade-distorting subsidies of developed countries cannot be treated at par with the minimal subsidies of developing countries targeted at subsistence farmers."

To address the asymmetries, India said, it "has jointly submitted a proposal with China for eliminating, in a phased manner, AMS [Aggregate Measurement of Support] beyond the *de minimis*, which is the most trade-distorting form of domestic support." India said the proposal offered "a calibrated approach of taking incremental steps to eliminate AMS, rather than eliminating it at one go."

Commenting on the permanent solution on public stockholding for food security, India said this is the only instrument that can "address the basic issues of poverty, hunger and malnutrition in the developing world and would also help achieve the SDG goals 1 and 2."

Expressing regret over the manner in which the mandated outcome on PSH was not fulfilled at the last Ministerial Conference in December 2017, India urged members to "galvanize" and accelerate efforts to finalize the outcomes on the PSH and SSM.

India reminded the developed countries that "the fight against hunger is a fundamental commitment which cannot be derailed by archaic trade rules."

Commenting on electronic commerce, India said the 1998 WTO work programme on e-commerce remains as the basis for continuing the exploratory work.

"It is in this spirit that we have submitted a proposal jointly with South Africa, to understand the implications of the moratorium on customs duties on electronic transmissions," India maintained.

India said while it acknowledges the

"transformational changes and opportunities in trade and investment that electronic commerce can bring", members must come to terms with "significant infrastructure, regulatory and other challenges, particularly for developing countries which will not benefit from the opportunity, due to the huge digital divide."

India cautioned that if members "do not first address this issue urgently and on priority and instead move on to negotiations, e-commerce has the potential of creating further asymmetries and disruption for developing countries and LDCs."

India urged its counterparts to "engage to reinvigorate the multilateral work programme which in the long run will build a foundation for our future work on e-commerce."

Commenting on the controversial joint initiatives towards plurilateral outcomes on e-commerce, disciplines for micro, small and medium enterprises (MSMEs), investment facilitation, and gender and trade, India said it remains gravely concerned that "the joint initiatives are being pursued in areas of regular work where there is a multilateral mandate in the WTO like on e-commerce and domestic regulation."

"Though proponents are suggesting that these are new pathways and approaches to multilateral agreements," India said it doesn't "see the advantages of this approach and feels that this would further undermine our multilateral work, mandates and the consensus principle."

Further, India maintained that it has "consistently voiced serious concerns and reservations on the introduction of new issues such as investment facilitation and MSMEs in the WTO till existing mandates have been addressed."

On the joint initiatives, South Africa said "it is still unclear whether participants would reach agreement amongst themselves and, even if they do, whether and how they would try to bring them under the cover of the DSU [WTO's Dispute Settlement Understanding]."

Differentiation

As regards attempts to bring about "differentiation" among developing countries for availing of special and differential flexibilities, South Africa, on behalf of the African Group, "reaffirmed

the centrality of development as set out in the Marrakesh Agreement, and the existing architecture and rights under special and differential treatment."

South Africa said "the African Group, as part of the G90, continue to pursue the S&D proposals as mandated, and to consider refining those proposals within the existing mandate."

India said "development is a critical issue for a large majority of the membership." "The provisions of special and differential treatment for all the developing countries and LDCs are an integral part of the WTO agreements and need to be carefully preserved and protected in future agreements as well," India maintained.

India warned that "any talk of differentiation or graduation of developing countries is likely to be divisive, and a case-by-case approach a complete non-starter."

"The centrality of development is part of the basic structure of the WTO and a core principle enshrined in the Marrakesh Agreement," India underlined.

China said it will never accept differentiation, pointing out that it is an explosive issue.

Speaking on behalf of the ACP Group, Malawi said it would "seek to ensure that results from the S&D mandate complement the respective national trade policies of the member states."

"This approach is aimed at improving export performance by facilitating, inter alia, enhanced competitiveness, increased productivity, innovation, exports diversification, policy resilience, and integration into global value chains," Malawi argued.

India added that "every day we [members] see a fresh attack on the principles and processes of the WTO ... As a result, the WTO weeps, it bleeds and each new day a gash is added to its wounds!"

"Since the beginning of the year India has constructively engaged in suggesting ways to strengthen the multilateral track and take our agenda forward," India said. "However, the crisis has only deepened with the organization facing multifaceted challenges."

Therefore, "it is important to realize that we now run the risk of dismantling the system which has been built with several decades of work," India said.

In short, the informal TNC meeting

witnessed a sharp divide between a large majority of developing and poorest countries seeking the much-promised developmental outcomes from the Doha Round on the one side, and, on the other

side, major industrialized countries and their developing-country partners running away with new issues after pocketing the Trade Facilitation Agreement in December 2013. (SUNS8730) □

management of the economy and strengthening the state sector, particularly state-owned enterprises. As long as China remains on this path, the implications for this organization are decidedly negative."

China asks US to set its fiscal house in order instead of blaming others

The US and China traded arguments and counter-arguments at the WTO on 26 July over the former's criticism of the "trade-disruptive" Chinese economic model.

by D. Ravi Kanth

GENEVA: China stood its ground against the United States at the WTO on 26 July by telling Washington to set its own fiscal house in order by generating domestic savings to contain trade deficits instead of blaming other countries.

China's trade envoy Ambassador Zhang Xiangchen, in responding to US criticism of Chinese policies, said: "If the US does not increase its savings rate, it's unlikely that it can solve its problems of trade deficit."

"We all know at the end of the day, all structural issues are domestic issues," Zhang told his US counterpart, Ambassador Dennis Shea.

The Chinese envoy was responding robustly at the WTO General Council to a tirade launched by the US trade envoy on "China's trade-disruptive economic model".

Zhang said the US and other developed countries had invented and implemented "industrial policies and subsidies" since 1790. "Before criticizing others, we should think twice if we have done similar things in the past ... Like developed countries had done in the past, today's developing countries also need time to enhance their protection of intellectual property rights, or develop their own industries through strategic planning and policies."

"Non-market" model

The US trade envoy had submitted to the General Council a paper setting forth the US views on the fundamental aspects of China's trade-disruptive economic model, the costs it exacts and the

benefits that China receives.

In an eight-page list of alleged violations committed by China since joining the WTO in 2002, the US charged China with violating the Marrakesh Declaration of 1994 by refusing to implement "open, market-oriented policies."

The US envoy elaborated on the "non-market-oriented conditions set by the [Chinese] government and the [Communist] party", and "non-market allocation of resources" by China's administration, including setting industrial policies.

Shea said that the Chinese government and the Communist Party have for decades exercised control over state-owned enterprises through the appointment of key executives and the provision of preferential access to important funds (e.g., land and capital) and other competitive advantages unavailable to non-state firms.

The US envoy accused China of adopting industrial policies for achieving "sector-specific economic objectives, particularly for those sectors deemed strategic and fundamental."

The costs borne by other WTO members because of China's economic model include "non-reciprocal and protected market", "excess capacity" and "forced technology transfer," the US envoy said.

The benefits seized by China, particularly between 2005 and 2016, the US envoy argued, include real GDP growth rates of 9.5% coupled with sudden transformation from the fifth-largest to second-largest economy in the world.

