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International Trade

WTO Can End Its Malaise if Small Member Groups Band Together

By Jamieson Greer

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There is steady call for the World Trade Organization to be “reformed” or be more “relevant,” but these mean different things to different countries and constituencies, says King & Spalding LLP partner Jamieson Greer. He suggests the WTO would achieve more ambitious goals if countries with common ambitions could agree to reciprocal treatment, and countries that do not agree would not benefit from others’ economic concessions.

The World Trade Organization recently canceled its 12th Ministerial Conference due to the omicron variant of Covid-19. The much-anticipated meeting of the world’s trade ministers had already been delayed by two years, further postponing an opportunity for the WTO to show its relevance. But the unspoken secret is that many stakeholders were privately relieved at its cancellation, which promised to be another disappointment to those who view the WTO as the control center of the international trading system.

It was likely that nothing of consequence would have been concluded: the decades-long negotiations on global fisheries rules are at a stalemate, institutional problems in dispute settlement remain divisive, and the air in the room is being sucked out by an ill-advised “waiver” of any intellectual property related to the Covid-19 pandemic.

Layered on top of these intractable issues is an existential challenge to the WTO: how to ensure that China plays by the same economic rules as everyone else.

China’s compliance record is abysmal, with countries around the globe strongly criticizing the country’s performance following its latest “trade policy review” occurring under WTO auspices. The failure of China—the world’s second largest economy—to comply with WTO rules and underlying norms shows that the organization is unable to deal with what will likely be the most important international economic issue of this century.

Even the staunchest believers in the WTO’s ability to craft a free and fair trading system, such as the EU, have acknowledged many of the organization’s shortcomings. There is a constant call for WTO “reform” and “relevance,” but these mean different things to different countries and constituencies.

WTO’s Focus on Consensus-Based Outcomes is Unrealistic

Some WTO members, like the EU and China, want the organization to have more authority, independence, and clout, while many developing countries seek to create more national policy space in the name of economic development. Against this backdrop, the WTO’s focus on consensus-based, high-ambition trade outcomes is unrealistic. Moreover, continuing to pursue stagnant initiatives will underscore the WTO’s inability to produce results rather than shore up confidence in the institution.

In discussing meaningful reform of the WTO, some sacred cows should be on the altar, including the concept of multilateralism itself. Pacts agreed to by all members on a reciprocal basis are an unlikely path forward, as the floundering fisheries negotiations have shown.

Countries have proved themselves more than willing to hold consensus hostage in pursuit of national objectives and special treatment. But isn't this to be expected? Indeed, sovereignty matters to countries and citizens, particularly with respect to international trade and its effects on domestic economies.

While there is no single solution to the WTO's malaise, members and organization leadership should start by embracing pragmatic, truly plurilateral (multi-national legal or trade agreements between countries) outcomes among small groups of countries with similar goals, commitment, and levels of ambition. This can also help to sideline spoilers like China that do not value outcomes based on market economics.

It is worth recalling that the foundations of the WTO lie in the General Agreement on Tariffs and Trade, a plurilateral organization that for decades served to advance liberalization among a smaller group of like-minded countries.

Responding to problems highlighted during the pandemic should be a noncontroversial area for multilateral progress. For example, a quantum of WTO members should be able to agree to a few core principles at the nexus of trade and health: facilitating regulatory approvals for drugs, ensuring expedited and efficient customs processing, addressing tariffs, and ensuring that export restraints on medicines and equipment are the least restrictive and time-limited as possible.

If some meaningful set of WTO members cannot agree to these basic notions to enhance the distribution of life-saving medicines, then there is little hope for the organization.

WTO Needs to Adjust to Realities of Political, Economic Moment

Unfortunately, instead of focusing on an achievable outcome addressing specific trade barriers slowing down the distribution of vaccines, the WTO is wasting its little remaining political capital in negotiations to waive all intellectual property protections for any research and science related to Covid-19. This, of course, will have a perverse effect, reducing incentives to create vaccines and therapeutics, even as we realize that new strains of the coronavirus demand further investment and innovation from the private sector.

Some suggest that meaningful plurilateral action is already happening and point to the plurilateral "joint statement initiatives" at the WTO on e-commerce and services domestic regulation. But these initiatives are hardly high ambition, and they would allow non-parties to free ride on the benefits.

The e-commerce initiative, while promising at the outset, has been diluted by the participation of China in the negotiations. A joint statement on services domestic regulation was announced last week to muted fanfare: the agreement merely commits members to more transparency and better process in services regulation. And it is multilateral in practice, as signatory members must provide the benefits to all WTO members, even those that didn't sign up.

The supposed hallmark of the agreement—a prohibition against services regulations that discriminate between men and women—is completely optional.

The WTO needs to adjust to the realities of the political and economic moment. It is unrealistic to think that the WTO will revert to its former prominence in global trade regulation, and efforts to achieve broad, multilateral outcomes will simply demonstrate the limits of the organization.

To the extent the WTO has a future, it is in facilitating true plurilateral agreements where countries with common ambition agree to reciprocal treatment, and countries that do not agree do not benefit from others' economic concessions.

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