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Getting Past the WTO Deadlock:  
The Plurilateral Option?

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European University Institute  
**Robert Schuman Centre for Advanced Studies**  
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**Abstract**

The WTO's Doha Development Agenda (DDA) negotiations are blocked. After repeated attempts to make progress, trade ministers have called for exploring new approaches to negotiations. This has been interpreted by some as clearing the way for plurilateral negotiations between subsets of like-minded WTO members and that need not apply or benefit all WTO members. This paper discusses a number of questions that arise with respect to plurilateral agreements and argues that in light of the very low probability of new plurilateral agreements being accepted by WTO members the focus should be on the impact of preferential trade agreements and how these can be better accommodated in the multilateral trading system.

**Keywords**

WTO, plurilateral agreements, services, preferential trade agreements



## **Introduction\***

The Doha Development Agenda (DDA) negotiations of the World Trade Organisation (WTO) are blocked. It is now nearly twenty years since the conclusion of the last multilateral round of trade negotiations. After repeated attempts to make progress the 8<sup>th</sup> WTI Ministerial Conference in December 2012 called for exploring new approaches to negotiations. This appears to have been interpreted by some as clearing the way for the use of plurilateral negotiations, in other words negotiations between a group of like-minded WTO members. Frustration with lack of progress in multilateral negotiations is understandable, but there are number of questions that need to be addressed in any balanced assessment of the pros and cons of plurilateral approaches. The first concerns how the deadlock in multilateralism has come about. A prominent view is that it has been due to the so-called Single Undertaking (nothing is agreed until a consensus of WTO members agree on all aspects of the DDA). This is at best a simplification, as there are a number of credible reasons for the lack of progress multilaterally.

Many questions arise regarding plurilateral agreements. One is whether plurilaterals will address the main blockages in trade and investment negotiations. Then there is the question of what we can learn from the use of plurilateral agreements in the past, for they are by no means a new phenomenon. Another question is whether plurilaterals will gain sufficient support for them to be credible as solutions to the challenges facing the international trading system, as opposed to a policy options for particular WTO members. Then finally there is the question of their impact on the international trading system and the WTO as a whole. This paper cannot answer all these questions, but it does address these questions. On substance it argues that there is in fact little prospect of plurilateral agreements being adopted within the WTO, and that the real focus should be on the impact of preferential or free trade agreements and how these can be accommodated within an international trading system.

## **Do plurilateral agreements address the challenges faced by the international trading system?**

There are two main assumptions underlying the proposals for plurilateral agreements. The first is that it has been the Single Undertaking that has been the main cause of difficulties in multilateral negotiations in the WTO. A second is that network externalities will oblige ‘non-likeminded’ countries to follow the lead of a core group so that plurilateral initiatives will achieve the ‘critical mass’ of countries or trade and investment necessary to make such approaches a success. This second assumption will be addressed below. The following section looks at the first.

There are alternative diagnoses for the DDA’s failings that are not much related to the issue of the Single Undertaking. The first relates to the shift in the relative market power among WTO member countries. In the past the trade agenda was shaped and led by a group of OECD countries. These, Often following a US initiative these both led the way in liberalisation and worked to establish a consensus on the trade agenda. In important instances this also meant work within the OECD itself on non-tariffs barriers to trade, such as technical barriers to trade, subsidies and government procurement (during the 1970s), agricultural subsidies (measurements of), services, intellectual property rights (during the 1980s). Although there were often heated disputes within the OECD group, it shared a broad consensus on trade and investment. This group was not unopposed. The G 77 group of developing countries pushed for a New International Economic Order (NIEO) during the 1970s in opposition to such an OECD led agenda. On trade specifically a group of 10 developing countries led by Brazil and India sought to block the Uruguay Round in the mid 1980s on the grounds that the

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\* Steve Woolcock (London School of Economics) June 2013.

agenda was not balanced and did not reflect developing country interests. What has changed during the 21<sup>st</sup> century is a shift in the balance of relative market power in favour of the emerging and developing countries (Abbott, 2011).

