

Reforming the WTO Through Inclusive and Development-friendly Approaches: How to Make Plurilateral Initiatives Work for All

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DGAP POLICY BRIEF

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Reforming the WTO Through Inclusive and Development-friendly Approaches

How to Make Plurilateral Initiatives Work for All

To address the dynamic challenges confronting modern trade relations it is imperative to update the rules of the World Trade Organization (WTO). Plurilateral agreements are a viable option for responding to trade issues on which multilateral consensus is difficult. They should follow an inclusive and development-focused framework for participation.

- In their current form, WTO rules do not adequately address pressing global challenges such as food security, pandemic responses, and climate change. Plurilateral agreements can be a viable option for reform.
- Effective plurilateral agreements feature a layered architecture of rights and obligations – similar to that of the Trade Facilitation Agreement (TFA) – and encompass capacity-building measures.
- WTO Members should initiate plurilaterals on topics that are of particular concern to developing countries and Least-Developed Countries (LDCs) and that can help achieve the UN's Sustainable Development Goals (SDGs).

PREMISE AND AIMS

This policy brief was written in the context of the Indian G20 presidency (2023) as part of the Think20 (T20) outreach process among global think tanks. It aims to put forward recommendations not only for the G20 but also the upcoming 13th WTO Ministerial Conference (MC13) in February 2024. The authors, who come from a diverse range of G20 countries – Brazil, India, the Netherlands, Turkey, the United States, and Germany – were members of the Indian T20 Task Force “Towards Reformed Multilateralism: Transforming Global Institutions and Frameworks.”

The policy brief **deals with a highly controversial issue, namely the question of how to reform the World Trade Organization (WTO) to both constructively address the new trading environment and include the concerns of developed and developing countries.** The way forward is contested. Countries like the United States and those of the European Union (EU) – in addition to various developed and developing countries – see plurilateral agreements (i.e., a coalition of a subgroup of WTO Members) as a way to reform the WTO. They hope that the outcomes of such agreements can serve as stepping-stones for multilateral accords. However, there are also countries that object in principle, warning that plurilateral agreements could lead to a fragmentation of the multilateral trading regime.

The authors of this policy brief agree that open plurilateral agreements can be a “viable option where achieving multilateral consensus in the WTO is difficult.” However, they also argue that these agreements need to be inclusive to counter the criticism that only developed countries with large administrative capacities and technical expertise can participate and drive the negotiations along. Thus, to prevent a further division between developed and developing countries – as well as a fragmentation of the multilateral trading regime – the authors advocate for an inclusive and development-friendly framework for plurilateral agreements that also includes capacity-building measures. If reform efforts are based on such a framework, they will not serve to reinstate the status quo; rather, they will shape a modern and inclusive global organization.

The authors table several recommendations on how to best approach open plurilateral agreements (based on the present four Joint Statement Negotiations) to advance an inclusive WTO reform. This could serve as a basis for the upcoming reform discussions at MC13 in February 2024.

