



## INDIA'S TRADE NEWS AND VIEWS 1 December to 31 December 2017

### **[Philippines' idea to raise import duties to protect farm products to aid India's cause in WTO](#)**

In a move that will further India's cause to protect farm products such as apples and poultry from sudden import surges or price...

### **[Fertilisers vital for doubling farm income: Ramesh Chand](#)**

Chemical nutrients have a very important role in enhancing farm productivity and it would be difficult to achieve the set goal of...

### **[India for better deal on food stock-holding issue at WTO](#)**

India's demand for a 'permanent solution' for public stock holding has been identified as a deliverable at the World Trade Organisation's...

### **[Battlelines get drawn as 164-member WTO Ministerial meet begins](#)**

Battlelines are clearly getting drawn between the developed and developing countries as 164 Trade Ministers from the World Trade Organisation...

### **[India opposed to outcome on domestic regulation in services](#)**

India is opposed to an outcome on domestic regulations on services pushed by many developed countries at the on-going Ministerial...

### **[India to seek permanent solution to food stock issue at WTO, says Suresh Prabhu](#)**

Commerce and Industry Minister Suresh Prabhu has said that a permanent solution to the public stockholding of food stock is...

### **[Prabhu to strategise with key allies ahead of WTO meet](#)**

Commerce and Industry Minister Suresh Prabhu will hold two crucial meetings on Saturday...

### **[India right candidate for differential treatment by WTO: Suresh Prabhu](#)**

Commerce and Industry Minister Suresh Prabhu on Tuesday asserted that India is the right candidate for special and differential treatment...

### **[Jack Ma pitches for easier e-commerce rules](#)**

The World Trade Organisation has officially roped in Chinese online retail giant Alibaba's founder Jack Ma to champion...

### **Food procurement programmes: India seeks lasting solution in current WTO ministerial**

India on Monday sought a permanent solution to the critical issue of public procurement programme at the on-going ministerial...

### **WTO stares at impasse over food procurement issue after US backs out on its promise**

The ongoing ministerial of the World Trade Organization (WTO) could end in a deadlock, without any outcome, as the US is reluctant...

### **WTO Buenos Aires meet: US blocks developing nations' bid to keep Doha agenda alive**

The US on Wednesday blocked a proposal from India, South Africa, and a clutch of developing countries to ensure that the Buenos Aires...

### **What is the food stockpiling issue at the WTO?**

India on Thursday expressed "deep disappointment" as countries failed to reach a consensus over the food security issue at the 11th edition...

### **Consensus elusive on centrality of multilateralism, development as WTO talks enter final day**

Consensus on safeguarding the very tenets of the rules based multilateral system continues to elude the World Trade Organization...

### **'We need soul-searching talks on development, trade'**

In her closing remarks at the December 10-13 meeting of the World Trade Organisation's (WTO) topmost decision-making body...

### **Is WTO working for India and China?**

Every two years or so the world's trade ministers meet in a great location (Buenos Aires this year) and promptly proceed to lock horns...

### **'WTO farm talks should be based on India-China plan to curb rich nation subsidies'**

China has said its joint proposal with India — on the elimination of the huge trade-distorting farm subsidies of rich nations...

### **India opposes move to link gender with trade**

Almost three-fourths of the nations that comprise the 164-member World Trade Organisation have backed a declaration seeking women's economic empowerment...

### **Lack of consensus: WTO ministerial ends in stalemate**

The 11th ministerial conference of World Trade Organisation (WTO) ended in stalemate late...

### **US calls WTO meet 'successful,' India says no 'substantive outcome'**

Initiatives like e-commerce among like-minded nations offer way forward for WTO, said the US Trade Representative...

### **Stalemate at WTO: On U.S. obstructionism**

The 11th biennial ministerial conference of the World Trade Organisation ended in a stalemate, with countries divided along industrial...

### **Goalless draw at WTO**

The “collapse” of talks at last week’s trade ministerial may have raised questions about WTO’s future, but they did not go off too badly...

### **To energise WTO, India to host informal, ‘representative’ ministerial in early 2018**

India will host a meeting of select trade ministers representing the entire membership of the World Trade Organisation...

### **WTO: After gains at Buenos Aires, India plans mini ministerial**

India plans to host representatives of around 40 countries early next year to set the ball rolling for the next ministerial...

### **For first time, India not being blamed for collapse of WTO talks, says Suresh Prabhu**

For the first time in the over two-decade old history of the World Trade Organisation (WTO), India was not blamed...

### **‘WTO meet failure: India not blamed’**

For the first time in the more than two-decade history of the World Trade Organisation (WTO), India was not blamed...

### **‘Opposition to curbs on agri sector at WTO meet has yielded results’**

K. Sellamuthu (70), a Tirupur-based farmer, says he is a contented person as various oppositions that many farmers including him raised...

### **WTO must focus on emerging issues to remain relevant: Prabhu**

The WTO must incorporate emerging issues if it wants to remain relevant in the changing times, Union Minister Suresh Prabhu said today, asserting that...

### **WTO: life after Buenos Aires**

There is life after Buenos Aires,” claimed Susana Malcorra, chair of the 11th ministerial conference of the World Trade Organization...

### **The decline of the WTO**

Trade ministers from around the world attended the once-in-two years World Trade Organization (WTO) ministerial in Argentina earlier...

### **India’s self-defeating stand on e-commerce**

India’s small and medium enterprises (SMEs), struggling to survive in the aftermath of demonetization and the introduction of the goods and services...

### **India can make a fight of it at WTO**

With the curtains having come down on the 11th Ministerial Conference of the WTO held recently at Buenos Aires...

### **The rise and fall of the WTO**

As the U.S. loses interest in multilateralism in trade, India should actively try to arrest the organisation's slide...

### **Global trade: back to the drawing board**

The outcome of the 11th ministerial meeting of the World Trade Organization (WTO) at Buenos Aires was on predictable...

### **India, South Korea may hold joint IPRs through trade pact**

With South Korean companies establishing themselves as big players in India, the two countries...

### **How India rejects bad patents**

Strong standards for patents have filtered the bad from the good, with the least administrative and financial burden...

### **Why India opposed deal to end fisheries subsidies at WTO**

India's opposition to a proposed agreement to end fisheries subsidies at the World Trade Organization (WTO) meeting in Buenos Aires that...

### **US takes India back to WTO in solar power dispute**

India has failed to comply with a World Trade Organization ruling on solar power, the United States will tell the WTO's dispute...

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## **Philippines' idea to raise import duties to protect farm products to aid India's cause in WTO**

Kirtika Suneja, The Economic Times

New Delhi, December 6, 2017 : In a move that will further India's cause to protect farm products such as apples and poultry from sudden import surges or price falls, the Philippines has proposed a tool that will allow developing countries to raise duties of certain products to deal with such volatile situations.

Called special safeguard provisions, this trade remedy tool would be used to mitigate price volatility risks and balance distortions in agricultural trade. It is important for India as the capped tariffs of some agricultural products such as apples and chicken legs are not high enough to protect domestic farmers.

The Philippines has made these recommendations in a series of proposals to the World Trade Organization (WTO) ahead of the crucial ministerial meeting in Buenos Aires next week. It has been leading the cause on special safeguards on behalf of the G-33 for a long time.

"While the Philippines has spearheaded this idea, it is in India's favour," said an official aware of the development.

Developed countries already have a special safeguard mechanism or SSM in place.

India and other developing countries have been fighting to secure a similar provision on a priority basis and at the previous ministerial meet in Nairobi in 2015, all members agreed to work on a SSM for developing countries. This would enable them raise import duties on agriculture items in case imports rise steeply or there is a sharp fall in domestic prices.

While the Nairobi decision indicates that "developing country members will have the right to have recourse to a SSM", there have been disagreements among members on various aspects of the SSM.

"After quantitative restrictions were removed in 2001, it is the only instrument to control price surges," the official added.

Price v/s volume safeguards

The Philippines has also favoured a price based SSM for developing countries wherein they can raise duties as and when any import takes place at a price lower than set by the government. A volume based SSM would come into place only after the country has the cumulative imports for the full year which is a

time consuming process.

"In no circumstances may any product be, however, subject to the simultaneous application of price-based SSM and volume-based SSM," it said in one of the proposals.

"The Philippines feels that price based SSM is more effective and easier to use...Price based mechanism is useful for India," the official said.

[\[Back to top\]](#)

### **Fertilisers vital for doubling farm income: Ramesh Chand**

Business Line

New Delhi, December 8, 2017 : Chemical nutrients have a very important role in enhancing farm productivity and it would be difficult to achieve the set goal of doubling farmers' income by 2022 without the help of the domestic fertiliser industry, said agriculture economist and NITI Aayog member Ramesh Chand on Thursday.

A back-of-the-envelope calculation has shown that a farmer who uses around 150 kg of fertiliser for one hectare paddy crop gets an income of ₹26,000, whereas if the fertiliser use is limited to less than 50 kg/ha, the income plummets to ₹6,500 per hectare, Chand said while addressing an annual seminar of the Fertiliser Association of India.

Not many studies have looked at the role played by fertilisers in improving farm income, he said adding that the fertiliser industry may have to increase its urea production capacity to 36 million tonnes by 2022-23 to achieve a doubling of farmers' income.

Earlier, addressing the gathering, Rao Inderjit Singh, Minister of State for Chemicals and Fertilisers, said the government was aware of the turmoil through which the fertiliser industry was passing.

According to FAI Director-General Satish Chander, the Government has promised the industry that it would clear dues of ₹22,000 crore and disburse fertiliser subsidy of ₹70,000 crore for the year, by March 31.

[\[Back to top\]](#)

### **India for better deal on food stock-holding issue at WTO**

Amiti Sen, Business Line

December 9, 2017 : India's demand for a 'permanent solution' for public stock holding has been identified as a deliverable at the World Trade Organisation's Ministerial Conference (MC 11) starting in Buenos Aires on Sunday. But the country has said that only a solution better than the existing 'peace clause' will be acceptable.

"We are not ready to accept anything less appealing than the peace clause that we already negotiated in the earlier ministerial. A permanent solution needs to be better than that in terms of less onerous conditions. A solution without improvement is not acceptable to us," said a senior Indian official.

In the MC in Bali in 2013, India and other members of the G-33 group (with a large population dependent on agriculture) were promised a permanent solution to treating subsidies for public stockholding by 2017. Such subsidies on Minimum Support Price programmes, as per rules, are subject to a cap of 10 per cent of production value.

The peace clause, which protects countries against action from other members in case the cap is breached, comes with a number of onerous conditions that India wants removed as part of the permanent solution.

"We want the notification condition which states that a country needs to update information on all crop related data before seeking relief from subsidy cap to go," the official said. He added that it was impossible to meet as was demonstrated in the fact that only nine countries have managed to update notifications without a time lag so far.

In a recent informal meeting of the Committee on Agriculture (CoA) chairperson Stephen Ndun'gu Karau (Kenya) pointed out that public stock holding was an issue where an outcome at MC11 is possible. "That being said, some serious work will need to be done in Buenos Aires," he added.

Discussions on the permanent solution will take place in one of the five discussion groups which will hold negotiations on key issues at MC 11. The other discussion groups are on e-commerce, fisheries subsidies, development issues and services.

India would insist on a work programme for a favourable permanent solution after the MC 11, if it is not offered a satisfactory resolution during the meeting. "We are not ready to accept just anything that is doled out to us," he said.

The MC 11, which starts on Sunday evening, will conclude on December 13.

[\[Back to top\]](#)

**Battlelines get drawn as 164-member WTO Ministerial meet begins**

Amiti Sen, Business Line

Buenos Aires, December 10, 2017 : Battlelines are clearly getting drawn between the developed and developing countries as 164 Trade Ministers from the World Trade Organisation (WTO) prepare for the official launch of the Eleventh Ministerial Conference (MC 11) in Buenos Aires late Sunday evening.

“Since yesterday, we have had good discussions with a number of developing countries, including the G-33 group in agriculture. We will continue to have meetings with many other countries. The idea is to be on a common platform so that when we finally push for our agenda there will be enough support for us,” Commerce and Industry Minister Suresh Prabhu told the media.

On a common platform

On Saturday, Suresh Prabhu attended a close-group get-together organised by the South Centre with more than 20 developing-country delegations, including South Africa, Zimbabwe, Cuba and Bolivia to examine their common positions.

The Minister, on Sunday, also held a lunch for key developing countries, including those from South Asia, China, South Africa and other African countries, including Kenya, Egypt, Benin and Burkina Faso.

“It was encouraging to note that there was a congruence of positions on all important issues such as domestic support on agriculture, e-commerce, investment facilitation, MSMEs and domestic regulation on services,” a Commerce Ministry official said.

Prabhu, however, cautioned that the exact positions would emerge over the next two days in the discussions between heads of States and the five discussion groups. “That is when we will know exactly the distances to be covered,” he said.

Prabhu also met the EU Trade Commissioner on Sunday and is scheduled to meet the Chinese Trade Minister.

The five discussion groups include ones on agriculture, e-commerce, fisheries subsidies, development issues and services.

Five discussion areas

A number of developing countries, including India and the G-33 group led by Indonesia, want an agreement on a satisfactory permanent solution for public stockholding programmes and special safeguard measures (SSMs) to allow developing countries protect farmers against import surges by raising import duties beyond caps.



On public stockholding, India has said that the permanent solution needs to be better than the existing 'peace clause' which comes with a number of riders. It wants that subsidies for Minimum Support Price should be allowed without the present 10 per cent cap and less onerous notification requirements.

In the area of e-commerce and investment facilitation, India is opposed to negotiations on rules.

The Central government has also said no to negotiations on domestic regulations on services but is open to a work programme which also includes elements from its proposal on Trade Facilitation in Services.

In the area of disciplining fisheries subsidies, India is agreeable to a work programme but no immediate commitment on lowering IUU (illegal, unregulated, unreported) subsidies.

The negotiations at Buenos Aires will go on till December 13.

[\[Back to top\]](#)

### **India opposed to outcome on domestic regulation in services**

Amiti Sen, Business Line

Buenos Aires, December 10, 2017 : India is opposed to an outcome on domestic regulations on services pushed by many developed countries at the on-going Ministerial Conference (MC 11) of the WTO at Buenos Aires.

