

WTO Enters Uncharted Waters By Forsaking Doha Round

By **Alex Lawson**

Law360, New York (December 21, 2015, 5:57 PM ET) -- The World Trade Organization effectively abandoned the long-stalled Doha Round of trade talks at its ministerial conference over the weekend, a move that could fundamentally alter the multilateral body's role on the global stage.

In its ministerial declaration issued after the summit in Nairobi, Kenya, the WTO did not explicitly state that it would be moving on from the Doha Round launched in 2001, but its acknowledgment of dissent within the membership essentially amounts to a rebuke of the current multilateral model, according to Peterson Institute for International Economics senior fellow Gary Clyde Hufbauer.

"Countries will be able to raise issues that were flagged in the Doha Round ... and try to persuade other countries to reach individual agreements on those issues," Hufbauer told Law360. "But the notion of a large package which is accepted as a single understanding by consensus, I think that is dead."

Officially, some WTO members are disputing whether the language of the Nairobi declaration actually constitutes a death sentence for Doha, but the mere fact that the Doha mandate was not reaffirmed, as has been the case in past declarations, speaks volumes about the state of affairs.

U.S. Trade Representative Michael Froman essentially declared Doha dead ahead of the ministerial, and used the striking of the declaration as a jumping-off point for a new phase of WTO negotiations.

"As WTO members start work next year, they will be freed to consider new approaches to pressing unresolved issues and begin evaluating new issues for the organization to consider," Froman said in a statement.

Other members, especially the WTO's poorer economies, appear to be clinging to hope for the Doha Round, not because it has provided results, but because it ensures that developing countries don't get left in the dust as more prosperous nations forge their own path, according to Sidley Austin LLP partner Andrew Shoyer.

"The concern of several developing country members is that without the Doha development agenda as a guidepost, they will not be able to hold developed countries' feet to the fire to get all of the promised reform that was imagined in 2001," Shoyer told Law360.

The end of the Doha Round means a change in the style of negotiations, if not necessarily the substance. In the Nairobi declaration, members agreed that numerous portions of the Doha agenda were vital to

the future of the global trading system, but gave themselves room to prioritize the most feasible portions of the round as opposed to an all-or-nothing approach.

In many ways, the WTO has already begun to do this through negotiations to forge the Environmental Goods Agreement and expand the Information Technology Agreement. These so-called plurilateral deals are negotiated only among willing members, but remain open for any WTO member to join.

If the WTO is truly ready to move on from the Doha Round, Hufbauer said he expected such plurilateral deals to grow in popularity.

"I think it will be issue by issue, and I can imagine there will be some packaging of issues, but not this grand packaging which was contemplated in the Doha Round and with great effort was completed in the Uruguay Round," Hufbauer said, referencing the South American talks that established the WTO nearly 20 years ago. "I think the Uruguay Round will turn out to be the last big package for quite some time."

An issue-by-issue approach has already begun to take root, as the Nairobi declaration also delivered results on a smattering of modest trade fronts, such as the gradual elimination of agricultural export subsidies and the ability of smaller countries to employ a special safeguard mechanism when faced with import surges.

The WTO's status as a forum for consensus-based multilateral negotiation has been in flux for some time now. It is difficult to pin down exactly when the Doha Round hit the skids, but the group has struggled to reach broad agreements even apart from those beleaguered talks.

At the last ministerial conference in 2013, the WTO struck a deal to streamline customs procedures and slash red tape at borders around the globe. But even that modest deal, the Trade Facilitation Agreement, soon encountered trouble as developing nations delayed its implementation amid fear over food security issues.

Squabbles of that nature are in many ways unavoidable, but by moving beyond a consensus-driven mandate, the WTO can ensure that the effect of those disagreements is relatively minor and does not pull the plug on years of work, according to Mayer Brown LLP adviser and former U.S. Trade Representative Susan Schwab.

"The negotiating function of the WTO has a fighting chance again, and that hasn't been the case for a long time," Schwab told Law360. "I would argue that the Doha Round was killing the WTO."

--Editing by Katherine Rautenberg and Emily Kokoll.