THE CHALLENGE

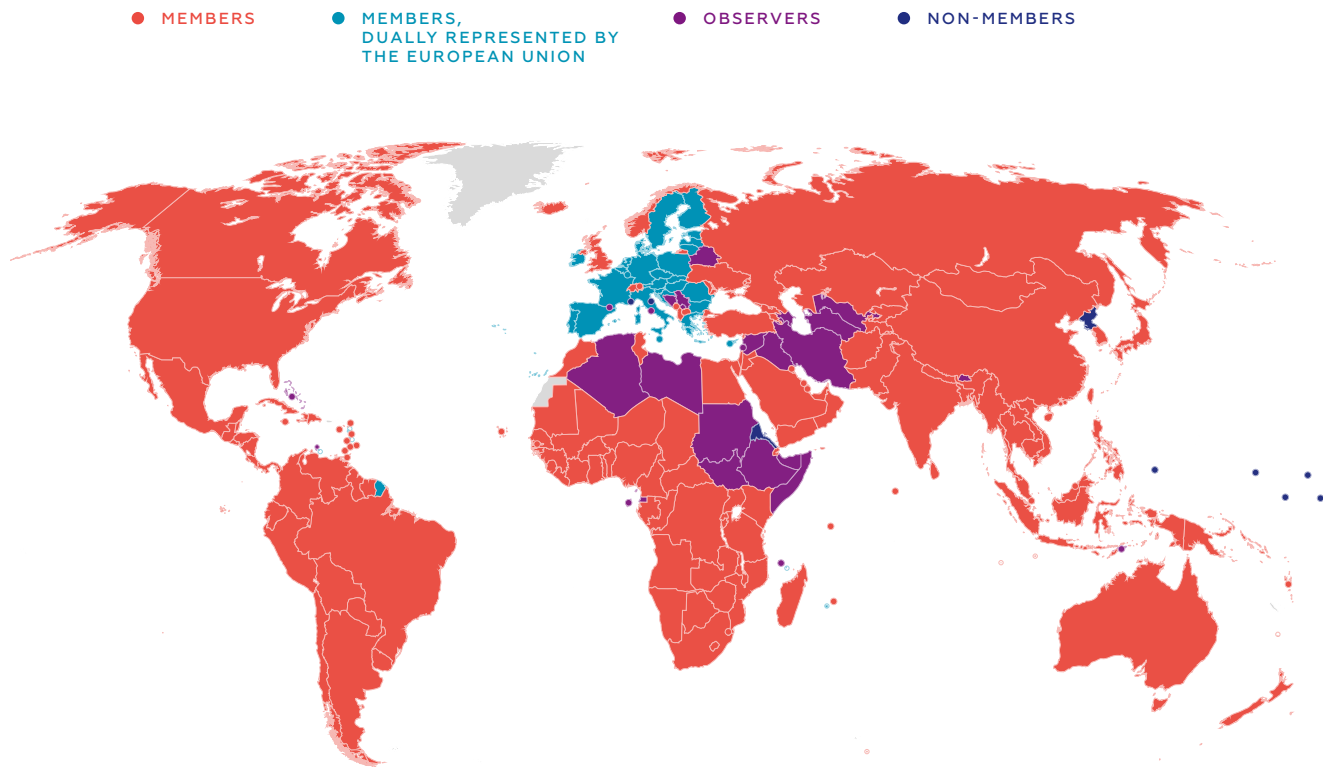
Introduction

The World Trade Organization (WTO) is under immense pressure. While the 12th Ministerial Conference achieved substantial outcomes in some areas and emphasized the need to better integrate Least-Developed Countries (LDCs) into world trade and the multilateral trading system, the WTO needs to be reformed to be fit for purpose. G20 leaders acknowledge this reform necessity and play a crucial role in providing momentum and ideas.

Since the last substantial update of the multilateral rule book on trade almost thirty years ago, the nature of world trade has changed: for example, e-commerce is becoming more important, sustainability issues play a growing role, and resilience of global value chains has become a major concern. Yet, as the WTO membership has grown, now including 164 Members, consensus-based negotiations of multilateral agreements has proven to be more and more of a challenge. Against the background of an increasingly contested geo-economic environment, a fragmenting international order, and high uncertainty in trade, trade negotiations have become more politicized. Economic and political interests of WTO Members increasingly diverge and the willingness to agree on compromises is declining.

In this environment, many WTO Members view “open plurilaterals”¹ – i.e., agreements among sub-groups of Members which only bind signatories but may also create benefits for non-signatories – as an expeditious way to preserve the WTO’s centrality with respect to trade. A greater recourse to plurilaterals may enable the WTO to better address the numerous global challenges such as the pandemic-triggered health crisis, the “Food, Fuel, Fertiliser and Financial” (4F) crises, climate change, the digital divide, the risk of deglobalisation, as well as the rise in protectionism, subsidies, nationalism, and cyber threats.

1 Bernard Hoekman, Charles Sabel, Open Plurilateral Agreements, International Regulatory Cooperation and the WTO, *Global Policy* 10(3) (2019), pp. 297-312.

Figure 1 – WTO Members and Observers

Source: Wikimedia commons; BlankMap-World6.svg; Happenstance et al / derivative work: Danlaycock

The WTO's 11th Ministerial Conference in 2017 launched a number of plurilateral negotiations, the so-called Joint Statement Initiatives (JSIs), in areas such as services domestic regulation, e-commerce, investment facilitation, trade and environmental sustainability, Micro, Small and Medium Enterprises (MSMEs), trade and gender, as well as plastics.² The JSI on services domestic regulation was successfully concluded at the end of 2021, and the JSI on investment facilitation for development in July 2023. The talks on the other JSIs remain ongoing.³

However, some developing countries have reservations in accepting the plurilateral nature of these negotiations, warning that they may undermine the multilateral approach, go against the rules of the WTO, or unduly restrict policy space also for

non-members. Several stakeholders feel that a shift from multisector trade rounds using a single undertaking approach risks marginalization of developing countries' core interests. Challenges facing some developing countries may constrain their ability to engage in plurilateral negotiations. They may lack capacity in areas such as agenda setting (i.e., selecting those topics that are in line with their development needs), negotiating, impact assessment, and implementation of agreements.

An analysis of participation patterns shows that some JSI are popular among less developed countries. The Investment Facilitation for Development (IFD) Agreement includes more than two thirds of the WTO membership, and emerging and developing countries can even be considered to be among

² The JSIs are not the first WTO plurilateral initiatives. Annex 4 of the WTO Agreement covers four other plurilaterals codes. However, the latter were not applied on a most-favoured nation (MFN) basis.

³ For an overview of ongoing plurilateral negotiations: Geneva Trade Platform, WTO Plurilaterals: <https://wtoplurilaterals.info> (accessed March 25, 2023).

the main drivers.⁴ In general, developing and emerging countries, however, do not participate widely in the other JSI negotiations.⁵

This policy brief analyses how the concerns of the developing countries and LDCs can be better addressed to make plurilateral negotiations and agreements more inclusive, development-friendly, and compatible with the WTO system.