The country, however, is ready for a work programme on services subject to some conditions. "India wants to exclude rules on investment facilitation (Mode 3) and include elements from its proposal on trade facilitation agreement on services such as movement of workers and recognition of quality actions," a Commerce Ministry official said.

The official added that India is not isolated in its views against domestic regulations on services with a large number of developing countries supporting it. "Most African countries are with us on the matter of domestic regulations on services and we draw a lot of strength from that," the official said.

The African group also support India's proposals on easing movement of professionals and recognition of qualifications of professionals in other countries.

However, they do not agree with some other elements of India's trade facilitation proposal such as data transfer and agreement on social security.

“India has, therefore, identified elements from its own trade facilitation proposal which would be acceptable to allies. These need to be included in the work programme,” the official said.

The US is opposed to inclusion of visa issues in the programme, the official added.

Further talks on the issue will take place in the discussion group on services, which is one of the five groups set up at the Ministerial meet to expedite decision-making.

[\[Back to top\]](#)

## **India to seek permanent solution to food stock issue at WTO, says Suresh Prabhu**

The Indian Express

Buenos Aires, December 10, 2017: Commerce and Industry Minister Suresh Prabhu has said that a permanent solution to the public stockholding of food stock is a “must have” at the 11th ministerial conference of the World Trade Organisation (WTO) which begins in Buenos Aires from Sunday. The permanent solution, the minister said, should also cover the current as well as future programmes of all developing member countries and LDCs as it concerns the livelihood of millions of poor people. “A permanent solution to public stockholding for food security is a must have at WTO MC (Ministerial Conference) 11... Any permanent solution on public stockholding for food security should cover the current and future programmes of all developing member countries and LDCs,” the minister said in a series of tweets after attending a meeting of G33 grouping.

The G33 is a grouping of 47 developing countries having common objectives and similar concerns. It has been at the forefront in taking forward issues affecting food security and livelihood of farmers. Strongly reiterating the need for a concerted action on public stock holding issue, Prabhu said it is an important instrumentality used in developing countries across the globe, where agriculture is mostly rain-fed, to ensure two square meals a day to millions of poor people.

Prabhu also pitched for special safeguard mechanism (SSM), an instrument which would help the developing countries to deal with import surges and price dips as a result of high subsidies provided by the developed countries to agriculture products. “Special safeguard mechanism is important for developing countries to address import surges and price dips from highly subsidised imports of agriculture products from developed countries,” the minister said, adding it deals with the question of livelihood of farmers.

“The demand by G-33 countries for an instrument that has been available to a select few for over two decades is reasonable and pragmatic,” Prabhu said, stressing that the grouping represents the collective voice of over two-thirds of humanity — overwhelming majority of poor and subsistence farmers.

Under the global trade norms, a WTO member country's food subsidy bill should not breach the limit of 10 per cent of the value of production based on the reference price of 1986-88. Apprehending that full implementation of food security programme may result in breach of the WTO cap, India has been seeking amendments in the formula to calculate the food subsidy cap.

As an interim measure, the WTO members at the Bali ministerial meeting in December 2013 had agreed to put in place a mechanism popularly called the Peace Clause and committed to negotiate an agreement for permanent solution at the 11th ministerial meeting at Buenos Aires. Under the Peace Clause, WTO members agreed to refrain from challenging any breach in prescribe ceiling by a developing nation at the dispute settlement forum of the WTO. This clause will be there till a permanent solution is found to the food stockpiling issue.

India's stand has been that the permanent solution should be an improvement over the Peace Clause. An agreement on SSM is important for India as the applied custom duty on some of the agriculture products is at the bound rate, meaning it can't be raised further. These include products such as chicken legs, apples, olive oils and rice.

The SSM, if agreed, would help in dealing with import surges and price dips.

[\[Back to top\]](#)

## **Prabhu to strategise with key allies ahead of WTO meet**

Amiti Sen, Business Line

Buenos Aires, December 10, 2017 : Commerce and Industry Minister Suresh Prabhu will hold two crucial meetings on Saturday — a day before the World Trade Organisation's (WTO) Eleventh Ministerial Conference (MC 11) kicks off in Buenos Aires — to give a final shape to India's negotiating strategy on the key issue of food security.

The Minister is scheduled to meet his South African counterpart Rob Davies and participate in a meeting of the G-33 alliance of countries led by Indonesia on December 9, a government official told *BusinessLine*.

“The meetings are extremely important as South Africa shares our concern about attempts being made by farm produce exporting countries to place riders on a permanent solution for procurement subsidies,” the official said. The G-33, on the other hand, is the platform from where India is fighting for its right to give adequate food security to its people, he added.

In the MC in Bali in 2013, India and other members of the G-33 group (with a large population dependent on agriculture) were promised a permanent solution to treating subsidies for public stock holding by 2017. Such subsidies, as per rules, are subject to a cap of 10 per cent of production value.

The peace clause, which protects countries against action from other members in case the cap is breached, comes with a number of onerous conditions that the G-33 wants removed as part of the permanent solution.

“In the G-33 meeting on Saturday, members would strategise on how to push other members into agreeing to a permanent solution with less stringent transparency conditions than in the peace clause,” the official pointed out.

The meeting between India and South Africa is likely to focus on, among other things, the proposal made by the EU and Brazil to link a permanent solution to disciplining of domestic subsidies, which both have objected to.

“The two Ministers are likely to discuss the strategy in case the EU is unwilling to move from its position during the Ministerial talks,” the official said.

India’s Ambassador to WTO JS Deepak reportedly said at a recent meeting in Geneva that any efforts to foster a linkage between public stock holding outcome and agricultural domestic support would have serious consequences, including jeopardising outcomes.

Apart from farm subsidies and public stock holding, other issues to be taken up at the MC 11 include disciplines on fisheries subsidies and rules on e-commerce.

[\[Back to top\]](#)

## **India right candidate for differential treatment by WTO: Suresh Prabhu**

The Indian Express

Buenos Aires, December 12, 2017 : Commerce and Industry Minister Suresh Prabhu on Tuesday asserted that India is the right candidate for special and differential treatment by the WTO, rejecting US criticism of countries bypassing rules in the name of self-proclaimed development status.

Special and differential treatment is an integral part of the World Trade Organisation (WTO) and the ground reality that some countries have low per capita income cannot be ignored, Prabhu said at a press meet.

The minister was fielding questions over issues of special and differential treatment as raised by US Trade Representative Robert Lighthizer in his address at the plenary of the 11th ministerial conference of the WTO.

“We need to clarify our understanding of development within the WTO. We cannot sustain a situation in which new rules can only apply to the few, and that others will be given a pass in the name of self-proclaimed development status. There is something wrong, in our view, when five of the six richest countries in the world presently claim developing country status,” Lighthizer had said.

Special and differential treatment, Prabhu said in his response, “is an important component of the WTO... You cannot ignore realities that certain societies have been left behind in the process of development.”

Developing nations, including India, he said, “are legitimate demandeurs for special and differential treatment... It is also noteworthy that many developed countries of today have benefited from long periods of derogation from GATT rules in the area of agriculture and textiles”.

In his address at the plenary, Prabhu also expressed concern over the way the discourse at the WTO is being deflected by arguments based on GDP of countries.

“We are increasingly seeing that the discourse on development at the WTO is sought to be deflected by specious arguments based on aggregate GDP figures.

“While in India, we are proud of our GDP and growth rates of recent years, propelled by innovative economic policies of my government, we cannot ignore that India is home to more than 600 million poor people,” Prabhu added.

The minister underlined the need for protecting the WTO as a platform for promoting trade in transparent and democratic manner, stressing that commerce ought to promote development and eliminate social problems like poverty.

About food security issues, the minister said he was only reminding the WTO members about the commitments made at the Bali conference that they would come out with a permanent solution to the problem by December 2017 at the 11th ministerial.

According to Prabhu, the asymmetry on provision of agriculture subsidies between developed and developing countries under the WTO norms ought to be addressed.

Taking questions on e-commerce, the minister observed that while taking up new issues for negotiations, the due process established by the members should be followed.

On the possible impact of the proposed tax reforms in the US on global economy, which many feel could violate the WTO rules, the minister pointed to the dispute settlement panel of the multilateral trade body as an option available to aggrieved member nations.

[\[Back to top\]](#)

## **Jack Ma pitches for easier e-commerce rules**

Amiti Sen, Business Line

Buenos Aires, December 12, 2017 : The World Trade Organisation has officially roped in Chinese online retail giant Alibaba's founder Jack Ma to champion the cause of liberalisation of the e-commerce sector.

A trilateral initiative between the WTO, Jack Ma's recently started Electronic World Trading Platform (eWTP) and the World Economic Forum for 'enabling e-commerce' was launched on Monday at the on-going Eleventh Ministerial Conference (MC 11) in Buenos Aires.

“We want to share our experience on how e-commerce can benefit small companies. Alibaba was launched in China 18 years ago when there was no infrastructure and almost no policies (on e-commerce),” Jack Ma said, adding that things evolved since then and it has now become the world's largest e-commerce company creating 33 million jobs.

Alibaba's daily sale recently crossed \$25 billion and the biggest beneficiaries were small and medium enterprises (SMEs), he added.

The trilateral initiative on e-commerce will encompass involvement and engagement with policy makers, industry and experts to identify best practices and see opportunities for aligning policies, Richard Samans from WEF pointed out.

India, however, is not impressed and is insisting on sticking to its stand of not supporting negotiations on e-commerce rules at the WTO . “There are no doubt about the many benefits of e-commerce, but it is a double-edged sword. If we allow multilateral rule-making in e-commerce, which most initiatives finally lead to, it could hurt small traders in the country and result in job loss rather than gains,” an Indian government official told *BusinessLine* .

A total of eight proposals on e-commerce are being considered at the MC 11 with some, such as the EU's, suggesting ways to fast-track discussions which is seen a prelude to starting negotiations.

Stressing on the benefits of e-commerce, Jack Ma said it can be used to improve globalisation and help develop small businesses to end the dominance of 60,000 big companies in global trade.

Alibaba announced the opening of its first Electronic World Trade Platform (eWTP) hub outside China in Malaysia to offer SMEs the infrastructure for doing commerce with services encompassing e-commerce, logistics, cloud computing, mobile payment and talent training.

WTO DG Roberto Azevedo said a right approach to e-commerce was needed without which big players will continue to dominate and small players will be left behind.

[\[Back to top\]](#)

## **Food procurement programmes: India seeks lasting solution in current WTO ministerial**

Banikinkar Pattanayak, The Indian Express

Buenos Aires, December 12, 2017: India on Monday sought a permanent solution to the critical issue of public procurement programme at the on-going ministerial of the World Trade Organization (WTO) and asked the developed world to trim their massive trade-distorting farm subsidies without putting the onus of a reduction in such dole-outs on developing nations.

Speaking at the plenary session in Buenos Aires, commerce minister Suresh Prabhu sought a special safeguard mechanism (SSM) to protect farmers from unusual shocks delivered by cheaper imports, in sync with a mechanism that already exists for the developed countries.

Prabhu asked the member-nations to desist from jumping to new issues like e-commerce or investment facilitation without settling those in the Doha development agenda, including a reduction in huge trade-distorting subsidies by the rich nations.

Prabhu reiterated India's pledge for a rule-based multilateral trading system (the WTO framework) and expressed concern at the "inordinate delay" in the appointment of new members to the Appellate Body that is central to the WTO's dispute settlement mechanism.

Separately, sources indicated that India could look to block any proposal to put investment facilitation on the negotiating agenda, as sought by the Friends of Investment Facilitation for Development (FIFD) grouping of 11 WTO members, including China, Argentina and Brazil.

"At MC11 (current ministerial conference) we look forward to constructive engagement of the entire WTO membership for taking final decisions in areas where specific mandates were provided at Nairobi (last ministerial in December 2015)," Prabhu said.

He stressed the permanent solution for public stockholding for food security is a matter of survival for 800 million people across the globe and made it clear that "we cannot envisage any negotiated outcome at MC 11, which does not include a permanent solution".

While India has got a permanent peace clause for public stock holding (which protects food procurement programmes against penal action from WTO in case subsidy ceilings are breached), this concession is basically restricted to the programme running in 2013. This means no new procurement programme will be covered by the clause if the subsidy ceiling is breached there. Also, the clause comes with cumbersome notification obligations on farm subsidies doled out by these countries. India wants a better solution than the status quo that makes compliance easier and concession more substantial for developing nations.

[\[Back to top\]](#)

## **WTO stares at impasse over food procurement issue after US backs out on its promise**

Banikinkar Pattanayak, The Indian Express

Buenos Aires, December 13, 2017: The ongoing ministerial of the World Trade Organization (WTO) could end in a deadlock, without any outcome, as the US is reluctant to pursue a permanent solution to the issue of food procurement that is central to the demands of developing countries, including India. The US has conveyed its decision to a group on agriculture, sources said.

Its latest stance marks a departure from its commitment in the Nairobi ministerial, where all WTO members had agreed to work towards finding a lasting solution to the issue by December 2017. After over two decades of existence, the WTO is now witnessing a barrage of criticism over the role of US, one of its staunchest proponents, while most others have renewed pledge to further strengthen its framework, exposing stark differences over how a rule-based multilateral trading system is being perceived today.

US Trade Representative (USTR) Robert Lighthizer said the WTO was increasingly becoming a litigation-centered organisation, losing its focus on negotiation, apart from going soft on fast-growing and wealthy developing countries. The USTR questioned the special and differential treatment to major developing nations at the WTO, in a veiled reference to countries like China and India. “We cannot sustain a situation in which new rules can only apply to the few, and that others will be given a pass in the name of self-proclaimed development status,” he said.

The EU, China, India and most others, however, called on all members to further bolster WTO’s framework. Re-invoking India’s pledge to the framework, commerce minister Suresh Prabhu said: “The expansion of global trade is our vision in the WTO. All countries stand to benefit from it. Therefore, at MC 11 we urge the WTO membership to unequivocally reaffirm the importance of a rules-based multilateral trading system as enshrined in the Marrakesh Agreement. We are increasingly seeing that the discourse on development at the WTO is sought to be deflected by specious arguments based on aggregate GDP figures,” Prabhu said.