"For China," said Shea, "economic reform means perfecting the government's and the Communist Party's

"Remarkable progress"

In measured but sharp interventions with historical details and anecdotes, the Chinese trade envoy said "criticism should be based on facts, should refrain from putting labels on others, should use correct facts and correctly use facts, [and] there should be clear logic in reaching conclusions through analyzing evidence."

Zhang said that the view that "China would change and move into a different path upon its WTO accession" is "wishful thinking" as "there is more than one model of the market economy in this world."

China, according to Zhang, "has been vigorously exploring a road of market economy" for China's own national situation and circumstances. "We have made remarkable progress in this endeavour," he asserted.

Zhang reminded his American counterpart that there is no definition of "market economy" throughout the WTO rulebook. Further, there is also no one-size-fits-all "market economy" standard in the world.

If there is any relevance of the term "non-market economy", he said, then it applies to the US because it disregards the WTO rules by using "notorious surrogate country" methodology in anti-dumping investigations despite the commitments made 17 years ago.

He urged the US and other industrialized countries to honour their commitments – "*pacta sunt servanda*" – by treating China on the same standards as other WTO members with regard to anti-dumping investigations.

The Chinese envoy said the US had selectively quoted from the Marrakesh Declaration of 1994, suggesting that it enjoined on members to adopt "open, market-oriented policies" based upon "the commitments set out in the Uruguay Round Agreements and Decisions."

Zhang said "each member has its own domestic policy objectives, and the results of the multilateral negotiations are a balance between member's domes-

tic policies and the process of global trade liberalization. Such balance is reflected in the trade rules, the tariff schedules and services schedules of members, which contain descriptions of members' legitimate regulatory policies and measures."

"To put it simply, the WTO Agreement is a set of contracts achieved through negotiations," the Chinese envoy said.

Zhang also said the US is adopting flawed arguments and logic on what constitutes "public bodies" in the context of the WTO so as to force subsidy and countervailing disciplines on members.

"In the US-China Anti-Dumping and Countervailing Duties case, the Appellate Body had stated that the mere ownership or control over an entity by a government ... is not sufficient to establish that the entity is a public body," he pointed out, arguing that "our American colleagues have been quite unhappy with losing this case, but the ruling of the Appellate Body cannot be challenged."

The Chinese envoy then drew attention to the industrial and subsidy policies followed by the US itself after Alexander Hamilton drew up the relevant framework in the late 18th century.

(The US subsequently built up its industry on the basis of the Hamilton plan set out in his *Report on the Subject of Manufactures* in 1791. "The core of his [Hamilton's] idea was that a backward country like the US should protect its 'industries in their infancy' from foreign competition and nurture them to the point where they could stand on their own feet," said the Cambridge economist Ha-Joon Chang in his book *Bad Samaritans: The Guilty Secrets of Rich Nations and the Threat to Global Prosperity*.)

Zhang suggested that the existential challenges being faced by the WTO are arising from disruptive trade measures such as US Section 232 decisions "to restrict the import of steel and aluminium using national security as a pretext," and Section 301 measures that unilaterally impose tariffs on imports.

Worse still, the US is still blocking the reappointment of the Appellate Body members, thereby paralyzing the WTO dispute settlement mechanism, the Chinese envoy argued.

"At the present moment, the paramount task for the WTO is to curb the spread of unilateralism and protectionism, to bring the dispute settlement

[mechanism] to its full function and to stop the trade war," the Chinese envoy concluded.

Japan, the European Union and Australia, among others, shared several concerns raised by the US against China's industrial and trade policies.

But developing countries said China is justified in implementing trade policies in a manner that brought economic development.

Also on 26 July, the US Trade Representative Robert Lighthizer told the US Senate Appropriations sub-committee on commerce, justice, science and related issues that it "could take years to resolve trade problems with China, suggesting the escalating tariffs battle could continue indefinitely," according to the *Washington Trade Daily* of 27 July.

Questioned by the American lawmakers on the US decision to impose global tariffs on steel and aluminium rather than focusing on China, Lighthizer argued that "global tariffs are the only way to ensure that Chinese steel does not come into the US market through other countries," according to the *WTD*.

In short, the US seems poised to intensify the trade war with China by joining forces with the EU and Japan. It is a defining moment for China whether it can build a solid alliance with all other developing countries or face the wrath of the US, the EU and Japan, which want to fundamentally change the architecture of special and differential treatment for developing countries and impose plurilateral trade initiatives at the WTO. (SUNS8732) □

Infructuous dispute consultations on US steel, aluminium duties

Initial consultations at the WTO between the US and six other WTO members made no headway in resolving a dispute over US steel and aluminium tariffs.

by D. Ravi Kanth

GENEVA: The United States failed to address various systemic issues raised by six countries against the unilateral measures imposed by President Donald Trump on imports of steel and aluminium during dispute settlement consultations at the WTO on 19 and 20 July, according to several participants.

China, the European Union, Norway, India, Canada and Mexico had sought consultations with the US on the controversial duties.

During the meetings, according to several participants who asked not to be identified, the US reportedly adopted a defiant position, failed to give satisfactory explanations and insisted that its measures were "sovereign determinations" falling under Article XXI security exceptions of the General Agreement on Tariffs and Trade (GATT) 1994.

The six countries had invoked dispute settlement proceedings against the US over the steel and aluminium tariffs, which were imposed under Section 232 of the US Trade Expansion Act on national security grounds.

The US decided to impose an additional import duty of 25% on steel and 10% on aluminium – which took effect from 23 March – against all countries except Canada, Mexico, Australia, Argentina, South Korea, Brazil and the EU. Subsequently, in June the US removed the EU, Canada and Mexico from the list of exempted countries, after which the three countries brought the matter before the WTO dispute settlement mechanism.

Alleged violations

The six countries invoking the dispute proceedings largely focused their complaints against the US on four areas. The complainants said the US measures violated many provisions in the WTO's Safeguards Agreement, GATT Article II commitments concerning the integrity of scheduled tariffs, Article I on "most favoured nation" (MFN) treatment since the US measures exempted several countries, and Article X because the US failed to administer its laws and regulations in a uniform, impartial and reasonable

manner.