Inclusiveness: The negotiations and agreements are inclusive, if they also address the interests and unique circumstances of developing countries, in particular those of LDCs. Furthermore, inclusiveness refers to procedural issues such as the ability of countries to join plurilateral negotiations or agreements and that the accords allow for the possibility to multilateralise their disciplines at a later point in time.

Development-friendly: An agreement is development-friendly if it not only fosters economic growth through increased trade and/or investment but does so in a way that contributes to achieving the UN Sustainable Development Goals (SDGs). This relates to, among other areas, reducing poverty and inequality, ending hunger, enhancing good governance (including less corruption), positively impacting environmental and social sustainability, including gender equality, and the integration of MSMEs in world trade. Covering sectors that are of high importance for developing countries, such as food security, the digital economy, and trade-and-health related issues, is another important aspect.

WTO compatibility: The legitimacy of plurilateral negotiations is recognized by the existing rule book of the WTO and by the decades-long practice of its Members. Their legal validity was reaffirmed in Article II.3 of the WTO Marrakesh Agreement, which established that these plurilaterals “do not create either obligations or rights for Members that have not accepted them.” A key aspect of ensuring the WTO compatibility of plurilaterals is to design them as open plurilaterals

ensuring that countries willing to join can do so and that the rules apply on a non-discriminatory basis so that non-signatories may also benefit.

Challenges, which Plurilaterals Can Help to Overcome

1. Overcoming Stalemate in Multilateral Negotiations

Plurilateral negotiations are a second-best alternative to multilateral talks because they do not cover the whole WTO membership. However, they can lead to progress in reducing negotiating complexities because they take place among a smaller group of like-minded Members, allowing them to move forward in areas in which consensus of all WTO Members cannot be reached.

Open plurilaterals allow hesitant countries to join at a later stage based on Article XII:3 of the WTO Marrakesh Agreement which stipulates that accession to a plurilateral agreement shall be governed by the provisions of that agreement. It is worth noting that the General Agreement on Tariffs and Trade (GATT) itself was originally conceived as a quasi “plurilateral agreement” among 23 founding Members within the framework of the International Trade Organization. Over time, another hundred new contracting parties joined the GATT. Had it been dependent on the acceptance of all parties in the trading system, the GATT would have never flourished.

A measure of flexibility in the structure and extent of Member commitments – often referred to as “variable geometry” – can help the WTO to sustain engagement and maintain legitimacy across its increasingly diverse membership.⁶

Plurilateral agreements in the context of the WTO offer some advantages also for non-participants. Plurilaterals are subject to transparency requirements including reporting to the General Council. Where they maintain openness to new Members, and – as feasible – make concessions available on a most-favoured nation (MFN) basis for all WTO

⁴ Axel Berger, Sebastian Gsell, Zoryana Olekseyuk, Investment Facilitation for Development: A New Route to Global Investment Governance, German Institute of Development and Sustainability, Briefing Paper, May 2019: <https://www.idos-research.de/briefing-paper/article/investment-facilitation-for-development-a-new-route-to-global-investment-governance/> (accessed March 16, 2023).

⁵ On average only 40 percent of the members participate in plurilateral agreements. See Mehmet Sait Akman et al., Boosting G20 Cooperation for WTO Reform: Leveraging the Full Potential of Plurilateral Initiatives, T20 Policy Brief, 2021: https://www.global-solutions-initiative.org/wp-content/uploads/2022/11/TF3_BOOSTING-G20-COOPERATION-FOR-WTO-REFORM-LEVERAGING-THE-FULL-POTENTIAL-OF-PLURILATERAL-INITIATIVES.pdf (accessed March 16, 2023).

⁶ Sustainability in the multilateral trading system will likely require care to balance legal means for recourse in disputes and space for diplomacy to address continuing points of concern. See Robert McDougall, “Disequilibrium in the Multilateral Trading System and the (Necessary) Return of Diplomacy”, in Research Handbook on Law and Diplomacy, eds. M. McGuinness and D. Stewart, 8.12.2022, pp- 103–121: <https://www.elgaronline.com/display/book/9781789908473/book-part-9781789908473-14.xml> (accessed March 16, 2023).

Members, benefits can be more widely spread and discriminatory effects reduced.⁷ The engagement of Members in these various plurilateral initiatives may help to reinforce the institutional relevance of the WTO for trade policy reform over the coming years.

2. Overcoming Fragmentation and Advancing Multilateral Trade Rules

In addition, building on best practices regarding constructive innovation in governance of new trade issues, WTO plurilaterals can consolidate divergent policies in regional and bilateral accords and better align approaches among WTO Members. In other words, there is the potential for a carefully developed WTO plurilateral agreement to reduce fragmentation and discrimination in a specific policy area, thus improving the conditions for trade for all.⁸

Handling emerging and contentious trade-related issues in plurilaterals through a novel architecture incorporating the 'spirit' of Special and Differential Treatment (SDT) provisions would be more beneficial for developing country WTO Members than them having to take on onerous commitments on such issues in bilateral and regional trade agreements (especially with developed countries) without such flexibilities.

It is also important to note that principles-based, inclusive, and open plurilaterals help Members to keep negotiations within the WTO system rather than shifting towards non-WTO venues which cause further fragmentation of the trading system.