Some consideration of the concept of market power is required here. Under US leadership reciprocity shaped the political economy of the GATT and continues to shape the WTO. Market power in trade negotiations has therefore been defined as ‘what you brought to the table’, in other words what countries are willing to offer in terms of concessions or market opening. This negotiating coinage is shaped by market size of course, but also the level of market openness, market potential and the willingness to use leverage (the threat of market closure). As the proponents of transatlantic initiatives are especially keen to point out, the US and EU together still account for roughly half of world GDP, but both are substantially open markets and the EU and US have made binding commitments to keep them this way under the WTO. Growth prospects are also better in the emerging and developing economies. When one considers that it takes a good decade for trade liberalisation to be implemented, rational trade and investment policies will need to take a long term perspective. Of course the expected growth in the emerging markets may not materialise, but current expectations shape views on relative market power. Finally, when it comes to the use of leverage, it is not clear that the established market economies have the ability to act. High levels of interdependence mean that there are strong interests opposed to threatening and especially closing markets. In the European Union support of at least a strong qualified majority in favour of such a policy is needed, if not a consensus, and this is very unlikely to exist with some member states committed to liberal policies. In comparison the emerging markets have grown considerably in size, are still relatively closed and - equally important in any negotiation – their negotiators believe that the established economies need access to their growth markets in the future.

All these factors mean that the emerging powers and larger developing countries no longer feel obliged to follow any transatlantic or OECD-led coalition. The extra leverage of the emerging markets may be a partial explanation for the difficulties in the DDA, but if they are not ready to follow a core OECD-type group in multilateral negotiations they even less likely to follow them in acceding to a plurilateral agreement that has been negotiated without their participation. The emerging markets do not necessarily share the same views on trade and development as the OECD economies.<sup>1</sup> In other words it is not just shifts in the relative balance of market power that make agreement difficult, but also a lack of consensus on how the international trading system should develop. In the absence of such a normative consensus encompassing all major WTO members, what remain are the existing basic norms of the GATT/WTO, namely MFN and national treatment and above all reciprocity, which raises the issue of ‘differentiation’ between WTO members on their level of commitment.

There is a broad consensus that least-developed countries (LDCs) should be granted special and differential treatment (S&DT) in any trade or investment regime, but this does not extend to more advanced developing countries, such as China and India. These countries argue that measured by GDP/capita they remain developing countries and cannot therefore be expected to make commitments incompatible with their development needs. At the same time developed economy WTO members expect countries that account for a growing share of trade to assume more responsibility. Underlying many of the difficulties in the DDA has been the question of ‘differentiation’ or how to treat developing countries or when - and to what degree - the emerging markets should begin to assume greater commitments. A plurilateral approach that does not account for such differences in levels of development would therefore fail to address a central challenge facing the international trading system.

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<sup>1</sup> This has been seen as a ‘clash of globalisations’ or differences between emerging markets with more interventionist, developmental models and the generally more liberal OECD economies, (Gallagher. K 2011)

This brings us to a second factor blocking progress multilateral trade negotiations, namely the lack of a broad consensus on the agenda for negotiations. Right from the start of the DDA there has been a difficulty over whether it was reciprocal market access or development that was the focus of the negotiations. An initial ambitious agenda has been reduced to a conventional market access negotiation, which has still not been concluded. A plurilateral approach will therefore only succeed in the long term if it can contribute to reaching a consensus. As discussed below past plurilateral initiatives have been primarily driven by the offensive market access interests of specific powerful WTO members. Such an approach would not address the need to find a broad consensus on the trade agenda.