He also drew attention to the fact that many developed countries have gained immensely from long periods of derogation from GATT rules in the area of agriculture and textiles.



The USTR's statement reflects the Trump administration's critical attitude towards the WTO on charges that US has got a raw deal from the trade body. In late November, the US blocked efforts by the WTO to draft a declaration for ministers to agree on at the Buenos Aires ministerial.

Under Trump, the US has blocked the appointments of new judges to a WTO body that hears internal trade disputes. Analysts have already warned of a paralysis in the functioning of the body, as more judges are expected to see their terms end in coming months.

EU trade commissioner Cecilia Malmstrom said the successes of the last two ministerials brought some optimism that despite significant differences of views among members, "the WTO is still capable of delivering important negotiated outcomes". "Unfortunately, however, we start this year's ministerial conference with more questions than answers, and little sense of concrete progress over the past two years. The system is being challenged, members show insufficient collective ownership and are divided on key questions such as what the WTO should be doing. And there are growing calls for conducting business outside the multilateral setting."

China's commerce minister Zhong Shan said: "Let us join hands and take real actions to uphold the authority and efficacy of the WTO." On the USTR's claims on special treatment to developing countries, Prabhu said although the country is a fast-growing major economy, it's home to 600 million poor people and that its per capita income is still meagre (\$2,000 in 2017, according to a forecast by rating agency S&P).

[\[Back to top\]](#)

## **WTO Buenos Aires meet: US blocks developing nations' bid to keep Doha agenda alive**

D. Ravi Kanth, Live Mint

Buenos Aires, December 13, 2017: The US on Wednesday blocked a proposal from India, South Africa, and a clutch of developing countries to ensure that the Buenos Aires declaration include a promise to address the unresolved issues from the Doha ministerial.

According to people familiar with the development, hours before the World Trade Organization's (WTO's) Buenos Aires ministerial meeting was to close, the chairperson for the meeting Susana Malcorra, the Argentinean minister, convened a head of delegations meeting to see if members could agree on common language on the Buenos Aires ministerial declaration.

During the meeting, India, South Africa, and a large majority of developing countries waged a grim battle to insert language that the unfinished Doha negotiations must continue until all issues are resolved satisfactorily by members till the 12th ministerial conference in 2019.

This proposal was also supported by China. “We fully support the proposal from India and South Africa,” China’s trade envoy to the WTO ambassador Xiangchen Zhang said in an interview.

But the US fiercely opposed any mention of the Doha work programme or unresolved Doha issues in the Buenos Aires ministerial declaration. The US insisted that there must be a simple statement without any prescriptive work programme, according to a participant present at the meeting.

The US’s position was also reflected in a joint statement issued by 44 countries who sought to erase the Doha work programme and Doha Development Agenda (DDA) from the ministerial declaration.

The 44 countries including Argentina, Australia, Canada, New Zealand, Chile, Colombia, Costa Rica, Cote D’Ivoire, Dominican Republic, El Salvador, Guatemala, Hong Kong (China), Iceland, Israel, Kazakhstan, Kuwait, South Korea, Liberia, Singapore and several others, emphasized the essential role for the WTO to continue delivering meaningful outcomes.

They also supported the US on issues concerning “WTO’s trade monitoring work contributes to the effective functioning of the multilateral trading system, by enhancing transparency of trade policies and practices of members.”

The 44 countries, however, differed with the US on one issue, namely, on how to reform the DSU (dispute settlement understanding). The US had blocked the nomination of judges to the appellate body creating a paralysis in the dispute settlement system.

“We underline the importance of ensuring its effective functioning. In this regard, we call for all vacancies on the appellate body to be filled without delay.”

With just few hours to go, the Buenos Aires ministerial meeting is poised to conclude on a note of disappointment as frustration over failure to generate outcomes on mandated issues such as the permanent solution for public stockholding programmes for food security spilled over into other issues.

Even a ministerial declaration—which is sign of a successful ministerial conference and which sets out the work programme for the next two years—is unlikely to come by because of the intransigent positions adopted by the US, said a trade minister who asked not to be named.

[\[Back to top\]](#)

## **What is the food stockpiling issue at the WTO?**

The Indian Express

New Delhi, December 13, 2017 : India on Thursday expressed “deep disappointment” as countries failed to reach a consensus over the food security issue at the 11th edition of the ministerial conference (MC11) of the World Trade Organisation, adding it posed a “severe threat” to the outcome of the meet. Without referring to the US, India said a major country has “renege” on its commitment to deliver a solution to address hunger in the poorest countries at this meet.

What is MC11?

The four-day session, which was held in Buenos Aires in Argentina, began on Sunday and concluded on Wednesday. The MC, chaired by Argentinan Minister Susana Malcorra, is the highest decision-making body of the WTO. Attended by trade ministers and senior officials from the organisation’s 164 member countries, the meet takes place at least once in two years. The last two meetings were held in Nairobi, Kenya in December 2015, and in Bali, Indonesia in 2013.

The MC takes decisions on matters related to any multilateral trade agreement.

What is the food stockpiling issue at the WTO?

According to global trade norms, a WTO member country’s food subsidy bill is restricted to 10 per cent of the value of production, based on the reference price of 1986-88.

However, during the Bali conference, members agreed to an interim ‘Peace Clause,’ under which any breach of the ceiling by a developing nation would not be challenged. The clause was installed until a permanent solution was agreed upon — it was decided that one would be negotiated at Buenos Aires.

What is India’s stance on this?

The Indian delegation at MC11 was led by Commerce Minister Suresh Prabhu. India had said the credibility of the WTO would be affected without a permanent solution to the issue. “India has emphasised that permanent solution was a must have and should be an improvement over the Peace Clause (agreed at Bali)... If not delivered, it would affect the credibility of the WTO,” J S Deepak, India’s Ambassador to WTO, was quoted as saying by news agency *PTI*.

In fact, in his plenary address, Prabhu had said, “We cannot envisage any negotiated outcome at MC11, which does not include a permanent solution.”

“This is a matter of survival for eight hundred million hungry and undernourished people in the world. A successful resolution of this issue would fulfil our collective commitment to the global community,” he had also said.

Was a solution negotiated?

Despite agreeing to a consensus in Buenos Aires, members countries of the WTO hit a roadblock on Wednesday over the food security issue. The US, which questioned special and differential treatment to countries with a high GDP, refused to accept a permanent solution to the issue, reported *PTI*.

“We need to clarify our understanding of development within the WTO. We cannot sustain a situation in which new rules can only apply to the few, and that others will be given a pass in the name of self-proclaimed development status,” US Trade Representative (USTR) Robert Lighthizer said. “There is something wrong, in our view, when five of the six richest countries in the world presently claim developing country status.” He did not specifically mention India, China or any of the emerging nations.

Lighthizer’s comments are in line with the Trump administration’s claims that the US has received a raw deal from the WTO.

How has India responded?

Prabhu, while addressing a press conference, said special and preferential treatment is an “important component” of the WTO, adding that developing countries like India are “legitimate demandeurs” of it.

“You cannot ignore realities that certain societies have been left behind in the process of development,” Prabhu said. “It is also noteworthy that many developed countries of today have benefitted from long periods of derogation from GATT rules in the area of agriculture and textiles,” he added, reported *PTI*.

Prabhu also raised the differences between developed and developing countries in providing agriculture subsidies, and called for it to be addressed.

No compromise on food security, says M S Swaminathan

M S Swaminathan, known as the father of the Green Revolution in India, in a series of tweets, said the basis of negotiation at the WTO should be to “end hunger, achieve food security, improved nutrition & promote sustainable agriculture”.

“Minister @sureshprabhu deserves gratitude for indicating at #BuenosAires #WTO that there’s no compromise on #foodsecurity. WTO exists to promote free & fair trade. “Fair” should include protection of livelihood & food security of our majority who depend on farming,” he tweeted. “... agriculture in many developing countries including India is not a commercial enterprise but the backbone of livelihood security of a large population.”

What about other member countries?

The European Union said this year’s MC has delivered “little sense of concrete progress”. EU trade commissioner Cecilia Malmstrom said, “The system is being challenged, members show insufficient

collective ownership and are divided on key questions such as what the WTO should be doing. And there are growing calls for conducting business outside the multilateral setting.”

China’s commerce minister Zhong Shan had said: “Let us join hands and take real actions to uphold the authority and efficacy of the WTO.”

What about the other issues at MC11?

Without any decision on the food security issue, talks on other issues, including services, fisheries and e-commerce may remain unresolved, according to *PTI*.

[\[Back to top\]](#)

### **Consensus elusive on centrality of multilateralism, development as WTO talks enter final day**

Kirtika Suneja, The Economic Times

Buenos Aires, December 13, 2017 : Consensus on safeguarding the very tenets of the rules based multilateral system continues to elude the World Trade Organization (WTO) even as the eleventh ministerial conference is about to enter its final day.

The 164-country WTO has not been able to find unanimity to reaffirm any of the fundamentals of the trade body- Marrakech principle of multilateralism, Doha Development Agenda, and special and differential treatment (S&DT).

Instead, what is happening is an effort to change the definition of development to leave certain countries out of S&DT, the US' non involvement and going back on its commitment, and new and non-trade issues entering the WTO even as the existing issues in agriculture remain unfinished.

Independent decisions are expected to come on moratorium on ecommerce and TRIPS Non-Violation and Situation Complaints which shields intellectual property from non-violation complaints as very decision maker

A work programme on fisheries subsidies is also likely because the issue already has a mandate and doesn't require a new one.

"Director General said there is a need to shift gears to forward looking outcomes," WTO spokesperson Keith Rockwell said in a press conference convened late evening on Tuesday.

Late night talks are scheduled for fisheries and e-commerce as members try to thrash out a decision on these issues.

Though host Argentina is trying to produce a text around consensus could be met, through a drafting group, an official said that the agriculture package had collapsed as the US has backtracked on its commitments made two years ago in Nairobi.

"The entire agriculture package is at risk because of one member," said a government official.

Earlier in the day Argentinian minister Susana Malcorra on Tuesday arranged a meeting between Indian commerce minister Suresh Prabhu and US Trade Representative Robert Lighthizer in which the US expressed its with the WTO system.

On its part, India is hopeful of a ministerial declaration or a work programme especially for finding the permanent solution for which a mandate exists based on processes which are inclusive and involve consensus, by the end of the talks.

[\[Back to top\]](#)

### **‘We need soul-searching talks on development, trade’**

Arun S, The Hindu

December 14, 2017 : In her closing remarks at the December 10-13 meeting of the World Trade Organisation's (WTO) topmost decision-making body, Susana Malcorra, Argentine minister and Chair of the Ministerial Conference (MC) said dialogue, and not just negotiation, was part of the world of the WTO members. Ms. Malcorra said she wants the Buenos Aires meeting to be remembered "as the place where this dialogue began." In an interview, Ms. Malcorra said, there was a need to lift the commitment to the 'development agenda' of the WTO's Doha Round and bring it all the way up to the 2030 Agenda for Sustainable Development. Excerpts:

Just before the meeting, you had said "there is life after Buenos Aires." Now that the meeting here is deadlocked, do you think the WTO and the development agenda of the Doha Round talks are on life-support?

No, I don't. I think it is clear that there is a big divide around the question of development and its relationship with trade.

So what we have to do is really give ourselves the opportunity to have a big soul-searching discussion on how to move it forward.

When Doha Round started in 2001, we were in a totally different context. We were at the beginning of the Millennium Development Goals. Now we are in the 2030 Agenda for Sustainable Development.

Many things have happened since 2001. So we need to lift the commitment to Doha and bring it all the way up to the 2030 Agenda, and recognize that as much as trade is ‘a’ pillar of development, it is not ‘the’ pillar of development, and [to] make sure we make those connections.

During the meeting, there was a perception that while the U.S. was seemingly stepping back from its leadership role in taking forward multilateralism, other countries like China, India and South Africa stepped forward. Do you feel this looks like the dawn of an era of new leadership at the WTO level?

Clearly the power is shifting, and the views from different powers are shifting. So that has implications on our negotiations.

That is the reality and we have to deal with reality.

What is your view on India’s stand that negotiations on ‘new issues’ like e-commerce, investment facilitation and proposed norms on small firms should start only after resolving outstanding issues such as food security in the Doha Round?

Well, India and others feel very strongly that we should not have any new issue on the table discussed, and more importantly being negotiated, until we finish the old issues. That is not the position of Argentina.

And now, let me step down from the position of the Chair [of the Buenos Aires meeting].

Argentina is of the view that not allowing ourselves to discuss certain issues that are of high interest to all of us, hinders our ability to deal with them in the future. So my feeling is that this is not an ‘either, or’ situation. We should be able to deal with both of them. This is a decision of WTO members. We need to close this divide.

[\[Back to top\]](#)

## **Is WTO working for India and China?**

Dipankar De Sarkar, Live Mint

December 14, 2017 : Every two years or so the world’s trade ministers meet in a great location (Buenos Aires this year) and promptly proceed to lock horns over the most intractable trade issues facing the world, the rich world on one side, the poor and middle-income on the other. These ‘ministerial conferences’ are the World Trade Organization’s “topmost decision-making body”. No, really—that’s what the WTO says. It’s just that these meetings—Buenos Aires was the 11th since 1996 —never actually

seem to take any decisions at all. Rather, they have become famous for what we journalists derisively call a “collapse.”

An exception in this long and inglorious list seemed to be Bali (Indonesia) in 2013, where, after protracted directionless negotiations on food security, quite suddenly there appeared an agreement. Just like that, India said it would sign on to something that the US and other rich nations had been clamouring for, a trade facilitation agreement (TFA), which basically aims to harmonise customs rules and regulations across the world. (The idea is to cut red tape: the United Nations Conference on Trade and Development estimates that your average customs transaction involves 20–30 different parties, 40 documents, 200 data elements, 30 of which are repeated at least 30 times, and the re-keying of 60-70 per cent of all data at least once.)

In return for this gesture, the US and other developed nations apparently promised not to block proposals for food stockholdings made by India, China and other developing nations. The proposal concerns a WTO rule on countries’ public stockholding programmes for food security—for instance, India’s procurement of foodgrains for its subsidized food supply programme or the minimum support prices it offers to farmers as a cushion against falling commodity prices. The cost of these programmes—basically a country’s food subsidy bill—says the WTO, must not exceed 10% of the value of production based on the reference price of 1986-88.

