

Opinions


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Issues and Prospects for the Post-Nairobi Multilateral Trade Agenda



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The outcome of the tenth Ministerial Conference of the World Trade Organization (WTO) held in Nairobi, Kenya in December 2015 can be cautiously dubbed as a ‘temporary remedy’ to prevent the collapse of the multilateral trading system as a whole. While it succeeded in not terminating the Doha Round (launched in November 2001), neither did it succeed in fully endorsing its continuance. In terms of ‘deliverables’, the Ministerial gathering managed to deliver a small package consisting of several decisions on agriculture, including the elimination of agricultural export subsidies, and several LDC issues, but the remaining agricultural issues failed to see such progress and the other ‘pillar issues’ such as NAMA (non-agricultural market

access) and services were not even tabled as the negotiating agenda. The WTO members also failed to reach agreement on how to advance the negotiations. The Ministerial Declaration adopted at the Nairobi Ministerial Conference is evidence of the stark difference in positions among the WTO members, especially regarding the core issue of the WTO's future agenda. The text of the Declaration includes language that manifests the deep division in positions, stating that "Members have different views on how to address the negotiations". Even regarding special and differential treatment (SDT) – a core development issue in the Doha Development Agenda – the text explicitly mentions the possibility of negotiations based on either the existing "Doha structure" or "new architectures". Furthermore, the Declaration indirectly acknowledges that the current negotiating structure of the WTO may be blocking the progress of negotiations, stating that "new approaches are necessary to achieve meaningful outcomes in multilateral negotiations".

Then what would be some possible "new approaches" for advancing the multilateral trade talks, and would they be a feasible alternative to the current negotiating approach in the WTO, i.e. 'single undertaking'? For quite some time, there has been much attention paid to plurilateral trade agreements as a feasible alternative approach for advancing the multilateral trade agenda. The Ministerial Declaration also explicitly recognizes the successful experience of plurilateral agreements by WTO members. A model case example is the recently concluded Information Technology Agreement (ITA), which has a membership of 53 countries that account for approximately 90% of trade in IT products, and, most importantly, extends market access benefits on an MFN (most favoured nation) basis to all WTO members. Enabling members, who are ready for more advanced liberalization on specific issue areas to come up with "new rules" in a more focused structure of plurilateral negotiations, would not only provide a breakthrough for advancing the multilateral trade agenda, but also enable the international community to trade and invest more in a disciplined and predictable manner. "Open regionalism" has long been touted as perhaps the second-best solution to the current situation in which the multilateral negotiating forum is undermined by deep divisions among core country groups along different interests, and the proliferation of bilateral and regional trade agreements which involves almost all WTO members. The U.S. is now reportedly pursuing the Trade in Services Agreement (TiSA) as its next target for discussing new rules in such a plurilateral format, in addition to the Environmental Goods Agreement (EGA) which is expected to be concluded within this year.

However, there is a precondition for such plurilateral formats to work with the intended effects of eventual multilateralisation. The benefits of liberalization committed by the signatories

would have to be provided on an MFN basis to all WTO members, including the non-signatories. This would require membership and the accompanying coverage of trade in the agreement to achieve a 'critical mass' (mostly around 90%). Such 'critical mass' requirement is quite important in dealing with the problem of 'free riders', which may take advantage of the benefits of the trade agreement without making any liberalization commitments. In the case of the ITA, the most important element in its successful outcome was China's membership, since it enabled the deal to reach the 90 percent critical mass threshold. Furthermore, the final ITA text confirms the maintenance of the threshold by stating that "an appropriate opportunity shall be found to discuss the issue in the future" should circumstances arise that undermine the threshold, creating free riders to the deal.

Another problem associated with the alternative approach would be the marginalization of less developed countries from the process of negotiating new trade rules. The less developed group of countries that are not ready to commit to additional trade liberalization, and decide not to join the negotiations initiated by several major nations, may eventually be included only after important decisions have been made and compromises been struck. As a result, the contents of the deal struck may not be fully representative of the needs of the developing countries. This could create a 'legitimacy' problem since the membership of the agreement does not cover all WTO members when the multilateral trade system rests on the foundation of Article 1 of the GATT Agreement to extend unconditional MFN treatment to all members.

However, looking back on the history of multilateral trade negotiations, we may need to be reminded that the Tokyo Round Codes of 1979 were also signed by fewer than the whole GATT membership, and applied on a 'conditional' MFN basis. The Tokyo Round 'codes', which were comprised of eleven agreements, including separate treaties on government procurement, subsidy/countervailing duties, and standards, existed outside the GATT structure, and took effect only between the signatories to the agreement. Conditionality in MFN treatment meant that although the countries could apply the codes unconditionally to all the members, in fact the codes specified that participation in the organs set up under the codes would be limited to the signatories to the agreement. Concerned about legitimacy issues, eventually a decision was later adopted to give non-signatories the right to participate in the various code committees in an observer capacity. Although it took quite some time until the conclusion of the Uruguay Round in 1995, these plurilateral codes were eventually transformed into a truly multilateral agreement undertaken by all the WTO members on an unconditional MFN basis.

In conclusion, it seems highly likely that the post-Nairobi multilateral trade agenda will be addressed in a 'two-track' approach, at least for the short or long time being. In the Doha Round negotiating forum, negotiations on trade and development issues are likely to continue, mainly involving the developing country groups. At the same time, issue-based plurilateral trade agreements (within the WTO framework) and mega-RTAs (outside the WTO framework) will serve as the new negotiating fora to discuss and regulate new trade rules. In the meantime, there should be parallel efforts to multilateralize the new rules that are agreed by leading groups of WTO members through plurilateral or regional negotiations. The 'multilateralisation' efforts will inevitably become an important function of the WTO, in addition to its existing function of rules negotiation and dispute settlement. To this end, the role of the Committee on Regional Trade Agreements (CRTA) will have to be strengthened, beyond its current function of monitoring RTAs and sharing information on various RTA provisions. The Nairobi Ministerial Declaration already recognizes the importance of this role, as seen in its decision to make the CRTA's Transparency Mechanism (notification and publication of all RTAs reached among WTO members) into a permanent function. In a further move, CRTA should seriously consider playing a facilitator's role in future rules negotiations by providing drafts for discussions in respective Committees based on the analysis of the new rules contained in RTAs and plurilateral agreements. In the current state of the multilateral trade negotiations, the plurilateral and regional negotiations will inevitably have to serve as 'building blocks' for advancing the multilateral trade agenda. 