Any balanced assessment of the difficulties concluding the DDA must also include an assessment of the inability (or unwillingness) of governments to resist pressure from particular domestic lobbies or adopt a flexible approach to national preferences in the interests of concluding the negotiations. The inability to conclude the DDA in July 2008 despite the considerable progress made on both agriculture and NAMA was to a large degree due to a lack of such ‘leadership’ or ‘political will’ on the part of some key WTO members. According to this third interpretation then the difficulties are not so much to do with the negotiating modalities as with the domestic political economy of some key WTO members.

Equally important is that the option of preferential trade agreements has undermined the incentive to conclude multilateral negotiations. Even when the welfare gains from multilateral agreements are greater than preferential agreements are greater preferential approaches offer a means of reaping some of the economic benefits from liberalisation and are seen by some governments as a way of shaping international trade rules. In the case of the latter the impact is greater when large regional wide agreements can be concluded such as in the case of the Trans Pacific Partnership Agreement.

Rigidities in the negotiating process, particularly with respect to the Single Undertaking, consensus decision-making and a rigid adherence to modalities (Baldwin and Evenett, 2012) represent another interpretation of the inability to conclude the DDA. As a negotiating technique, the Single Undertaking principle means that nothing is agreed until everything is agreed. But there is in reality more flexibility than many WTO members are ready to show. Paragraph 47 of the Doha Declaration appears to allow early agreements to be reached and implemented on a provisional or definitive basis. But a lack of flexibility means WTO members are not ready to agree to anything until they know the exact shape of the final outcome. The interpretation that it has been the Single Undertaking that has caused all the difficulties then leads to calls for more “variable geometry”, including plurilateral or ‘critical mass’ approaches to allow members to proceed at different paces in the WTO (Rodriguez Mendoza and Wilke, 2011: The Warwick Commission, 20 07) .<sup>2</sup> These calls have come from the more established economies in the WTO. Developing countries tend to favour the retention of the Single Undertaking as a means of maintaining their ability to veto outcomes which do not match their interests.

There are therefore a number of different interpretations of the difficulties facing the world trading system. Views on the best approach to remedying the current impasse will be influenced by the relative weight placed on these competing explanations, as well as the national preferences of the WTO members themselves and views on what the trade agenda should be. For example, simply calling for a return to multilateralism does not reflect the reality that preferential agreements offer an alternative (even if second best). Calling for leadership does not reflect the challenges of dealing with the shift in market power and the need to address the issue of differentiation between WTO members

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<sup>2</sup> The Sutherland Report was the first to recommend variable geometry as the approach to negotiations in the WTO. See *The Future of the WTO: Addressing Institutional Challenges in the new Millennium – Report by the Consultative Board to the Director General Supachai Panitchpakdi*, 2004.

according to their level of development. Calling for plurilateral agreements does not address the shifts in market power or differentiation if they simply exclude emerging markets and developing countries.<sup>3</sup>

### **Have plurilateral agreements worked in the past?**

There are precedents for plurilateral approaches within the GATT/WTO. During the Tokyo Round of the GATT qualified MFN agreements were negotiated for technical barriers to trade, subsidies and government procurement. The TBT and subsidies codes were subsequently adopted as integral parts of the GATT (1994), which suggests that plurilateral initiatives can lead to multilateral rules. The conditions were however, very different during the 1980s and early 1990s when this occurred. The trading system was still shaped by a group of (sometimes US-led) like-minded OECD countries. Indeed, the conclusion of the Uruguay Round was made possible by the strong leadership of this group and in particular by a convergence of views between the US and the EU. The conditions in the 21<sup>st</sup> century are however very different in the sense that leadership by such a group is not sufficient without wider support.<sup>4</sup>

