



Task Force 7

**Towards Reformed Multilateralism: Transforming Global Institutions and Frameworks**



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# MAKING PLURILATERAL INITIATIVES WORK FOR ALL: REFORMING THE WTO THROUGH INCLUSIVE AND DEVELOPMENT-FRIENDLY APPROACHES

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# Abstract



**U**pdating the World Trade Organization (WTO) rules has become imperative to address pressing global issues such as food security, pandemic responses, climate and the environment, and emerging areas in services trade. Plurilateral agreements can be a viable option where achieving multilateral consensus in the WTO is difficult. To ensure that they advance the multilateral trading system, plurilaterals should follow an inclusive and development-friendly

framework. They should have a layered architecture of rights and obligations and encompass capacity-building measures. WTO members should initiate plurilaterals on topics that are of particular concern to developing countries and least developed countries, and can help achieving the Sustainable Development Goals. The G20 can play a decisive role in fostering mutual understanding on plurilaterals, for example by establishing a taskforce on plurilaterals in the G20 Trade and Investment Working Group.



# The Challenge



# 1



**T**he World Trade Organization (WTO) is under immense pressure. While the 12<sup>th</sup> Ministerial Conference (MC) held in June 2022 achieved substantial outcomes in some areas and emphasised 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. The G20 acknowledges this reform necessity and plays a crucial role in providing momentum and ideas.

Since the last substantial update of the multilateral rulebook on trade almost 30 years ago, the nature of world trade has changed: for example, e-commerce is becoming more important, sustainability and health issues play a growing role, and the resilience of global value chains has become a major concern. This makes updating the WTO rules book paramount. However, against the background of an increasingly contested geo-economic environment and the diverging economic and political interests of WTO members, reaching multilateral consensus has become difficult.

In this environment, many WTO members view “open plurilaterals”—agreements among sub-groups of members that only bind signatories but may also create benefits for non-signatories—as an expeditious way to address many of today’s most pressing global challenges.

The WTO’s 11<sup>th</sup> MC launched several plurilateral negotiations, the Joint Statement Initiatives (JSIs). The JSI on services domestic regulation was successfully concluded at the end of 2021, while a breakthrough was reached in the Investment Facilitation for Development (IFD) talks in the spring of 2023.

However, some developing countries warn<sup>1</sup> that plurilaterals may undermine the multilateral approach, go against the WTO rules, unduly restrict policy space for non-members, and marginalise the core interests of developing countries. They are concerned that developing countries lack the capacities for agenda setting, negotiations, and effective implementation.

In general, developing and emerging countries do not participate widely



in the other JSI negotiations.<sup>a,2</sup> An exception is the IFD JSI, which is being negotiated by more than two-thirds of the WTO membership, and emerging and developing countries can even be considered to be among the main drivers.

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 and development friendly.

**Inclusiveness:** Inclusiveness refers to both the negotiation and implementation of a plurilateral agreement. Countries need to have the capacity for both. Furthermore, the interests and unique circumstances of developing countries and LDCs need to be respected. In addition, the accords should allow for the possibility to multilateralise their disciplines.

**Development-friendly:** An agreement is development-friendly if it not only fosters economic growth but does so in a way that contributes to achieving the Sustainable Development Goals (SDGs).

**WTO compatibility:** The legitimacy of plurilateral negotiations is recognised by the existing rule book of the WTO and by the decades-long practice of its members. 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. This way, there is little risk that they will advance the fragmentation of the world economy, which the international community is currently witnessing.

## Challenges that Plurilaterals Can Help to Overcome

- **Overcoming stalemate in multilateral negotiations**

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

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a On average only 40 percent of the members participate in plurilateral agreements.



Openness to new members, flexibility in the structure of a plurilateral agreement and extent of member commitments—often referred to as “variable geometry”—can help the WTO to sustain engagement, maintain legitimacy across its increasingly diverse membership, and reinforce the institutional relevance of the WTO.

Plurilateral agreements in the WTO context offer some advantages also for non-participants. As they are subject to transparency requirements, including reporting to the General Council, they can lead to more information on trade policy measures. Concessions made in open plurilaterals, which are based on a most-favoured nation, also benefit non-members.

- **Overcoming fragmentation and advancing multilateral trade rules**

Principles-based, inclusive, and open plurilaterals help members to keep negotiations within the WTO system rather than shifting towards non-WTO venues that cause further fragmentation of the trading system. They can provide opportunities for policy innovation and can thus provide an incremental approach to modernising trade rules.

WTO plurilaterals can also consolidate divergent policies in regional and bilateral trade agreements and better align approaches among WTO members. In other words, there is the potential for a WTO plurilateral agreement to reduce fragmentation and discrimination in a specific policy area, thus improving the conditions for trade for all.

Furthermore, plurilateral agreements within the WTO context, incorporating the ‘spirit’ of special and differential treatment (SDT), are far more preferable for developing countries than trade agreements outside the WTO that do not feature such flexibilities.

- **Overcoming structural impediments faced by developing countries**

Developing countries face several hurdles when joining the open plurilaterals. They might have to invest resources to boost their ability to effectively participate in the negotiations and unilaterally undertake painful domestic reforms.

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, to strengthen them and make them more precise, effective, and operational. 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 both developed and developing countries. However, the TFA's SDT approach allowed developing country members to self-designate whether they wanted 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.