China, which raised the dispute first among the six countries, said the measures at issue, operating separately or together, appear to be inconsistent with the US' obligations under:

i. Articles XIX.1(a) and XIX.2 of the GATT 1994 and Articles 2.1, 2.2, 4.1, 4.2, 5.1, 7, 11.1(a), 12.1, 12.2 and 12.3 of the Agreement on Safeguards, because with regard to the measures at issue which constitute safeguard measures in substance, the US has failed to make proper determination and to provide reasoned and adequate explanation of "unforeseen developments", imports "in such increased quantities" and "under such conditions", and "cause or threaten to cause serious injury to domestic producers", and the US has also failed to follow proper procedural requirements including, for example, notification and consultation procedures, and has failed to apply the measures in a proper manner, for example, application irrespective of source of supply and only for necessary period of time.

ii. Article II.1(a) and (b) of the GATT 1994, because the US has imposed import duties on certain steel and aluminium products in excess of the duties set forth and provided in the US' Schedule of Concessions and Commitments annexed to the GATT 1994, and has failed to exempt products of China subject to the measures at issue from ordinary customs duties in excess of those set forth and provided in the schedule and from all other duties or charges in excess of those imposed on the date of the GATT 1994 or those directly and mandatorily required to be imposed thereafter by legislation in force in the US on that date.

iii. Article I.1 of the GATT 1994, because the selective application by the US of the additional import duties on certain steel and aluminium products originating in different members, including providing exemption or applying alternative means, has failed to extend immediately and unconditionally to China any "advantage, favour, privilege or immunity" granted by the US "[w]ith respect to customs duties and charges of any kind imposed on or in connection with" the importation of products originating in the territory of other members, as well as with respect to "the method of levying such duties and charges" and the "rules and formalities in connection with importation".

iv. Article X.3(a) of the GATT 1994, because the US has failed to administer its laws, regulations, decisions and rulings in relation to the measures at issue in a uniform, impartial and reasonable manner.

Defiant

In response to the dispute settlement requests from the six countries under Article 4 of the WTO's Dispute Settlement Understanding, the US held meetings with China, the EU and Norway on 19 July, and with Canada, India and Mexico on 20 July at the WTO.

During the meetings, the US adopted a defiant position, saying repeatedly that it did not have to provide any reasons for the Section 232 measures on steel and aluminium since they were "sovereign determinations" falling under Article XXI security exceptions of the GATT 1994, said several participants who asked not to be identified.

The US repeatedly maintained that every member retains the authority to determine for itself those matters that it considers necessary to the protection of essential security interests under Article XXI of the GATT 1994, the participants said.

The US said it was wrong on the part of the complainants to raise the dispute under safeguard provisions because the measures implemented by the US administration fell under security provisions.

The six countries, however, sharply disagreed with the US and raised several systemic and other issues, said the participants.

To start with, the complainants maintained that the additional duties on steel and aluminium constituted a "disguised safeguard", as the US Department of Defence had maintained that there was no threat from the imports of steel and aluminium to the country's national security.

In response, the US said it was not in a position to share the reasons for the determination made under the Section 232 provisions.

The complainants asked the US whether Washington complied with the requisite "transparency" provisions before determining the additional duties on steel and aluminium. They sought to know whether the US had held prior consultations with domestic steel and alu-

minium companies before imposing the duties. The US team said it was not in a position to provide any reasons, said participants who asked not to be quoted.

The complainants asked the US to explain the reasons as to how it determined that the countries exempted from the additional duties, such as Argentina, Australia and Brazil, did not pose any national security threat for the American steel and aluminium industries.

The US team of lawyers said they were not fully apprised of the consultations within the administration.

The six countries also asked the US whether the exemptions violated the MFN treatment principle since Argentina, Australia and Brazil were let off the hook. The US stonewalled the issue by saying it was a sovereign determination, the participants said.

The complainants said while the US Department of Commerce had suggested duties of 21% on steel and 7% on aluminium, the presidential proclamation had increased the duties to 25% and 10% respectively. They asked the US to explain this discrepancy.

In response, the US team said it had no knowledge of how the decision on final duties was arrived at, according to the participants in the consultations.

When asked whether the additional duties violated Article II of the GATT 1994, the US team said it was a sovereign determination under Article XXI of the GATT 1994.

Given the US' failure to provide credible reasons, the six countries are considering requesting for a dispute settlement panel to rule on the US measures.

Russia and Switzerland, which had also raised the dispute against the US measures, will hold their consultations later.

The US told Switzerland on 19 July that "the tariffs imposed pursuant to Section 232 are issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, and the consultation provision in the Agreement on Safeguards is not applicable."

In short, the US chose to adopt stonewalling tactics by refusing to provide credible replies during the consultations, said participants who asked not to be quoted.

[While the WTO has not so far dealt with a dispute where GATT Article XXI (national security exception) has been

invoked, the Hague-based International Court of Justice (ICJ) has dealt with the scope of such “self-judging clauses” and how they are to be interpreted. The ICJ has held that such clauses in a treaty “do not grant a pure discretionary power to the state invoking these.”

[In the case *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, the ICJ considered Article 2(c) of the 1986 Convention on Mutual Assistance in Criminal Matters, which provides that a state may refuse a request for mutual assistance “if it considers that execution of the request is likely to prejudice [the] sovereignty, ... security, ... ordre public or other ... essential interests” of the state. The ICJ stated: “... while it is correct ... that the terms of Article 2 provide a State to which a request for assistance has been made with a very considerable discretion, this exercise of discretion is still subject to the obligation of good faith codified in Article 26 of the 1969 Vienna Convention on the Law of Treaties ...” (<http://worldtradelaw.typepad.com/ielpblog/2018/03/litigating-gatt-article-xxi-the-us-view-of-the-scope-of-the-exception.html#comments>).

[In a long line of disputes, the WTO Appellate Body has consistently ruled that the “good faith” requirements of the Vienna Convention are applicable at the WTO at all stages – from negotiations to accords and to their implementation.

[However, the Appellate Body is currently facing a problematic situation where it may eventually be unable to function if existing and future vacancies on the body remain unfilled as a result of an ongoing impasse in the selection process. In such a scenario, a panel ruling on the steel-aluminium tariff dispute cannot be adopted if the ruling is appealed and the Appellate Body is unable to hear the appeal. – *SUNS*]

Separately, reports **Kanaga Raja**, the US has initiated disputes against Canada, China, the EU, Mexico and Turkey at the WTO over the additional duties imposed by these five WTO members on imports of certain products from the US.

The five had imposed these additional duties in response to the additional duties on steel and aluminium imposed by the US under Section 232.

In initiating these disputes, the US has sought consultations with these five WTO members, the first step in the for-

mal dispute settlement process at the WTO. The requests for consultations were circulated to all WTO members on 19 July. If the consultations fail to settle the dispute within 60 days after the date of receipt of the request, the complaining party may request the establishment

of a panel.

The establishment of a panel may also be requested by a complaining party during the 60-day period if the consulting parties jointly consider that the consultations have failed to settle the dispute. (*SUNS*8727/8728) □

EU for “reforms” to end MFN, consensus decision-making at WTO

The EU has proposed “comprehensive and far-reaching” reforms aimed at “modernizing” the WTO but which could further undermine developing-country interests in the world trade body.

by D. Ravi Kanth

GENEVA: The European Union has called for modernizing the WTO by undertaking comprehensive reforms in the latter’s negotiating, dispute settlement and monitoring functions, and for “plurilateral processes” for framing new rules, trade envoys told the *South-North Development Monitor (SUNS)*.

Brussels has underscored the need for introducing “differentiation” among developing countries in availing of special and differential flexibilities under the WTO rules, said a trade envoy who asked not to be quoted.

In a “non-paper” for “modernizing the World Trade Organization” issued in June, the EU said it disagrees with the “path recently followed by the US to solve trade challenges.” However, said the EU, there is a need to address “the root causes of the current crisis, namely gaps in the [WTO’s] rulebook leading to distortions.”