The reason is a fear, articulated by net food importing countries, that a massive food procurement project might end up distorting global commodity prices. On the other hand, a country like India is home to a large population for whom subsidized food supplies are the difference between life and death. It is also a country with a history of famine under colonial rule, and is not likely to compromise on its freedom to roll out domestic policies aimed at ensuring food security, something that indeed is guaranteed by the Right to Food Act. The Act, the last great package of entitlements signed off by the previous government led by Manmohan Singh, aims to provide subsidized food grains to around two-thirds of India’s population, described by the agriculture ministry at the time as the “biggest ever experiment in the world for distributing highly subsidized food by any government through a ‘rights based’ approach.”

After considering some options (such as changing the value of total production, or even the base year), the Bali meeting decided to seek a permanent solution to the problem, so that developing countries like India, with their large poor populations to support, could never be hauled up to the WTO for breaching the ceiling.

In Buenos Aires, the US told a meeting of key nations involved in negotiating the matter that it could not agree to a permanent solution—not in Buenos Aires at any rate. In a strong statement, India said it is “surprised and deeply disappointed that despite an overwhelming majority of members reiterating it, a major member country has reneged on a commitment made two years ago to deliver a solution of critical importance for addressing hunger in some of the poorest countries of the world.”

India wasn’t tilting at the windmills in a lonesome noble mission. The proposal has the full backing of the Africa Group as well as important nations such as China. The rich nations are on a sticky wicket and their renege calls into question how much they value the multilateral system as also how much they can be trusted by developing countries in the future.



On the other hand, developing countries have good reasons to confront the US on this matter. All WTO members are signed up to the principle of ‘special and differential treatment’, provisions that accord developing countries special flexibilities, including longer time periods for implementing agreements and commitments as well as measures to increase trading opportunities for developing countries.

“For countries like India, the development objective of trade is all-important,” said Jill Atieno Juma, policy analyst at CUTS, the international non-governmental body that specializes in global trade issues. “It is my understanding that developing countries cannot be referred to the WTO’s dispute resolution mechanism for breaches” of the public stockholding provision.

“On legal and tech grounds you cannot. However, in case of breaches, countries need to give prior notification.” Atieno Juma, however, argued that from a policy perspective, “having an indefinite moratorium places you in a dicey situation. It becomes a never-ending argument. What would be better would an outcome that takes care of the national interest of the developing and least developed countries, so that their farmers get a good payoff.”

There can be no equivalence between the developed and developing worlds on matters of such sensitivity as food security. And the reasons for the US to dig its heels in the negotiations can only be strategic—the matter of principle involved in the US posture is hard to detect.

The UN’s State of Food Security and Nutrition in the World 2017 report says the number of undernourished people in the world increased to an estimated 815 million in 2016, up from 777 million in 2015. India alone is home to 190.7 million of them—a 14.5% prevalence of hunger vis-a-vis its total population.

Guaranteed minimum farm prices are key to the survival of predominantly agricultural societies, and India is one despite massive strides in manufacturing and services.

Robert Reich, the academic and former labour secretary in US president Bill Clinton’s government notes: “Fewer than 2 percent of Americans even work on a farm. Yet about half the population of the developing world depends on farming for their livelihoods. But they can’t earn what the global market would otherwise pay them, because America’s subsidized farm exports keep prices artificially low.”

The US posture in Buenos Aires, while protecting its own farm subsidies worth billions of dollars, combined with its withdrawal from the climate change agreement, risks compromising the shared prosperity that global trade is supposed to bring for developing countries such as India as well as rich ones like the US.

[\[Back to top\]](#)

**‘WTO farm talks should be based on India-China plan to curb rich nation subsidies’**

Amiti Sen, Business Line

Buenos Aires, December 14, 2017 : China has said its joint proposal with India — on the elimination of the huge trade-distorting farm subsidies of rich nations — should form the basis of future agriculture reforms at the WTO.

“We would want to continue agriculture reforms at the WTO in the future, but it has to be in the right direction. That direction will be the AMS (aggregate measurement of support) reduction of developed countries,” said Zhang Xiangchen, Permanent Representative of China, in an interview with *BusinessLine* at the WTO ministerial meet here.

Several developed countries are trying to focus on Other Trade Distorting Support (OTDS) that includes small subsidies given by developing countries, while the need is to trim the AMS entitlements of the rich nations, he said.

According to a joint paper circulated by India and China recently, the developed world, including the US, the EU and Canada, has cornered 90 per cent of total entitlements, amounting to a whopping \$160 billion annually.

Zhang said his country is opposed to the focus on OTDS and the only direction to move in the area of farm subsidies is to reduce AMS.

Upset over the US’ refusal to support a permanent solution on public stockholding, he said the US reluctance to mention the Doha development agenda in the mandate is also disappointing. “If we fail now, what is the guarantee that we are going to succeed next time?” he asked.

While China supports new issues such as investment facilitation and e-commerce, it doesn’t support plurilateral talks, he said. “We are trying to insist that we would like to see the discussion conducted in a multilateral approach. We oppose plurilateralism.”

China is an advocate of investment facilitation and hopes to engage more WTO countries in discussion and not negotiations, he added.

“We think that not everyone, including like minded countries, share this (insistence on multilateralism). Like in e-commerce, someone wants to organise a group. It is not the idea we can share with them,” Zhang said.

Key position

China’s position against plurilateralism is important as members such as the EU have been hinting that if there isn’t enough support to new issues at WTO, members might hold plurilateral negotiations.

## **India opposes move to link gender with trade**

Arun S, The Hindu

December 14, 2017 : Almost three-fourths of the nations that comprise the 164-member World Trade Organisation have backed a declaration seeking women's economic empowerment by expeditiously removing barriers to their participation in trade, a decision that the WTO termed as 'history-making'.

India, an influential WTO member, was however among the minority group that chose not to endorse the move saying that while it strongly supports gender equality, it could not concur with the view that gender is a trade-related issue. Agreeing to the proposition to link gender and trade could lead to advanced countries using their high standards in gender-related policies to not only curb exports from the developing world, but also indirectly restrict developing countries from incentivising their women citizens as part of measures to address developmental challenges, Indian officials said.

They added that gender-related discussions should take place at appropriate fora and not at the WTO, which is purely a trade-related body. Otherwise, it would set a precedent to bring in other non-trade issues such as labour and environment standards into the WTO's ambit, the officials said.

Meanwhile, a WTO statement on Tuesday said, "For the first time in the history of the WTO... 119 WTO members and observers agreed to support the 'Buenos Aires Declaration on Women and Trade', which seeks to remove barriers to, and foster, women's economic empowerment." It added, "Actions outlined in the Declaration will... provide more and better paid jobs for women. These actions will also contribute to UN Global Development Goals, including the Sustainable Development Goal to achieve gender equality through the empowerment of women and girls." According to Arancha González, Executive Director, International Trade Centre, increasing women's engagement in trade is important as advancing women's equality could help add \$28 trillion to global GDP by 2025.

'Pink herring'

However, more than 160 women's rights and allied organisations across the world said in a joint statement that the Declaration "fails to address the adverse impact of WTO rules on women and instead appears to be designed to mask the failures of the WTO and its role in deepening inequality and exploitation." Kate Lappin, Global Coordinator, Asia Pacific Forum on Women, Law and Development said in a statement that, "women's rights organisations from all continents have rejected this declaration as simply a 'pink herring' designed to distract attention from the harm the WTO does." Joms Salvador, GABRIELA Alliance of Filipino Women, Philippines, said, "we reject WTO's gender washing aimed at making palatable neoliberal policies that inflict deep sufferings on women from poor and underdeveloped countries."

WTO members and backers of the Declaration have agreed to explore ways to address women's lack of access to trade financing and sub-optimal participation of women in public procurement markets. "Inclusion of women-led businesses, in particular small firms, in value chains" has also been identified as a theme related to the economic empowerment of women. Members would evaluate policies through a gender lens, the WTO said, adding "progress will be reported in 2019."

[\[Back to top\]](#)

## **Lack of consensus: WTO ministerial ends in stalemate**

Banikinkar Pattanayak, The Indian Express

Buenos Aires, December 15, 2017 : The 11th ministerial conference of World Trade Organisation (WTO) ended in stalemate late on Wednesday as member-nations failed to set aside differences on issues ranging from the role of the trade body as a multilateral institution to public procurement programmes for food security, marking the closure of the biannual event without a joint declaration.

While a failure to produce a joint statement has precedents (there were deadlocks in Seattle and Cancun), what sets the Buenos Aires ministerial apart was the stinging criticism by a key member — the US — of the rules-based, multilateral trading system that the WTO represents. The US refusal to pursue a permanent solution to the issue of public procurement — as committed by it, along with all others at the Nairobi ministerial in 2015 — also cast a pall over the sanctity of pledges made at the WTO.

The attempts by small groups of nations to secure work programmes or negotiating mandate on new issues like e-commerce, investment facilitation, micro, small and medium enterprises, and gender — spearheaded by the developed world — signals increasing efforts to secure "short-term plurilateral arrangements" within the multilateral WTO framework.

For India, the conference ended without much gain or loss. While its attempt to secure the lasting solution to the public stock holding issue was thwarted by the US, it successfully resisted pressure from various groups of nations to include new issues, such as e-commerce, investment facilitation, micro, small and medium enterprises, and gender in the WTO's negotiating mandate without first concluding the Doha development agenda that is crucial to the interest of developing nations. The only worthwhile agreement — a consensus on including a work programme on disciplines on fisheries subsidies with a view to arriving at a decision by the next ministerial in 2019 — at the latest ministerial was also in sync with India's position. The non-negotiating mandate of an existing work programme on e-commerce will continue, as desired by India, among others, but no new issue on e-commerce was included in the agenda.

[\[Back to top\]](#)

**US calls WTO meet 'successful,' India says no 'substantive outcome'**

Arun S., The Hindu

Buenos Aires, December 16, 2017 : Initiatives like e-commerce among like-minded nations offer way forward for WTO, said the US Trade Representative.

Following the deadlocked World Trade Organisation (WTO) meeting, India said the Ministerial Conference (MC) ended without any substantive outcome, while the U.S. — which had attracted criticism from several quarters for “undermining” the WTO and “holding it hostage” — claimed that the event was successful.

In a statement, India said the MC ended “without... any substantive outcome,” adding that “Due to divergences among members, and a few members not supporting acknowledgment and reiteration of key underlying principles guiding the WTO and various agreed mandates, Ministers could not arrive at an agreed Ministerial Declaration.”

Meanwhile, U.S. Trade Representative Robert Lighthizer said in a tweet: “Congratulations to (WTO) Director General (Roberto Azevêdo) and (Argentine Minister and Chair of the Buenos Aires MC) Susana Malcorra on a successful MC.”

He added that “The new direction of the WTO is set: improving trade through sectoral agreements by like-minded countries.” Mr. Lighthizer was referring to three proponent groups of WTO members announcing ‘new initiatives to advance talks at the WTO on the issues of e-commerce, investment facilitation and small firms’.

In a statement, Mr. Lighthizer said, “The U.S. is pleased to partner with 70 WTO Members to initiate exploratory work on negotiations on e-commerce issues in the WTO... The launch of this initiative marks a significant milestone, with a large group of countries now working together to move forward in this important area within the WTO. Initiatives like this among like-minded countries offer a positive way forward for the WTO in the future.”

Meanwhile, European Commissioner for Trade Cecilia Malmström said in a statement that, “I believe we have succeeded in changing the tone and orientation of our discussion about trade and development, moving beyond old ideological fault-lines towards actually addressing real development needs.”

She further said, “Whilst not harvesting results, the EU and many, many others are resolute in their support for moving forward on key issues for global trade. This is the true meaning of the statements that many countries, including the EU, have made on areas such as domestic regulation on services, e-commerce, investment facilitation — as well as supporting the integration of women and of small and medium sized enterprises in global trade.”

The Indian government statement said, in the run-up to Buenos Aires meet, decisions were expected on a permanent solution on food security and other agriculture issues. Indirectly referring to the U.S blocking the demands of more than a 100 developing nations, including India and China, to implement their food security programmes without onerous conditions, India said, “Unfortunately, the strong position of one member against agricultural reform based on current WTO mandates and rules, led to a deadlock without any outcome on agriculture or even a work programme for the next two years,” it said.

India, however, said the existing mandates and decisions ensure that work will go forward and members will continue to work on issues such as the permanent solution on public stockholding for food security purposes, agricultural Special Safeguard Mechanism and agricultural domestic support.

[\[Back to top\]](#)

## **Stalemate at WTO: On U.S. obstructionism**

The Hindu

December 16, 2017 : The 11th biennial ministerial conference of the World Trade Organisation ended in a stalemate, with countries divided along industrial and developing lines. India is seeing the outcome as a partial success; none of its “offensive” interests were achieved, but its “defensive” interests remain protected. While India’s push to ensure a consensus around a ‘permanent solution’ to the public stockpiling of food for food security purposes was thwarted by the U.S., the “peace clause”, under which countries would not lodge complaints against developing country subsidies to meet their food security needs, remained in place. The failure of industrial countries to fast-track e-commerce talks, and commitments that reductions in fishing subsidies would not be discussed at least until the next ministerial in 2019, are being seen by India as points in its favour. The rift between advanced economies and the rest was apparent. Industrial countries have been keen on moving the agenda forward from development, which was the stated focus of the Doha Round that began in 2001. Developing countries want Doha Round commitments to be fulfilled before topics of interest to the West — such as e-commerce and market access for small enterprises — are discussed. The U.S. has said it wants to clarify its understanding of “development”, and contended that members were using it to gain exemptions from rules, and that some of the richest countries (presumably in absolute and not per capita GDP terms) were claiming this status. It also issued a joint statement with the European Union and Japan, aimed primarily at China, on trade-distorting practices such as over-capacity and mandatory technology transfer policies, while India and China submitted a proposal to end the trade-distorting farm subsidies of Western nations.

