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The Relationship between Plurilateral Approaches and the Trade Round

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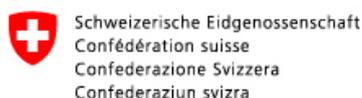
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ABSTRACT

The WTO's failure to oversee any multilateral liberalization or create new rules for governing a dynamic global trading system has raised concerns about the efficiency and efficacy of the organization's legislative function. Several critics argue that the WTO's set-piece negotiations, namely consensus-based bargaining underpinned by the Single Undertaking, lead to an overly politicized and inefficient process.

One solution proffered is to revive plurilateral negotiations. Theoretically, such agreements could advance a more progressive and responsive WTO agenda, reduce the diversion of liberalization initiatives to RTAs, provide more efficient differentiation in the levels of rights and obligations among a community of highly diverse economies, and provide a mechanism for promoting greater efficiency at lower cost in WTO negotiations. However, this is perhaps a narrow response to WTO's negotiating deadlock. The reality is that developing countries today constitute the bulk of WTO's membership. They have a political expectation to be represented and included at every stage of the negotiating process, especially to ensure that trade opportunities are made available to all Members on a more equitable basis, and trade rules do not subvert their development prospects.

Although plurilateral agreements are not prohibited by the WTO, they require consensus for their incorporation into the wider WTO architecture. The first priority should be to strengthen the consensus principle. The second is to ensure that future plurilateral agreements are designed, framed and implemented in ways that do not undermine the principles of inclusiveness, transparency and multilateralism.

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LIST OF ABBREVIATIONS

DDA	Doha Development Agenda
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GPA	Agreement on Government Procurement
ITA	Information Technology Agreement
LDCs	least developed countries
MFN	most favoured nation
NAMA	Non-Agricultural Market Access
RGF	Really Good Friends
RTAs	regional trade agreements
SDT	special and differential treatment
TiSA	Trade in Services Agreement
TTIP	Transatlantic Trade and Investment Partnership
TPP	Trans-Pacific Partnership
WTO	World Trade Organization

INTRODUCTION

Less than 20 years after its establishment, the World Trade Organization (WTO) confronts the challenge of remaining relevant and credible for 21st century global economic governance. The WTO's failure to oversee any multilateral liberalization or create new rules for governing a dynamic global trading system has raised concerns about the efficiency and efficacy of the organization's legislative function. Notwithstanding the diminished ambitions and expectations of many WTO Members, the Doha Development Agenda (DDA) remains stalled. By contrast, regional trade agreements (RTAs) continue to proliferate, including such "mega-regionals" as the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) negotiations. The latter regularly incorporates many "WTO-plus" commitments to regulate a range of new-generation trade issues, diverting attention away from the stalled Geneva juggernaut.

Amid the Doha impasse, there is growing academic and policy debate about new approaches or pathways for governing world trade, lest the WTO be rendered irrelevant (Low 2009; Lawrence 2006; Cottier and Takenoshita 2008). Several critics argue that the WTO's set-piece negotiations, namely consensus-based bargaining underpinned by the Single Undertaking, lead to an overly politicized and inefficient process. If the WTO is to progressively and responsively develop multilateral trade regulation suited to the realities and demands of the modern trading system, there is need for greater flexibility and efficiency—or even "variable geometry" in terms of Members' rights and obligations. Within this debate, considerable attention is being focused on reviving plurilateral negotiations, that is, negotiations among a sub-set of able and willing WTO Members to create new rules or liberalize markets in areas of mutual interest.

This policy brief explores the relationship between plurilateral agreements and the WTO, specifically in the context of the Doha Round. It proceeds in three sections. The first section briefly explains the current situation regarding plurilateral negotiations in the WTO, as well as the advantages and disadvantages of this approach. The second section outlines some of the broad responses to proposals for plurilateral negotiations, including the far-reaching Trade in Services Agreement (TiSA). The policy brief concludes with two key recommendations for the future.

PLURILATERALS AS "NEW PATHWAYS" FOR TRADE GOVERNANCE

The persistent deadlock in the DDA negotiations points to a lack of efficiency in the WTO's legislative track. One solution proffered is to revive plurilateral negotiations, which are not unfamiliar terrain in the WTO landscape (albeit during a different historical era when the multilateral trading system was dominated by the so-called "Quad" countries).

