

SPECIAL REPORT – Eighth WTO Ministerial

Ministerial Finds WTO Adrift without New Goals

With World Trade Organization (WTO) members warned in advance not to raise any controversial subjects at the Eighth Ministerial Conference Dec. 15-17, the meeting in Geneva revealed a trade body adrift as the Doha Round remains stalled with no consensus on what to do next. In almost every speech, trade ministers used the same wording to bemoan the “impasse” in the round. The new theme for the WTO was signaled in the opening remarks of the ministerial meeting chairman, Olusegun Aganga, Nigeria’s trade minister, who said, “The WTO is more than the Doha Round.”

The search for a way forward for the WTO might end up stepping back in history to the pre-WTO Tokyo Round that concluded in 1979. The inability of negotiators in those talks to reach multilateral agreements in several areas led to the creation of “codes” to which individual countries could sign onto and receive reciprocal treatment from other signers. Codes covered areas such as subsidies, civil aircraft and farm pricing.

In his opening address, U.S. Trade Representative (USTR) Ron Kirk acknowledged the impasse in the Doha Round. “We need every bit of creativity we can muster in developing different approaches,” he said. The U.S. apparently hasn’t thought out what such a new approach would be, but it is sending a clear message that it wants to look at new pluralateral negotiations on such subjects as services, trade facilitation and regional trade agreements (see story below).

U.S. Looks Toward Pluralaterals to Bypass Doha Deadlock

The “new approach” the U.S. is looking for to get around the impasse in Doha Round negotiations is likely to focus increasingly on the negotiation of pluralateral agreements that may involve only a minority of WTO members. Although U.S. officials have not formally proposed such talks or fully defined what they want, early candidates for such treatment include services and trade facilitation. “I think our approach, rather than to talk about redoing the [Doha Round] mandate or talk about debating the mandate, has been to be much more pragmatic,” Deputy USTR Michael Punke told WTTL in an exclusive interview. “As part of what we do next year, we are very open to looking at other ideas for how we might progress. One idea that’s been



out there has been this idea of a services pluralateral,” he said. “That’s not an idea we’re floating, but it is something that our companies have talked about a lot. And it’s something that many members have talked about. And it’s something that we’re interested in exploring,” Punke told WTTL. “I think that it won’t really be until next year that those even initial discussions start happening among what would probably be a very core group of mostly like-minded thinkers in terms of services,” he added.

USTR Ron Kirk, who also participated in the interview, said a model for such an agreement could be the Government Procurement Agreement (GPA), which is allowed under WTO rules. “Let that coalition of the willing begin and let the work take it where it may,” he said. “It may be a handful of countries. It may be 40-plus, like we had in GPA. It could become the vehicle that unlocks the services chapter of Doha. But let’s not restrain ourselves with the type of limited thinking that we’ve done in the past,” Kirk told WTTL.

Punke admitted “there is no consensus among the membership right about what we should do next. There are 153 different ideas about that.” He said U.S. goals moving forward are the same as in the past for market liberalization. “I think what we’re going to want to explore next year for all of our goals are ways in which we can find traction,” Punke told WTTL.

BRICS Clique Gains More Weight in WTO

The WTO ministerial’s approval Dec. 16 of Russia’s WTO membership completes a link that is expected to make the BRICS – Brazil, Russia, India, China and South Africa – an even more powerful bloc within the WTO than it already has been. The five countries, or BRICS clique, signaled their intention to work more closely together in the WTO Dec. 14 in a joint communique and press conference. The BRICS already have been holding their own summit meetings and are working to increase trade and cooperation among the five.

“Deepening and enlarged economic cooperation of the BRICS countries may be conducive not only to serving our shared interests but also to helping promote growth in the global economy,” they said in their joint declaration.

While eschewing a formal role as leaders of the developing world, they suggested they intend to support developing and least developed country (LDC) issues in the trade organization and serve as a counterbalance to demands from developed countries, especially the U.S. and European Union (EU). An early area of BRICS alignment is their opposition to proposals to spin off parts of the Doha Round agenda, including services, into separate pluralateral agreements in which they would have less leverage in the negotiations (see story, page 1).

“The multilateral trading system should be the main channel for global trade,” said Chinese Trade Minister Chen Deming at the press briefing, according to a translator. “Pluralateralism should only serve as a supplement to the multilateral trading system,” he added. Indian Commerce Minister Anand Sharma echoed his views. At a recent meeting, the BRICS committed to the “affirmation of the Doha Round’s development agenda; no dilution, no deviation,” he said. “We do not think that there should be peeling off. The multilateral system needs to be further strengthened, and the processes, as such, have to be inclusive, transparent and democratic,” he said. One U.S. trade official, however, discounted chances that the BRICS clique would gain more strength in the WTO than they already have or remaining united on all issues. Countries take different positions based on the issue, including the BRICS, he said.