President Donald Trump’s disdain for multilateral forums and agreements, which he sees as opportunities for countries to take advantage of America, was reflected in Buenos Aires. U.S. Trade Representative Robert Lighthizer left before the conference concluded, leaving a leadership vacuum that his EU counterpart, Cecilia Malmström, unsuccessfully tried to fill. In fact, since Mr. Trump assumed office, the administration has blocked the reappointment of judges to the appellate body of the WTO, despite the U.S. being a frequent user of the dispute resolution mechanism. India rightly argued that while its GDP may be growing, the country has hundreds of millions living in poverty and without food security. While India can, and must, develop a multi-pronged approach to end hunger, it is correct to seek clarifications that its sovereign right to provide subsidies for food security is not compromised by the WTO. What has become clear in Buenos Aires is that India cannot rely on the Trump administration for support on crucial trade issues at multilateral forums.

[\[Back to top\]](#)

## **Goalless draw at WTO**

Business Line

December 17, 2017: The “collapse” of talks at last week’s trade ministerial may have raised questions about WTO’s future, but they did not go off too badly for India. Unlike the ministerials at Bali (2013) and Nairobi (2015), India did not concede any ground. At Bali, India agreed to trade facilitation rules in exchange for virtually nothing — a ‘peace clause’ till 2017 on its food procurement subsidies. At Nairobi, India unconditionally agreed to phase out export subsidies by 2023. Perhaps, India fielded a better prepared negotiation team this time.

The focus of the Buenos Aires meet was public stockholding and e-commerce. India, backed by China, managed to get the developing countries, including LDCs, to push for a permanent solution to public stockholding. To the credit of the Modi government, it managed to prolong the ‘peace clause’ soon after the Bali meet, till a permanent solution was arrived at — a view reiterated in Argentina. India’s joint paper with China on how the US and EU are chiefly responsible for trade-distorting farm subsidies has helped in pushing for a solution where the existing method of evaluating subsidies is dismantled. The WTO allows price subsidies to the extent of 10 per cent of the gross value added of the product concerned; the controversy over the years has been over which subsidies should come under scrutiny and manner of arriving at the market price, or fixed reference price, against which the amount of subsidy was calculated. With these wranglings not getting anywhere, and the rich countries managing to mask their subsidies while blaming the rest, there has now been a change of tack. That said, India should reconsider allowing exports out of its PDS pool (it is the world’s largest rice exporter) if it is to push towards a new regulatory order. A food security arrangement does not sit well with one that confers export advantage. By presenting a joint front with the LDCs on e-commerce and stalling efforts by the developed world to fast-track rules, India managed to buy time for its MSME-dominated brick and mortar trading sector. Efforts by the rich countries to introduce Singapore Round issues, such as investment rules did not gain traction. The Doha Round (2001) principles of according differential treatment to developing countries and not piling on issues extraneous to trade were implicitly underscored here.

But the question is what happens to WTO if there is no broad consensus on trade rules. It does not seem to matter much if the US plays spoiler in multilateral forums, as the progress on TPP and even climate talks seem to indicate. India cannot set store by FTAs, given its experience over the last decade. It needs to play a leadership role in working out a new multilateral trade paradigm, because that’s its best bet in an increasingly chaotic world. Inconsistencies between its positions at WTO and other forums such as RCEP need to be avoided.

[\[Back to top\]](#)

## **To energise WTO, India to host informal, ‘representative’ ministerial in early 2018**

Amiti Sen, Business Line

Buenos Aires, December 17, 2017: India will host a meeting of select trade ministers representing the entire membership of the World Trade Organisation (WTO) early next year to ensure that the multilateral

body does not lose focus and moves forward in the right direction, Commerce & Industry Minister Suresh Prabhu has said.

“It will be a meeting on the lines of a mini-ministerial but more representative. It will be held to ensure that the WTO process goes forward with re-energised focus,” said Prabhu, talking to the media after the conclusion of the WTO Eleventh Ministerial Conference (MC 11) in Buenos Aires.

On MC 11’s failure to deliver results, including a permanent solution, the minister said it was clear to India from the very beginning, given the noises that emanated from the WTO headquarters in Geneva prior to the event, that there would be no outcome at the ministerial. “It was very clear at the outset that the US was not willing to engage as it was questioning the entire efficacy of the global trading system,” he said.

India, however, was on a sound wicket this time as it already had a permanent peace clause in place, which guaranteed its food security programme, the minister said. “But that does not mean we should not try to get something better. So we aimed for a permanent solution and tried to make it better than the peace clause. And not just for us. We are fighting for all those countries that are more vulnerable than India. We have taken up their battle on our shoulders,” he said.

The minister pointed out that India had not been blamed for the failure of a ministerial round after a long time and the country had managed to earn the goodwill of a lot of countries. “We had about 20-25 bilateral meetings with many countries and explained our position to them. Most understood that we are protecting our interest without harming anybody else’s,” said Prabhu.

The Buenos Aires meet was all about making strong coalitions — like India’s brotherhood with African countries — and not letting them fall apart, the minister added.

Another key issue to emerge from the ministerial was the clear signal by the WTO that it was not ready to engage on new issues, be it investment facilitation, micro, small and medium enterprises or e-commerce, Prabhu said.

The Buenos Aires meet may have ended, but not the WTO. “The WTO is alive and kicking,” the minister said.

[\[Back to top\]](#)

## **WTO: After gains at Buenos Aires, India plans mini ministerial**

Kirtika Suneja, The Economic Times

Buenos Aires, December 17, 2017: India plans to host representatives of around 40 countries early next year to set the ball rolling for the next ministerial meeting of the World Trade Organization (WTO) in 2019 after the country emerged victorious from the recently-concluded 11th ministerial conference in Buenos Aires, commerce minister Suresh Prabhu said.

The mini ministerial meeting, whose contours are yet to be decided, is likely to be held in February or March, will have key countries from each continent.



"It will be like mini ministerial but more representative to ensure that WTO process goes forward and we refocus it," Prabhu said.

Sources said India will begin rethinking its plans for the next ministerial and officials have been made aware of their likely responsibilities.

"WTO has signalled clearly that we are not yet ready to engage with new issues. Also that some sifting of what really is a trade issue and what's not, like gender and women issues, is needed," said an official.

Other countries' efforts to push a plethora of new issues like e-commerce, investment facilitation and MSMEs in the ambit of the organisation, especially by forming informal pressure groups and organising events during the conference, are likely to be carried over to the next ministerial as well and India is keen to set the tone for the next one, said another official.

Non-trade issues like gender, labour standards and environment too were pushed through informal groupings and events, which India and others opposed.

#### INDIA NO VILLAIN

The outcome of the just concluded ministerial was a positive one for India as it was able to secure the interests of its farmers and fishermen. It was also successful in pushing back the efforts of developed countries of fast-tracking of e-commerce talks.

"We were on a very sound wicket this time... During the most difficult and trying circumstances, we came out unscathed and victorious," Prabhu said.

Though the conference failed to deliver any concrete decision, India is not blamed for the impasse as it was "unambiguous and clear". Prabhu said this was probably the first time in recent history that India was not being blamed for the collapse of talks at WTO.

"We are not going as villains," the minister said as Delhi not only protected its interests without harming anyone else's but also fought for countries which are more vulnerable than India. It was also able to keep WTO alive, which is an achievement at a time when its existence and efficacy were doubted.

The US' refusal to reaffirm multilateralism and the Doha development mandate in the outcome was objected to by many countries including India leading to a breakdown in talks at the 164-nation WTO.

Explaining that WTO represents a democratic and rules-based system and should go ahead as an institution, Prabhu said: "It is alive and kicking. That's a big gain we have achieved for global community. This is like promoting global good". "We didn't lose anything, gained something, gained goodwill of the rest of the world," the minister said.

[\[Back to top\]](#)

**For first time, India not being blamed for collapse of WTO talks, says Suresh Prabhu**

Arun S., *The Hindu*

Buenos Aires, December 17, 2017 : For the first time in the over two-decade old history of the World Trade Organisation (WTO), India was not blamed for the failure of a meeting of the global body's apex decision-making body as witnessed in the Argentine capital, a perception — according to commerce minister Suresh Prabhu — that was important for the country.

The WTO's Ministerial Conference had on earlier occasions ended without a Ministerial Declaration in Seattle (1999), Cancun (2003) and Geneva (in 2009 and partly in 2011) owing to a lack of consensus among member nations from the rich and the poor world on issues relating to market-opening commitments in farm and industrial goods. India was blamed for these as well as even for the failure of some of the WTO's 'mini-ministerials' (meetings by a group of some important members of the WTO from the developing and developed world), most notably in June 2007 in Potsdam and July 2008 in Geneva on agriculture issues.

Speaking to a select group of reporters, including this writer from *The Hindu*, in Buenos Aires a day after the deadlocked meeting, Mr. Prabhu, who led the Indian negotiating team, said, "I was told by quite a few people who have attended almost all ministerials that for the first time, India is not blamed. This is very important. India has always been the whipping boy, and people need whipping boys," he said.

Talking about India's efforts to protect food security right and centrality of development in multilateral trade negotiations as well as its views against the introduction of new issues like e-commerce, investment facilitation and norms relating to small firms into the ongoing Doha Round talks that has a 'development' agenda without resolving outstanding issues such as food sovereignty, the minister further said, "India is not a country that can be just walked over. We stood our ground, and we took a principled stand as well as practical stand."

The position of the U.S. to block the demands of over 100 developing countries, including India and China, for implementation of their food security programmes without onerous conditions, was widely seen as one of the main reasons for the failure of the talks. The U.S. had also questioned the centrality of development in WTO talks, another reason for the talks ending without a Ministerial Declaration.

Mr. Prabhu said by standing firm on food security issues, India "gained the goodwill of the rest of the whole world... India has not only protected its national interests, but also not harmed anybody's interests. That is very important. We promote our interests, but not at the cost or expense of other's interests."

The minister said an important mission for India was to ensure that the WTO lives on even after the Buenos Aires meeting, "because the WTO represents and in a way manifests the very important elements that should be there in global trade. That is democratic functioning, as well as a transparent and rule-based system." He added, "I can now say very happily that the WTO is not only alive, but kicking. That is a big gain we have achieved for the global community as a whole for global good."

He said multilateral trade negotiations are much more difficult than bilateral trade talks as every country wants to get something but doesn't want to give anything in return, and also due to the WTO norm that all major decisions will have to be taken by the consent of all members.

He said while there were little expectations from the Buenos Aires meeting on outcomes in substantive issues, following hardening of position on all the issues under consideration, there was a difficulty in taking the talks forward. He said the target of the developed world was not really India but China, as was evident from their (the US, European union and Japan) statements on overcapacity creation, giving subsidies to state-owned enterprises, ensuring that market is not properly handled, and currency manipulation.

On food security, though India had the protection of a perpetual peace clause, India wanted a permanent solution (to the issue of public stock holding for food security purposes) that was an improvement over the peace clause, Mr. Prabhu said. “We fought for it, and not only for us, but also for those countries that are more vulnerable than India when it comes to implementation of food security programmes, because we were in a stronger position to fight for the cause,” he said.

The other main issue for India was to aggressively pursue the issue that the developed world should reduce their subsidy. “This was is a legacy issue, coming from the Uruguay Round (of WTO negotiations). So we thought Uruguay being the neighbor of Argentina, something could happen here. But Uruguay Round issue could not be settled in Argentina. That doesn’t matter. May be it will be settled somewhere in Asia or in Africa when we have the next Ministerial,” he said.

[\[Back to top\]](#)

### **‘WTO meet failure: India not blamed’**

Arun S, The Hindu

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The WTO’s Ministerial Conference had, on earlier occasions, ended without a Ministerial Declaration in Seattle (1999), Cancun (2003) and Geneva (in 2009 and partly in 2011) owing to a lack of consensus among member-nations from the rich and the poor world on issues relating to market-opening commitments in farm and industrial goods. India was blamed for these as well as for the failure of some of WTO’s ‘mini-ministerials’ (meetings by a group of some important members of the WTO from the developing and developed world), most notably in June 2007 in Potsdam and July 2008 in Geneva on agriculture issues. Speaking to a select group of journalists, including this writer from The Hindu , in Buenos Aires a day after the meeting ended in a deadlock, Mr. Prabhu, who led India’s negotiating team, said, “I was told by quite a few people who have attended almost all ministerials that for the first time, India is not blamed. This is very important. India has always been the whipping boy, and people need whipping boys,” he said.

‘Not a walkover’

Talking about India’s efforts to protect food security right and centrality of development in multilateral trade negotiations as well as its views against the introduction of new issues like e-commerce, investment

facilitation and norms relating to small firms into the ongoing Doha Round talks, the Minister further said, “India is not a country that can be just walked over. We stood our ground, and we took a principled stand as well as practical stand.”

The position of the U.S. to block the demands of more than 100 developing countries, including India and China, for the implementation of their food security programmes without onerous conditions, was widely seen as one of the main reasons for the failure of the talks.

The U.S. had also questioned the centrality of development in WTO talks, another reason for the talks ending without a Ministerial Declaration.

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[\[Back to top\]](#)

### **‘Opposition to curbs on agri sector at WTO meet has yielded results’**

Tirupur, The Hindu

December 18, 2017 : K. Sellamuthu (70), a Tirupur-based farmer, says he is a contented person as various oppositions that many farmers including him raised at the World Trade Organisation Ministerial Conference in Argentina against the curbs on agriculture sector had yielded results.

“The conference ended up without taking any major decision on imposition of trade restrictions on agriculture sector after representatives like me staged opposition at the venue”, said Mr. Sellamuthu during an interaction with media persons soon after his arrival from Argentina here on Sunday evening.

Mr. Sellamuthu had the invitation for the event as being the part of the La Via Campesina, a collective of farmers’ organisations from different countries.

Free trade in agriculture

He said that he raised open remarks against the WTO recommendations for free trade in agriculture, for removal of subsidies in agriculture and for stopping government procurements of farm produces directly from farmers.

Subsidies

“Allowing of free trade will result in dumping of agriculture produces in India which in turn affect the local farming community. Stopping of subsidies in agriculture is not practical in Indian context”, he said.

[\[Back to top\]](#)

## **WTO must focus on emerging issues to remain relevant: Prabhu**

### Business Line

New Delhi, December 19, 2017: The WTO must incorporate emerging issues if it wants to remain relevant in the changing times, Union Minister Suresh Prabhu said today, asserting that India will organise a “mini ministerial” meeting of the global trade body within a few weeks to help realise this objective.