At the outset, however, it is important to be candid about the motivation for seeking new or alternative approaches for WTO negotiations. The recurrent failure to reach consensus in the Doha Round may have less to do with procedural design and more to do with domestic political and economic factors constraining WTO Members, particularly given the fragile conditions of the world economy. Some developing-country negotiators may even assert that the alleged inefficiency of the consensus principle is only raised when smaller developing countries and larger emerging economies refuse to join the rich countries' consensus (which was "multilateralized" in previous trade rounds (Ismail and Vickers 2011)).

This is a pivotal point—there is no "procedural panacea" that will magically resolve the spectrum of substantive differences over core DDA matters (for example, from agriculture to services, while the much vaunted trade facilitation text is still riven with brackets). In other words, "Constitutional and procedural refinements at best could ease the path to making decisions and concluding negotiations," (Harbinson 2009).

That said, plurilateral approaches should not be a priori discounted or rejected as a means for advancing more efficient multilateral outcomes.

Plurilateral negotiations in the WTO would indeed settle some Members' demands for greater efficiency of the organization's legislative track. Importantly, plurilateral approaches are neither novel nor revolutionary to the multilateral trading system. The Tokyo Round (1973–79)

1 Without claiming to define countries that have emerged, I am thinking of China, South Korea, India, Brazil, Mexico, and several of the ASEAN group—Thailand, Malaysia and Indonesia. We might add Turkey and Argentina or Chile. South Korea and Mexico have already been OECD members for some time. Hong Kong and Singapore are, in statistical terms, leading trade entities and centres of trade, investment, and shipping.

2 This has led to negotiations with South Korea (completed), and with India and ASEAN countries, especially Singapore and Malaysia (ongoing).

had produced nine agreements covering largely non-tariff measures, to which the General Agreement on Tariffs and Trade (GATT) parties could subscribe on a voluntary à la carte basis. Formally within the WTO, there are only two plurilateral agreements, namely the Agreement on Trade in Civil Aircraft and the Agreement on Government Procurement (GPA). During the 1990s, a “critical mass” of leading exporters of information technology, telecommunications, and financial services also negotiated their own agreements to open new commercial opportunities, although these are not formally within the WTO’s ambit. Moreover, RTAs could strictly be regarded as plurilateral agreements too, conditional upon the requirements of GATT Article XXIV or the General Agreement on Trade in Services (GATS) Article V.

There are obvious attractions to pursuing plurilateral approaches. Theoretically, such agreements could advance a more progressive and responsive WTO agenda, reduce the diversion of liberalization initiatives to RTAs, provide more efficient differentiation in the levels of rights and obligations among a community of highly diverse economies, and provide a mechanism for promoting greater efficiency at lower cost in WTO negotiations (Low 2009). For example, the GPA allows non-signatories, such as China, to steadily negotiate their access and commitments, providing a “building block” for multilateralism.

However, this is perhaps a narrow response to the WTO’s negotiating deadlock. The reality is that developing countries today constitute the bulk (almost two-thirds) of the WTO’s membership. They have a political expectation to be represented and included at every stage of the negotiating process, especially to ensure that trade opportunities are made available to all Members on a more equitable basis, and trade rules do not subvert their development prospects. Modern multilateral governance in the WTO must thus satisfy three competing demands, namely greater efficiency as well as inclusiveness and legitimacy. Seen from that perspective, there are obvious downsides to strictly efficiency-seeking plurilateral agreements, such as the proposed TiSA among a sub-set of WTO Members.

Two key concerns, therefore, stand out. First, plurilateral or “critical mass” negotiations are likely to introduce a two-speed system in the WTO, compromising the principle of inclusiveness. This is best expressed as follows: “If developing countries are exempted from participation in clubs, they will forever be trying to catch up, they will not be playing their part in the continual evolution of the system and in the development of consensual knowledge about the system, and they will continue to complain about having to implement rules they had no part in drafting,” (Wolfe 2008). The Sutherland Report expressed similar concerns that a differentiated process would enshrine a “multiclass membership structure” that takes the multilateral trading system backwards rather than forwards (Sutherland et al. 2004). Any plurilateral negotiation will, therefore, have to address the legitimate concerns of excluded partners or “outsiders” that this process simply resurrects the old

“Principal Supplier Principle” of the GATT era, which had the effect of locking out developing countries and marginalising them from the negotiations.