42 WTO Members Agree to Update Procurement Pact

The WTO ministerial was not supposed to make news, but the successful conclusion of negotiations to update the Government Procurement Agreement (GPA) Dec. 15 after 10 years of talks was hailed as a major achievement and proof that the trade body is still capable of reaching

agreements on difficult topics. The fact that it took 10 years to revise an agreement that comprises only 42 of the WTO's 153 members and mostly developed countries does not bode well for proposals to shift the WTO's negotiating agenda toward pluralateral deals.

Despite last-minute resistance from Japan and Korea, which were placated with exclusions from commitments they made to open their public railways to GPA coverage, negotiators were able to agree on expanding the coverage of the accord to more government and sub-central entities, services and electronic procurement; adding more than \$100 billion in government purchasing to GPA members. Japan agreed to come on board the deal just four hours before the final negotiating session, and Korea assented just 10 minutes before the session.

Because of the last-minute deals that were concluded, trade officials admitted they didn't know the details of what was in the annex of commitments to the agreement. The final text was still undergoing scrubbing days after the accord was announced. Even Japan's trade minister wasn't sure what was adopted.

"Basically, we agreed to make sure to have thorough consultations in the GPA and other opportunities on points where there is a difference in views. Regarding details, it probably will cause some confusion if I was to give you my one-sided interpretation, so I would leave it at that," Japanese Economic and Trade Minister Yukio Edano told WTTL.

As part of the new agreement, all Canadian provinces have agreed to adhere to GPA rules. This will resolve long-running friction between Canada and the U.S. over the Buy America provisions of U.S. stimulus legislation, a problem that has been handled through bilateral agreements in the past. In addition, Israel agreed to phase-out over 15 years its domestic content offset requirements. The U.S. agreed to bring the Transportation Security Administration under GPA discipline. The EU added another 150 central government entities to its obligations. Taiwan, Singapore and Switzerland also opened new government procurement opportunities.

The agreement could unblock a logjam of countries that have indicated interest in joining the accord but were waiting to see the final changes and what new obligations they would face. Of the 42 countries participating in the GPA, 27 are EU member states. The next major countries that expected to join are China and Russia (see story below). There is also hope that India will end its resistance to membership. Sources say there are elements in the Indian government who favor GPA accession as another step toward economic reform and against rampant corruption.

The EU was one of the main demandeurs seeking more access to the U.S. and Japanese government markets. With some of their goals unmet, the EU will be entering bilateral talks with the U.S. and Japan to press for more concessions. In talks with the U.S., it will try to get all states to adhere to the agreement not just the 37 that currently do and also to narrow U.S. exemptions for small and medium size enterprises and minorities. With Japan, it will seek to clarify on the exclusions Tokyo applies to railway construction for safety reasons.

Accessions Are Among Few Highlights of Ministerial

The approval of the accession of three more countries – Russia, Samoa, Montenegro – to the WTO during the Eighth Ministerial Conference and Vanuatu in October reflects the continued attraction of WTO membership despite the organization's failure to reach a Doha Round deal and global economic problems. Russia was the only member of the 20 largest world economies (G-20) that was not a member of the WTO. With the four accessions, which will bring the WTO to 157 members, the WTO enjoyed a "vintage accession year," one diplomat said.

Russia's accession "is a singular tribute to the United States and European Union," said one diplomat in Geneva. "They pushed and worked extremely hard to not just conclude an agreement but on terms that would significantly improve market access," he added. Other countries also had issues to resolve with Moscow, and the Russians conducted bilateral accession talks with 56 countries, a WTO record. The working party report on Russia's membership ran to 612

pages and 1,415 paragraphs, including 163 paragraphs containing binding commitments. Many of the provisions directly respond to concerns about the lack of an independent judiciary and Kremlin interference in administrative proceedings, one source reported.

The WTO action on Russia Dec. 16 starts a 220-day deadline by which time Moscow must complete adoption of all implementing legislation and regulations and file its final accession documents with the WTO. Only at that point will its membership become official.

That same clock is ticking for Congress to grant a waiver of the Jackson-Vanik Amendment and give Russia full permanent-normal-trade-relations (PNTR) status. The U.S. has already notified the WTO that it has applied its “nonapplication” rights to deny Russia most-favored-nation status, which means Moscow won’t have to give U.S. goods the same benefits it will give other WTO members until PNTR is approved (see **WTTL**, Dec. 12, page 4).