The 11th WTO meet collapsed last week in Buenos Aires, ending without any ministerial declaration or any substantive outcome with the US going back on its commitment to find a permanent solution to the public food stockholding issue, leaving India and other developing nations disappointed.

“We are in the next few weeks going to organise a major conclave in India wherein we want to bring in the top countries of the world. We call it the mini Ministerial for the WTO (World Trade Organisation), Prabhu said. He had earlier said that India will call a meeting of some WTO members in February to muster support for food security and other issues.

Developed nations have been forming groupings to prepare the ground for pushing investment facilitation, preparing rules for e-commerce, promoting gender equality and reducing subsidy on fisheries.

India has been keenly pushing agricultural issues at the WTO. It has also been raising its voice against bringing in new issues, especially those which are not directly linked to trade, on the negotiating table.

Addressing a conference here, Prabhu pointed out that the idea behind the mini-ministerial was that the WTO must also focus on some of the relevant issues of the world today. “If you say that we are going to discuss only those issues, then probably WTO will be a very good historical institution, which will have a very good place in some of the good regions of the world,” he said.

“But if you want to make sure that WTO becomes relevant to times that are changing, then we must also incorporate into WTO some of the very emerging important issues,” he added.

Addressing the Services Conclave organised by industry body CII, he observed that India must have a clear-cut, holistic strategy to realise the true potential of its services sector, which can create a large number of jobs. Moreover, he said, efforts must be made so that services contribute significantly to global trade, particularly India’s exports.

Prabhu said the Commerce Ministry is working in collaboration with EXIM Bank on a market strategy, clearly defining each market and geography with the kind of products that will be sold there. India must become the front office of the world in providing services globally, Prabhu said.

“It is a unique position that we enjoy today, that we are actually the service providers. I don’t want to call ourselves as some other countries described India some time ago, that we are the back office of the world. “I think we are not really the back office, we should be the front office, and not just office but we should be at the front of providing services of all kinds,” he added.

Highlighting that the service industry has grown immensely in India and the country’s services are accepted globally, he said the country must now leverage that advantage to be a global leader in services.

He said the services sector will actually pull along with itself even manufacturing and agriculture in a substantial way.

[\[Back to top\]](#)

## **WTO: life after Buenos Aires**

D, Ravi Kant, Live Mint

December 20, 2017: There is life after Buenos Aires,” claimed Susana Malcorra, chair of the 11th ministerial conference of the World Trade Organization (WTO). After failing to issue the concluding ministerial declaration, the hallmark of a successful multilateral summit, she said the Buenos Aires summit this month will be remembered for two “defining” and positive outcomes.

First, it has provided a direction for accelerating negotiations on the fisheries subsidies. And second, it has become the staging ground for “a great number of plurilateral” initiatives (those involving more than two countries) for 21st century issues. The issues —negotiating rules for electronic commerce, disciplines for micro, small, and medium enterprises (MSMEs), investment facilitation, and gender and employment—are important for “people” who should keep negotiating them, she exhorted. Her navigator at the four-day summit, Roberto Azevedo, the WTO director-general, said even though “it was disappointing in some ways but as the chair (Malcorra) said we have made progress in some areas.”

“Progress in long-standing areas is particularly challenging,” he said, without mentioning the areas or the challenges faced in those areas. Azevedo spoke eloquently about the work programme for stepping up the negotiations on fisheries subsidies for achieving the United Nations Sustainable Development Goal (SDG) 14.6 for eliminating subsidies to vessels engaged in illegal, unreported, unregulated (IUU) fishing on the high seas, subsidies that contribute to overfishing and depletion of fish stocks by 2019. He said there is an outbreak of “dynamism” in other areas. “You will have seen a number of statements by a large group of members” on “MSMEs, e-commerce, investment facilitation, and women’s economic empowerment, and domestic regulation,” he said, suggesting there are big, medium, and small countries engaged in these issues. “How these conversations are going to advance depends on those members (in those plurilateral groups),” Azevedo said, maintaining “it is important they remain open”.

The director-general said it is important that “this dynamism is reflected everywhere” suggesting that in Buenos Aires we had a “successful business initiatives” led by the billionaire Jack Ma of Ali Baba, the Chinese e-commerce trading behemoth. “Multilateral(ism) is not about what you want but what is possible, we need to show greater flexibility in the future, give and take and compromise is needed for multilateralism to flourish,” Azevedo said.

Clearly, who should give and who should take always remains a big question. Is the director-general suggesting that the developing and poorest countries must always pay and pay for the commitments they did not initiate in a one-way street—without ever securing the developmental benefits mandated/promised in the Doha work programme which was launched in the 21st century, i.e. November 2001. What is the compromise that countries must settle for the mandated multilateral outcomes that the director-general is suggesting? Were there any compromises on the table at all at Buenos Aires after the US unilaterally blocked further negotiations on 12 December morning—which the WTO spokesperson refused to name at

his conference (the spin doctors invariably resort to planting baseless/mischievous stories in The Economist and other western publications portraying India or South Africa as the culprits even though the elephant in the room turned roguish at Buenos Aires)? Isn't food security for addressing hunger and poverty of more than a billion people an SDG goal that the director general and the chair failed to mention? Is it consistent with rules of the organization as set out in the Marrakesh treaty for the chair of the conference and the director-general to trumpet about "new" initiatives that have no multilateral consensus? Isn't the director-general violating the Marrakesh treaty by providing a platform at an inter-governmental ministerial meeting for non-governmental organizations with billionaire business tycoons to promote electronic commerce, knowing well that more than 100 countries opposed the issue?

"It's a moment of truth for the multilateral organization" which faces a grave systemic crisis, Rob Davies, South Africa's trade minister, lamented minutes before the Buenos Aires meet fell apart. Grotesque attempts were made at the meeting to terminate the special and differential flexibilities for developing countries and walk away from all mandated issues while embracing new issues, Davies suggested. The Buenos Aires meeting, which is the second to collapse in South America after the infamous Cancun ministerial in 2003, has proved that developing/poorest countries are unlikely to secure credible "developmental" results. The US will never tolerate any changes in the Uruguay Round rules crafted during 1986-93 lest it will be required to scrap its hundreds of billions of farm subsidy programmes that sustain its agricultural exports. The US also single-handedly cherry-picked issues such as fisheries subsidies and electronic commerce while paralysing the dispute settlement system. Azevedo's silence speaks volumes about his ability to legitimize the US' actions.

Little wonder US reneged on its assurances for a modest "improvement" in the interim peace clause for public stockholding programmes for food security purposes that was first negotiated in Bali, Indonesia, in December 2013, and later further clarified in November 2014, pulled the plug at a meeting of seven countries—the US, the European Union, China, India, Brazil, Australia, and Argentina—on 12 December. It refused to agree to a modest improvement in the upper limit of total procurement not exceeding 12% of the domestic production quantity of the crop in question while providing more than \$150 billion green box subsidies that not only distort trade but exempted from any legal action. The US wanted the facilitator for agriculture negotiations Amina Mohamed, Kenya's cabinet secretary for foreign affairs, to do the hatchet job by terminating the negotiations. But the facilitator refused to acquiesce to US demands.

India's commerce minister Suresh Prabhu deserves kudos for remaining firm on India's core demands, particularly the permanent solution for public stockholding programmes for food security. "No agreement is better than a bad agreement," said Celso Amorim, the former Brazil trade minister, who led the G-20 group of developing countries along with India's former commerce minister Arun Jaitley, at the Cancun meeting, when it collapsed in 2003, because of the intransigent positions adopted by the US on agriculture. India and developing countries have to live to fight another day as their demands are based on mandates.

Fourteen years after that disastrous meeting in Cancun, the Buenos Aires ministerial, chaired by Malcorra and ably assisted by Azevedo sought to inflict another abominable calamity on the multilateral trading system by opening the window for plurilateral initiatives or plurilateralization of the WTO.

Close to the Hilton Hotel in Buenos Aires which hosted the trade summit last week that supposedly gave dubious life to plurilateral initiatives, there is the famous La Recoleta Cemetery. That exclusive cemetery is the last stop for Argentina's most celebrated and controversial rulers, including Eva Peron, and army generals. Perhaps, the current Argentinean government, with Azevedo's assistance, had planned to bury the Doha Development Agenda round of negotiations at that cemetery—but that will not happen so easily.

[\[Back to top\]](#)

## **The decline of the WTO**

Suhail Nathani, Live Mint

December 20, 2017 : Trade ministers from around the world attended the once-in-two years World Trade Organization (WTO) ministerial in Argentina earlier this month. They deliberated on several crucial issues that will impact the multilateral system of global trade.

Two things have changed from the last ministerial. Britain is entirely free of the European Union (EU) agenda and has a huge interest in building a robust multilateral trading system. The US, on the other hand, has stated repeatedly that the WTO multilateral system, to the extent that it does not put US interests paramount, is not something that will have its support.

Previous rounds of ministerial meetings have resulted in very little progress. The last 'low-hanging fruit' the WTO was able to garner for its members was the Trade Facilitation Agreement at the Bali ministerial in 2013. While this came as a lifesaver for the WTO in 2013, it had been on the cards since the Doha Development Agenda in the 2001 ministerial. The 2015 ministerial in Nairobi did nothing much to enhance the WTO's stature.

The WTO has made limited progress over the past two decades for numerous reasons—be it the one-sided nature of the original agreements, the North-South divide, or the aggression of the Brics (Brazil, Russia, India, China and South Africa) lobby on subsidies, agriculture and food security at successive ministerial meetings.

Even the protocol of negotiations has gone through a metamorphosis. From secret anteroom negotiations and the subtle ways of global diplomacy, today, countries are quick to state their extreme negotiation positions publicly—seemingly more for the benefit of their constituencies at home. This makes negotiations more cumbersome. In all this noisy rhetoric, what is being missed is the very real threat to the entire WTO system and its 'jewel in the crown', the dispute resolution mechanism.

The dispute resolution mechanism, which has been in place since the WTO's inception in 1995, has served its purpose well. It has been a great leveller and has enabled smaller countries like Barbados and Antigua to take the US to the Dispute Settlement Body (DSB) and prevail. It has been widely hailed as the biggest success of the WTO.

The WTO dispute settlement mechanism involves consultations, panel proceedings, appellate body proceedings, and implementation and enforcement.



The panel report, or, in the case of an appeal, the appellate body report and the panel report, is adopted by the DSB. After the adoption of the reports, the respondent, if found to be in breach of WTO law, has to implement the recommendations and rulings adopted by the DSB, which comprises all WTO members. This makes enforcement all the more easy.

The US has always been a reluctant participant in the WTO dispute resolution process. Its record also reflects patchy compliance with WTO decisions by the US. For example:

—In a dispute where US online gambling sites were noted to be GATS (General Agreement on Trade and Services) non-compliant, the US offered a \$200 million settlement package to Antigua and Barbuda. However, it has only paid \$2 million till now.

—South Korea has stated that the US has not implemented the WTO ruling on South Korean washing machines despite the conclusion of a “reasonable period of time” of 15 months.

—In third-party disputes, the US has taken a position that undermines the dispute settlement system. For instance, where Qatar has instituted a dispute against the trade embargo imposed upon it by Saudi Arabia, United Arab Emirates and Bahrain, the US has categorically stated that it will not support WTO panels and the appellate body making a decision on issues of national security.

Now, in what could prove to be a body blow to the entire system, the US has refused to participate in the appointment of new judges to the appellate body. Members are usually appointed by consensus, and the US is a major participant. As it is, with selective and partial cooperation from the US, the system was under threat. This new approach of systematically diminishing the appellate body will put an end to the DSB. The chairman of the appellate body, Ujal Singh Bhatia, has stated that “delays compel WTO members to look for other solutions, potentially elsewhere”. Outside the WTO system, weaker countries will be disadvantaged. Beyond the dispute resolution system, existing agreements operate in large part because there is a redressal system as backstop. In the absence of judicial recourse, these will also erode.

Trump’s position of ‘America First’, scrapping the Trans-Pacific Partnership agreement, undermining the North Atlantic Free Trade Agreement and now slowly dismantling the working parts of the WTO system, will have long-term effects on global trade. Add to this mix a weakened EU and a Britain with a dire need to either be part of a robust multilateral system or have its own trade agreements. Global trade is no longer going to have the leadership from the Western world that it did. Can China, India, Brazil and Russia fill the void? The pendulum of global trade is swinging from the richest nations to the most populous ones. Will it bring a shift in prosperity too?

Dreamers speak of the original Silk Route that ran from Japan to the Mediterranean Sea. History may repeat itself, thanks in no small measure to the new world order being driven by Trump. Ironically, it may just restore the old world order!

[\[Back to top\]](#)

### **India’s self-defeating stand on e-commerce**

Tulsi Jayakumar, Live Mint

December 22, 2017 : India's small and medium enterprises (SMEs), struggling to survive in the aftermath of demonetization and the introduction of the goods and services tax (GST), seem now to face the threat of global competition through e-commerce platforms. In the recently concluded eleventh ministerial conference (MC11) of the World Trade Organization (WTO) held in Buenos Aires, developed countries sought to negotiate new global e-commerce rules which could liberalize e-commerce and benefit SMEs. India, however, has taken an unfavourable stance. It has cited unfair market access to foreign companies in the currently 'asymmetrical' e-commerce space, with its power to hurt domestic e-commerce platforms, as well as SMEs, as the logic for such a stance. Such a stance, however, may not be in its own interests.

SMEs, which contribute to almost 50% of India's exports, can provide the basis for an export-led growth model. The challenge to the SME-led traditional growth models lies in the barriers that they face in growing their markets domestically and globally in a cost-effective manner. SMEs can use the e-commerce route to mitigate the challenges to their growth, as also to increase their competitiveness.

E-commerce can help SMEs expand their geographical reach to reap economies of scale, as also increase the speed and flexibility of business, with a positive impact on top-line growth. By tying up with reputed e-commerce marketplaces, SMEs can allay customer fears and mitigate the trust deficit associated with online transactions. This would improve their profit margins by reducing overhead costs and upfront capital investments. At the same time, such e-commerce platforms also reduce transaction costs by eliminating the need for middlemen.

