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## **Get down to business**

Abhijit Das, Business Standard

March 25, 2018 : At a time when the WTO is facing a crisis on multiple fronts, the member countries should take steps to preserve & strengthen it.

With the frenzy of activities and the glare of arc lights at the Informal World Trade Organisation (WTO) Ministerial Meeting held in New Delhi on March 19-20 being over, it is time to assess the outcome of the meeting. The meeting was primarily aimed at breaking the ice among the WTO members after the failed ministerial meeting in Buenos Aires held three months ago. Moreover, recent actions on the trade front by the US President Donald Trump, imparted additional salience to the New Delhi ministerial meeting. Based on the documents available in the public domain, eight key messages emerge from the meeting.

First, at a time when the WTO's negotiating function and its dispute settlement mechanism are gradually being made dysfunctional, and the sanctity of its rules is being threatened by questionable actions of the US, more than 50 ministers and high-level officers participated in the New Delhi meeting. Clearly life is still left in multilateralism, despite many obituaries having been written on the WTO.

Second, the Delhi meeting was convened by the Commerce and Industry Minister Suresh Prabhu, with the intention of reinvigorating the WTO. This objective of the meeting should compel a re-think among countries, which perceive India as a nay-sayer and deal-breaker at the negotiating table.

Third, almost all the countries participating in the Delhi meeting appear to have spoken in one voice about the need to resolve the impasse in the appointment of the Appellate Body members expeditiously and immediately. It may be recalled that by blocking the nomination of new members to the Appellate Body, the US would render the dispute settlement mechanism of the WTO inutile. The strong message delivered by almost 50 countries should force the US to either agree to the nomination of new members, or to articulate its specific problems with the dispute settlement mechanism, thereby enabling a dialogue aimed at resolving the underlying issues.

Fourth, India and a few other countries were successful in establishing a link between the problems in the WTO's dispute settlement pillar and the negotiating function of the WTO. While this link is extremely relevant and crucial, it was not clearly and forcefully articulated earlier. In its statement at the meeting, India raised an important question -- What good is it to invest effort in the negotiation of rules if the existing rules cannot be effectively implemented and impartially enforced, because the Appellate Body is rendered dysfunctional? A few other countries appear to have echoed similar sentiments. This should provide an additional impetus to resolving the crisis confronting the Appellate Body.

Fifth, the countries participating in the Delhi meeting clearly recognised the serious threat posed to the credibility of the WTO rules and some of its cardinal principles, such as non-discrimination, by the vicious cycle of recent increase in tariffs on steel and aluminium by the US and the proposed counter-measures by some developed countries. Instead of each WTO member individually attempting to persuade the US to play by the rules of the game, at the Delhi meeting, the need for WTO members to take urgent and coordinated action to address the underlying issues was highlighted. Collective action by a large number of countries should prove to be more effective in getting the US back on the rule-based path, as was the case during 2000-2003 when the US had resorted to WTO inconsistent action for protecting its steel sector.

Sixth, with respect to initiating negotiations on some issues such as investment facilitation and electronic commerce, India stated that the following three conditions must be met: One, the issues should be trade-related; two, negotiating binding rules on the new issues would be beneficial for developing countries; and three, there must be certainty that special and differential treatment would be provided in the negotiations to all developing countries. India has now shifted the onus on the proponents of the new issues to persuade it on the three counts, before it can agree to initiating negotiations on these issues.

Seventh, it was evident at the Delhi meeting that the developed countries continue in their attempts to deprive India and many other developing countries of special and differential treatment in trade negotiations. These discussions, which started at the Buenos Aires ministerial meeting of the WTO, would undermine the long standing concept of less-than-full reciprocity in multilateral trade negotiations as enshrined in the General Agreement on Tariffs and Trade. This is not an encouraging development for India and the government must find ways of putting brakes on the discussions on this extremely divisive issue.

Eight, the meeting in Delhi suggests that the WTO members continue to have an interest in taking the negotiations on issues such as reforms in agriculture subsidies, fisheries subsidies and services, forward on the basis of pragmatism and flexibility. While similar sentiments were expressed on many earlier occasions, how exactly the WTO members should make progress on the contentious negotiating issues, does not appear to have been discussed in the meeting. Perhaps this was not the objective of the meeting.

When the WTO is facing a crisis on multiple fronts -- trust deficit among its members, paralysed negotiating arm, increasingly dysfunctional dispute settlement mechanism and spiraling trade friction --

the New Delhi Informal WTO Ministerial Meeting was timely. Deliberations at the meeting and its key messages would have reinforced the benefits of a rule-based multilateral trading system and the stark reality of a power-based trading system and anarchy that would be engendered, if the WTO collapses. This sobering reality should concentrate the minds of the member countries to take steps to preserve and strengthen the WTO. If this does happen, then to a large extent, credit would be due to the Delhi WTO meeting.