The EU said the recent US actions such as blocking the appointment of members to the WTO Appellate Body that serves as the final arbiter in trade disputes, and imposing additional tariffs on imports of steel and aluminium and on products from China, constitute “the more immediate threat.” But WTO members should “not lose sight of the root causes of the current crisis” in continued trade-distorting policies being implemented by some major trading nations, it argued.

These “distortions”, according to the EU, are “associated with non-market policies and practices in major trading nations that the WTO does not seem to address adequately.”

Effectively, the EU is echoing the

charge constantly hurled at China by the US Trade Representative Robert Lighthizer, namely that the WTO’s rulebook is incapable of addressing the non-market policies followed by China.

The EU maintained that it will accelerate “efforts and show its intention to invest political will and capital in ensuring the WTO remains vital, relevant and effective” to face the challenges of the 21st-century trade realities.

These realities, according to the EU, call for making the WTO system “flexible enough to accommodate different sets of ambition among its membership” and enable plurilateral negotiations for accomplishing different sets of rule-making goals. Further, the realities underscore the need for enforcing the rules “effectively and efficiently” with requisite “checks and balances” in the WTO system, the EU said.

After having worked with the US and Japan as part of a “trilateral” process for the past seven months since the WTO’s eleventh Ministerial Conference in Buenos Aires last December, the EU said it had formulated the proposals seeking to modernize the WTO as well as create “a circle of like-minded Members that will eventually lead to multi-lateral reforms.”

Although many of the proposals in the EU’s non-paper are targeted against China and other developing countries, the EU said China must remain “at the table from the beginning of the negotiations” for modernizing the WTO.

According to a report in the *Financial Times* on 17 July, after a meeting with China’s Premier Li Keqiang in Beijing, Donald Tusk, president of the European

Council, called for reforms of the WTO with new rules on industrial subsidies and intellectual property rights.

In response, Li said: "As I said at the beginning of my meeting with Mr. Tusk and Mr. Jean-Claude Juncker [president of the European Commission], our negotiations are not targeted at any third party and cannot be influenced by any third party."

"Leaving behind any other country – let's not even talk about leaving behind the US or a country located between the European Union and China – is unfeasible. Because this is a multilateral trade agreement," the Chinese premier maintained.

Gaps

Brussels maintained that "the accession of China in the WTO and its failure to converge towards the market economy model has revealed gaps in the WTO rulebook that need to be addressed now."

"These gaps relate mostly to the way a government exercises its powers to either give preferential treatment to its domestic operators, i.e., through subsidies or skewed regulatory practices and policies or to obtain the competitive advantages of foreign operators for its own use (i.e., through forced technology transfer or failure to protect intellectual property)," the EU argued.

The EU sought approval for a negotiating mandate from its member states to "develop new rules to address current gaps in the rulebook with regard to level playing field issues such as subsidies and state-owned enterprises; investment market access; regulatory barriers to services and investment, including rules on technology transfer."

The EU said "it has not been possible to advance negotiations in the WTO for a number of years, with the exception of the Agreement on Trade Facilitation and agricultural export subsidies", because of the lack of flexibility within the system. Consequently, the "like-minded members" were unable to go ahead with rule-making within the WTO as a group, the EU lamented.

Therefore, "plurilateral processes should be encouraged, whether the benefits of such rule-making apply to all or only to the like-minded members," the EU maintained.

The EU said it wants to "inject flexibility in the negotiating process, by facilitating the conclusion of agreements among willing Members which would

form part of the broader WTO framework."

"The initiatives launched in Buenos Aires with joint statements by large groups of Members committing to explore negotiations in some specific areas are a good step in the direction of increased flexibility in negotiations," the EU said.

Brussels said that it will "continue to support exploratory work toward negotiations on a broad range of issues relating to the reduction of trade costs, in particular in the areas of the joint statements endorsed in Buenos Aires in December 2017 (such as the statements on e-commerce, domestic regulation as well as investment facilitation as signed by the European Union)."

In order to further improve the WTO's negotiating function, members must also address "the question of development and special [and] differential treatment," the EU argued.

"Since the creation of the WTO, the rapid economic growth among developing countries has led to the emergence of significant differences in economic development," the EU said.

Acknowledging that "special rules may be necessary to address specific development needs", the EU said "a re-examination of the way development flexibilities operate and who can benefit from them is warranted, in order to ensure appropriate, targeted assistance and ambitious disciplines."

Consequently, the EU said it will work towards developing "a new approach to development and special and differential treatment based on a case-by-case, needs-driven analysis."

In short, the EU wants to dismantle the current architecture of special and differential flexibilities for developing countries and introduce "differentiation" among developing countries to decide which can avail themselves of these flexibilities on a case-by-case basis.

The EU also emphasized "developing country Members [moving] toward undertaking greater commitments."

To strengthen the WTO's effectiveness, the EU said, "the dispute settlement function of the WTO", which is currently in "grave danger", must be strengthened and preserved.

The EU said it put forward a comprehensive proposal to "address the concerns raised by the WTO Member blocking the Appellate Body appointments to the extent that they have merit while preserving and further strengthening the

main features and principles of the WTO dispute settlement system."

The EU said its proposal "will – in a first stage, and in order to unblock the appointments – aim at improving the efficiency of procedures, at creating conditions for a better interaction between the Appellate Body and the WTO Members while at the same time strengthening the independence of the Appellate Body."

"In a second stage, substantive issues concerning the application of WTO rules would be addressed."

As part of transparency and strengthening the regular committees of the WTO, the EU called for enhancing "transparency by increasing incentives for Members to comply with notification requirements and by challenging wilful non-compliance". It called for using "regular committees better to address trade issues by empowering the WTO Secretariat."

The EU claimed its proposals are "comprehensive and far-reaching, aiming to revitalize the organization and bring the WTO back to the centre of trade policy-making."

Imbalanced

The EU's non-paper did not mention what needs to be done for addressing "development", said a trade envoy who asked not to be quoted. If anything, it intends to strengthen the "system designed by the US, the EU and other trade majors over the course of the GATT and consolidated in the Uruguay Round negotiations that established the WTO," the envoy said.

Another developing-country trade envoy said Brussels's non-paper is "replete with imbalances and inequities that prejudice interests of many developing countries."

In conclusion, the EU's non-paper seeks to terminate the principle of "consensus" on which the 164-member WTO functions.

After foisting the Doha Round of trade negotiations in 2001, and failing to address the developmental concerns raised by developing countries and to implement its own commitments under the WTO treaty to end subsidies distorting agricultural trade, the EU is now pursuing a dangerous course to transform the WTO by excluding the majority of developing and poorest countries from the decision-making process. (SUNS8729) □

Trade war – developing countries should respond

The world is on the brink of a Trump-induced global trade crisis, and developing countries stand to be among the worst hit.

by Martin Khor

The escalating trade war initiated by United States President Donald Trump is a major threat to world trade and the global economy.

The developing countries will be among those most affected. It is time for them to respond and speak out.

The trade war is a very dangerous game that will engulf the whole world if it is prolonged. The country most directly affected by the US trade attack is China. But it is not just a tit-for-tat fight between two giants, the US and China.