The internet economy, with its concomitant power of exponential growth, will prove to be a game changer in this regard. Active internet adoption for business activities by Indian SMEs, boosted revenue by 51%, profits by 49% and expanded the customer base of such SMEs by 7%, compared to SMEs which chose to remain offline. Further, marketing and distribution spending were expected to be 60-80% lower than traditional marketing spending.

SMEs which used a wide range of internet tools to market, sell and support their products, called high-web SMEs, experienced a three-year sales growth of 19%, as opposed to 13% growth experienced by low-web SMEs. More importantly, India's export revenue from the sector was generated mainly by the technology-enabled SMEs. Thus, 98% of such SMEs contributed to India's export revenue, as opposed to only 11% of the traditional SMEs engaged in exports, which used the internet sparingly. SMEs that adopted e-commerce perceived it as a cost-effective medium for growing sales, ensuring business expansion, and increasing business profitability.

Indian SMEs have been slow in adopting e-commerce despite the strong evidence in its favour. It is critical that participants in the e-commerce ecosystem, as well as the government, understand and resolve the challenges associated with not adopting e-commerce, both on the demand and supply side.

The low rates of e-commerce adoption can be explained partly due to a lack of awareness of information technology products and services, and the e-commerce ecosystem as a whole. However, adoption rates by even those SMEs which had gone online were extremely low (27 %).

One important reason for the non-adoption of e-commerce on the sellers' side is the perceived cost of technology adoption and maintenance. Lack of adequate financing for SMEs and confusion about the

total cost of ownership and return on investment of technology adoption, as also the non-availability of ‘soft’ training and support required to sustain the usage of technology, act as factors causing the under-adoption on the sellers’ side.

On the demand side, issues pertaining to payment gateways, infrastructure, patchy internet connectivity, and the absence of a clear legal and regulatory environment, deter domestic adoption of e-commerce. Building trust regarding the timely and effective delivery of goods and services will prove to be the biggest challenge in building global demand for Indian SMEs’ products and services.

Changes in the information and communication technology (ICT) landscape, as well as global developments such as those represented by the WTO negotiations, will make SME-led global e-commerce a reality. It is important that India recognize this as an opportunity, and prepare and plan adequately.

The government, in partnership with universities, can undertake active SME engagement to educate them on the power of the internet economy. SMEs can be made aware of the minimal investments, ranging from Rs99 to Rs3,000, required to establish an online presence or enter the e-commerce space, respectively. At the same time, Indian SMEs can be encouraged to partner with global businesses to adapt to, or adopt, new technologies, innovations, and the quality needed to compete in global markets.

It would be foolhardy to overlook the benefits to Indian SMEs of participating in the international value chains—greater market access, improved efficiency and lower transaction costs—that global e-commerce represents. The mantra should be—join them to beat them.

[\[Back to top\]](#)

## **India can make a fight of it at WTO**

Abhijit Das, Business Line

December 24, 2017: With the curtains having come down on the 11th Ministerial Conference of the WTO held recently at Buenos Aires (MC11), action on global trade talks shifts back to Geneva. In order to understand the challenges that now confront India at the WTO, it is relevant to decipher the silence and read between the lines of the outcomes and deliberations of MC11.

As the WTO membership failed to agree to a ministerial declaration at the end of MC11, the sound of silence was rather eloquent. This was a consequence of the aversion of the US to any mention of three issues — development, multilateralism and Doha Round.

Doha and after

Referring to some of the larger developing countries, the US launched a withering attack on the role of development at the WTO. The US found it troubling that “so many Members appear to believe that they would be better off with exemptions to the rules”. Ironically, during the course of the inconclusive Doha negotiations, it was the US that had secured a slew of exemptions from the application of future trade rules in agriculture.

Even earlier, starting from the early years of GATT, the US and other developed countries had secured exemptions from non-discriminatory trade obligations in order to promote their protectionist agenda in agriculture and textiles sectors for nearly five decades. These are good examples of special and differential treatment for the developed world, something that the US may not want to be reminded about.

Such a brazen attempt at distorting the narrative about exemptions from trade rules should not be allowed to become par for the course. India, along with other developing countries, must strongly counter any attempts at diluting the application of the concept of special and differential treatment in future negotiations at the WTO.

Given the antipathy of the US to the role of development, it came as no surprise that at MC11 it chose to block India's efforts at securing a permanent solution to the issue of public stockholding for food security. India, and its coalition partners, need to persist in their efforts and not abandon their quest for a permanent solution.

The dogged refusal of the US to even acknowledge the Doha Round and the hesitation of many developing countries to effectively voice their interests is likely to consign the Doha Round to a footnote in history. Certainly not a positive development.

#### Fisheries and e-commerce

Returning to MC11, there were a few concrete outcomes — fisheries subsidies and electronic commerce, to mention two of them. In the months preceding MC11, intense negotiations were held in Geneva for prohibiting subsidies for illegal, unreported and unregulated (IUU) fishing. However, some basic concepts, including the scope of subsidies sought to be prohibited, could not be resolved in the negotiations. At MC11 a pragmatic decision was taken to continue the negotiations on fisheries subsidies with a view to concluding it in 2019.

While few would argue in favour of subsidies for IUU fishing, India must guard against any prohibition on subsidies that would constrain it from developing its fishing fleet in the future. Given the fact that fishing activities are a matter of survival for millions of fishermen in India, it is important that the country negotiates hard for protecting the interests of its small-scale and artisanal fishermen.

Another outcome of MC11 was to continue the 1998 work programme on electronic commerce. While there was a strong push by some countries to initiate negotiations on this issue, this was resisted by India and a large number of African countries. The consensus decision was to continue discussions in a non-negotiating mode — a vindication of India's stand.

Turning to the so-called new issues, at MC11 the proponents issued separate joint statements on electronic commerce, investment facilitation and micro, small and medium-sized enterprises (MSME). The statements essentially seek initiation of negotiations at the WTO on these three issues. India has been steadfast in opposing initiation of multilateral negotiations on these new issues. While the joint statements of the proponents do not represent formal outcomes of MC11, these enjoy the support of around 70-80 countries. How should India respond to this emerging situation?

#### Dealing with new issues

First, the Department of Commerce should consult all relevant stakeholders in order to make a comprehensive and balanced assessment of the implications for India of the likely outcomes of negotiating binding rules on the three issues.

This assessment must be objective, based on hard facts and not on merely on subjective impressions of a few influential individuals. If the assessment so warrants, India should carefully consider recalibrating its position on the three issues.

Second, considerable research is emerging that punctures the narrative of WTO negotiations on e-commerce being good for development. This stream of research is getting drowned by the drumbeat of the proponents of negotiations on this issue. India should take the lead in discussing the research with other developing countries, so that the true nature of the negotiated outcome is understood by all.

Third, at the WTO India should work assiduously to enlarge the coalition of countries that share its concerns on the new issues. This would provide it further strength in the months ahead.

The situation confronting India after MC11 is reminiscent of the position in which the country found itself in 2001 after the launch of the Doha Round. The odds stacked against India were perhaps higher in 2001. Unperturbed by the number of countries arrayed against it or the stinging headlines in the international media against its negotiating approach, within two years India managed to effectively turn the tables on the proponents of the new issues.

Overall, the nature of the deliberation at MC11 is a manifestation of the changing global power dynamics. While the US can prevent outcomes going against its interest, some of the developing countries are now in a position to firmly resist its hegemony at the multilateral level. Given this reality, as countries seek to protect and promote their national interests, we are likely to witness many more pitched battles in the future.

[\[Back to top\]](#)

## **The rise and fall of the WTO**

C. Rammanohar Reddy, The Hindu

December 26, 2017 : As the U.S. loses interest in multilateralism in trade, India should actively try to arrest the organisation's slide

Less than 25 years after the World Trade Organisation (WTO) was created, its future as a body overseeing multilateral trade rules is in doubt. The failure of the recent ministerial meeting at Buenos Aires is only symptomatic of a decline in its importance.

Too ambitious?

When the WTO was born in 1995, replacing the General Agreement on Tariffs and Trade (GATT), it was given a large remit overseeing the rules for world trade. It was also given powers to punish countries which violated these rules. Yet, in what must be an unusual development in the history of international institutions, the WTO has been felled by the weight of the extraordinary ambitions placed on it. As a

consequence, since the late 2000s, the organisation has been unable to carry out its basic task of overseeing a successful conduct of multilateral trade negotiations. The rise and decline has happened quickly.

In the early 1990s, global corporations pushed the major trading powers of the time — the U.S., the European Union (EU), Japan and Canada — for a GATT agreement that would vastly increase access for their products in foreign markets. They succeeded with the 1994 Marrakesh agreement which was supposed to be a grand bargain. The “farm subsidisers” of the U.S. and EU agreed to bring agriculture under GATT rules. In exchange, the developing countries had to pay up front by reducing import duties on manufacture, opening their markets to services, and agreeing to strict protection of intellectual property rights. The Marrakesh agreement also created the new Dispute Settlement Body (DSB) to adjudicate on trade disputes. All this would be overseen by the new WTO.

Under the DSB, the decision of a WTO panel could be rejected only by “a negative consensus” (i.e. all member-countries present had to turn down the ruling). A final verdict in favour of a complainant country entitled it to impose penalties on the other country. And under the principle of cross-retaliation, these penalties, when authorised, could be imposed on exports from a sector different from where the dispute was located. This hurt the smaller countries and was to the advantage of the bigger ones.

The new ability of the DSB to enforce decisions seemed too good to not take advantage of. For a brief while in the mid/late 1990s, the WTO seemed to be just the kind of “super” international organisation that the major powers wanted. If all trade and non-trade issues could be brought under one body which had the powers necessary for enforcement, there would be no place to hide for any country. There was pressure to bring many more “new” non-trade issues under the WTO. If the U.S. wanted labour and environment standards included, the EU wanted foreign investment, competition and government procurement.

Over-reach, however, sometimes can have the opposite of the intended outcomes.

The developing countries, which had realised that they had been had in the Marrakesh agreement, were far more active in the WTO from the late 1990s. Through a combination of the formation of strategic alliances and simply refusing to say “yes”, they began to win some battles.

The China factor

The entry of China into the WTO in 2001 also changed the picture. China used its newly acquired ‘most favoured nation’ status to the hilt. It expanded exports manifold to the EU and the U.S. Indeed, an influential body of opinion holds China’s export success as responsible for the hollowing out of U.S. manufacturing.

On its part, the U.S. soon realised that it was not the master of all it surveyed. Conflicts with the EU, a DSB that did not always oblige, and the more assertive developing country bloc (for a while led by Brazil and India) saw the hopes for a “super” WTO gradually evaporate.

Still, in 2001, Brussels allied with Washington to successfully push for fresh trade negotiations even before the 1994 agreement had been digested. A new round with the Doha Development Agenda (DDA), covering old and new issues, was launched in the Qatar capital in 2001. However, by refusing to make any honest concessions over the years, the U.S., aided by a willing WTO secretariat, more or less killed

the DDA in the late 2000s. This intransigence showed that the WTO and its major member-countries remained as insensitive as before to the concerns of the majority of the membership. The U.S. and EU have since even sought to formally scrap the DDA.

The major powers now cherry-pick trade issues. Thus, in 2014, trade facilitation (covering customs rules and procedures) was taken out of the DDA and a stand-alone agreement was signed, because the U.S. and the EU were interested in it. This virtually destroyed the principle of reciprocity under which each country wanting to obtain gains in specific areas makes concessions in others.

On the whole, the U.S. and the EU have been losing interest in multilateralism in trade. The U.S. has even begun to undermine the very elements of the WTO that it had pushed through in the early 1990s. It now refuses to implement some DSB decisions. Most recently, it has taken decisions on DSB appointments which will in effect bring adjudication to a halt.

This does not mean major powers have no use for the WTO. They may no longer see any value in it as a forum for multilateral trade agreements, but they now use it to push for stand-alone deals as well as plurilateral deals (agreements involving a few and not all members of the WTO). At Buenos Aires, proposals were made for the WTO to take up “new issues” such as e-commerce, investment facilitation and trade and gender. These are all outside the DDA and of interest only to a select membership.

#### Need for multilateralism

No one should be happy about the turn of events. All countries need mutually agreed discipline on market access, customs duties, etc. Regionalism cannot be an alternative. Regional trade groups have succeeded in some places and they have not elsewhere. India’s own experience with bilateral trade agreements has not always been good. Bilateral and regional treaties also open the door to the stricter “WTO plus” conditions in select areas like patents.

The world therefore benefits from a multilateral trade body – though a fairer one than the WTO of the 1990s. To give just one example, India is on a better wicket with its food procurement and public stock holding policies protected within the WTO than with having to negotiate separate deals with major farm exporters like the U.S., Canada, Australia and Brazil. Still, one cannot take multilateralism in trade for granted. At the extreme, one cannot rule out a collapse of the WTO engineered by the Trump administration. The consequences are unimaginable even if they do not lead to trade wars as happened in the 1930s.

India should be more actively engaged in how to arrest the slide and then make the WTO a more equitable organisation. Commerce Minister Suresh Prabhu has said that India will soon convene a mini ministerial to discuss “new issues” for the WTO. Such fancy talk will not get us anywhere. India needs to work on persuading all members of the WTO to return to the table and negotiate on bread-and-butter issues like agriculture, industrial tariffs, and services. At this point, India and most of the world have everything to lose and nothing to gain from first a hollowing out and then a selective use of the WTO.

[\[Back to top\]](#)

**Global trade: back to the drawing board**

Rajeev Kher, Live Mint

December 27, 2017 : The outcome of the 11th ministerial meeting of the World Trade Organization (WTO) at Buenos Aires was on predictable lines. The writing has been on the wall for a long time now. Some serious efforts were made to revive Doha Round negotiations between 2008 and 2011; thereafter, these efforts could succeed only in bringing up selected issues for negotiations in one after the other ministerial meetings. International organizations are adept at creating hype around what they do, howsoever little that may be.