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### **‘Countries need to avoid measures that could have domino effect’**

Amiti Sen, Business Line

New Delhi, March 21, 2018 : “Trade war is kind of a thing that you know when you see it. We are not there yet,” believes Roberto Azevedo, Director General, World Trade Organisation.

In an interview with *BusinessLine* on the sidelines of the WTO informal Ministerial Meet hosted by New Delhi, Azevedo talks about a whole range of issues including the threat posed to the WTO by the US unilateral trade actions, the Appellate Body crisis and the way out, the utility of the Mini Ministerial meet and lack of consensus on new issues. *Excerpts:*

How serious is the situation triggered by the unilateral trade measures applied by the US on some countries including India?

There were announcements of measures on steel and aluminium by the US and these were not taken well by the affected countries. Some said they could apply counter measures. Now what those counter measures would be and the extent of that is difficult to tell.

If you look back in history, when you have these kinds of tit-for-tat situations, it tends to escalate. Because you apply a restrictive measure that you believe is legitimate, when the other side responds with something you say you would do it as well. Then it goes on and on. Others too are affected by the situation. Once you begin to get more players and more measures in place, you don’t know where it is going to go. That’s why I said there is a potential for escalation. How big an escalation and how widespread it would be is hard to tell.

Are you in touch with countries in your effort to control the escalation?

I am talking to them. I am trying to understand what their concerns are and if there are ways of mitigating them. More importantly I have been telling them to be careful with whatever they do to avoid a spiral of measures that could have a domino effect. That would be a losing proposition for all.

Is a trade war about to begin?

I don't want to get into a semantic definition of what a trade war is. I think in general terms a trade war is the kind of thing that you know when you see it. I don't think we are there yet. We have not seen yet these measures and counter-measures automatically happening. It may come but I don't think we are quite there yet. But as I said that there is a risk that we may go down the path.

The US has justified these measures by saying that these are part of its domestic rules. Will this argument hold at the WTO?

Every country follows their domestic disciplines. The question is whether it is compliant with WTO legislation. The only body that can say whether compliance exists or not is the WTO panel. Every time a member imposes a measure it presumes that it is consistent till somebody challenges that. The only way to challenge that effectively is to do it under the dispute settlement mechanism of the WTO.

With the US blocking the appointment of judges in the Appellate Body, are there talks of an alternative mechanism?

In Geneva, members are thinking about roughly two types of ideas. One is on the kind of things that can be done to break the impasse and resume the nomination process for Appellate Body. The other set of ideas is an alternative to what we have today. In other words, if this impasse continues to the point that the Appellate Body work is compromised, are there other things that they could do to make the system continue to function in a way that will be acceptable to them?

Can Article 25 of the DSU, which offers an alternative to the dispute settlement body, act as a substitute?

It is very difficult to have a perfect substitute or alternative to the Appellate Body. Article 25 is a possibility that allows two parties to take arbitration directly to the Director-General instead of the DSB. The D-G provides the means by appointing the arbitrators and setting up the system so that the parties can have an arbitration between themselves based on mutual agreement. I heard that some members are thinking of using that as some kind of mechanism that could be helpful in the context of a improper functioning of the Appellate Body. How exactly it would be done I don't know. This is precisely what they are talking about.

Do you go back from India with the sense that there has been some movement in the negotiations?

This was not a negotiating meeting. We had a situation in Buenos Aires (Ministerial Meeting) where we did not have many negotiated outcomes. The conversation today was do we have ways of finding solutions? There were suggestions of things that could be done. Discussions happened at the political level in a meaningful way. But there was no attempt to have a breakthrough. We were basically testing if others are willing to take part in discussions that would go in a particular way.

What will it take to move forward?

We need to show flexibility. There is a kind of flexibility that you find in the Trade Facilitation Agreement where developing countries have identified commitments they can take on immediately and ones where they need time and technical assistance for implementation. There are also flexibilities in the format of conversation, whether all countries participate or only some.

Now there are some new initiatives in the WTO in e-commerce, investment and MSME, where some members are flexible in the beginning because it is open-ended and anybody can participate and anybody can leave. They are still deciding what would be the topic of the conversation and whether there would be negotiations in the future or not. I think the only way to have comfort and move forward in negotiations is if everyone is reasonably sure that they would not be asked to undertake things that they cannot undertake.

Was there any understanding on the new issues at the informal Ministerial Meet?

The groups already exist. They have been having meetings. More than half the membership is participating in the meeting.

What I heard here was that some said that we need and want the Doha issues (flowing from the on-going Doha Round) but we also want to talk about some of the new issues that are important for us. Others were saying that we want to have a conversation on the Doha issues but we are not ready yet to have a conversation about the issues those groups are talking about. There was no attempt to find any kind of agreement.

Do you think expanding the ambit of the current round could help advance the talks?

Some people argue that sometimes to make things move you need more items on the table. If something is very difficult for me in one particular area and I can show to my constituency that there is a positive result for me in another area, it could make it easier for me to move. But some others argue that the

additional things could complicate matters for the Doha Round. I don't know what the situation would be like.