Vanuatu actually completed its accession negotiations in 2001, but withdrew its membership application for 8 years while it attempted to implement its commitments on its own. It is expected to become a WTO member by the end of January. With only 230,000 citizens, Vanuatu has enjoyed strong economic growth in the last decade in part because it has become a tax haven. Nonetheless, the government has faced strong criticism for agreeing to join the WTO and only narrowly received parliamentary approval of its accession agreement.

Russia’s accession will set the stage for the accession of Kazakhstan, which is in a customs union with Russia and Belarus. Belarussian accession is further behind, sources in Geneva say. Kazakhstan has agreed to accept the same schedule of tariff commitments as Russia on goods imports, but will negotiate separate provisions on non-merchandise trade. Its representatives met Dec. 14 with the chairman of the WTO working party negotiating its accession. They reportedly agreed on a roadmap for concluding an accession agreement by the end of 2012.

With the four accessions, there are now 10 other countries for which formal WTO working parties have been established to negotiate their accession. One of the few actions taken by the ministerial conference Dec. 17 was the approval of work toward the drafting of new rules aimed at making it easier for least-developed-countries to join the trade body. Proposed changes would allow acceding LDCs to “benchmark” their commitments against commitments of LDCs that already belong to the WTO. There are also plans to help them cope with the bilateral negotiating process in light of their limited diplomatic resources.

China Takes Significant Step toward GPA Membership

China has kept its promise to make a significantly improved offer to join the WTO Government Procurement Agreement (GPA), but WTO members have told Beijing the second revised offer circulated among GPA members on Nov. 30 still falls short of what it needs to do to join the accord. Sources in Geneva say China is expected to make a third revised offer in 2012 and probably additional ones after that, but they said they couldn’t speculate on whether it will take one or three more years for its GPA accession process to be completed.

“China fully intends to come in,” said a diplomatic source close to the negotiations. He said top Chinese officials have made it clear they want China to join. GPA membership will be “transformational” for China, he added.

“The last offer from China is quite significant because it covers for the first time China’s sub-central government entities,” the source said. When China made its first formal offer to join the GPA, its proposal was very limited. The new offer would commit China to opening government procurement in sub-central entities, including Beijing, Shanghai and three or four developed provinces. The next major unresolved issue remains China’s policy for its state-owned-enterprises (SOE). Its last offer did not cover SOEs, but sources in Geneva expect its next proposal will. “So far they have not done anything in that regard,” he source noted. “The

existing parties, certainly including the United States and European Union, have said at GPA meetings that the condition for China's entry into the agreement is going to be coverage at a comparable level to that of existing parties," the source reported. He noted that existing members have exclusions and he expects China will be allowed some too.

LDCs Still Feel Left Out of Trade Talks

Representatives of less-developed-countries (LDCs) at the WTO ministerial renewed complaints that they are being left out of trade talks and the Doha Development Agenda (DDA) is not living up to its supposed goal of delivering more trade benefits to poor nations. In ministerial meetings and at press conferences, LDC ministers warned of the growing unrest in their countries because the lack of jobs and economic opportunities.

A "gap in trust" has emerged between the powerful and the emerging powers in the multilateral trading system, a delegate from St. Lucia told an informal group of developing countries. At the same time, employment has become "a major issue" over the last 10 years, said Amos Kimunya, Kenya's minister for transport. "If we ignore these people, it will only lead to riots... revolutions and potential chaos," he said.

In an exclusive interview with WTTL, USTR Ron Kirk acknowledged the problems in LDCs. "You don't have to be a trade expert to understand that the petri dish for insurgency, for rioting, is extreme poverty with no hope for the future," Kirk told WTTL. "It's why we announced the initiative we did today at the C-4. It's why we have to work hard to improve utilization of AGOA [Africa Growth and Opportunity Act], which is a great tool for 38 sub-Saharan countries, but probably 85% underutilized," he said.

"We don't believe unlocking Doha is dependent on asking the least developing economies to step up," Kirk told WTTL. "We have not asked them for any contribution, and we have made it fundamentally plain from day one, that we absolutely embrace and are committed to the developmental nature of this round. We're not asking LDCs to do anything else," he asserted.

Developing countries want to address the inequities in the system, the delegate from St. Lucia said. They want to focus on "mainstreaming development," including new disciplines and aid to implement existing Uruguay Round commitments and boosting technical assistance, and help to make greater use of the WTO dispute resolution mechanism, he said.

