



Indian PM Modi with African trade ministers

Attacks against multilateralism likely at mini-ministerial in India

The mini-ministerial meeting on 19 March, that India is sponsoring and hosting, faces the prospect of an intensified attack against multilateral trade liberalization from the sponsors of plurilateral initiatives on electronic commerce and investment facilitation among others, warns ***D. Ravi Kanth**.

India has convened the meeting to address agriculture and development issues set out in the Doha Work Program. However, the plurilateral sponsors attending the New Delhi meeting have their own plans to drum up support for their initiatives on e-commerce, investment facilitation, disciplines for micro, small, and medium enterprises (MSMEs), and trade and gender, according to people familiar with the development.

Ahead of the two-day ministerial meeting in New Delhi on 19-20 March

of around 40 trade ministers from different groups, including all the industrialized countries, the plurilateral sponsors have intensified their aggressive campaign for launching discussions on their plurilateral initiatives at the World Trade Organization despite lack of multilateral approval.

Though failing to secure multilateral approval at the WTO's eleventh ministerial conference in Buenos Aires on 12 December 2017, the plurilateral sponsors went ahead and announced their

specific initiatives on electronic commerce, disciplines for MSMEs, investment facilitation, and trade and gender on 13 December.

The US, which endorsed the plurilateral initiative on electronic commerce at Buenos Aires, however chose to stay away from the initiatives on investment facilitation and disciplines for MSMEs, promoted by China.

In a similar vein, China and Pakistan chose not to join the plurilateral initiative on electronic commerce and trade

and gender.

China, which has stated its commitment to the unresolved Doha issues, indicated its willingness to pursue new issues such as investment facilitation and disciplines for MSMEs.

Following the Buenos Aires meeting, trade ministers from select countries made their renewed pitch for plurilateral initiatives at the closed-door dinner meeting on 25 January (on the sidelines of the Davos World Economic Forum).

The WTO Director-General Roberto Azevedo also joined the plurilateral bandwagon at the dinner meeting, according to a participant who asked not to be quoted.

Surprisingly, Azevedo kept silent on the plurilateral initiatives when the sponsors, including the US, called for pursuing the plurilateral discussion on electronic commerce at the closed-door informal ministerial meeting the next day, hosted by Switzerland on the margins of the World Economic Forum meeting in Davos.

At that informal ministerial meeting, the US Trade Representative Ambassador Robert Lighthizer said that plurilateral initiatives are not suitable for rule-making in all areas except electronic commerce.

Ambassador Lighthizer suggested that the plurilateral initiative in e-commerce will be beneficial for all members, but remained stoically silent on the sharp concern expressed by the other participants at that meeting on the impasse created by the US at the Appellate Body over the filling-up of vacancies created by retiring members.

The US had already presented a “non-paper” on the electronic commerce work program almost two years ago in which it had set out the broad goals that must be accomplished at the WTO.

In its proposal (Job/GC/94 issued on 4 July 2016), the US had unveiled “a number of trade-related policies that can contribute meaningfully to the flourishing of trade through electronic and digital means.”

China, however, remained silent on the plurilateral initiatives at the Davos meeting, emphasizing that members must respect their multilateral obliga-

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tions. (See SUNS #8610 dated 30 January 2018).

Subsequently after the Davos meeting, Brazil fired the first salvo on investment facilitation, calling for structured discussions at the WTO based on its draft proposal. Brazil created the G20 developing country coalition for reforming global trade in agricultural products, particularly reducing trade-distorting domestic subsidies. The same Brazil has now ensured the death of the G20 and has become the champion of investment facilitation.

In its proposal (Job/GC/169) circulated on 1 February, Brazil said that the eleven-page document, “Structured Discussions on Investment Facilitation”, is not meant to be a negotiating proposal, but rather (i) a platform (among others) to promote more focussed and text-based discussions, as well as (ii) a response to the call made in the Joint Ministerial Statement issued at the Buenos Aires meeting. (See SUNS #8615 dated 6 February 2018).

The plurilateral sponsors led by the European Union will hold a public discussion at Geneva’s Graduate Institute on 28 February for intensifying their push. The WTO Director-General, Roberto Azevedo, and other chiefs of the UN bodies dabbling in trade issues, will also participate at the EU-sponsored meeting.

Against this backdrop, the informal ministerial meeting in New Delhi could become the launching pad for the plurilateral initiatives given the speed with

which its sponsors are proceeding.

India wants to focus on issues of agriculture and development but it remains moot whether it would be able to prevent the plurilateral sponsors from firing salvos from India’s shoulders.

At the last informal ministerial summit hosted by India on “Re-Energizing Doha - A Commitment to Development” in 2009, India issued a set of objectives aimed at “weaving them into a response of solidarity to move the multilateral process forward.”

“This is what the Delhi meeting attempts to achieve ... it brings together groups from across the spectrum of interests and positions in the Doha negotiations, in a microcosm of the WTO itself, in a bid to give a determined push to the multilateral process,” India stated in a discussion paper issued for Senior Officials for that meeting on 2 September.

Given the near-wreckage brought about in the Doha trade negotiations by the US along with other industrialized and several developing countries over the past several years, culminating in the disastrous collapse of the Buenos Aires meeting, and in the face of aggressive push for plurilateral discussions on e-commerce and other issues, it remains to be seen how India will be able to bring about a consensus at the upcoming Delhi meeting to advance discussions on agriculture and development.

Moreover, the US administration, which is going to accelerate its safeguard actions on steel and aluminum products in addition to the recent safeguard duties slapped on solar cells and large washing machines, is in no mood for any multi-lateral work on agriculture and development.