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## **Concern over threat posed to WTO by US tariffs**

### Business Line

New Delhi, March 20, 2018 : The threat posed to the World Trade Organisation by the US action of selective imposition of import tariffs on steel and aluminium and ways to deal with it dominated the discussion at the informal Ministerial Meet in New Delhi on Tuesday.

India also battled for the need to preserve the mandate of special and differential treatment for developing countries while some members argued that larger countries should opt out.

Addressing a press conference after the meeting, attended by representatives of 51 countries, WTO Director-General Roberto Azevedo said that he had serious concerns about the ramification of the US action on tariffs.

“These measures have serious possibility of escalation. My hope is that the affected countries will talk it out and see how to handle this within WTO framework. That is how we can handle this,” said Azevedo .

The countries affected by the US action include Japan, Korea, India and the EU among others.

Azevedo said that India's move to host the informal meet at the crucial moment when world trade rules were under threat showed the country's commitment towards the multilateral framework.

Members who were represented at the meet included the US, the EU, Brazil, China, Russia and South Africa.

### Special treatment



On the issue of special and differential treatment (S&DT) — which basically is an entitlement given to poorer countries to get more concessions from richer members and give fewer concessions in return — there were other members such as the US and the EU, who wanted larger developing countries, such as India, China and Brazil, to opt out. India, however, did not agree.

“S&DT for developing countries is a fundamental part of the WTO mandate. This must be carefully preserved. We do not support arguments which are based on indicators such as aggregate GDP but disregard the millions of people that live in poverty in these countries,” said Minister of State CR Chaudhary at the plenary session of the meeting.

The divergence of opinions was reflected in Commerce and Industry Minister Suresh Prabhu’s concluding remarks.

“The need for all developing countries, including LDCs, to benefit from S&DT in future trade agreements was emphasised in many interventions. While this was contested in some interventions, the need to find a way to address the issue in a balanced way was emphasised by some participants,” said Prabhu.

Divisive issues

The house was also divided over new issues such as e-commerce, investment facilitation and MSMEs. India said it could agree to discussing new issues only if they were trade related and it could be convinced that the rules being negotiated will be beneficial for developing countries.

India hosted the meeting with the hope to revitalise the multilateral talks that had taken a beating at the Ministerial Meeting in Buenos Aires in December 2017 with no major outcomes.

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## **U.S. challenges India’s export subsidies at WTO**

Varghese K. George, Business Line

Washington, March 16, 2018 : Turning the heat further on India on trade issues, the United States has challenged India’s export subsidy programmes at the World Trade Organisation (WTO). The move comes

close on the heels of a string of statements accusing India of “unfair” trade practices, by President Donald Trump.

U.S. Trade Representative (USTR) Robert Lighthizer said Washington had requested dispute settlement consultations with the Government of India at WTO on the issue. Mr. Trump had threatened to raise duties on products from India.

Unlike the many trade disputes between India and America that are sector specific or product specific, the new move by Mr. Lighthizer — a trade hawk closely in alignment with Mr. Trump’s nationalist economic policies — is broad and sweeping in targeting the whole range of Indian export subsidy programmes.

‘Distorting trade’

A statement from the USTR listed the Merchandise Exports from India Scheme; Export Oriented Units Scheme and sector specific schemes, including Electronics Hardware Technology Parks Scheme; Special Economic Zones; Export Promotion Capital Goods Scheme, and a duty free imports for exporters programme as distorting trade in a way that allows Indian exporters “to sell their goods more cheaply to the detriment of American workers and manufacturers.”

“These export subsidy programmes harm American workers by creating an uneven playing field on which they must compete,” said Mr. Lighthizer. “USTR will continue to hold our trading partners accountable by vigorously enforcing U.S. rights under our trade agreements and by promoting fair and reciprocal trade through all available tools, including the WTO.”

Mukesh Aghi, president of the United States-India Strategic Partnership Forum (USISPF), said the case would not alter the long-term trajectory of bilateral trade partnership. “As the relationship deepens, and volumes increase, disputes are natural. This is a normal dispute redressal mechanism that will run its course.,” Mr. Aghi said.

“The U.S has been imposing countervailing duties in response to all these Indian programmes already. The decision to take this to the WTO is a political move and qualitatively different from countervailing duties,” said Moushami P. Joshi, trade lawyer at Washington law firm Pillsbury, where she advises sovereign governments on WTO disputes.

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## **Informal WTO ministerial meeting begins with 52 nations**

Business Line

New Delhi, March 20, 2018 : Delegates from as many as 52 countries, including the US and China, are participating in the informal meeting of the WTO being held here today amid increasing protectionism in global trade. India has called this meeting to explore options to reinvigorate the World Trade Organisation (WTO).