Furthermore, plurilaterals can provide opportunities for policy innovation aimed at addressing new issue areas and on-going trade-related challenges such as food (in)security and industrial policies. In doing so, they can provide an incremental approach to modernizing trade rules.

3. Overcoming Structural Impediments Faced by Developing Countries

Developing countries face several hurdles when joining the open plurilaterals. They might have to unilaterally undertake painful domestic reforms in many of the areas concerned. Developing countries would also need to invest in augmenting resources to boost their ability to effectively participate in the technical aspects of JSI negotiations. Their capacity problems need to be tackled, and plurilateral negotiations need to emphasise this challenge concretely.

Trade capacity building and technical assistance is thus important for the negotiation of inclusive, development-friendly and open plurilaterals. In the Doha Declaration, ministers had agreed that all SDT provisions should be reviewed, in order to strengthen them and make them more precise, effective, and operational.⁹ While this overall review was in the end not implemented, this led to a radically new approach in the Trade Facilitation Agreement (TFA). The TFA contains binding commitments for developed and developing countries, with the latter committing to implementing challenging provisions. However, the TFA's SDT approach allowed developing country Members to self-designate whether they want to implement single provisions immediately, or in the case of LDCs after one year (Category A), after a certain transition period (Category B), or only after they have received appropriate technical assistance and capacity building (Category C). In addition, the WTO secretariat together with relevant international organisations established a trade facilitation needs assessment process that assisted developing countries in meeting the TFA requirements. This process provided a basis for developing countries to self-designate their levels of commitment (according to categories A, B and C) in each of the various areas covered by the accord.¹⁰

7 The exceptions to MFN plurilaterals are the Government Procurement Agreement, the Civil Aircraft Agreement, the International Bovine Meat Agreement and the International Dairy Agreement negotiated during the Tokyo Round. They were included in Annex 4 of the WTO in 1995, but in 1997 the Dairy and the Bovine agreements were terminated by their parties.

8 This can be economically viable for participants where Members of a plurilateral together account for most of the global trade in the covered products. See Bernard Hoekman, L. Alan Winters, and Yohannes Ayele, Delivering Plurilateral Trade Agreements within the World Trade Organization, UK Department for International Trade, 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041625/dit-research-delivering-plurilateral-trade-agreements-within-world-trade-organization-wto.pdf (accessed March 16, 2023); Douglas Lippoldt, Mitigating Global Fragmentation in Digital Trade Governance: A Case Study, CIGI Paper, No. 270, 10.1.2023: <https://www.cigionline.org/publications/mitigating-global-fragmentation-in-digital-trade-governance-a-case-study> (accessed March 16, 2023); M. Sait Akman, Axel Berger, Fabrizio Botti et.al., Roundabout Way to Multilateralism: How Could Regional Trading Agreements and Plurilaterals Revitalize It?, T20 Indonesia Policy Brief, 2022: https://www.t20indonesia.org/wp-content/uploads/2022/10/TF1_Roundabout-way-to-multilateralism.pdf (accessed March 16, 2023).

9 WTO, Special and Differential Treatment: https://www.wto.org/english/tratop_e/dda_e/status_e/sdt_e.htm (accessed March 29, 2023).

10 Axel Berger, Ann-Margret Bolmer, Zoryana Olekseyuk, Implementing an Investment Facilitation Agreement. How to Self-assess Implementation Gaps and Technical Assistance Needs, International Trade Centre Technical Paper, 2022: <https://www.idos-research.de/externe-publikationen/article/implementing-an-investment-facilitation-for-development-agreement-how-to-self-assess-implementation-gaps-and-technical-assistance-needs> (accessed March 25, 2023).

At the 12th Ministerial Conference, Ministers again put development issues at the heart of their work program.¹¹ The main objective was to find ways to facilitate the integration of developing countries and LDCs into the multilateral trading system as a central element in the WTO reform process. It also provided the basis for the Aid for Trade Work Programme for 2023-2024, with priority given to food security, digital connectivity, and mainstreaming trade. The new and innovative approach employed in the TFA is now generally accepted as a constructive way toward creating an enabling environment that helps developing countries and LDCs to participate effectively in plurilateral negotiations.

While the principle is not yet built into all JSIs, the Investment Facilitation for Development (IFD) Agreement foresees, in line with the TFA approach, a combination of longer transition periods and technical assistance and capacity building measures. This should allow developing country and LDC Members to better implement the provisions. The WTO secretariat, together with FDI-competent international organizations, is setting up a needs assessment process that helps Members to self-designate the different categories of commitments during the implementation process.¹² Developed country Members are requested to provide sufficient technical assistance and capacity building support to strengthen the implementation capacity of developing country Members and LDCs. The IFD Agreement text furthermore includes an early warning system for developing country Members not able to implement category B and C commitments in a timely manner. Furthermore, in case a developing country member is in breach of its commitments, an expert group may be established to assess the situation and make recommendations to support the implementation by the developing country member. During the time of this assessment, the Member would not be subjected to dispute settlement. In addition, the IFD Agreement text foresees grace periods of different length for the application of the WTO's dispute settlement mechanisms for developing countries.

