

PolicyBrief



Open Plurilateralism: Initiatives among Groups of WTO Members

Recommendation from the Report of the High-Level Board of Experts on the Future of Global Trade Governance

The High-Level Board of Experts on the Future of Global Trade Governance

The Bertelsmann Stiftung has called into life a High-Level Board of Experts on the Future of Global Trade Governance. Composed of eminent experts and seasoned trade diplomats, it elaborated a number of recommendations to increase the effectiveness and salience of the WTO. The entirety of these recommendations and underlying analysis of the changing political economy of international production and trade can be found in the Board's report "Revitalizing Multilateral Governance at the WTO", authored by Prof Bernard Hoekman. This briefing is part of a series of six, each of which details one specific recommendation from the report.

The full report can be accessed under https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/MT_Report_Revitalizing_Multilateral_Governance_at_the_WTO.pdf.

Towards more open plurilateral initiatives

The inability of the WTO membership to conclude the long-running Doha round of multilateral trade negotiations has had a significant opportunity cost in terms of rule-making and cooperation forgone. It has impeded the launch of discussions to consider new policy areas that call for updating of the rulebook to support new types of trade, including trade in digital products and revising the coverage or substance of existing rules.

At the WTO, there is strong support for decision-making to be based on consensus. There is an increasing perception that consensus has been used beyond its intended remit: to assure all WTO Members that proposed new rules can only be adopted if they agree to them. Consensus has also been used to constrain the ability of proponents of launching discussions on new issues from doing so. While there are good reasons for consensus to apply for new rules and agreements, this working practice need not preclude

subsets of WTO members from pursuing discussion on a matter or potentially cooperating with each other.

Deliberation in groups of WTO Members may become the basis for discussion on agreements to incorporate new elements of good practice into the commitments of those WTO members that see a benefit from doing so on a concerted basis. Agreements among groups of WTO Members may take different forms. Such agreements have already been concluded in the past. Examples include agreements on telecommunications regulation and sectoral agreements to abolish tariffs such as the Information Technology Agreement.

Such initiatives among groups of WTO members are currently being pursued. One of the results of the 2017 WTO Ministerial Conference in Buenos Aires was the launch of initiatives on e-commerce, investment facilitation, MSMEs and domestic regulation of services by different groups of WTO members. WTO members that joined these groups demonstrated that consensus cannot be used to prevent groups of countries discussing issues of common interest. Participation in these groups spans a broad cross-section of the membership. The EU participates in all four groups. The US is part of one (e-commerce). China participates in all groups except the one on e-commerce. India as well as many African countries decided not to participate in any of the groups.

Three types of mechanisms can be used by subsets of WTO members to collaborate on a policy area: preferential trade agreements (PTAs), in which substantially all trade in goods is liberalized on a discriminatory basis, so-called critical mass agreements (CMAs), and Plurilateral Agreements under Article II.3 WTO. Of these three by far the most frequently used are PTAs.

CMAs are open plurilateral initiatives under which a group of countries agree to specific trade policy commitments they inscribe into their WTO schedules and apply on a non-discriminatory basis to all WTO members. A major example is the Information Technology Agreement (ITA), which abolishes tariffs on information technology products. This was re-negotiated in 2015 to expand the number of products covered. The ITA has increased global trade substantially in electronic products and improved access to key technologies that underpin the digital economy.

CMAs have also been concluded for services sectors – an example is an agreement on basic telecommunications that was appended as a protocol to the GATS in 1997, with 69 WTO members signing it. The benefits of the agreement apply to all WTO members, including those that did not sign it. The basic telecom agreement includes a so-called Reference Paper that establishes regulatory principles (good regulatory practices) that signatories commit to apply.

A key feature of CMAs is that disciplines are negotiated among a subset of interested WTO members and apply only to countries that sign on to them, while the benefits must be extended on a most-favoured-nation basis to all WTO members, including those that do not participate. Such agreements do not require consensus to be incorporated into the WTO – if Members decide to join a CMA they can inscribe the provisions of the agreement into their schedules of commitments under the GATT and/or the GATS. The agreements become part of the WTO and are serviced by the WTO Secretariat. Members interested in discussing possible future CMAs can request WTO Secretariat support for the process.