Welcoming the participants, Commerce and Industry Minister Suresh Prabhu hoped that the meeting will provide opportunity to the participating countries to engage in free and frank discussions. The ministry said in a statement that delegations from 52 countries including WTO Director General Roberto Azevedo are participating in the discussions. Ministers and Vice Ministers from 27 countries are part of the delegations. “All heads of delegations appreciated the Commerce Minister’s initiative in calling this meeting and providing political guidance for the work in the WTO,” it added.

Informal discussions will continue through the day and the delegates will explore in detail the option for reinvigorating the WTO.

Expressing concerns over increasing protectionism, Azevedo has said: “There was the announcement by the US of new tariffs on steel and aluminium. In response, we also heard announcements of other potential trade restrictive actions by numerous other economies. This is of real concern. The risk of escalation is clear.” He said that instead of escalating tensions, the WTO member countries need to find ways to resolve issues hampering global trade constructively.

The meeting assumes significance as the global trade appears fragile with certain developed countries threatening to retaliate the duty hike on steel and aluminium products by the Trump administration.

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**‘India must lead in defusing the possibilities of a global trade war’**

Business Line

March 23, 2018 : “India’s growing acceptance as an important nation in facilitating constructive deliberations must be capitalised”

India should play a proactive role in defusing the emerging possibilities of a global trade war that can derail the positive outlook in the world trade, FICCI said today.

The industry body observed that protectionist measures by the US have raised serious concerns about a global trade war, highlighting the importance of keeping the World Trade Organisation (WTO) process intact and also making the multilateral institution stronger.

Moreover, with the WTO Director-General Roberto Azevedo raising alarm on the issue at the two-day mini-ministerial in New Delhi early this week, it is high time countries across the world think beyond retaliatory measures to counter the challenges posed by the targeting of the WTO by the US and unilateral increase in tariffs, FICCI said.

“India can play a significant role in guiding this exercise to defuse the emerging possibilities of a global trade war that can derail the positive outlook in the world trade,” said Rashesh Shah, President, FICCI.

### Strengthening WTO

Shah noted that by turning the mini-ministerial into a platform for ‘meeting of minds’, Commerce and Industry Minister Suresh Prabhu has shown that India can lead the way in bringing all countries together to find a way out and avoid fuelling of a trade war due to the US actions.

It is important to keep the WTO process going and also making the multilateral institution stronger so that a rule-based global trade is ensured and bilateral issues have an effective platform for resolution, Shah said. “India’s growing acceptance as an important nation in facilitating constructive deliberations among the countries with diverging interests must be capitalised to strengthen the WTO,” he added.

Concerns over a global trade resurfaced after US President Donald Trump yesterday imposed USD 60 billion of tariffs on Chinese imports to punish the country for its “unfair” seizure of American intellectual property, a move that could escalate the already tense trade relations between the world’s two biggest economies.

In response to Trump’s move, China unveiled plans today to impose higher tariffs on USD 3 billion worth of American goods, including pork and pipes, in retaliation to US tariffs on steel and aluminium imports from Beijing, authorities said.

The measures suspending tariff concessions will target 128 US products including pork, wines and seamless steel tubes, China's Ministry of Commerce said in a statement.

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## **India to take up U.S. tariffs bilaterally**

Business Line

New Delhi, March 21, 2018 : India will take up the issue of the U.S. imposing tariffs on steel and aluminium imports on a bilateral level, Commerce Minister Suresh Prabhu said on Tuesday.

“We are obviously not the largest exporter of steel or aluminium to the U.S.,” Mr. Prabhu said at a press conference following the conclusion of an informal mini-ministerial meeting of the WTO, which was attended by 53 countries.

“But still, as far as we are affected, we will definitely take it up with the U.S. with whom we have a huge trade surplus and we have a very good political relationship. We will take up this matter with them bilaterally.”

U.S. President Donald Trump recently announced a 25% import tariff on steel and a 10% tariff on aluminium.

“What the U.S. has raised, whether it is WTO compatible or not, whether it is violating some rules or not, is something the country will have to individually look into,” Mr. Prabhu added. “This is a unilateral action [by] the U.S., and any trade related action is subjected to scrutiny on whether it is WTO compatible or not.”

WTO Director General Roberto Azevedo also expressed his concerns about the actions taken by the US, warning that this could lead to escalation and retaliatory tariffs being imposed by other countries.

‘Potential for escalation’

“The WTO does not as an institution take a stance, but I have said publicly that I am very concerned [about the U.S.’ decision],” Mr. Azevedo said. “And I think the institution itself could say the same because such measures, for whatever reason, have a very real potential for escalation because of the possibility of responses from other partners with trade restrictive measures as well, and that is something we should avoid.”

“This is what we heard today, with many countries saying they are concerned by this and highlighting the potential for escalation,” he added. “We have to proceed very carefully and try to work within the framework of the WTO.” He also urged member countries to follow up verbal commitments to multilateral trade through action.

“Members committed to continuing negotiations on various issues including on the ones where we made no progress under the Doha round,” Mr. Azevedo said. “But... just pledging support for the system is not enough. We need to match words with deeds.”