The plurilateral Government Procurement Agreement (GPA) negotiated in the 1970s has remained a separate agreement within the WTO. Government procurement was explicitly excluded from the scope of Art I - and implicitly Art III - of the GATT 1948, because of differences between the then major economies (especially the USA and Britain) over the feasibility of including rules on public procurement and the fact that governments at that time, and subsequently, have desired to retain the ability to use public contracts as an instrument of national industrial policy. In the decades that followed there have been repeated efforts to establish a liberal regime for procurement. Much of this was promoted by US offensive interests seeking access to the largely closed Japanese and European national procurement markets of the 1960s and 1970s (Woolcock, 2007). The early work on procurement was conducted in the OECD Secretariat and a draft code effectively transferred to the GATT during the negotiation of the Tokyo Round (Reich, 1997). A number of developing countries participated in the wider negotiations at the time of the GATT Tokyo Round, but none of them chose to accede to the final agreement. There were various reasons for this, but the main one was that the negotiations had been framed in terms of market access, even though much of the content concerned rulemaking.

There were also no specific provisions to account for the different levels of development of signatory countries. The rules were designed for developed country conditions. For example, the complexity meant that their implementation required a capacity in terms of purchasing officials to implement the agreement that developing countries did not have. There was scope for some differentiation between countries only in the sense that coverage of purchasing entities was up to each participant to negotiate. But the operative word here is 'negotiate' and the negotiations took place on a bilateral basis between the signatories to the GPA in order to achieve reciprocity. This put developing countries at a disadvantage due to asymmetries in the size of markets and ability to supply procurement markets. There were also no specific special and differential treatment (S&DT)

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<sup>3</sup> An interesting recent illustration of how views on what is needed for the trading system is provided by Carla Hills, the former USTR, who has argued that a policy of competitive liberalisation, such as the conclusion of a US-EU FTA, will precipitate multilateral agreement just as the conclusion of the NAFTA did in the Uruguay Round (International Herald Tribune, 25<sup>th</sup> April, 2013)

<sup>4</sup> There were three other plurilateral agreements adopted at the end of the Tokyo Round; one on civil aviation which provided for tariff free trade in plans and parts. This was signed by 31 countries, essentially Western Europe, North America, Japan and Egypt (and Georgia). There have been discussions about broadening the agreement but without much success. WTO dispute settlement applies to the agreement. The other two plurilateral agreements on bovine meat and dairy products were essentially about information sharing and were scrapped in 1997 because it was felt that the Agreement on Sanitary and Phytosanitary measures covered the same ground. In this sense then there was a multilateralisation of the agreements.

provisions in the GPA that would allow developing to maintain some preferential purchasing programmes to support infant industries.

The GPA was adopted in 1979 with only OECD countries signing up. Not all OECD countries signed the agreement, for example Australia and New Zealand opted not to sign. In subsequent years there were repeated reviews and updates of the agreement in 1984 and 1994 that resulted in modest increases in the scope of the agreement –especially in 1994 - but no widening of membership. In the most recent revision of the agreement explicit S&DT was added in order to make the agreement more attractive to developing countries. There was also a further extension of coverage by the existing signatories at the end of 2011, but efforts to bring China in failed. China had, on accession to the WTO, agreed to negotiate accession to the GPA but agreement has still not been reached due to differences of reciprocal commitments.

The Information Technology Agreement (ITA) of 1997 is held up as the best precedent for a successful market access plurilateral agreement, so it is worth assessing this approach. The origins of the ITA have been traced back to the ‘sectoral approach’ requested by the United States in the Tokyo Round and the ‘zero-for-zero’ approach to tariff elimination in the Uruguay Round, again promoted by the US. The pressure for sectoral negotiations on information technology in 1996 initiated from the – US based - Information Technology Industry Council (ITI) (WTO, 2012). This industry level initiative gained the support of the European and Japanese industry, but differences remained on the scope of an agreement. As one would expect issues concerning MFN and free-riding came up, as did the question of whether the agreement should cover non-tariff barriers as well as tariffs. The European Union in particular favoured coverage of NTBs and a number of developing countries sought to have their offensive sectors included, such as consumer electronics.