The US has also increased tariffs against European countries, Mexico, Canada and others with regard to steel and aluminium. Additional US tariffs on automobiles and their components are now imminent, and if implemented this will take the conflict to a much higher level, with the US versus Europe at the centre.

But many countries that are integrated in the regional and global supply chains will also be affected. Some could even suffer more damage than the direct protagonists.

For example, many Asian countries like South Korea, Vietnam and Malaysia export components to China, such as electronics. The components are used to make products such as mobile phones and computers, some of which are exported to the US. If the extra US tariffs reduce Chinese production, there will be less demand for components exported by these countries to China.

Moreover, a decline in economic growth in China and the US will depress their demand for commodities and other products, thus affecting many developing countries including in Africa and Latin America.

A study done by Pictet Asset Management of 45 countries shows that many developing countries are among the most vulnerable to a trade war.

Taiwan, South Korea, Singapore, Hungary, Malaysia, Thailand, Vietnam, Chile and the Philippines are among the most dependent on global supply chains and would thus be susceptible to a breakdown in trade. For example, Malaysian

exports are about 60% dependent on global supply chains, while the rates are about 48% for China and 40% for the US.

A Reuters report using OECD data to calculate value-added embodied in Chinese exports by its source countries shows that the Asian countries most exposed to a reduction of Chinese exports would be Taiwan (8% of its GDP value is embodied in Chinese exports), Malaysia (6%), South Korea, Hong Kong and Singapore (4-5%).

Another study by the Development Bank of Singapore found that in Asia, South Korea, Malaysia, Taiwan and Singapore are most at risk from a trade war, based on trade openness and exposure to supply chains.

A trade war would reduce economic growth in 2018 by 0.4 percentage point for Korea, 0.6 percentage point for Malaysia and Taiwan, and 0.8 percentage point for Singapore, with these rates doubled in 2019.

These are significant losses indeed. Thus, developing countries cannot afford to be mere spectators in a US-China trade war. They should assess how their countries will be affected and prepare for the effects. More importantly, they should examine who is at fault, speak out and act.

It is clear that the US is the initiator and provocateur of the trade conflict. Its tariff hikes are unilateral actions, against the rules of the World Trade Organization and the global trading system.

Complaints have been filed against the US at the WTO, including by China, the EU, Russia and India. Other countries should join in as complainants.

The US actions threaten the very survival of the trade system. If moves and counter-moves keep taking place, there will no longer be any predictability for any country's exports. The EU remarked at the WTO recently that the trading system is now facing acute "stress and uncertainty."

The uncertainty and the reduction of trade will hit the whole world, but most affected will be export-dependent countries.

This is also the worst time for a trade war. It comes on top of the increasing shakiness of the world financial system, now on the verge of a new crisis. Already foreign funds are moving out of developing economies, and their currencies are weakening, thus increasing inflationary pressures and making it more expensive to service external loans.

Trade war footing

Trump and his advisors have been planning a trade war for some time and now they are putting it into action. It started in January with an extra 30% tariff on solar panels and components, and 20% tariff on washing machines.

Then came tariffs of 25% on steel and 10% on aluminium on all but a few exempted countries. The US used Section 232 of its Trade Expansion Act of 1962, which allows the president to impose extra tariffs to counter threats to national security. This section has been rarely used and until now had never been invoked since the WTO was established in 1995.

Using "national security" as a reason is clearly a pretext for what is a commercially motivated move, as the imported metals are hardly a security threat and most countries affected are close US allies.

There are well-founded concerns that the use of "national security" grounds by the US will undermine the world trading order, since it will also open the door for other countries to cite the same reason to take similar unilateral actions. Although there is a clause in the WTO rules allowing trade measures to ensure national security, it has hardly been invoked as there is a fear it can be abused.

China in April and the EU in June initiated complaints at the WTO against the US action. Retaliatory actions in the form of tariffs on imported goods from the US with equivalent value have been taken by China on 128 US products worth \$3 billion; by Canada on 299 products valued at \$13 billion; by the EU on 180 products valued at over \$3 billion; and by Mexico on \$3 billion of US goods.

On 6 July, the US imposed an extra 25% tariff on \$34 billion worth of Chinese goods, with similar action coming soon on another \$16 billion of imports. This time the US invoked Section 301 of its Trade Act of 1974, accusing China of violating intellectual property rights of US companies and pressuring American firms in China to transfer their technology. Section 301 is deemed by almost all

countries and experts to violate WTO rules.

China immediately retaliated with tariffs on \$34 billion of imports from the US. It accused the US of launching the "largest trade war in economic history."

The US tariffs will hit China's exports of electrical, telecom and transport equipment, engines and motors, and farm machines. The Chinese actions will affect US agricultural goods, especially soybeans, autos and aquatic products.

Responding to China's retaliation, the US on 10 July announced it would slap a 10% tariff on another \$200 billion of Chinese imports, again invoking Section 301. China said it is shocked by the US' behaviour and vowed to retaliate.

Trump has calculated the US will win a trade war because in 2017 the US imported \$506 billion worth of goods from China, while China imported \$130 billion of US goods. He thinks China would soon run out of retaliation capacity as it does not have much more US imports on which to slap tariffs.

The Chinese however could still retaliate by taking other measures, such as setting more conditions for US firms based in China, not giving access for US companies in various sectors, or not implementing WTO obligations on intel-

lectual property.

Trump will probably go into a rage and raise more tariffs against China, thus escalating the war further. This will provoke even more actions from China, which has vowed to stick to its rights and not to retreat.

The US is also examining imposing tariffs on automobiles and parts. Trump has threatened to place a 20% tariff on all European cars. This would have dire consequences, warned German leader Angela Merkel.

In short, the world is on the brink of a Trump-induced global trade crisis. It will have spillover effects on exports and economic growth in developing countries, and secondary effects on policies of banks (which may increase the price and volume of credit) and on the financial markets (with effects on stock prices and the outward flow of funds).

The developing countries should now strongly speak up against the unilateral measures of the US at many venues, and take or join initiatives to stop the trade war from escalating into a very big crisis that the world cannot afford to have. □

Martin Khor is Advisor to the Third World Network and a former Executive Director of the South Centre.

besides blocking US imports.

Trump views most trade deals such as NAFTA as unfair. His team insists that renegotiating trade deals, "buying American", a strong dollar and confronting China will shrink US trade deficits.

But the country's overall trade deficit, offset by capital inflows, is related to the gap between its savings and investments.

The US spends more than it produces, thus importing foreign goods and services. Cheap credit fuels debt-financed consumption, increasing the trade deficit. Total US household debt rose to \$13.2 trillion in the first quarter of 2018, the 15th consecutive quarter of growth in the mortgage, student, auto and credit card loan categories. American consumer debt was more than double GDP in 2017.

US government budget deficits have also been growing. From 67.7% of GDP in 2008, US government debt rose to 105.4% in 2017. The federal budget deficit was \$665 billion in fiscal year 2017, rising 14% from \$585 billion in the previous fiscal year. The US budget deficit was 3.5% of GDP in 2017. According to the US Congressional Budget Office, it will surpass \$1 trillion by 2020, two years sooner than previously projected, due to Trump tax cuts and spending increases.