Second, with regard to legitimacy, new rules must be accepted as appropriate and legitimate by all WTO Members, and not only the major powers. This will not happen if plurilateral decisions impose negative welfare outcomes on a sub-set of WTO Members, especially smaller developing countries. For example, deeper liberalization amongst the major trading nations in the proposed Non-Agricultural Market Access (NAMA) “zero-for-zero” sectoral negotiations may erode the existing preferences enjoyed by the least developed countries (LDCs) and other small vulnerable economies.³

These tentative observations suggest that the institutional design and normative framing of future plurilateral approaches will need to satisfy the principles of transparency, inclusiveness, and multilateralism in order to incrementally take the WTO forward rather than backwards. In the context of the Doha Round impasse, many developing countries are concerned that proposals for plurilateral initiatives only seek to raise the level of ambition beyond the Doha Mandate (that is, extracting greater market access commitments) and erode the development content of the Doha Round.

Current plurilateral proposals also appear to focus only on issues of specific interest to mainly developed countries, such as services.⁴ Agricultural reform is notably absent from this agenda. For example, there has been no proposal or support for a plurilateral negotiation—or “coalition of the willing”—to ambitiously and expeditiously address cotton, which is a matter of vital importance to impoverished West African nations. This does not imply a wholesale rejection by many developing countries of more efficient approaches or even single track negotiations to advance multilateral outcomes. For example, there is strong support among developing countries (and even some developed countries) for an LDC Package, which in some ways approximates a plurilateral initiative. However, it bears recalling that the reason for adopting the Single Undertaking at the end of the Uruguay Round and “multilateralizing” the Tokyo Round Codes was precisely to stem fragmentation and restore symmetry in terms of rights and obligations to the rules-based system. Moreover, a broad-based Doha Round based on the Single Undertaking was seen as necessary to break out of the deadlock of the unsuccessful single-issue negotiations on agriculture and services generated by the Uruguay Round’s “built-in” agenda and reinstate issue-linkage as the negotiating construct.

3 See Figure 1. Studies have shown that items such as Apple’s iPod and iPhone have much greater value added in the US than was previously assumed, and that the value added in final assembly and packaging in China is relatively low.

4 The TiSA negotiations appear to be more of a political tactic (or “plurilateral ploy”) to put pressure on the DDA’s stalled services negotiations, especially the emerging economies led by Brazil, China, and India.

DESIGNING PLURILATERAL AGREEMENTS

The Agreement Establishing the WTO clearly provides for plurilateral agreements. What is at stake concerns the issue area of the plurilateral agreement (that is, agenda item, plus market access versus rule-making); what will get included or excluded; and how the different plurilateral agreements will balance out against one another.

Within the context of the Doha Round, the majority of developing countries have been unwilling to support or endorse new approaches or new issues until the “unfinished business” of the present and previous trade rounds is satisfactorily addressed. In many respects, this revolves around agriculture, the real litmus test of a development outcome. The failure to ambitiously address distortions in global farm trade means that agriculture remains a “21st century” issue amid other emerging and more complex debates, such as global value-chains. But many developing countries’ opposition to plurilateral approaches is perhaps a more pragmatic strategy in the Doha context than principled position. The successful conclusion of the DDA, albeit a limited agreement but consistent with the development mandate, could be the linchpin that unlocks consideration of new approaches, under very specific conditions, and for very discrete issues (rather than systemic concerns). In that context, plurilateral negotiations could theoretically take three forms:

- Plurilateral agreements that extend benefits to all WTO Members on a most-favoured nation (MFN) basis (that is, unconditional plurilateral).
- Plurilateral agreements that extend benefits only to signatories (that is, conditional non-MFN plurilateral).⁵
- RTAs negotiated under GATT Article XXIV or GATS Article V, notified to the WTO.

In the context of the Doha impasse, a number of WTO Members identified as the “Really Good Friends” (RGF)⁶ of services have embarked on closed club-like negotiations to establish a TISA. The latter is a textbook example of a conditional plurilateral agreement that suspends the MFN principle, in contrast to the “open plurilateralism” of the Information Technology Agreement (ITA) concluded in 1996.⁷ The TISA has been criticized by some developing countries and progressive civil society formations for undermining the principles of inclusiveness, transparency, and multilateralism, while eroding the Doha Round’s development mandate. According to available reports, the negotiations have not been pursued in an open and transparent manner, with both the

WTO Secretariat and would-be “observers” excluded from the meetings (Sauve 2012). It is envisaged that the agreement will be a conditional MFN plurilateral agreement, conferring rights and benefits only upon signatories. However, the TISA is being modelled on the GATS rules in order to provide a “credible pathway to future multilateralization” (European Commission Memo 2013).

