

Subtle War at the WTO*

C.P. Chandrasekhar

At the time of writing, the 13th ministerial meet of the World Trade Organisation (WTO) is under way in Abu Dhabi. Among the many issues that are being discussed are two of concern for less developed countries generally and India in particular. The first relates to the renewal of a moratorium on imposition of trade taxes on digital services identified as “electronic transmissions”. The second concern is that of finding a permanent solution to the issue of public stockholding of food, or the legality under WTO rules of measures to procure at administratively prescribed, ‘non-market’ prices of food to be stored and distributed to ensure food security. According to the developed countries, which subsidised their farmers through other means, the administratively determined prices are instruments for subsidising farmers in ways contrary to WTO rules. There are many other issues of special concern to the less-developed countries, including Special Safeguard Mechanisms to address import surges and the tendency in advanced economies to use “non-trade” issues like climate to invoke trade measures, as noted in a statement issued by the G33 group of countries on the eve of the ministerial meet.

Despite such concerns, the event has not received the attention it got in the past, or which is directed at the annual Conference of Parties (COP) on climate-related issues. This is not because global trade flows have become any less weighty or significant than they were. If anything, the consolidation of global value chains and the increased cross-border provision of services has increased the volume and impact of trade on global economic performance.

The retreat from attention to the WTO and its meetings is because the organisation, ostensibly created to ensure the “orderly” liberalisation of global trade, is now largely dysfunctional. This is not because of undisciplined low and middle income countries violating rules, but because of moves by the United States and, on occasion, its allies, to protect their own markets while forcing less developed countries to further open theirs. Epitomising this is the evidence that the principal means through which the organisation facilitated implementation of the decisions taken at its meets and summits, the Dispute Settlement Mechanism, has ceased functioning. The mechanism is the channel through which countries appealed when aggrieved by actions of trading partners, leading to consultations and, if those discussions are not fruitful, to the constitution of a panel to study and report on the complaint. If not settled based on that report, the complaint can go to the Appellate Body that would adjudicate on the matter. If the grievance was found to be genuine, the member violating rules has to take action, failing which the affected member country can retaliate.

This dispute settlement system is no longer operative because the United States has blocked appointments to the Appellate body that is the arbiter on disputes, leaving panel reports that are challenged in limbo. The US has not even specified what changes to the Appellate Body would ensure its support for the appointments process. In the process, the US has disrupted the WTO which it, along with its allies, long dominated. When the task was to open up the markets of the less developed countries, the WTO was useful. But now, when most less developed country markets have been prised open, but the US and Europe have lost or are losing competitiveness in many

areas, developed nations want to close their own markets and regulate imports. The European Union's controversial Carbon Border Adjustment Mechanism that would be effective 2026, which is an import tax on carbon-intensive imports like steel, cement and aluminium, is an example of the new protectionism. An organisation that specifies common rules is an impediment to the adoption of such measures. It must be decommissioned.

Despite this impasse, the WTO continues its routine operations, holds its myriad consultations and convenes ministerial and other meetings. That is because it functions as a pressure pump to be used to bully weaker nations into accepting reform without a quid pro quo. One way to do this is for groups of countries to arrive at 'plurilateral'—rather than 'multilateral'—agreements on multiple issues, which lack force because they remain outside of a global treaty, and then get nations to accept the terms of those plurilateral agreements in a multilateral settlement. Examples of such efforts are the Information Technology Agreement (1996) and protocols on financial services.

Among the controversial issues affecting the less developed that features in the ongoing ministerial is a moratorium on customs duties on electronic transmissions that was agreed to as far back as 1998 and has been periodically extended since then. In the interim much has happened. On the one hand, the volume of cross border provision of priced digital services, including digitally delivered information and commercially streamed music, movies and video games has increased enormously, with substantial profits accruing to providers from clients and consumers in less developed countries. On the other hand, the less developed countries have been overcome by fiscal stringency that affects their ability to meet crucial capital and social expenditures through their official budgets. Revenues from the growing markets for commercial 'electronic transmissions' can help. An UNCTAD study by Richard Kozul-Wright and Rashmi Banga from 2020 estimated the potential tariff revenue loss to developing countries as a result of the moratorium at around \$10 billion per annum. So, the less developed countries want the moratorium lifted.

The advanced economies have raised a range of arguments to justify their stance against digital services imposts, that are echoed in a piece by Alan Beattie in the Financial Times: that implementing such taxes despite the benefits of available digital technologies is not feasible, that it would involve an invasion of privacy, and that the measure would reduce the social accountability of large tech companies. They therefore recommend implementing value added taxes on consumption of digital services, so that the burden is placed on the consumer of these services rather than on the profits of the providers who are global majors.

Countries like India, it is argued, are not really serious about the demand for an end to the moratorium, and only use it as a bargaining chip, "to gain leverage in other WTO issues, such as its long-running campaign to subsidise its farmers in the name of building up buffer stocks of grain." This, in Beattie's view is bizarre, and amounts to "holding a 21st-century industry hostage to a 19th-century one". The reality is that India had to lose revenue because it dropped digital services taxes as part of an agreement on sharing revenues from a global corporate minimum tax, from which it obtains far less.

The WTO crafted to liberalise global trade has lost its purpose. But it remains relevant as an instrument to protect and advance developed economy interests, within a framework where decisions are ostensibly based on ‘consensus’.

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