The SDT approaches adopted in the other JSIs are much less comprehensive and progressive compared to the IFD Agreement. The JSI on Services Domestic Regulation adopts a more traditional approach to SDT and grants developing countries transitional periods of up to seven years and exempts LDCs while encouraging them to implement the provisions according to their capacity. Developed country Members are simply encouraged to provide technical assistance to increase the implementation capacity of LDCs. The E-Commerce JSI text – in the version of September 2021 – foresees that developed country Members shall provide technical assistance upon request of developing country Members. The respective provision, however, is much less specific compared with the IFD Agreement. The launch of the E-Commerce Capacity Building Framework¹³ aims to provide training and assistance to strengthen digital inclusion. In doing so, it would help LDCs and developing countries benefit from digital trade under the JSI on E-commerce and thereby promote both inclusivity and ambition.

While the draft provisions of the JSI are fundamentally in line with the 12th Ministerial Conference declaration, the trade capacity building provisions vary in terms of their comprehensiveness. Offering new opportunities for a more inclusive approach toward facilitating the fuller integration of developing countries and LDCs is a priority. In short, more needs to be done to make some of the above-discussed JSIs truly inclusive and development friendly.

4. Selecting the Right Topics for Developing Countries

Plurilaterals can serve as stepping-stone to modernise the rule book of the WTO to ensure that the organisation can continue to foster economic growth and development.¹⁴ However, they are regarded by some WTO Members as a way to hijack negotiations from the multilateral arena to channels representing only a small number of like-minded, advanced economies with greater capacities to set the agenda. Selecting topics which also reflect the interests of developing countries and LDCs will be of utmost importance to ensure the acceptance and legitimacy of plurilaterals.

11 WTO, MC12 Outcome Document - Draft, WT/MIN(22)/W/16/Rev.1, 16.6.2022: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/W16R1.pdf&Open=True> (accessed March 25, 2023).

12 WTO, Investment Facilitation for Development. Investment Facilitation Negotiators Take Steps to Assess Needs of Developing Countries, 2022: https://www.wto.org/english/news_e/news22_e/infac_23feb22_e.htm (accessed March 23, 2023).

13 WTO, E-Commerce JSI Co-convenors Announce Capacity Building Support, https://www.wto.org/english/tratop_e/ecom_e/jiecomcapbuild_e.htm (accessed March 23, 2023).

14 Simon Evenett, Johannes Fritz, Must do Better: Trade and Industrial Policy and the SDGs, The 30th Global Trade Alert Report, 20.12.2022: <https://www.globaltradealert.org/reports/gta-30-report> (accessed September 9, 2023).

Figure 2 – Participation in Plurilateral Agreements and Ongoing Negotiations per Member