Seen from that perspective, the TISA offers valuable lessons on how future plurilateral negotiations should not be conducted, especially if they are to be sanctioned by the wider WTO membership as Annex 4 instruments. Since plurilateral agreements are not prohibited by the WTO but require consensus for their incorporation into the wider WTO architecture, the institutional design and normative framing for such exercises should be very carefully considered. There may also be a case that different plurilateral agreements should balance out against one another, although this enters uncharted territory and could lead to the same kinds of negotiating brinkmanship that have dogged the Doha Round, undermining efficiency considerations.

5 To avoid free-riding, these agreements may be “multilateralized” with MFN benefits only once a critical mass of WTO Members participate in the initiative.

6 The RGF bloc includes Australia, Canada, Chile, Colombia, Costa Rica, Hong Kong, Iceland, Israel, Japan, Mexico, New Zealand, Norway, Panama, Pakistan, Peru, South Korea, Switzerland, Taiwan, Turkey, the United States (US), and the Member States of the European Union (EU).

7 The ITA was unique in its construction as an open agreement where the founding Members agreed to eliminate tariffs on a minimum list of products. This was extended to all Members of the WTO, including those who are not signatories of the agreement, according to the WTO’s MFN principle.

CONCLUSIONS

This think piece has argued that modern multilateral governance in the WTO must satisfy three competing demands—greater efficiency of rule-making, inclusiveness of all WTO Members, and legitimacy of outcomes, including plurilateral agreements included in the WTO architecture. Purely efficiency-seeking plurilateral approaches removed of any equity considerations, or plurilateral ploys to politically advance the Doha Round, will not be sanctioned by the wider WTO membership.

Looking ahead, two priorities loom large for strengthening the WTO and perhaps advancing the organization's legislative function in an incremental manner.

REAFFIRMING AND STRENGTHENING THE CONSENSUS PRINCIPLE

The first order priority should be to strengthen the consensus principle and discipline its use/abuse by some WTO Members. It is not unimportant that the consensus principle has distinguished the WTO as a more formally democratic organisation than its Bretton Woods counterparts.

Serious consideration should be given to the Sutherland Report's recommendation to strengthen the consensus principle. In an attempt to reduce the blocking measures resorted to by some Members, the Sutherland Report suggests that there should be a responsibility by the WTO Member seeking to block a decision to declare, in writing, that the matter is one of vital national interest to it. Consensus-based decision-making is more sustainable and efficient in the long term, since it compels WTO Members to build convergences in their positions and make compromises in the interests of the system as a whole. The consensus rule also applies for admitting plurilateral agreements under the WTO's Annex 4.

FRAMING AND DESIGNING OPEN PLURILATERALS

In the current Doha Round context, there is unlikely to be WTO-wide consensus for launching "new issue" negotiations until the "unfinished business" of the present and previous trade rounds is satisfactorily addressed. However, the requirement of consensus to establish plurilateral agreements under the WTO's Annex 4 provides developing countries with some bargaining leverage. For example, it is conceivable that astute developing countries could sanction a plurilateral

negotiation in exchange for ambitious movement on their own areas of concern. Under very specific conditions and for very discrete issues, plurilateral negotiations could incrementally advance multilateral regulation in an open manner among a "critical mass" of WTO Members.⁸ The second priority is thus to ensure that future plurilateral agreements are designed, framed and implemented in ways that do not undermine the principles of inclusiveness, transparency and multilateralism.

There are two possible models for designing plurilateral agreements, namely the TiSA (closed) and the ITA (open) approaches. The argument of this policy brief is that the latter design would best accommodate and reinforce the principles of inclusiveness, transparency, and multilateralism. To meet these criteria, plurilateral agreements should not be discriminatory and should be extended to all WTO Members on an MFN basis; be open to full participation of the WTO Membership (even if this involves staged participation); be sufficiently transparent to enable Members to assess the benefits of joining them; and provide sufficient flexibilities for developing countries, including special and differential treatment (SDT) in terms of technical assistance and capacity support, to implement the agreement.

⁸ The "critical mass" criteria will need to be developed in an open and transparent manner (for example, 80–90% share of world trade in a specific product or sector).

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