Art. II.3 Plurilateral Agreements differ from CMAs in that they may be applied on a discriminatory basis – that is, benefits need not be extended to non-signatories. Because of this, Plurilateral Agreements require consensus to be incorporated into the WTO. Two such agreements currently exist – the Agreement on Civil Aircraft and the Government Procurement Agreement (GPA). Because Article II.3 WTO Plurilateral Agreements may be applied in a discriminatory manner, they are subject to the approval of all WTO members, including those that have no intention of joining. Art. X.9 of the Agreement Establishing the WTO stipulates that the Ministerial Conference of the WTO may decide to add a new Plurilateral Agreement to the existing ones ‘exclusively by consensus’.

WTO members have devoted much more effort and resources to the negotiation of PTAs than to open plurilateralism in the WTO but there has always been interest in pursuing cooperation on a critical mass basis. Aside from the expansion of the ITA in 2015, examples include negotiations on a possible Environmental Goods Agreement. These commenced in July 2014 and span the EU and 16 other WTO members. At the 2017 Ministerial Conference in Buenos Aires different groups of WTO members launched four joint initiatives on

micro, small and medium-sized enterprises, e-commerce, investment facilitation and domestic regulation of services.

The scope for open plurilateral initiatives – i.e., CMAs – is likely to be limited to issues that are either insensitive to free riding concerns or policy areas where many WTO members can be induced to participate so that benefits are mostly internalized by signatories (as was the case for the ITA). The types of subjects that may lend themselves to such initiatives therefore do not include policy areas such as industrial policy or subsidies. However, there may be much more scope for open plurilateral cooperation than is often assumed, especially for technical issues where cooperation may reduce trade costs. There are potentially many such policy areas. Examples include using the scope under the GATS to make additional commitments, extending the ITA to encompass digital trade, or agreement on standards for using block chain technology to facilitate trade under the WTO Trade Facilitation Agreement.

At a minimum, open plurilateral initiatives provide an opportunity to insert new oxygen into the system. They offer a mechanism for groups of WTO members to engage on matters of interest to them and to determine whether there is potential scope to agree on what constitutes desirable policy. They can serve as experiments and laboratories to identify areas where cooperation is feasible and demonstrate that the WTO need not be hamstrung by its consensus practice in providing a platform for cooperation. Even where no agreement proves possible, the associated deliberations are useful as they will help inform decisions on the set of issues that could be considered as part of a broader effort to construct a forward-looking agenda to update rules that will apply to all WTO members.

The likelihood that the WTO membership will be willing to accept new Article II.3 WTO Plurilateral Agreements – i.e. agreements such as the GPA that permit discrimination – is very low, given that their incorporation of such agreements into the WTO requires consensus. Some observers have argued that it is in the interest of all WTO members to be more willing to let countries negotiate such agreements. Refusal to consider this essentially means that countries that want to engage in deeper integration in areas where free riding is a concern must do so outside the WTO framework. In practice this implies (mega-regional) PTAs.

These are important instruments for deepening trade cooperation, and, in the case of services, offer a potential mechanism for WTO members to pursue reciprocal liberalization of markets, but such PTAs not only give rise to the discriminatory features of Art II.3 Plurilateral Agreements but are less transparent. They are not subject to WTO monitoring and dispute settlement will occur outside the WTO.

It would be beneficial for the WTO membership to engage in a discussion on concerns that exist regarding WTO Art. II.3 Plurilateral Agreements and work to clarify and strengthen the ground rules that should apply to such agreements through a Reference Paper or a code of conduct. In practice, however, small group agreements will have to take the form of open plurilateral initiatives – CMAs – that apply on a non-discriminatory basis and that do not require a consensus among all WTO members to be established.

Careful choices need to be made in pursuit of such initiatives. Ideally, the focus should be on matters of importance to influential constituencies and ones that stimulate engagement/support from the private sector and other stakeholders. The WTO is best served by initiatives that ‘move the needle’. Much depends on what will happen with the joint initiatives that emerged from MC11. All have a large potential set of stakeholders and all address subjects that are very relevant for the trading system.

An important question with respect to open plurilateral initiatives is whether any specific conditionality that is included in an agreement could violate the MFN rule. The benefits of such initiatives among a subset of countries will need to be extended to all WTO members, including those that do not participate in the agreement. However, such benefits may be subject to satisfying specific preconditions that relate to the quality or capabilities of regulatory institutions and frameworks. In this respect, the situation may be akin to mutual recognition agreements for conformity assessment of product standards. WTO rules require these to be accessible (open) to any WTO member that is interested in participating in an extant agreement, but this does not nullify the need to satisfy the conditions that are necessary for mutual recognition. Similar approaches will

need to apply to open plurilateral initiatives that involve regulatory cooperation.

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