The growing US economy may also increase the trade deficit, as consumers spend more on imported goods and services.

The stronger dollar has made foreign products cheaper for American consumers while making US exports more expensive for foreigners.

These underlying economic forces have become more important than policies in raising the overall trade deficit, while bilateral deficits reflect specific commercial relations with particular countries. Thus, disrupting bilateral trade relations may only shift the trade deficit to others.

Have the cake and eat it?

So, why does the US have a structural trade deficit? As the de facto international "reserve currency" issuer after the Second World War, the US has provided the rest of the world with liquidity. Its perceived military strength means it is seen as a safe place to keep financial assets. Of about \$10 trillion in global reserves in 2016, for example, around

Will Trump's trade war make America great again?

The Trump administration's assertive push to lower the US trade deficit ignores the structural causes behind the gap and may end up hurting the country's economy, write *Anis Chowdhury* and *Jomo Kwame Sundaram*.

The United States has had the world's largest trade deficit for almost half a century. In 2017, the US trade deficit in goods and services was \$566 billion; without services, the merchandise account deficit was \$810 billion.

The largest US trade deficit is with China, amounting to \$375 billion, rising dramatically from an average of \$34 billion in the 1990s. In 2017, its trade deficit with Japan was \$69 billion, and with Germany, \$65 billion. The US also has trade deficits with both its partners in the North American Free Trade Agreement (NAFTA), including \$71 billion with Mexico.

President Donald Trump wants to reduce these deficits with protectionist measures. In March 2018, he imposed a

25% tariff on steel imports and a 10% tariff on aluminium, a month after imposing tariffs and quotas on imported solar panels and washing machines. On 10 July, the US listed Chinese imports worth \$200 billion annually that will face 10% tariffs, probably from September, following 25% tariffs on \$34 billion of such imports from 7 July.

Do US trade deficits reflect weakness?

The usual explanation for bilateral trade deficits is price differentials. However, the US accuses such countries of "unfair" trade practices, such as currency manipulation, wage suppression and government subsidies to boost exports,

three-fifths were held in US dollars.

US supply of international liquidity by issuing the global reserve currency offers several economic advantages. It also earns seigniorage from issuing the main currency used around the world, due to the difference between the face value of a currency note and the cost of issuing it.

With growing foreign demand for dollars, the US can run deficits almost indefinitely by creating more debt or selling assets.

Demand for dollar-denominated assets, e.g., US Treasury bonds, raises their prices, lowering interest rates, to finance both consumption and investment.

While foreign investors buy low-yielding, short-term US assets, Americans can invest abroad in higher-yielding, long-term assets. The US usually reaps higher returns on such investments than it pays for debt, and this is labelled America's "exorbitant privilege".

Thus, for the US to enjoy the "exorbitant privilege" of the dollar's role as the major reserve currency, it must run a chronic trade deficit.

Therefore, giving up the dollar's global reserve currency status will have major implications for the US economy, finances and living standards.

Economist Barry Eichengreen noted that countries in military alliances with reserve-currency issuing countries hold about 30% more of the partner's currency in their foreign exchange reserves than countries not in such alliances.

Instead, Trump has prioritized reducing trade deficits to strengthen the US dollar and dominance while disrupting some old political alliances.

As the US retreats from the global diplomatic stage, use of other reserve currencies, including China's renminbi, has been growing, especially in Europe and Africa. Thus, ironically, as Trump wages trade wars on both foes and friends, China will probably gain, both geopolitically and economically.

The resulting global economic shift will hurt not only the US dollar and economy through the exchange rate and borrowing costs, but also its geopolitical dominance. (IPS) ☐

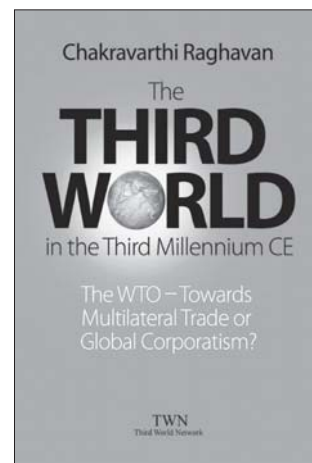
Anis Chowdhury, Adjunct Professor at Western Sydney University (Australia), held senior United Nations positions in New York and Bangkok. Jomo Kwame Sundaram, a former economics professor, was United Nations Assistant Secretary-General for Economic Development, and received the Wassily Leontief Prize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

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

By Chakravarthi Raghavan

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

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



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Argentina: 20 years on, has the IMF really changed its ways?

The International Monetary Fund's largest ever loan – a \$50 billion package for Argentina, which had also received IMF financing some two decades ago – comes attached with essentially the same, ruinous policy prescriptions for austerity.

by Gino Brunswijck, María José Romero and Bodo Ellmers

Argentines are experiencing *deja vu* as the government announces massive layoffs and a hiring freeze as part of an adjustment package attached to a loan from the International Monetary Fund (IMF). Thousands of public servants are being forced yet again to swallow the bitter pill of austerity, which the IMF programme – published on 20 July – aims to salve through increased targeted social assistance.

For many Argentines, the financial crisis gripping the country, and the return to the Fund, brings back bad memories of 2001. Then, IMF-induced policies triggered the worst economic meltdown in Argentinean history. A cocktail of austerity measures contributed to the contraction of economic activity, with a loss of 20% of GDP between 1998 and 2002. They also compromised the government's ability to provide essential services; unemployment soared above 20% while real wages dropped by 18%; and poverty affected more than half of all Argentines. Children were most affected, with seven out of 10 falling below the poverty line.

To appease popular discontent, the government and IMF officials have emphasized that this time the Fund has changed its ways. However, a comparison between previous and current agreements points to business as usual – a focus on traditional austerity with a few cosmetic tweaks.

Argentina's debt crisis

Argentina's financial outlook looks gloomy as global financial conditions change. Tightened monetary policies in advanced economies, just as foreign investors discard Argentinean assets, are putting downward pressure on the domestic currency, the peso. The Argentinean central bank attempted to stabilize

the peso by raising interest rates to a whopping 40% and by spending massive amounts of its foreign reserves – up to \$7.7 billion over the course of a few months. To bolster reserves, the government is also negotiating an extension to the current currency swap with China. Nevertheless inflation remains high, while the peso continues to depreciate.

The seeds for the current debt build-up were sown in the aftermath of the 2001 crisis. A majority of the country's creditors agreed to a haircut on their Argentinean debt, restoring the country's solvency. However, a group of vulture funds held out. Eventually, a US court ruled in favour of the vulture funds, which meant that the Argentinean government had to pay out. In the absence of a global sovereign debt workout mechanism, these vulture funds were able to pocket astronomical profits.

Argentina's new government ploughed ahead and raised the money they needed by issuing new debts. This was just the beginning of a new borrowing boom. Private creditors enabled this boom by generously investing in Argentina's high-yield bonds. While Argentina's public and external debts had been low and stable for almost a decade, they increased rapidly from 2015 as debt servicing costs rose. This debt build-up is the underlying cause of the \$50 billion IMF bailout loan.