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## **China opts for measured retaliation--urges U.S. to “pull back from the brink” of a trade war**

Atul Aneja, The Hindu

Beijing, March 23, 2018 : China has responded guardedly to the decision by the United to States to raise tariffs on a raft of Chinese exports, signaling Beijing’s intent to play the “long game” and avoid a trade war.

The Chinese commerce ministry on Friday issued a statement stating its plan to impose fresh duties on US products, which would amount to \$3 billion.

Earlier on Thursday, U.S. President Donald Trump announced a 25 % levy on Chinese goods worth around \$60 billion.

The commerce ministry said it planned to impose a 25 % levy on 8 U.S. products, including pork and recycled aluminum, worth \$2 billion.

Besides a 15 % tariff was in the pipeline on 120 items, such as fruit, nuts and wine as well as steel pipes,--altogether worth \$1billion.

But the statement stressed that the U.S. should “pull back from the brink” and avoid the world’s two largest economies locking horns in a trade war. “China doesn't hope to be in a trade war, but is not afraid of engaging in one,” the ministry observed. China said that it would impose its own set of counter-tariffs only if the two countries were unable to resolve their trade differences.

According to a Xinhua report quoting the commerce ministry, Beijing’s proposed measures will be implemented in two stages. In the first stage, the 15% tariff will be levied if the two countries cannot reach an agreement on trade issues within a scheduled time. In the second stage, the 25% import tax will be imposed after evaluating the impact caused by the U.S. policies.

“With the restrained response, China hopes Mr. Trump can realise his errors and mend his ways,” Reuters quoted Xu Hongcai, deputy chief economist at the China Centre for International Economic Exchanges, a Beijing think tank.

“If we really want to counter, the strongest response would be to target soybean and automobiles. This would hurt the U.S.,” Mr. Xu observed. “China is ‘drawing its bow but not firing. We still have some cards to play.”

There could be room for dialogue as the presidential memorandum signed by U.S. President Donald Trump on Thursday said that there would be a 30-day consultation period that begins once a list of Chinese goods that are targeted is published. The U.S. side alleges that Chinese companies have been engaged in stealing U.S. intellectual property and indulging in forced technology transfers.

Analysts say that China’s proposed retaliation to the U.S. decision has so far been proportionate, and is in tune the rules of the World Trade Organisation rules, which allow “counter-safeguard measures” on imported products.

In fact, the commerce ministry said on its website that the U.S. move, restricting imports on national security grounds, “has severely undermined the multilateral trade system led by the WTO, disrupted international trade order, and has drawn opposition from other WTO members”.

It added: “China will take legal action under the WTO framework and work with other WTO members to safeguard the stability and authority of the multilateral trade rules.”

In a conversation with *The Hindu*, John Ross senior fellow at Beijing's Chongyang Institute of Financial Studies said that, "China is indicating clearly that it stands for the multilateral framework embodied in the WTO."

He added: "This flows from its fundamental strategy that it is against a trade war but will defend itself if, against its wishes, it is attacked."

Stock markets in Asia tumbled on Friday amid escalating trade tensions between the U.S. and China. The Indian benchmark equity indices lost more than 1 % each during the morning trading session following concerns related to a U.S.-China trade war.

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### **Talk softly as you acquire a big stick**

The Economic times

New Delhi, March 27, 2018 : India should not squander its diplomatic gains from the peaceful resolution of the Doklam standoff last year by indulging in aggressive rhetoric. New Delhi has little to gain for itself and the region by raising the decibel levels. Rather, it should focus on building and strengthening its strategic capacity, including partnerships with countries in the region and beyond to contain China's expansionist ambitions and mercantilist approach to global engagement. Such a move will help India secure its place as a global leader.

The peaceful resolution of the Doklam standoff was a diplomatic win for India. Doklam is not Indian territory, although it is of strategic importance, given that it looks down on the so-called Chicken's Neck that connects the northeast with the rest of India. Doklam is part of Bhutan but is claimed by China.

The Chinese initiated a move to change the status quo, building structures to establish its territorial claim. India, with Bhutan's concurrence, sent its security forces to non-Indian territory and prevented the Chinese from changing the status quo. China preferred, on the eve of the Brics summit in Xiamen, a public climb down to a showdown. The entire world saw China blink, while India stood firm where it mattered and offered China a face-saving way to de-escalate by withdrawing its own troops. This is good enough for India. Indian diplomats should preserve the upper hand New Delhi acquired through this confrontation, instead of forcing a risible China to escalate rhetoric with open talk about having bested Beijing.



New Delhi should push for enhanced dialogue to resolve longpending bilateral issues and prevent future flashpoints, as also strengthen relations in South and West Asia and Africa, partnering Japan, the US other and western powers.

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### **Nations' bilateral parleys with US threat to WTO: Experts**

Kirtika Suneja, The Economic times

New Delhi, March 24, 2018 : The current trend of countries seeking exemptions from the higher tariffs levied by the US through bilateral consultations is a dangerous trend and a threat to the multilateral trading system, Indian officials and experts have said.

