

Unfair trade practices: A strong WTO can play a key role

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The steel and aluminium safeguards announced by US president Donald Trump, followed by his proposed tariff increase against China on the basis of alleged intellectual property rights (IPR) violations, have led to a tense and complex situation. (Reuters)

The steel and aluminium safeguards announced by US president Donald Trump, followed by his proposed tariff increase against China on the basis of alleged intellectual property rights (IPR) violations, have led to a tense and complex situation. China has threatened retaliation and vowed to “fight back resolutely”, while Chinese president Xi Jinping also talks about reducing tariffs and improving market access in some sectors of interest to the US. Other economies such as the European Union (EU), Canada, Mexico, South Korea

have begun negotiations with the US after the steel and aluminium tariff rise was announced—basically to provide some quid pro quo, and, thus, be excluded from those tariffs. At the same time, both the US and China have taken their concerns to the World Trade Organization (WTO) dispute settlement system, and the EU and Japan have said they share the IPR-related concerns of the US.

We, thus, have a situation where the WTO is being recognised as the forum to address strong differences on trade practices, while individual action outside threatens to erode the competence and impact of this system itself. There is a need to step back and examine the basic underlying reason for the present situation—the US' concern about unfair trade practices of other large economies is shared by some other economies as well, as embodied in the OECD work on “competitive neutrality”. Piecemeal solutions resulting from negotiations following the steel and aluminium safeguard action or accommodation through opening up parts of the market as suggested by president Xi's statement, will only provide a temporary respite to this concern. We need a far more stable and relevant mechanism that also strengthens the WTO.

The dilemma faced by many is how to strengthen the WTO, while also addressing trade practices that are not adequately covered by the WTO. In this context, it is noteworthy that there are also unfair trade concerns, which—though not emphasised by Trump—have been strongly raised by several developing country members at the WTO. These include agriculture subsidies and initiatives, which helps improve development opportunities. For a credible effort, the WTO would need to work on addressing these as well as the issues emphasised by Trump. For agriculture subsidies, instead of a comprehensive solution, the WTO members could progress in a step-wise manner—by first creating disciplines on the extent of subsidies that may be provided to individual agricultural products. Relevant flexibilities that will help implement the disciplines would be part of the agreed framework.

For development, we could examine the Chapters in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) on cooperation and capacity building; competitiveness and business facilitation; development and small and medium-sized enterprises. These areas are the ones that express to a larger extent the aspirations of developing economies that negotiated TPP earlier, and now the CPTPP. The development-related areas may be concluded first, the result on agriculture subsidies may be next, and then the third initiative we discuss below, which has a much larger scope. The solution for Trump's concerns would require creating a new framework of disciplines. It is pertinent to note that the WTO agreements contain several principles and concepts that would be useful to work towards a framework to address "unfair trade" in general.

Thus, discussions could begin under the WTO General Council, or even a working party, based on an assessment of the conceptual features that are already part of the WTO agreements that deal with "unfair trade", i.e., anti-dumping (AD) and subsidies and countervailing measures (SCM). A useful model could be the General Agreement on Trade in Services (GATS), with a general framework of agreed disciplines regarding "unfair trade", supplemented with schedules of disciplines addressing specific areas of "unfair trade practice". These schedules for individual topics would be agreed separately for each area of concern. These would cover areas not already part of the WTO, such as the issues covered in CPTPP under the chapters on competition policy, and state-owned enterprise and designated monopolies. In addition, the discussion may consider any other areas that are seen as a major cause of trade tensions.

The resulting disciplines may range from soft to hard law. Further, most WTO members may be exempt from these disciplines, because their actions would be unlikely to cause the relevant "adverse effects" on trade. For them, these would serve mainly as guiding principles. The general framework could include existing concepts under WTO agreements such as notification; evidence based on factual investigation; serious injury; steps to avoid

circumvention of measures; de minimis; higher obligations for those whose share in world trade is above a specified threshold (akin to Article 27.5 and 27.6 of the WTO subsidies and countervailing measures agreement); no obligations for countries below a specified threshold level (akin to Annex VII of WTO Subsidies Agreement); a framework similar to the Telecom Reference Paper with disciplines that combine a set of legal obligations and guidelines; a transition period for implementing the obligations (akin to Article 27.4 of WTO subsidies agreement). In addition, similar to the WTO TRIMS agreement, there could be an illustrative list of trade policy actions that would be considered as relevant to be addressed by the overall framework and the schedules.

Some innovations would be needed, so that an agreement may be concluded with a “critical mass” of countries accepting the new results, such as the top-ten trading economies plus top-ten according to GDP. All others would be exempt. One possible idea could be to recognise that addressing “unfair trade” is basically an effort to create a market-oriented economy with a level playing field. The major economies need to be part of the process to address this concern, which arises because of a deviation from such a level playing field.

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