Cotton Dispute Remains Despite Progress

Despite U.S. and Chinese promises of more aid and trade, four West African cotton-producing countries known as the Cotton Four (C-4) are still considering the filing of a WTO complaint against major cotton growing and subsidizing nations. The C-4 are assessing a possible case, along with three dozen other small cotton countries, in 2012, and will make a decision after reviewing the viability of dispute proceedings, C-4 officials said. They hope any future dispute would be "a class action suit," said Prosper Vokouma, ambassador of Burkina Faso to the WTO through a translator. The C-4 cotton countries are Burkina Faso, Chad, Benin and Mali.

While the U.S. is "a main target" in C-4 efforts to reduce subsidies, India and China also apply subsidies, he said. "We are targeting all distorting subsidies... whatever their nationality," Vokouma said. Ministers will assess Brazil's successful case against the U.S. and the workings of the dispute settlement body to determine a path forward, he added.

The atmosphere on cotton has changed, Vokouma conceded, referring to talks the C-4 had with USTR Ron Kirk during the ministerial and new U.S. promises made earlier in the week to provide more aid to West Africa and grant tariff-free, quota-free access to C-4 cotton. Kirk

made “several offers” on development aspects to C-4 ministers and said a number of programs will be extended, Vokouma reported. In addition to duty-free, quota-free access for Upland cotton fiber, there is a possibility of access to the U.S. trade preference program to least developed cotton producing countries, he said. China also met with the C-4 and offered technical assistance and other programs, Vokouma noted.

In an exclusive interview with WTTL, Kirk said the U.S. has a good partnership with the C-4 countries. “I understand their concern. I have always believed that one of the fundamental flaws in the principles on which Doha was founded was holding out this notion by dealing with one particular agriculture product in one country, you were going to solve all the problems of poor cotton farmers around the world,” Kirk said. “It’s just simply not true.”

The U.S. has raised the cotton issue with other major producing and consuming countries, particularly China, the world’s biggest subsidizer, and India. “We spent all of last summer trying to get China to engage in a discussion about their cotton subsidies and their market access barriers and they patently refused to engage,” Deputy USTR Michael Punke told WTTL in the same interview with Kirk. “Likewise, we’ve worked to address concerns we have with Indian export restraints on cotton as part of this discussion,” he added. “The point that we made is that it’s a global cotton market and...a subsidy anywhere, if you believe it’s trade distorting, has a trade distorting effect,” he said. “You can’t ignore the world’s largest cotton subsidizer.” India and China were “not willing to have that conversation,” Punke said.

WTO Director General Pascal Lamy said cotton interests moved forward on technical assistance with China and the U.S. and in talks with the EU. “The C-4 have elements in their basket, elements which they did not have at the beginning of the week,” Lamy said at a closing press conference. Tariff and subsidy issues appear to have resulted in “quite precise” U.S. commitments, Lamy said. “This was not on the landscape before this conference,” he added.

Congress will have to approve some of the promises the U.S. made to the C-4. The U.S. “will launch the review process” to consider adding Upland cotton fiber to the list of products eligible for duty-free treatment for LDCs through the Generalized System of Preferences, a USTR fact sheet stated. The USTR’s office “will seek Congressional action to provide quota-free access for LDCs on all Upland cotton fiber tariff lines,” it said.

Lamy Admits Trade Agenda Out of Date

In the search for a way forward for the WTO with no action on the Doha Round, WTO Director General Pascal Lamy announced that he would convene in 2012 a “panel of multi-stakeholders of the WTO” to “look at the real drivers of today's and tomorrow's world trade, at today’s and tomorrow’s obstacles to trade, at today’s and tomorrow’ trade patterns.” At the end of the ministerial, he told a press conference that the panel is intended as a “relaxing exercise” to help relieve tension among WTO members.

The WTO needs to help negotiators “adjust their knowledge to the reality of what world trade is today,” he said. “I very often have the impression that what trade negotiators are doing, the way they prioritize their objectives, the way they ponder their offensives and defensives, resembles more the world of trade 20 years ago than what it is today,” Lamy told reporters.

Based on his visits to ports in Africa and Asia, Lamy said he didn’t find a lot of resonance between the concerns of industries and what many trade negotiators do in Geneva. “There is a worrying discrepancy,” he said. “I think this discrepancy needs to be addressed,” he added.

EDITORS’ NOTE: In keeping with our regular schedule of 50 issues a year, there will no issue of *Washington Tariff & Trade Letter* on Dec. 26. Our next issue will be Jan. 2, 2012. Until then, we wish all our readers a HAPPY HOLIDAY and a HEALTHY AND PROSPEROUS NEW YEAR.