From its a no-exception stance a few weeks ago, the US has given exemptions to some allies including Australia, South Korea, Mexico and Canada from higher tariffs on steel and aluminium it imposed earlier.

The approach is wrong on two counts, experts said. Besides violating the Most Favoured Nation (MFN) principle under which countries are not supposed to discriminate between goods on the basis of their origin or destination, the move goes beyond the tariff issue by undermining the World Trade Organization (WTO), which is responsible for resolving trade disputes among countries, they said. "The US is giving them a bait and other countries are negotiating their issues with it by boycotting the WTO," said an expert on WTO matters. "Global trade will collapse because countries want to save their own backyard."

Experts expect China to begin bilateral consultations with the US, as it has already retaliated with reciprocal tariffs after the Trump administration imposed tariffs on \$60 billion worth of Chinese products.

"The US has come to unilateralism and we don't know what China will do," said Biswajit Dhar, professor at the Centre for Economic Studies and Planning in the School of Social Sciences at Jawaharlal Nehru University in Delhi. "The collateral damage if the two largest economies of the world get into a trade war will be immense," he said.

Experts said the US' decision to impose 25% duty on Chinese imports of information and communication technology products violates the Information Technology Agreement, under which signatories can't impose import duties on many IT products.

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## **US-China trade war: WTO warns trade barriers will 'jeopardise global economy'**

Live Mint

Geneva, March 24, 2018 : The World Trade Organization chief warned states Friday that creating barriers to international trade would "jeopardise the global economy," after Washington slapped steep tariffs on Chinese imports, heightening fears of a trade war.

"Disrupting trade flows will jeopardise the global economy at a time when economic recovery, though fragile, has been increasingly evident around the world," WTO Director-General Roberto Azevedo said in a statement, calling for "restraint and urgent dialogue".

US President Donald Trump on Thursday hit China with tariffs on up to \$60 billion (€48.5 billion) of imports to retaliate against the "theft" of American intellectual property, fuelling fears of a trade war between the world's two largest economies.

Washington also launched Friday a challenge before the WTO's Dispute Settlement Body (DSB) against China over intellectual property breaches.

China meanwhile warned the United States that it was "not afraid of a trade war" as it threatened tariffs on \$3 billion worth of US goods in retaliation over the US measures.

In his statement, Azevedo said that during a meeting of WTO's Council of Trade in Goods, member states had discussed "a number of the specific tensions that have arisen between different members in recent weeks."

"I encourage members to continue working through the WTO's many forums and mechanisms to deal with their concerns and explore potential solutions," he said, without naming any specific countries.

“Actions taken outside these collective processes greatly increase the risk of escalation in a confrontation that will have no winners, and which could quickly lead to a less stable trading system,” he warned.

“I again call for restraint and urgent dialogue as the best path forward to resolve these problems.”

The WTO, which strives to foster a level-playing field in global trade, can through its DSB act as a court to resolve trade disputes.

However Trump’s protectionist administration has levelled hostile rhetoric towards the WTO, and has nearly crippled its dispute resolution mechanism by blocking appointment of new judges.

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## **Export subsidies should go**

Amti Sen, Business Line

March 25, 2018 : It is tempting to pass off the recent US action against India’s export subsidies at the World Trade Organisation as yet another example of the superpower’s growing economic aggression against trade partners. But that would be incorrect.

Since August last year, when the WTO officially notified that India’s per capita Gross National Income (GNI) had crossed \$1,000 three years in a row, a formal complaint against India at the multilateral forum was just waiting to happen. According to WTO rules, countries can give export subsidies only as long as their per capita GNI is below \$1,000. Once it is established that the higher income is there to stay (with three consecutive years of GNI breaching the \$1,000 threshold), countries can no longer enjoy the special dispensation of export subsidies which is otherwise banned under WTO rules.

The fact that it was the US that complained against India was just a matter of chance. It could have been any other member such as the EU, Japan or Australia that could have raised the dispute as all of them are unhappy with India’s continued use of export subsidies.

For and against

One might argue that expecting a country to change a plethora of export subsidy schemes, including extremely popular ones like the Merchandise Export from India Scheme (MEIS) used across sectors, at a drop of a hat, could be considered harsh. The fact, however, remains that breaching the \$1,000 mark was not an overnight development: India could see it coming. In fact the Foreign Trade Policy, which was announced in 2015, as well as the review of the policy announced last year, talked about the need to recalibrate existing export promotion schemes. However, nothing was done on the ground.

Instead of trying to wean exporters off the export subsidy schemes, the FTP review went ahead and increased the number of items covered under MEIS and also increased the level of entitlement in certain cases.

In its defence, India has said that it believes that it is entitled to an eight-year phase-out period and would put this forth in the discussions it has with the US. Its contention is based on the argument that when the Agreement on Subsidies and Countervailing Measures was implemented in 1994-95, the countries with GNI higher than \$1,000 got eight years to get rid of their export subsidies and, therefore, it should get the same.