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

participate effectively in plurilateral negotiations. While the principle is not yet built into all JSIs, the negotiations for the IFD Agreement foresee a combination of longer transition periods and technical assistance and capacity building measures. The WTO Secretariat, together with FDI-competent international organisations, is setting up a needs assessment process that helps members self-designate the different categories of commitments during the implementation process. 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 will not be subjected to dispute settlement. In addition, the IFD Agreement text

foresees grace periods of different lengths for the application of the WTO's dispute settlement mechanisms for developing countries.

The SDT approaches adopted in the other JSIs are less comprehensive and progressive than the IFD negotiations. 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 (September 2021 version) 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 Framework 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.

Overall, more needs to be done to make some of the above-discussed JSI truly inclusive and development friendly.

- **Selecting the right topics for developing countries**

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 and other studies and reports suggest that developing countries and LDCs stand to gain from trade rules for e-commerce, which will reduce the digital divide. The IFD Agreement is also projected to benefit participating developing countries members.

Selecting topics that also reflect the interests of developing countries and LDCs will be of utmost importance to ensure the acceptance and legitimacy of plurilaterals.



# **The G20's Role**



# **2**



**T**he G20 has not only repeatedly recognised the importance of the WTO but also the need to reform the multilateral organisation.

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.”<sup>3</sup> The Turkish G20 Presidency of 2015 suggested ensuring the complementarity of plurilaterals with the multilateral trading system, while the Chinese G20 Presidency in 2016 recommended that “WTO-consistent plurilateral trade agreements with broad participation can play an important role in complementing global liberalization

initiatives.”<sup>4</sup> During the German G20 presidency, leaders noted the importance of “plurilateral agreements being open, transparent, inclusive and WTO-consistent”.<sup>5</sup>

In the Riyadh Initiative on the future of WTO reform, which was initiated during Saudi Arabia’s G20 presidency 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.<sup>6</sup> The Indonesian G20 presidency discussed taking forward the WTO work programme on e-commerce and the open plurilateral on e-commerce, even while noting the concerns on the JSIs.<sup>7</sup>



# **Recommendations to the G20**

# **3**



## Principles-based approach to plurilaterals

The institutional architecture of open plurilaterals should not interfere with the fundamentals of multilateralism. The architecture must be inclusive, development-friendly, 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. 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, incorporating the following three critical components: (i) a multilayered architecture, recognising 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 an architecture of support and capacity development where required.

## A multitiered framework for plurilaterals

A multitiered approach, which builds on Kher, et al. (2022),<sup>8</sup> forms the basis of this proposal. The spirit of SDT 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 express a desire and preparedness to negotiate a plurilateral, they need to share a discussion note with all members and set up thresholds on identified parameters when the negotiations could begin. They should invite comments by all WTO members. If possible and in view of potential capacity 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.

**Conclusion and accession phase:**

Even after a group of WTO members has concluded a plurilateral agreement, the door should 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 will require the acceptance of the overall agreement; picking and choosing among the individual topical pillars should not be possible as this will lead to a fragmentation of the agreement.

However, the agreement should follow the TFA approach and strongly reflect different development levels. As such, plurilaterals should allow developing countries and LDCs to self-designate the provisions they want to implement immediately, after a certain time-period, or only after sufficient implementation capacity has been acquired.

This approach will create an incremental matrix of lowest to highest ambition. It will give WTO members sufficient flexibility to enter an agreement at the level desired and to graduate overtime within the architecture.

**Development-friendly enforcement**

To ensure the effectiveness of plurilaterals, mechanisms need to be in place for monitoring and dispute settlement, which reflect the multitiered approach:

- All members of a plurilateral agreement should be fully subjected to the WTO Dispute Settlement Mechanism (DSM) 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 DSM. With the level of development considered, LDCs should enjoy extended grace periods.
- When the grace period provided expires, a developing country

member could be brought to the DSM for a dispute concerning only provisions that said member has designated for implementation.

- In addition to the DSM, mechanisms should be considered to support effective implementation of a plurilateral agreements, such as monitoring, notifications, and implementation reports. This is particularly important considering the current DSM crisis.
- Furthermore, plurilateral agreements should establish an early warning mechanism. The expert advisory group could identify specific implementation problems and offer solutions outside of arbitration or panel decisions. It could also 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 organisations.

### **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-recognised 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. The needs assessment programme of the TFA and the IFD could also provide examples of best practices that could be adapted for use in other plurilaterals.

Furthermore, 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 them 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.



## **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. As developed countries in general have more capacities and agenda-setting power, it is important that plurilaterals reflect more than just their interests. Rather, WTO members should also initiate plurilaterals on topics that are of particular concern to developing countries and LDCs, and that can help achieve the SDGs. This is paramount to ensure not only the legitimacy of plurilaterals but of the WTO itself.

## **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 and assist plurilaterals should take steps to ensure diversity in staffing, inclusiveness in operations (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 WTO Secretariat's work on plurilaterals including matters relating to good governance such as staffing, resource deployment, decision-making processes, and outcomes.

## **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 to discuss the issue of plurilateral negotiations. The task force could bring together G20 members, WTO officials, and invited 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.



The WTO remains an indispensable organisation to govern international trade. Nonetheless, the multilateral organisation must modernise. Open, inclusive, and development-friendly plurilaterals are an opportunity to bring

fresh air into the system. The G20 should not lose sight of a substantive WTO reform and should endorse plurilateral agreements within the context of the WTO reform process.

Attribution: M. Sait Akman et al., “Making Plurilateral Initiatives Work for All: Reforming the WTO Through Inclusive and Development-friendly Approaches,” *T20 Policy Brief*, May 2023.

## Endnotes

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