The Bali ministerial in 2013 was unique as it showed how the fear of failure forced leadership on all sides to agree on some outcome. But those were the Barack Obama days. The new dispensation in the US is not that charitable to multilateralism. Bali was followed by India's dramatic reassertion for resolution on the public stock holding issue, linking it with the implementation of the trade facilitation agreement. India's enhanced positioning was a reflection of the accession of a new and more assertive dispensation in New Delhi. India very cleverly leveraged its market position to secure a permanent peace clause, recognizing that a large number of members would have been very keen to do business with the new government after relative stagnation over the past few years.

It was, therefore, not a surprise that the membership accepted India's position and a permanent peace clause was agreed on. It helped the domestic image of the new establishment as well. In trade lexicon, the permanent peace clause was the price for India's agreeing to the implementation of the trade facilitation agreement. So, a quid pro quo and the deal was over. The developed country membership led by the US, therefore, is not prepared to pay a greater price for converting the permanent peace clause into a rule and thereby removing a structural flaw in the Agreement of Agriculture.

The other old issues on the agenda were of relative insignificance, including the demand for a special safeguard measure (SSM) by a group of developing countries. Since there was no agreement on tariff reduction, SSM was an overstretch by the G-33. However, there were new demands, such as a proposal for beginning negotiations for an agreement on e-commerce and a work programme on micro, small and medium enterprises (MSMEs), etc.

Some developing countries, led by India and China, took a logical position of not agreeing to a proposal such as e-commerce as at the moment it is on the ascendency in the developing world and it would be too soon to start disciplining it because the gains in such a situation would only flow to already established global participants. There are significant issues at the interface of technology-law-business-security and privacy which must be sorted out before any meaningful negotiation can be contemplated on e-commerce. The proposal on MSMEs was too amorphous and woolly. The differences would begin at the definitional level and cover the whole gamut of economic governance.

Since expectations were low, it was a win-win for all those who participated. Some developing countries maintained an obsessive attachment to the Doha Agenda and a ministerial declaration could not come. Those who can recall the Nairobi ministerial declaration would appreciate that divisions had already been formalized on this issue(Para 30,31); for some, it would have been a retraction from their position, and unlikely to happen.



Therefore, if somebody had expected the US to agree to a specific mention of the Doha Agenda, it was a wrong assessment of the realities, given that there was a more hawkish establishment in the US.

There is no doubt that the Doha Agenda is a dream agenda for a developing country as it addresses some of the systemic inequities of the Uruguay Round agreements. But have we not come a long way from 2001, when this Agenda was adopted? Much has happened in the meanwhile that has worked towards rebalancing global trade. Nevertheless, some principles intrinsic to Doha remain equally relevant even now, such as the special and differential treatment of developing countries. What is our ask from the global trading system? Is it not true that several inadequacies in our own policy development and its enforcement are staring at us? Can we talk of regaining competitiveness without addressing many sectoral policies? Don't we need to bring international trade in the mainstream of our policy discourse and don't we need to mainstream multiple arms of the government at the federal and state levels in our international trade policymaking and its implementation? Whose baby is trade in the government? Just the department of commerce? Trade is only the front end of a policy and process value chain.

These are just a few questions we need to address before we flog a near-dead horse yet again. We sought protection under Doha hoping that our policies in some critical areas would evolve in the meanwhile. But this incubation has taken much longer. We must prepare our own narrative on where we want to see ourselves in the next decade in the global trade architecture, how we want to influence our development with our trade policies and prepare to mould and influence global policies and institutions accordingly. So it's back to the drawing board.

[\[Back to top\]](#)

## **India, South Korea may hold joint IPRs through trade pact**

Kirtika Suneja, The Economic Times

New Delhi, December 26, 2017: With South Korean companies establishing themselves as big players in India, the two countries plan to jointly hold intellectual property rights (IPRs) in areas of manufacturing, energy and healthcare.

The proposal will be within the negotiations for the bilateral trade agreement that the two countries recently reviewed. In the fourth round of negotiations of the India-Korea comprehensive economic partnership agreement or CEPA held on December 21, the two countries finalised a Futures Group comprising experts from academia and industry to work on joint research and development and networking.

The two countries have zeroed in on internet of things, electrical and automotive manufacturing, renewable energy, water management and medical equipment as some areas to work together. "We will decide how to rope in experts from Indian Institutes of Technology and other premier institutions to be able to create an environment for joint IPRs and build capacity," said an official in the know.

Commerce and industry minister Suresh Prabhu had announced forming such a group in September when he visited South Korea to review the CEPA. In June last year, the two countries began official talks to

improve the trade agreement. Further, they launched an initiative 'Korea Plus' in India to promote and facilitate South Korean Investments in India.

The likes of LG, Samsung and Hyundai have established strong presence in India with big market shares, something that the two governments feel can be used for greater cooperation in areas of research. The Futures Group is likely to be set up early next year and will give an impetus to India-Korea trade and investment.

Bilateral increased to \$16.82 billion in 2016-17 from \$16.57 billion in the previous fiscal, but the trade surplus is tilted towards South Korea at \$8.3 billion.

The official said Korea has also proposed to bring on board some of its industrial giants in the group. Major Korean conglomerates such as Samsung, Hyundai Motors and LG have made significant investments in India, estimated at nearly \$3 billion, while Indian investments in South Korea have already exceeded \$2 billion.

[\[Back to top\]](#)

## **How India rejects bad patents**

Feroz Ali & Sudarsan Rajagopal, The Hindu

December 27, 2017 : Strong standards for patents have filtered the bad from the good, with the least administrative and financial burden

In 2005, India made some remarkable amendments to the Indian Patents Act of 1970, to keep medicines affordable in the country. Since then we have faced a significant blowback not just from the global pharmaceutical industry but also from developed world including from the U.S. and the European Union.

At the heart of the matter are the strong standards for patents which India introduced to promote genuine innovation across all fields of technology, in perfect compliance with the World Trade Organisation (WTO) norms. In contrast, developed countries have weaker standards as a result of incessant lobbying by corporate behemoths. Twelve years later, we now know what it means: India rejects bad patents in far greater number than developed countries.

### **The background**

The findings of a new study by us which examined all 1,723 pharmaceutical applications rejected by the Indian Patent Office (IPO) between 2009 and 2016 have been an eye-opener.

Section 3(d) of the Indian Patents Act, a provision introduced to restrict the patenting of new forms of known pharmaceutical substances, became the subject of international attention after its use in rejecting a patent application by Novartis for the anti-cancer drug, Gleevec. We found that exceptions to patentability in Section 3 of the Act, which includes Section 3(d), were responsible for 65% of all rejected pharmaceutical patent applications.

Over its short lifetime, Section 3(d) has survived a challenge to its constitutionality before the Madras High Court, and Novartis's fight against the rejection of its patent that went to the Supreme Court. Both courts ruled decisively to uphold the legality of Section 3(d). The United States Trade Representative has also repeatedly rebuked India for this provision in its Special 301 Report, despite its perfect compliance with WTO norms. While the world's attention is still fixed on this legal experiment that the Indian Parliament introduced into law, there has been a dearth of information on how the IPO has applied Section 3(d). We found that it filters the bad from the good, with the lowest possible administrative and financial burden.

#### Rejected using Section 3(d)

An astonishing 45% of all rejected pharmaceutical patent applications cited Section 3(d) as a reason for rejection: the applications were identified as mere variants of known compounds that lacked a demonstrable increase in therapeutic value.

Between 1995 and 2005, prior to our new law, India provided a temporary measure to receive patent applications for pharmaceutical products at the IPO, called the mailbox system. Though introduced in 2005, the use of Section 3(d) gradually increased from 2009 when mailbox applications were examined. The spike coincides with the Supreme Court's ruling in the Novartis case, in April 2013. It would appear that this judgment provided legal certainty to Indian patent law in general, and Section 3(d) in particular, enabling the IPO to weed out trivial innovations.

#### At the patent office

In the last decade, we found that the IPO rejected about 95% of all pharmaceutical patent applications on its own. Only 5% were through the intervention of a third party, such as a pre-grant opponent. Our basic patentability criteria, that the invention should be new, involve an inventive step (also known as non-obviousness), and should be capable of industrial application, were the most frequently used grounds for rejection, followed by the exceptions to patentability grounds in Section 3.

Section 3(d) invaluablely equips the IPO with a yardstick to evaluate applications that are merely trivial innovations over existing technology. In cases where the invention is a variant of a known substance, the criterion for patentability is proof of a necessary improvement in its performance for its designated use, i.e., increased efficacy. In the context of pharmaceuticals, as was the case involving Novartis, this translates to evidence of an improvement in therapeutic efficacy. In other words, trivial innovation must result in a far better product in order to qualify for patent protection.

Within the arcane world of patent law, an argument against provisions such as Section 3(d) is that it is no more than an extension of one of the basic requirements of patentability: non-obviousness. Certainly, for an application to be deemed non-obvious, it has to establish a technical advance over what was known before.

But non-obviousness standards are more effectively applied in invalidity proceedings before a court of law than by officials at the IPO. The advantage that a provision such as Section 3(d) provides is the ability to question an application at the IPO itself without having to go through expensive and time-consuming litigation. The high cost of litigation poses significant barriers. Cases are often settled before reaching a conclusion, in pay-for-delay settlements negotiated by patent owners, where generic manufacturers are

essentially paid to stay off the market. Patent litigation is expensive, but it is the patient who eventually pays a higher price — by being subject to exorbitant medicine prices, driven by the unmerited exclusivity that bad patents create.

As a check

Without Section 3(d), the Indian public would have to bear the burden of invalidating a bad patent through litigation.

India is certainly not alone in facing two connected challenges: constrained government budgets and urgent public health needs. As Section 3(d) has been efficient in separating the bad patents from the good in India, it would be a wise move for other developing countries, grappling with similar challenges, to incorporate similar provisions in their law.

[\[Back to top\]](#)

## **Why India opposed deal to end fisheries subsidies at WTO**

Asit Ranjan Mishra, Live Mint

New Delhi, December 27, 2017 : India's opposition to a proposed agreement to end fisheries subsidies at the World Trade Organization (WTO) meeting in Buenos Aires that led to a collapse of the negotiations may be linked to a potential adverse political fallout in India's coastal states, said a trade expert on condition of anonymity.

A deal on fisheries subsidy was seen to be low-hanging fruit at the WTO's 11th ministerial conference (MC11), unlike India's demand for a permanent solution on public stockholding for food security that failed to make headway as the US refused to engage on the matter.

The 164 member countries of the multilateral trade body could only finalize a work programme on fisheries subsidies to finalize a deal by 2019 as India opposed any interim deal to restrict illegal, unreported and unregulated (IUU) fishing.

India did not agree to an interim outcome as many elements concerning interests of developing countries were not defined clearly, said the expert.

“Since countries have territorial sovereignty till EEZ (Exclusive Economic Zone), according to international rules, India insisted to protect its fishing rights till that point. There was no urgency to rush for an interim agreement,” he added.

Developed countries claim that fisheries subsidies, estimated to be in tens of billions of dollars annually, create significant distortions in global fish markets and are a major factor contributing to overfishing and overcapacity and the depletion of fishes.

Developing countries such as India want to protect subsidies for low-income, resource-poor fishermen for whom it is a matter of livelihood and that constitute a significant electorate in coastal belt states in Gujarat, Tamil Nadu, Karnataka and Kerala.

A deal is mostly targeted at China, which is the largest catcher and exporter of fish and provides huge domestic subsidy to its fishermen. India is a distant seventh among top fish exporters and does not indulge in IUU fishing.

Initially, India had proposed special and differential treatment for its artisanal fishermen that would have allowed it to continue to supply fuel subsidy within the territorial waters, which is within 12 nautical miles from the coast. It subsequently changed its stand, demanding a carve-out for all of its fishermen allowing them to fish till the EEZ, which is 200 nautical miles from the coast.

An Indian trade diplomat speaking under condition of anonymity said India's changed stand took even developed countries by surprise as India does not have fishing interest till EEZ. "We should have played our cards better not to take the blame," he added.

European Union trade commissioner Cecilia Malmström on 13 December after the MC11 tweeted: "At the @WTO #MC11 meeting, members cannot even agree to stop subsidizing illegal fishing. Horrendous. The EU tried really hard, but destructive behaviour by several large countries made results impossible. How did we end up here?"

In the absence of an agreement, WTO members decided to continue to engage constructively in the fisheries subsidies negotiations with a view to adopting an agreement on comprehensive and effective disciplines by the ministerial conference in 2019 that "prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU-fishing, recognizing that appropriate and effective special and differential treatment for developing country members and least developed country members should be an integral part of these negotiations," a WTO ministerial statement said.

[\[Back to top\]](#)

## **US takes India back to WTO in solar power dispute**

The Economic Times

Geneva, December 20, 2017: India has failed to comply with a World Trade Organization ruling on solar power, the United States will tell the WTO's dispute settlement body (DSB) next month, triggering a fresh round of litigation, according to an agenda issued on Wednesday.

Renewable energy has become a hot area of trade friction as major economies compete to dominate a sector that is expected to thrive as reliance on coal and oil dwindles.

India unveiled its national solar programme in 2011, seeking to ease chronic energy shortages in Asia's third-largest economy without creating pollution.

But the United States complained to the WTO in 2013, saying the programme was discriminatory and U.S. solar exports to India had fallen by 90 percent from 2011.

The United States won the case last year, when WTO appeals judges ruled India had broken the trade rules by requiring solar power developers to use Indian-made cells and modules.

Such "local content" requirements are banned because they discriminate in favour of domestic firms and against foreign competitors.

Under an agreement with the United States, India had until Dec. 14 to comply with the ruling and it told the DSB last week that it had done so.

"Indian authorities have held extensive internal stakeholder consultations since the adoption of the rulings and recommendations of the DSB to fully comply with them," India said in its statement to the DSB.

"Accordingly, in compliance with the findings and recommendations of the DSB in this dispute, India has ceased to impose any measures as found inconsistent in the DSB's findings and recommendations."

But an agenda for the DSB's next meeting on Jan. 12 showed the United States plans to raise the dispute again, citing WTO rules on non-compliance with trade rulings.

If India is found not to have complied, Washington could ask the WTO for permission to impose trade sanctions on India. But the WTO dispute system is struggling to process a large number of highly complex disputes, so the legal process is likely to continue for a year or more.

[\[Back to top\]](#)