But obviously the two situations are not comparable as initially the phase-out period was extended to give comfort to members when the pact kicked in and more than two decades have passed since then. India's efforts to establish that it would be fair to extend the same dispensation to all have not borne fruit yet at the WTO.

Pushing its case

Recently, officials from the commerce ministry, in their interaction with the media, pointed out that India had submitted a paper way back in 2011 stressing that the phase-out period for export subsidies should be eight years from the time it crossed threshold; it has been demanding and discussing the matter at the WTO since then. An effort to make the demand a part of the discussion agenda at the Nairobi ministerial meeting of the WTO in December 2015 did not succeed.

So, what exactly is making the country optimistic about having its demand met now?

The least that India should have done to prepare for the eventuality was to have a contingency plan ready. It should have held wide-ranging discussions with industry and related ministries to look at the best possible alternatives to the export subsidy schemes which could include technology upgrading funds, capital expenditure subsidies and funds for research and development. Some discussions happened but no concrete plan emerged. Especially in the area of textiles, where India itself has accepted that its time to extend export subsidies runs out in 2018 (the sector reached export competitiveness as defined by the WTO back in 2010), there should have been some movement.

Although the textile ministry held a few meetings with the commerce ministry on the issue, nothing moved on the ground as it did not want to push the industry out of the comfort zone of receiving the subsidies it is familiar with.

However, it is not too late for action. Since it takes at least a couple of years for a dispute at the multilateral forum to run its course, New Delhi has to use this time effectively to draw up alternative schemes. All the ministries need to take the matter seriously and cooperate with the commerce ministry to decide on ways to continue extending support to exporters without violating WTO rules. India cannot afford to be caught napping the second time round when the WTO is ready to pronounce judgment on the matter.

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## **Draft Agri Export Policy seeks to end curbs to bring in stability**

Business Line

New Delhi, March 19, 2018 : The Commerce Ministry has sought to put an end to any kind of export restriction — including minimum export price (MEP) and export duty — on commodities not categorised as essential in order to build a more stable trade policy regime.

A draft Agri Export Policy circulated by the Commerce Ministry on Monday proposed that consultation among stakeholders and Ministries will be initiated to identify commodities which are essential from food security perspective and barring these, the effort would be to ensure that no other produce is brought under any kind of export restrictions.

“India is seen as a source of high quality agricultural products in many developing nations and ASEAN economies and changes in export regime on ground of domestic price fluctuations, religious and social belief can have long-term repercussions. This is particularly important for commodities such as onions, rice, wheat, oilseeds, pulses and sugar,” the draft stated.

Export restrictions could be ended straight away on processed agricultural products and all kinds of organic products, and a policy assurance given that these would not be brought under the ambit of any kind of export restriction such as MEP, export duty, export ban, etc even though the primary agricultural

product or non-organic agricultural product is brought under some kind of export restrictions, the draft said.

The National Agriculture Export Policy is being formulated in line with the vision to double the farmer's income and increase the share of agricultural exports from \$30 billion to \$60 billion by 2022.

While the draft policy has been prepared after consultations with stakeholders, it has been put up for wider consultations and comments have been invited till April 5, 2018, following which the final policy would be drafted.

### Quality issues

To minimise rejections on quality issues — sanitary and phytosanitary (SPS) and technical barriers to trade (TBT) barriers — the draft proposes to develop a common portal to monitor all export rejections and provide a platform to different nodal agencies to take up a root cause analysis, take corrective action and if required, respond to the partner country regarding action taken.

It suggests creation of an institutional mechanism under the aegis of Department of Commerce with representation of relevant Ministries and Agencies to address India's market access request, calibrate it with the trading partner's market access request for accessing the Indian market and quickly respond to SPS/TBT barriers.

Highlighting the need to bring about reforms in APMC Act and streamlining of Mandi fee, the draft proposed using the DGFT field offices, Export Promotion Councils, Commodity Boards and Industry Associations to act as advocacy forum for reform by all the States.

The draft policy also talks about development of export-centric clusters, promoting value added exports through incentives, special focus on value added exports of organic products, developing uniform packaging for organic products, marketing and promotion of 'produce in India' through Geographical Indication (GI) registration and putting in place post-harvest infrastructure support for smooth logistical movement of agri produce.

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**Data privacy: Time to act**

S Ronendra Singh, Business Line

New Delhi, March 21, 2018 : Recent developments with respect to Facebook and Cambridge Analytica raise some questions on how the Government can protect data. Although the Government claims data is safe, but incidents like this privacy breach lead to concerns about security — be it Facebook or Google or Amazon or Apple or any other foreign company. Further, will the Government take on these big Tech 4? They are the main firms driving data in the country and globally. But so far, India has shown no signs of doing anything to control them.