In short, India faces a serious challenge to accomplish its multilateral objectives on agriculture and development at the upcoming meeting in New Delhi. Being the hosts of the two-day meeting, it faces a difficult task to ensure that the plurilateral sponsors are kept under check. Otherwise they will reinforce the perception that the WTO is not meant any longer for multilateral trade liberalization.

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The policies set out in the US non-paper:

1.1. PROHIBITING DIGITAL CUSTOMS DUTIES: The complete prohibition on customs duties for digital products can ensure that customs duties do not impede the flow of music, video, software, and games so that creators, artists and entrepreneurs get a fair shake in digital trade.

1.2. SECURING BASIC NON-DISCRIMINATION PRINCIPLES: Fundamental non-discrimination principles are at the core of the global trading system for goods and services. Rules that make clear that the principles of national treatment and MFN apply to digital products can contribute directly to stability in the digital economy.

1.3. ENABLING CROSS-BORDER DATA FLOWS: Companies and consumers must be able to move data as they see fit. Many countries have enacted rules that put a choke-hold on the free flow of information, which stifles competition and disadvantages digital entrepreneurs. Appropriately crafted trade rules can combat such discriminatory barriers by protecting the movement of data, subject to reasonable safeguards like the protection of consumer data when exported.

1.4. PROMOTING A FREE AND OPEN INTERNET: A free and open Internet enables the creation and growth of new, emerging, and game-changing Internet services that transform the social-networking, information, entertainment, e-commerce and other services we have today. The Internet should remain free and open for all legitimate commercial purposes.

1.5. PREVENTING LOCALIZATION BARRIERS: Companies and digital entrepreneurs relying on cloud computing and delivering Internet-based products and services should not need to build physical infrastructure and expensive data centers in every country they seek to serve. Such localization requirements can add unnecessary costs and burdens on providers and consumers alike. Trade rules can help to promote access to networks and efficient data processing.

1.6. BARRING FORCED TECHNOLOGY TRANSFERS: Requirements that make market access contingent on forced transfers of technology inhibit the development of e-commerce and a flourishing digital economy. Trade rules may be developed to prohibit requirements on companies to transfer technology, production processes, or other proprietary information.

1.7. PROTECTING CRITICAL SOURCE CODE: Innovators should not have to hand over their source code or proprietary algorithms to their competitors or a regulator that will then pass them along to a State-owned enterprise. It is important to ensure that companies do not have to share source code, trade secrets, or substitute local technology into their products and services in order to access new markets, while preserving the ability of authorities to obtain access to source code in order to protect health, safety, or other legitimate regulatory goals.

1.8. ENSURING TECHNOLOGY CHOICE: Innovative companies should be able to utilize the technology that works best and suits their needs. For example, mobile phone companies should be able to choose among wireless transmission standards like Wi-Fi and LTE. Trade rules may play a role in ensuring technology choice by stipulating that companies are not required to purchase and utilize local technology, instead of technology of their own choosing.

1.9. ADVANCING INNOVATIVE AUTHENTICATION METHODS: The availability of diverse electronic signature and authentication

methods protects users and their transactions through mechanisms such as secure online payment systems. Trade rules may assist in ensuring that suppliers can use the methods that they think best for this purpose.

1.10. SAFEGUARDING NETWORK COMPETITION: It is important to enable digital suppliers to build networks in the markets they serve or access such facilities and services from incumbents - whether landing submarine cables or expanding data and voice networks - to better access consumers and businesses.

1.11. FOSTERING INNOVATIVE ENCRYPTION PRODUCTS: Encryption is increasingly seen as an important tool to address protections of privacy and security in the digital ecosystem. Rules may be developed to protect innovation in encryption products to meet consumer and business demand for product features that protect security and privacy while allowing law enforcement access to communications consistent with applicable law.

1.12. BUILDING AN ADAPTABLE FRAMEWORK FOR DIGITAL TRADE: New and innovative digital products and services should be protected against future discrimination. Trade-based protections for services and investment should continue to apply as markets change and innovative technologies emerge, unless a specific, negotiated exception applies.

1.13. PRESERVING MARKET-DRIVEN STANDARDIZATION AND GLOBAL INTEROPERABILITY: Innovators should not have to design products differently for each market they seek to serve; that is why we have the global standards process, where industry leads and the best technologies win. Trade rules can help to ensure that countries cannot arbitrarily demand that less competitive national standards be forced into innovative products.

1.14. ENSURING FASTER, MORE TRANSPARENT CUSTOMS PROCEDURES: The sorts of provisions contained in the WTO Trade Facilitation Agreement can make very direct contributions to digital trade. Administrative and at-the-border barriers can often be a bigger problem than tariffs for exporters of digital equipment.

1.15. PROMOTING TRANSPARENCY AND STAKEHOLDER PARTICIPATION IN THE DEVELOPMENT OF REGULATIONS AND STANDARDS: The development of new regulations and standards can pose a significant challenge to suppliers of information and communications technology, whose product cycles are short and whose regulatory environment is constantly evolving. A positive environment for e-commerce/digital trade entails strong commitments on transparency, stakeholder participation, coordination, and impact assessment for new regulatory measures, standards, and conformity assessment procedures.

1.16. RECOGNIZING CONFORMITY ASSESSMENT PROCEDURES: Conformity assessment procedures verify that products, including information and communications technology, meet required standards and technical regulations, but overly burdensome conformity assessment procedures can hinder such exports. "National treatment" in conformity assessment, so that testing and certification performed by one qualified conformity assessment body will be accepted as consistent with another Party's requirements, can be an important means of facilitating trade in products relevant to the digital economy.