The borrowing boom culminated in Argentina's June 2017 issuance of a "century bond". The *Financial Times* commented: "What sane individual lends money for 100 years to a serial defaulter?" The conditions were highly attractive though: high yields of 7.125% annually and an initial offering at a steep discount of 90 cents to the dollar. Argentina found sufficient greedy investors to pick up the bonds. Perhaps these also speculated that someone might step in

to bail them out when Argentina loses the ability to pay. They were right, because this is exactly what the IMF just did with its \$50 billion loan, barely a year later.

Has the IMF changed its ways?

The \$50 billion three-year "stand-by agreement" (SBA) – the largest in IMF history – is a hefty loan compared to an outstanding debt stock of roughly \$221 billion as of 2016, and it is likely to be primarily allocated towards debt service payments and the replenishment of international reserves.

SBAs are typically used to assist countries with balance-of-payments problems in the short term. While the IMF claims that conditionality has been streamlined as part of this facility, in fact, the number of loan conditions rose compared with the 2000 loan programme.

The IMF is advancing similar policy prescriptions to those doled out 20 years ago, with a focus on austerity measures. The main difference between the SBAs of 2000 and 2018 lies in the fact that the former promoted austerity through both increased taxation and spending cuts, while the latter focuses on spending cuts only. This is by no means a change of course by the IMF as both types of austerity are still operated across other country programmes.

The spending cuts advocated strongly resemble those under the 2000 SBA. In 2018 the programme calls for the following cuts:

- Budget cuts at federal and provincial levels
- Reduction of the wage bill through hiring freezes and layoffs
- Pension reform
- Subsidy elimination for sensitive products such as gas and electricity
- Cuts in public works
- Reduced transfers to public enterprises.

Worryingly, local analysts expect ripple effects from squeezed budgets at the provincial level leading to supplementary cuts in education, healthcare and utilities (transport, energy and water).

To make matters worse, the IMF did not require an upfront restructuring of Argentina's current debt stock as a precondition for disbursing the loan. The IMF loan ensures that private creditors will be paid in full, at least for the time being, as the share of the budget going towards debt servicing remains pro-

tected by the Fund. This implies that the full burden of adjustment is placed squarely on the Argentine people who will be affected by job losses, reduced pension entitlements, tariff hikes and lower public service provision.

The Argentinian Foundation for the Environment and Natural Resources (FARN) is worried that austerity will fall on the shoulders of ordinary citizens: "The IMF asks for a reduction of the primary deficit of 3.1% of GDP. According to our estimates this is equivalent to the amount of fossil fuel subsidies to large companies. However, the government has applied austerity measures that are a burden to citizens."

Paving the way for the private sector?

Argentina is increasingly pushing for privatization. In particular, it has been scaling up public-private partnerships (PPPs) in infrastructure since the adoption of a PPP law in 2016. In the meantime, the country has developed a major pipeline of PPP projects, including in health and education, such as the construction of six hospitals. Furthermore, Argentina aims to further develop infrastructure as an asset class as part of its G20 agenda.

Austerity cuts for public works are thus being implemented in parallel with an increased push for PPPs in infrastructure. Confronted with shrinking fiscal space, a government might well turn to PPPs because, using this model, infrastructure projects can be kept off the balance sheet, hiding the true cost of the project.

Civil society organizations in Argentina such as FARN have expressed widely held concerns about PPPs, as shrinking public spending reinforces "existing bias" in the government towards private investment and PPPs in particular.

Social window dressing

While the IMF programme recognizes that there will be social repercussions associated with austerity, it does so through a narrow fiscal lens. Targeted social programmes are supposed to protect the vulnerable from the effects of adjustment. However, in practice, targeted programmes have often failed to reach people in need.

What is more, Argentinian civil society groups and trade unions have labelled the level of social safeguards in the IMF programme "a joke" for those who stand to lose their jobs, salaries and pension entitlements. They calculated that the level of social spending under the programme for the remaining six months of 2018 would amount to \$6 per person for the 13 million poor in Argentina. In an environment of generalized spikes in food prices and increasing numbers suffering economic hardship, these safeguards are unlikely to attenuate the consequences of austerity.

How to deal with Argentina?

Over the years the IMF's macroeconomic prescriptions attached to loans remained broadly the same: the magic potion for economic crisis remains austerity based on the promise of restoring "market confidence". This threatens to further dampen economic activity and constrains the government's ability to

provide essential services. What is more, the current IMF programme fails to tackle the crucial underlying issue, namely the desperate need to restructure Argentina's debt in a sustainable and transparent way.

Instead of locking countries into a perpetual cycle of austerity programmes – an austerity trap – the focus should be on establishing an international debt workout mechanism. The IMF, on its part, should stick to its mandate and assist in addressing countries' short-term balance-of-payments problems. This should not require long-term structural reforms and should leave fiscal and monetary decisions in the hands of democratic decision-makers.

Without these changes, the same prescriptions will continue to be doled out time and again to treat the exact same problem. □

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Will there be a UN treaty to deal with abuses committed by multinationals?

Concerns over corporate impunity are propelling the push for an international accord to curb human rights violations by multinational firms.

by Chloé Maurel

Since the 1970s, representatives of trade unions and non-governmental organizations (NGOs) have made attempts at the United Nations – particularly within its specialized agency the International Labour Organization (ILO) – to regulate the actions of multinationals in order to be able to sanction them if necessary. For example, the ILO adopted in 1971 a resolution on "the protection of workers' representatives in the enterprise", and in 1977 a Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

But all efforts to establish binding regulations have so far failed, blocked by private actors and, during his tenure as UN Secretary-General, by Kofi Annan himself, who instead buttered up the multinationals by offering them the privileged role of interlocutors at the UN

with its Global Compact project.

Multinational companies, which currently number over 82,000, and some of whose wealth exceeds the GDP of several countries, have become major players in the global economy. They have long been criticized by NGOs and trade unions for their attacks on people and the environment. Examples include Michelin's actions in India, Bolloré in Cameroon and Areva in Niger. Not to mention the working conditions of workers in Asia, including the Rana Plaza tragedy in Bangladesh in 2013 where the collapse of a building that was not up to safety standards caused the deaths of more than 1,100 employees of subcontractors of Western textile firms.

Another example is the damage caused by the American company Chevron Texaco in Ecuador: from 1964 to 1990,

the company extracted oil and knowingly polluted, very seriously, the host country. Oil spills that spread into the ground in the Amazon led to major health problems for the region's indigenous people. Chevron refused to compensate the victims.

Thus, "the greatest human rights abuse in Ecuador was not committed by the state but by a company", explains former Ecuadorian minister Guillaume Long, showing why Ecuadorian society is very sensitive to the issue of sanctions against multinationals.

Other examples are legion: "Alstom is accused of corruption in Brazil and is engaged in the construction, with EDF and GDF, of large dams in the Amazon that devastate entire regions and trample on the rights of the people. In India, Veolia is accused of making money out of water management contracts that are against the people's interests, while Areva's projects are fiercely contested by the local population. As for Carrefour ... subcontractors are accused of resorting to slave labour in Thailand," says France's Association for the Taxation of Financial Transactions and for Citizens' Action (ATTAC).