The Data protection law in India is also still in the making, but past experiences are not promising. For example, the earlier government had disallowed the use of gmail for official purposes, and had encouraged the use of ‘.nic.in’, but is this rule followed?

The Government should start by asking these tech giants to set up their data centres here. This is not a big investment for such companies, especially as they rarely pay tax in India. However, every time they have been asked to set up shop, they have raised issues ranging from problems acquiring land to electricity.

Data should remain within India and be subject to Indian laws. Without such laws or regulations the threats by government to such companies are ring hollow. And, such breaches will only grow in future with India being the centre of expansion by these tech giants.

The Government has also been talking about creating an Indian Google, but its been years now. There should be firms in India, like WeChat and Baidu in China, to counter these firms. We can follow the example set by China instead of doing lip service. We must back big India-owned e-commerce and mobility players to fight the Amazons and Ubers of the world.

Tech is not the challenge, user-behaviour is. So, at the end of the day, it is time for action and not reaction.

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**Do away with consent to strengthen data privacy**

Rahul Matthan, Live Mint

March 28, 2018 : Much of the outrage around the recent Cambridge Analytica incident has centred around the fact that academic Aleksandr Kogan could, with a simple Facebook survey app, leverage 270,000 survey respondents to gain access to the data of 50 million users directly from the Facebook platform. While most of those respondents were dimly aware that they must have consented to sharing personal information, many of them were surprised (outraged even) that, in addition to information about them, the app was able to harvest information about their friends as well.

Nothing about this incident really surprises me. If anything, I am surprised that everyone around me is so surprised.

The Facebook terms of service makes it clear that when we use a Facebook app, we provide the app developers access to a wide variety of information about us for them to use to personalize our user experience. This explicitly includes access to our list of friends. Anyone who has used an app on Facebook has done so based on these terms, and app developers who collect information about our friends are doing so legitimately, based on the consent that we provided. Everyone is upset that Facebook is hiding behind its terms of service. But to me what is more significant is how few of us actually bother to read the terms of service or to fully understand the repercussions of what we are signing up to.

Today, consent is a formality—a step we blindly take when we sign up to new services. We agree to terms and conditions as acts of faith, trusting that the service providers we've signed up with will not let us down. Even if we want to be mindful about what we are committing to, we feel a sense of futility in even attempting to understand these terms as we have no scope to negotiate any provisions we might find unacceptable.

Social media networks have become our principal point of interaction with friends and family. As a result, our need to participate on these platforms often overrides our instinct to refrain from agreeing to clauses we disagree with.

To be clear, rarely have I found the terms of service of social media platforms to be deceptive. Most alleged violations tend to take place within the realm of what is legally permissible. They usually involve a breach of the spirit rather than letter of the law.

In this most recent incident, Kogan's app was entitled to access information about the friends of its users. Kogan then passed that information on to Cambridge Analytica, which was against Facebook's terms. There was nothing illegal about the initial collection, however; what was wrong was that the data wasn't used as it was intended to be.

This is why consent cannot be the primary safeguard that protects our personal privacy. When it is made available to them, service providers will hide behind it, using our acceptance of their terms as absolution of their responsibility to protect us from harms we might suffer as a consequence of using their service. If,



instead, service providers can be held accountable for their actions despite the consent we have provided them, we might have a useful framework to safeguard our privacy.

Last year, I spelled out the contours of such a framework, calling for an accountability regime that completely does away with consent, in *Beyond Consent: A New Paradigm For Data Protection*. At the time, many argued against such a drastic measure on the ground that consent allowed us to exercise autonomy over what can be done with our data. In the light of recent incidents, I wonder how many still think consent is still useful.

As much as autonomy is necessary, consent is irrevocably broken, and in today's world of take-it-or-leave-it contracts, its continued use is meaningless. If we can no longer negotiate our contracts or truly understand their implications on our personal privacy, any faith we have in our consent as the instrument of our autonomy is misplaced.

That said, autonomy is important and in the paper I have suggested a granular opt-out mechanism by which we can preserve our autonomy. I have suggested a framework of learned intermediaries coupled with regular audits to ensure that data controllers are held accountable even if we don't fully understand their algorithms or the way in which their services work. What we can no longer afford to do is allow our consent to terms and conditions, whose implications we barely understand, to absolve data controllers of their obligation to be responsible for the privacy implications of their actions.

In my submissions to the Justice Srikrishna Committee on Data Protection, I have suggested that India should take the bold step of doing away with consent entirely. As much as it might have been useful decades ago, consent no longer fulfils the purpose we think it serves. Given the trajectory of our growth, India is likely to become a significant player in the data economy over the coming decade. We need a privacy law that is in tune with the realities of the future to which we are hurtling. If the evidence before us is any indication, consent is useless. We should not feel constrained to use consent as the foundation of our law merely because the rest of the world does so. India has a unique opportunity to create a truly forward-thinking privacy law completely unencumbered by the baggage of consent that the rest of the world is struggling to shrug off.

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