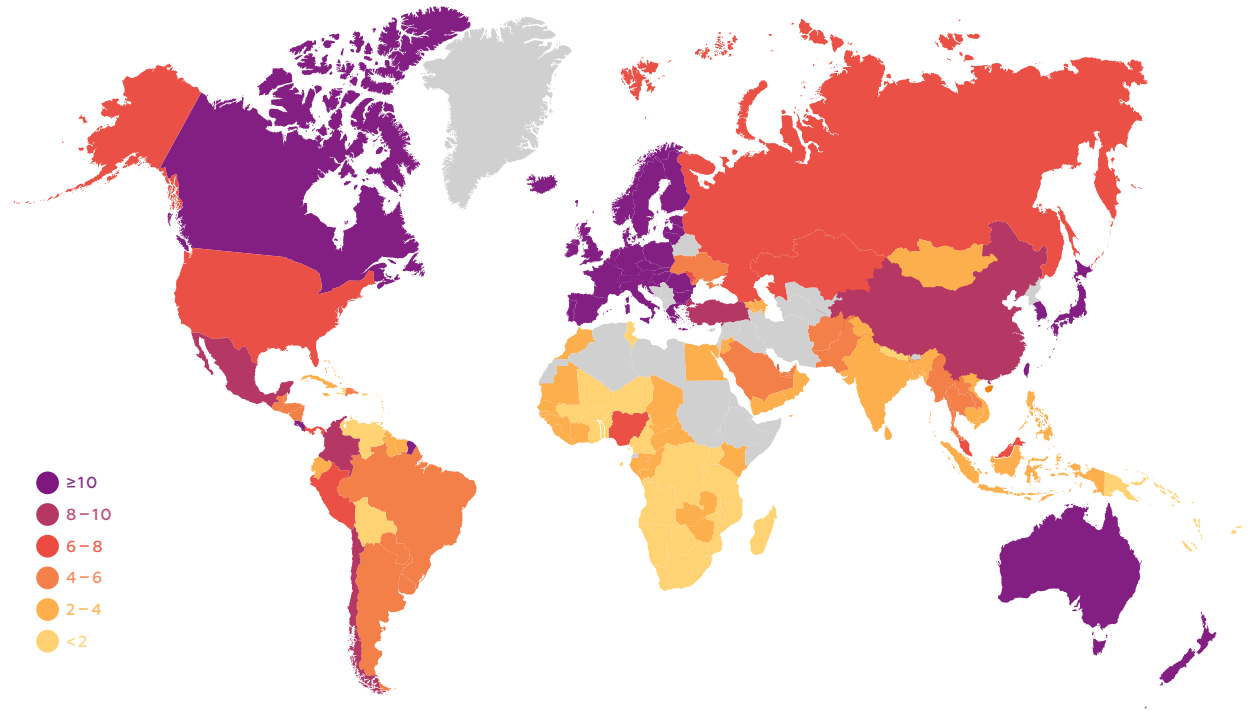


Figure 3 shows that a handful of Members, including Canada, the European Union, Switzerland, Norway and Australia, are signatories of all existing plurilateral agreements or participants in all ongoing negotiations. Costa Rica and Japan are participating in eight plurilaterals. Then there is a group of Members, comprising the USA, Mexico, Colombia, Turkey and China, which are participating in five to seven. | Source: Authors, based on information made available by the WTO, see: www.wto.org

Several SDGs require urgent trade policy measures to address critical matters such as eradicating poverty (SDG1), zero hunger (SDG2), good health (SDG3), industry and infrastructure (SDG9), climate action (SDG13), partnership for the goals (SDG17). Trade-related aspects of food (in)security, health, and climate may constitute potential areas for further plurilateral cooperation.

In addition, the evidence presented by the WTO as well as other studies and reports¹⁵ suggest that developing countries and LDCs stand to gain from trade rules for e-commerce, which will reduce the digital divide. Common disciplines and rules for digital trade will facilitate access to international markets for goods and services alike and reduce transaction costs. Technical assistance may support development

of their digital capacity and expertise in a specific and targeted way. The IFD Agreement is also projected to benefit participating developing countries Members, in particular.¹⁶

THE ROLE OF THE G20

The G20 is an informal group, which includes large, systemically-relevant emerging market economies and developed countries, which are important for global economic governance. Even though the final decisions need to be taken at the relevant and legitimate organisations (in this case the WTO), the informality of the G20 provides an opportunity to exchange views, establish trust, and possibly find common ground on WTO reform and the role of

15 Maarten Smeets (ed.), *Adapting to the Digital Trade Era: Challenges and Opportunities*, WTO, 2021: https://www.wto.org/english/res_e/booksp_e/adtera_e.pdf (accessed March 29, 2023); Bernard Hoekman, *Digital Trade Opportunities and Challenges*, UN-OHRLS, WTO, EIF, 2022: https://www.wto.org/english/tratop_e/devel_e/digital_trade2022_e.pdf (accessed March 29, 2023).

16 Edward J. Balistreri, Zoryana Olekseyuk, *Economic Impacts of Investment Facilitation*, Center for Agricultural and Rural Development/Iowa State University, Working Paper Series (21-WP 615), 2021: <https://www.card.iastate.edu/products/publications/pdf/21wp615.pdf> (accessed March 23, 2023).

plurilaterals. As such, the G20 can provide an ongoing informal platform for dialogue with all the relevant players to forward the agenda on these trade issues.

The G20 has recognised this potential and included discussions and commitments on WTO reforms and trade-related multilateral issues as a constant element in G20 meetings since 2008, when the first Leaders' Summit was held.¹⁷

During the Australian G20 presidency in 2014, leaders committed to “to ensure our bilateral, regional and plurilateral agreements complement one another, are transparent and contribute to a stronger multilateral trading system under World Trade Organization (WTO) rules.”¹⁸ The Turkish G20 Presidency of 2015 suggested ensuring the complementarity of plurilaterals with the multilateral trading system¹⁹, while the Chinese G20 Presidency in 2016 had recommended that “WTO-consistent plurilateral trade agreements with broad participation can play an important role in complementing global liberalization initiatives.”²⁰ During the German G20 presidency, leaders noted the importance of “plurilateral agreements being open, transparent, inclusive and WTO-consistent”.²¹

In the Riyadh Initiative on the future of WTO reform, which was initiated during the G20 presidency of Saudi Arabia in 2021, most Members suggest that open plurilateral negotiations could be pursued by Members who were ready to move ahead on particular issues. It was mentioned that these initiatives can pave the way for multilateral outcomes. The initiative also noted the concerns by other Members.²² The Indonesian G20 Presidency of 2022 discussed taking forward the WTO work program on e-commerce and the open plurilateral on e-commerce, even while noting the concerns on the JSIs.²³

Thus, the G20 has consistently evolved its support to the concept of plurilaterals within the WTO, providing an informal platform for an exchange of views, facilitating compromise.

RECOMMENDATIONS TO THE G20

1. A Principles-based Approach to Plurilaterals

The institutional architecture of open plurilaterals should be flexible and not interfere with the fundamentals of multilateralism. The architecture has to be inclusive, development-focused, accommodative, and capable of offering an incremental step-by-step framework for participation. This means that developing countries participating in the JSIs should have a better say in the agenda-setting and the negotiations in order to promote win-win outcomes. Only such an approach can ensure that the trend of open plurilaterals will not erode the WTO's credibility or lead to fragmentation of the rules-based multilateral trading system. Plurilaterals must grow from a set of basic provisions capable of attracting even the least prepared Members for participation. It is vital, therefore, for WTO Members to formulate a new approach in the plurilateral architecture that in effect captures the ‘spirit’ of SDT.