Key resolution at the UN Human Rights Council

In June 2014, at the initiative of Ecuador, then under the progressive government of Rafael Correa, and South Africa, the UN Human Rights Council adopted, by 20 votes to 14, a resolution creating an intergovernmental working group (IWG) to establish a legally binding framework to regulate the activities of multinationals.

"This group is of historic significance," says Marthe Corpet, confederal adviser to the French national trade union centre CGT in charge of multinationals. Indeed, this is the first time such a group has been set up. Ecuador was elected chair of this group.

Long, who was Ecuador's Foreign Minister during the first two sessions of this group in 2015 and 2016 and the country's Ambassador to the UN in 2017, presided over the group. He recounts that "it was extremely difficult at first, because there were countries that voted against the resolution, such as the United States, the European Union, Canada, the United Kingdom and Australia. They

were very opposed to the project, which they perceived as a cause taken up by the countries of the South against the countries of the North. We then tried to broaden support for the project, because we needed the support of countries where multinationals are based to make the treaty effective. In 2016, things went better, and in 2017, we managed to have a real negotiation, especially with the European Union and Australia [while the United States and Canada are still strongly opposed]."

At the 2017 negotiating session, nearly 110 countries were represented in Geneva, showing the international interest in the draft UN treaty, which is a project with "a lot of financial stakes", as Long points out.

It is the rich countries, where more than 85% of the multinationals are headquartered, which are the most opposed to the draft treaty. The draft treaty intends to regulate the actions of multinationals and impose concrete sanctions on them in case of violation of human rights or attacks on the environment. This treaty, once finalized by the working group, will be put to the vote in the UN General Assembly.

The ongoing battle in the UN

France is leading the way after adopting in March 2017 a law on the duty of care of multinationals, a law carried by a coalition of the left. "This French law is the first act regulating the behaviour of multinationals regarding human rights at the global level," says Corpet. Indeed, this law, one of the last laws of President François Hollande's five-year term, is the first in the world to write into hard law the regulation of multinationals.

Several associations and NGOs which had pushed for the adoption of this law, such as CCFD or Sherpa, as well as unions and experts, have established a Citizen's Forum for CSR (Corporate Social Responsibility). Subsequently, as explained by Carole Peychaud, an ATTAC activist who was until recently in charge of lobbying for the regulation of multinationals at the French humanitarian organization CCFD-Terre Solidaire (the Catholic Committee against Hunger and for Development), they created a French Coalition for a Treaty at the UN, which organizes frequent meetings in-

volving groups such as ATTAC, FIDH (the International Federation for Human Rights), CCFD or France-Latin America.

"France is a special case," says Peychaud, "because it is the only country in the world to have a law governing multinationals." This law requires major groups to publish and implement a vigilance plan to identify and prevent the risk of serious violations of human rights and the environment. "Any failure to implement this plan is a fault liable to prosecution of the parent company in a French court," says ATTAC.

Now, Peychaud believes, "France has every interest in internationalizing this French law. The civil society organizations in favour of the project are putting a lot of pressure on the European Union to support it."

At the global level, the other two leading countries in the process, Ecuador and South Africa, have brought the most left-wing countries in the southern cone of Latin America and Africa respectively with them. However, as Long tells us, the change of government in Ecuador since 2017, with a clear swing to the right, means that this country will undoubtedly be less enthusiastic in its support of the project. As for the United States, Japan, Russia and the European Union, they remain firmly against the project.

Thus, this treaty, if it succeeds in being adopted by the UN General Assembly, will be signed, it is hoped, by the European Union (France is pushing for this) and by the G77 countries – that is to say, the countries of the South.

A real battle is going on at the UN over the draft treaty. The International Organization of Employers (IOE) "is up in arms against this project", according to Corpet. Employers' representatives, in particular representatives of large multinational firms, are increasingly influential in the UN; we are talking about corporate capture of the UN, i.e., the weight of big business is growing at the world body. Multinational firms and the IOE are trying to block the negotiation process of this draft treaty.

A strong commitment from civil society

What is positive, however, is civil society's strong commitment to this project: today, more than 700 movements

(NGOs, associations, unions) support the draft treaty. These movements play “a fundamental role”, according to Long. And to unite them, the Global Campaign to Dismantle Corporate Power was set up, strongly supported by Latin American anti-globalization and ecological movements. This very active organization has documented the human rights violations of multinationals since the 2000s and has uncovered “an architecture of impunity”.

Indeed, there is a deeply unjust imbalance: a victim of a multinational cannot apply to any court for justice, while a multinational can turn against states via private arbitration tribunals.

The French Coalition for a Treaty at the UN, to which Peychaud belongs, is a French version of the Global Campaign. Another, more mainstream structure has been put in place to unite many of these movements, the Treaty Alliance. All these movements are putting pressure on the European Union to lean in favour of the treaty. These movements are very active and have acquired, as Long says, a lot of expertise and technical knowledge; “they have drawn up a draft treaty, on a maximalist basis, with the help of lawyers and experts.”

The draft treaty at the UN has created a synergy between associations, NGOs, unions and activists around the world that have organized and linked together to lobby for its development and adoption. Long believes that “there is an important political debate to be held at the UN on the primacy of the human being over capital; so far, only states can be tried in court, not multinationals. Multinationals must be too!”

It is vital that this group of negotiators can succeed in getting this treaty through, to put an end to the impunity enjoyed by multinational companies and to punish their violations of civil, political, social, economic, cultural and environmental rights. ☐

Chloé Maurel, an associate professor and Doctor of Contemporary History, is a historian specializing in the United Nations. She has published books including Histoire de l'Unesco (History of UNESCO) (Harmattan, 2010); Histoire des Relations Internationales depuis 1945 (History of International Relations since 1945) (Ellipses, 2010); and Manuel d'Histoire Globale (Global History Handbook) (Armand Colin, 2014). The above article, translated from the French, first appeared in Equal Times (<https://www.equaltimes.org/will-there-be-a-un-treaty-to#>).

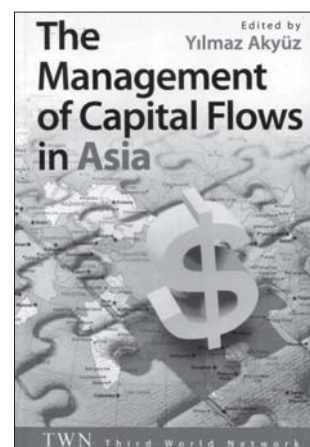
The Management of Capital Flows in Asia

Edited by Yilmaz Akyüz

THE 1997 Asian financial crisis brought home to the region's economies the importance of managing capital flows in order to avert financial shocks. This book looks into whether and how this lesson was taken on board by policy makers in Asia, and, accordingly, how capital account regimes in the region evolved in the post-crisis period.

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This book – a compilation of papers written in 2008 for the first phase of a Third World Network research project on financial policies in Asia – examines the above developments in relation to the region in general and to four major Asian developing economies: China, India, Malaysia and Thailand.



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