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US interests and the writing on the wall

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There is little in common between a communiqué issued by G-20 leaders, particularly in the section on reviving international trade and investment, and a decision announced by the World Trade Organization's (WTO's) appeals body last week. The Appellate Body (AB), the highest court for resolving global trade disputes, struck down anti-dumping and countervailing duties imposed by the US on large washing machines from South Korea on several grounds. The verdict came just after the G-20 leaders' meeting in Hangzhou, China, on 5 September. Clearly, these two developments are unrelated, but they portend the underlying dynamics in the global trading regime.

In the 7,177-word Hangzhou communiqué, the leaders representing major industrialized, developing and even least developed countries reiterated their commitment "to shape the post-Nairobi work (programme) with development at its centre" for advancing negotiations "on the remaining DDA (Doha Development Agenda) issues as a matter of priority" at the WTO.

Against the backdrop of a genuine backlash against globalization and a rising wave of anti-trade sentiment after Brexit, they acknowledged the importance of addressing the unresolved DDA issues. They were referring to the DDA negotiations that were launched immediately in Doha, Qatar, after the 9/11 terrorist attacks in 2001. The leaders urged WTO's 164 members to address the remaining DDA issues such as "all three pillars of agriculture (i.e. market access, domestic support and export competition), non-agricultural market access (industrial goods), services, development, agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and rules".

They underscored the need for speedy ratification of the Trade Facilitation Agreement by the end of this year. At the insistence of the US and other industrialized countries, the leaders included language for pursuing "WTO-consistent plurilateral trade agreements" as well as concluding a sectoral deal on an environmental goods agreement (EGA) by a section of the G-20 countries led by the US. India, Indonesia, Brazil, South Africa, Argentina and other developing countries opted out of the EGA negotiations on the grounds that they seek tariff elimination of industrial goods that fall outside the DDA's mandate.

In short, the section on 'Robust Trade and Investment' seems to be a grand compromise struck between the sherpas of the US, the European Union, Japan, Australia and Canada on the one side and developing countries such as China, India, Brazil, Indonesia and South Africa on the other. Otherwise, why would the US allow strong language on DDA in the communiqué? After all, Washington made it repeatedly clear during the past eight months that the DDA negotiations were terminated in Nairobi, Kenya, at the WTO's 10th ministerial conference.

Despite launching the DDA negotiations in alliance with its trans-Atlantic trade partner, the EU, the US has been pretty honest in letting members know about its visceral opposition to the DDA talks since 2008. After it embraced the Trans-Pacific Partnership negotiations with 11 other countries in 2008, the US focused all its energies in hiving off trade facilitation from the DDA package, which was premised on a single undertaking that implies nothing is agreed until everything is agreed.

So, will the Hangzhou statement for kick-starting negotiations on the remaining DDA issues with "development at its centre" make any material difference for members at the WTO? The chances are close to nil because of opposition from only one member. That member may succeed in clinching an agreement on the EGA despite the non-participation of more than 100 countries.

Coming to the US' anti-dumping duties on large South Korean washing machines, a three-member division of the AB on 7 September largely upheld an earlier panel ruling that struck down Washington's controversial practice of calculating dumping margins based on the zeroing methodology.

According to this practice, which is condemned time and time again in every dispute by the AB, since the India bed linen dispute against the EU in 2001, negative dumping margins arising from higher export price as compared with normal value are either excluded from the calculation of the weighted average, or included with a value of zero, by the US' anti-dumping investigating authorities.

For the umpteenth time, the US was found to be guilty in continuing with the practice of zeroing methodology. However, in the current washing machines dispute, while the majority— i.e., two members of the AB—dismissed the US' arguments on zeroing, one member issued a dissenting note in support of the US' stand.

"So, the US still loses on this issue under the majority opinion, and every kind of zeroing continues to be found in violation of WTO obligations, but there is a formal dissent on the Appellate Body record in support of this type of zeroing," says Simon Lester, a trade policy analyst with the Washington-based Cato Institute, a libertarian think tank.

Writing in the International Economic Law and Policy blog on the South Korean dispute, Lester posed a question: "Will prospective AB Members be asked about this issue by governments during the selection process? If so, what is the best way to answer?" Perhaps, he may be alluding to the manner in which the US blocked a second term for a Korean member, Seung Wha Chang, on grounds that his interventions in rulings deviated from the WTO's covered agreements.

In crux, whether it is the G-20 leaders' call for addressing the remaining DDA issues with development at its centre or the AB rulings against the continued use of zeroing methodology by

the US department of commerce, the writing on the wall is clear. Washington will do what is best for its interests regardless of international rules and pressure. The US, for example, chose to cock a snook at India's demand for providing a status report on repealing/amending a US provision that was found to be inconsistent with global trade rules in a dispute launched by New Delhi against Washington's countervailing duties on hot-rolled carbon steel flat products.

Yet, Washington has demanded trade retaliatory measures to the tune of $450 million on Indian goods without a WTO compliance body determining whether India has properly implemented the AB ruling in removing the Avian influenza-related measures on American poultry and poultry products. But, in a recent tuna trade dispute with Mexico, the US maintained that the WTO's dispute settlement body "cannot give authorization to suspend concessions in any amount where the Member concerned has come into compliance".

Uncle Sam deserves praise for believing what is good for the goose is not good for the gander.