In line with the TFA model open plurilaterals should encompass the following three critical components: (i) a multi-layered architecture, recognizing diverse capacities and domestic preparedness; (ii) flexibilities on matters of vital importance across the layers with a basic structure as the lowest denominator; and (iii) adoption of a subsidiary architecture of support and capacity development where required.

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- 17 Axel Berger, Simon Evenett, “The Trump-Induced G20 Stress Test on Trade: Did the German Presidency Pass?,” *Global Summitry* 3(2) (2017), 17.5.2018, pp. 124–140: <https://academic.oup.com/globalsummitry/article/3/2/124/4999066> (accessed March 29, 2023).
- 18 G20, G20 Leaders' Communiqué, Brisbane Summit, 15–16.11.2014: https://g7g20-documents.org/fileadmin/G7G20_documents/2014/G20/Australia/Leaders/1%20Leaders%27%20Language/G20%20Leaders%27%20Communiqu%C3%A9_16112014.pdf (accessed March 29, 2023).
- 19 G20, Chairman's Summary Meeting of G20 Trade Ministers, Istanbul, G20 Information Centre, 6.10.2015: <http://www.g20.utoronto.ca/2015/151006-trade.html> (accessed March 29, 2023).
- 20 G20, G20 Leaders' Communiqué: Hangzhou Summit, Hangzhou, G20 Information Centre, 5.9.2016: <http://www.g20.utoronto.ca/2016/160905-communicue.html> (accessed March 29, 2023).
- 21 G20, G20 Leaders' Declaration Shaping an Interconnected World, Hamburg, 7–8.7.2017: https://g7g20-documents.org/fileadmin/G7G20_documents/2017/G20/Germany/Leaders/1%20Leaders%27%20Language/Leaders%20Declaration%20-%20Shaping%20an%20Interconnected%20World_07102017.pdf (accessed March 29, 2023).
- 22 G20, G20 Trade and Investment Ministerial Meeting: Communiqué, Riyadh, G20 Information Centre, 22.9.2020: <http://www.g20.utoronto.ca/2020/2020-g20-trade-0922.html> (accessed March 29, 2023).
- 23 G20, G20 Chair's Summary Trade, Investment and Industry Ministers Meeting, Bali, G20 Information Centre, 22–23.9.2022: http://www.g20.utoronto.ca/2022/G20-Chairs-Summary_Trade-Investment-and-Industry-Ministers-Meeting-ANNEXES.pdf (accessed March 29, 2023).

2. A Multi-Tiered-Framework for Plurilaterals

A multi-tiered approach, which builds on Kher, et al. (2022),²⁴ forms the basis of this proposal. The spirit of SDT (as mentioned above in the three critical components) is captured in this proposed architecture of the agreement. Inclusivity is central to this proposal. For this, an approach with a layered architecture of rights and obligations, similar to the TFA architecture, is most promising. As such, it is important to differentiate between the negotiations phase and the signature/accession phase.

Negotiation phase: After a group of WTO Members expresses desire and preparedness to negotiate a trade agreement on a specific topic, they need to float a discussion note among all Members and set up thresholds on identified parameters when the negotiations could begin after a fixed time. They should invite comments by all WTO Members. If feasible and in view of possible resource constraints, the WTO Secretariat should be mandated by the WTO Members to conduct impact analyses of the proposed plurilaterals agreements. It can be expected that some WTO Members will be ready to join as active negotiators, while some others might join as observers. The door for entry as *Observer* (without any obligations or rights/benefits) or active *Negotiator* should remain open throughout the negotiations. Transparency is paramount to ensure acceptance and legitimacy of the negotiations. It is important for WTO Members, which wish to learn about the process, to be able to officially observe the negotiations.

Conclusion and accession phase: After a group of WTO Members has concluded a plurilateral agreement, the door should always remain open for other WTO Members to join at a later stage. As transparency will continue to remain key, plurilaterals should allow Observers also during the implementing and monitoring phases of the agreement, permitting Observers to sit in all relevant meetings. Accession to an agreement would require the acceptance of the overall agreement; picking and choosing among the individual topical pillars should not be possible as this would lead to a fragmentation of the agreement.

However, the agreement should follow the TFA approach and as such strongly reflect different development levels and capacities. As such, plurilaterals should encompass flexible membership of developing

countries that are – in the given framework of a plurilateral agreement – allowed to self-designate the provisions that they want to implement immediately, after a certain time period, or only after sufficient implementation capacity has been acquired; LDCs benefit from longer implementation timeframes.

This approach would create an incremental matrix of lowest to highest ambition. It would leave WTO Members sufficient flexibility to enter an agreement at the level desired or felt comfortable with as well as to graduate overtime within the architecture.

