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The US sets out a pathway to multilateralization.

For discussion only

Pathways to Multilateralization

One of the most exciting aspects of the plurilateral discussions on services is the prospect of bringing new ideas and approaches into the multilateral arena. This paper explores possible pathways for taking the results of a plurilateral agreement into the World Trade Organization (WTO).

1) Whole agreement adopted by WTO Members

The traditional means of multilateralization involves WTO members collectively negotiating and ultimately adopting an agreement, meaning that all WTO Members take on the rights and obligations of the agreement. Since the General Agreement on Trade in Services is already in force, this would essentially entail WTO members agreeing by consensus to amend the GATS.

2) Agreement incorporated into the WTO as the 5th plurilateral agreement

Article X.9 of the Marrakesh Agreement provides for Members to incorporate plurilateral agreements into the WTO body of agreements. The WTO agreement itself would be amended, which requires a consensus decision by the Ministerial Conference. In joining the body of WTO agreements, the new agreement would be able to apply the WTO dispute settlement procedures.

3) Elements adopted by the WTO

There are a number of possible means by which Members could incorporate elements of a new agreement within the GATS. For example, new disciplines on data flows or domestic regulations developed through a plurilateral agreement could be proposed for adoption by the WTO. WTO members would consider some proposals and reject others. Those proposals that receive sufficient interest to pursue would then be subject to a multilateral negotiating process. The end result would look very different from the starting point, but the plurilateral agreement will have served a valuable role as an incubator of new ideas.

The same is true if the plurilateral agreement applies techniques like a standstill, a ratchet, or a negative list. The negative list is simply a scheduling methodology - one that has already been applied under the GATS with respect to the most-favored-nation obligation. Nothing in the GATS prevents Members from proposing to modify the scheduling methodology of Article XVI (Market Access) and/or Article XVII (National Treatment), either for the WTO as a whole or among a group of Members.

Members could also apply key components of the negative list approach. For example, what if existing Schedules of Commitments were supplemented with an index listing sectors, subsectors and modes that are missing? Similarly, what if an index was prepared that identifies where scheduled limitations are more restrictive than actual practice (just as with manufactured goods Members identify both the bound and applied tariff levels)? These simple scheduling techniques would vastly improve the transparency and comparability of the Schedules.

4) Accession model

An accession approach is another readily-available means of multilateralizing an agreement. Like the WTO agreements themselves, additional members could join the plurilateral agreement individually. As the membership expands, the agreement moves progressively toward multilateral membership.

An accession model would be viable even if the WTO takes up some components of the plurilateral agreement because the original agreement would continue to exist in its "pure" form. In addition, the parties to the plurilateral agreement could continue to work on new issues that could be fed into the WTO for multilateral consideration.

5) Critical mass, External MFN, or GATS MFN

Another often-cited approach for multilateralization is the unilateral extension of new plurilateral commitments to all WTO members on a most-favored-nation (MFN) basis. The WTO as a whole would take no action. The agreement would be "multilateralized" in the sense that it would be incorporated into the multilateral trading system, but it would not truly be a "multilateral agreement" because only a subset of WTO members would adhere to its obligations.

The precedent for such an approach is the Information Technology Agreement (ITA), where the parties voluntarily extended their goods market access commitments to all WTO members by unilaterally modifying their WTO tariff schedules.

There are some significant differences between the ITA and the proposed plurilateral services agreement. Because the ITA was a plurilateral agreement that applied only to selected products rather than all goods, the only way the agreement could be implemented consistent with the GATT MFN obligation was through extending the commitments to all WTO members. To justify free riders, the parties argued that the agreement achieved a balance among a "critical mass" consisting of the most significant trading partners for the relevant goods. Therefore the benefits the parties received by implementing the agreement exceeded any costs incurred by free riders.

The same logic does not apply for the plurilateral services agreement. Because the proposed agreement would encompass all service sectors, it could be implemented plurilaterally pursuant to GATS Article V. There would be no legal rationale to permit free riders. Since the parties would be able to obtain any economic benefits without extending equivalent treatment to all WTO members, there would also be no economic rationale.

The logic of a critical-mass approach for a services agreement then appears to rest on the policy benefits of bringing the agreement underneath the umbrella of the WTO, which principally include having recourse to the WTO dispute settlement system and bolstering the role of the WTO as the central repository for trade agreements.

Meanwhile, the prospect of extending the benefits of the plurilateral agreement to all WTO members without receiving compensation could have adverse effects on the incentives of existing and potential parties:

- Existing plurilateral participants could be more conservative in offering market access in order to preserve their future negotiating position relative to non-parties;

- Potential plurilateral candidates could choose not to join the negotiations if they believe they will ultimately receive any benefits for free; and

- The major emerging markets needed for critical mass may not be willing to negotiate to join the agreement if they know that, as soon as they do, their concessions would be given away to the full WTO membership.

In addition, once critical mass is reached, there would be little incentive for new Members to accede, which could effectively terminate the agreement. Finally, the existence of a separate tier of commitments within the same agreement could further exacerbate the disparity in treatment among Members, with poorer and smaller Members left behind with regard to the adoption of principles aimed at supporting trade and economic development.