3. Development-friendly Enforcement

To ensure the effectiveness of plurilaterals, mechanisms need to be in place for monitoring and dispute settlement, which reflect the above-described multi-tiered approach:

- Full Members of a plurilateral agreement should be fully subjected to the WTO Dispute Settlement Mechanism concerning any provision of the said agreement.
- In accordance with the SDT provisions of a plurilateral agreement, developing countries should be granted grace periods during which they are exempted from the application of the Dispute Settlement Understanding. With the level of development taken into account, LDCs should enjoy extended grace periods.
- When the grace period provided expires, a developing country Member could be brought to the Dispute Settlement Mechanism for a dispute concerning only provisions that a said Member has designated for implementation.
- In addition to the formal dispute settlement process, mechanisms should be considered to support effective implementation of a plurilateral agreements, such as monitoring, notifications, and implementation reports.
- Furthermore, plurilateral agreements should establish an early warning mechanism as well as an expert group to assess implementation difficulties. The expert advisory group could identify specific implementation problems and offer solutions outside of arbitration or panel decisions. It could also

24 Rajeev Kher et. al., Exploration of New Methodologies and Configurations for an Effective WTO and to Strengthen the Multilateral Trading System, T20 Policy Brief Indonesia, 2022: https://www.t20indonesia.org/wp-content/uploads/2022/09/TF1_Exploration-of-New-Methodologies-and-Configurations-for-an-Effective-WTO-and-to-Strengthen-the-Multilateral-Trading-System-.pdf (accessed March 29, 2023).

be used to help solve conflicts through evidence-based analyses, which identify specific constraints for implementation. This group could also draw on the expertise of relevant international organizations.

4. Integrating Capacity-Building Measures into Plurilaterals

Lack of capacities may leave some developing countries, especially LDCs, unable to identify, defend and advance their trade policy objectives in specific areas covered by a potential plurilateral. To address this, donor and beneficiary participants should engage well-recognized knowledge-based institutions to support capacity-building in such developing countries and thereby boost their relevant analytical and negotiating capacities. The comprehensive approach to SDT adopted by Members in the IFD Agreement could serve as a yardstick for other ongoing and future plurilaterals in this respect. Furthermore, the Needs Assessment Program of the TFA and the IFD could also provide examples of best practices that could be adapted for use in other plurilaterals.

Further, developing countries lacking capacity to join a plurilateral negotiation should be encouraged and assisted to join as an observer. The experience may prove helpful in enabling a developing country to take stock and prepare for eventual participation. The time spent as an observer may also promote development of coalitions among similarly placed nations and ultimately influence the evolution of these plurilaterals.

5. Ensuring Inclusive Topic Selection

It is difficult to offer a predetermined list of topics. Policy areas subject to open plurilateral initiatives must be determined by WTO Members as in the case of JSIs. Plurilaterals can be designed to promote market access and rule-making in specific areas. As developed countries in general have more capacities and agenda-setting power, it is important to ensure that plurilaterals do not reflect only the interests of developed countries. Rather, WTO Members should also initiate plurilaterals on topics which are of particular concern to developing countries and LDCs and which can help achieve the SDGs. This is paramount to ensure not only the legitimacy of plurilaterals but of the WTO itself.

The following topics are not to be perceived as priorities for further plurilaterals but rather as some examples for topics which are on the one hand important to ensuring sustainable and development

friendly trade, while on the other being too controversial to reach consensus among all WTO Members: trade and food security; trade and pandemic responses; climate and the environment; emerging areas in services trade; etc.

6. Ensuring Good Governance

It is critical to strengthen the WTO Secretariat with additional financial, technological, and human resources to handle potential plurilateral negotiations and their outcomes. As resources for this work are expanded, the Secretariat department(s) assigned to support plurilaterals and provide assistance should take steps to ensure diversity in staffing, inclusiveness in operations (i.e., unbiased support for member country participation), and good governance in line with WTO best practices. There should be an annual report to Members concerning the work of the WTO Secretariat on plurilaterals including matters relating to good governance such as staffing, resource deployment, decision-making processes, and outcomes.

7. Use the G20 as a Facilitator for Plurilaterals

A possibility to further enhance the discussions on inclusive and development-friendly plurilaterals could be to establish a task force in the G20 Trade and Investment Working Group (TIWG) to discuss the issue of plurilateral negotiations. The task force could bring together G20 Members, WTO officials and invite leading experts to provide consultation on plurilateral negotiations and best practices that can be derived from provisions of and implementation in regional trade agreements. The task force could also discuss ways for the initiation, negotiation, and implementation of plurilaterals, as proposed in this Policy Brief that can later be developed by WTO Members into a code of conduct to govern plurilaterals.

5. CONCLUSION

The WTO and its predecessor the GATT have a history of surviving existential crisis situations. The resilience of the WTO is a reflection of its importance to Members including developing countries. Nonetheless, the multilateral organization has to modernize. Open, inclusive and development-friendly plurilaterals are an opportunity to bring fresh air into the system. The Leaders of the G20 should thus take the opportunity during the upcoming Brazilian G20 Presidency to firmly support the WTO and plurilateral agreements within the context of the WTO reform process.



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