The issue of free riders and MFN was dealt with by adopting a critical mass approach in which the agreement would only come into force when WTO members accounting for 90% of trade in information technology signed up. There were originally 28 WTO members as signatories (the EC as one). It was the WTO Secretariat that did the work to show that 90% of trade in IT was covered (for the products concerned). The ITA required participating WTO members to amend their bound MFN tariffs in line with the WTO’s 1980 Procedure for the Modification and Rectification of Schedules of Tariff Concessions. In other words the commitments were made under the WTO and were extended on an MFN basis to all WTO members. On the question of sectoral coverage, there was initially an agreement within the Quad (US, EU, Japan and Canada) at the time of the 1996 WTO Ministerial meeting in Singapore. Potential new members pressed for an extension of the product coverage to include their offensive interests. But this risked unbalancing the existing agreement on coverage in the Quad so an agreement was reached on an accelerated product extension process to start immediately after the agreement came into force (WTO, 2012). Work did indeed start on a review in 1988, but thereafter no progress was made for many years. On the third issue of non-tariff measures, this proved too difficult to cover by means of a binding agreement.

The ITA therefore remained a tariff cutting plurilateral. For all the products covered the parties were to commit to zero tariffs, with no scope for sensitive products within the scope of the product coverage. But not all potential products were covered. The coverage was determined by negotiation among the parties and in particular among the quad. The debate on an extension of the product coverage continues today, 15 years after the adoption of the ITA and is focused on services related to information technology (Dreyer and Hindley, 2008).

In terms of country coverage this has increased to 74 , which suggests success. A large number of the new signatories to the ITA came as accession to the agreement as part of a wider negotiation. For example, China and Vietnam joined as part of their WTO accession processes. The new signatories from Central American joined at the time they negotiated free trade agreements with the United States. This suggests that they may have been some leverage from these other negotiations. Having said this

China is one of the major gainers from the ITA so it would have been in China's interest to join anyway.

Finally on non-tariff barriers there has been no real advance towards binding agreements. Part of the difficulty is that any new provisions under the ITA would require potential modification to be the WTO Agreement on Technical Barriers to Trade. Agreeing to a common approach to standards and conformity assessment is also difficult in a field in which technology is moving fast and in which, as in other industries, there are differences between countries on the relative importance of industry-led standards and quasi-public standards-making (Hufbauer et al, 2012).

The record to date on plurilaterals has therefore been mixed. Some of the qualified MFN agreements of the 1970s were later incorporated into the GATT/WTO as multilateral agreements. The ITA was able to achieve a critical mass, but only covered tariffs not rules which are arguably the more challenging aspect of current trade and investment policy. The experience with the GPA shows clearly that leadership of like-minded countries in negotiating a high standard agreement by no means guarantees there will be followers. Above all the existing plurilateral agreements all date from an earlier era in international trade when cooperation among OECD economies was sufficient.

### **Will plurilaterals succeed today?**

A number of key questions arise with regard to any attempt to negotiate plurilateral agreements in the current circumstances. First of all, will it be possible for a group of like-minded states to negotiate agreements that go significantly beyond the WTO to make it worth while? This is by no means a given. If a reluctance or inability of governments to overcome entrenched domestic interests has been an impediment to progress in negotiations at the multilateral level, there must be some scepticism that governments will be able to make rapid progress in plurilaterals. As noted above, this factor was at least as important in the difficulties faced by multilateral negotiations as any other. However, major OECD countries are negotiating a series of comprehensive FTAs with one another that are clearly WTO-plus. The US, EU and Japan have each negotiated broadly equivalent agreements with countries like South Korea, Chile and Mexico. These provide for nearly full tariff liberalisation, GATS-plus services commitments, liberalisation and protection of investment as well as rules on government procurement. If the current negotiations initiated between the EU and US, Japan and the EU, the US and Japan (as part of the TPP) are successfully completed then all will have advanced along broadly similar lines towards more comprehensive commitments. In such an eventuality rapping the various preferential agreements into one or more larger plurilateral agreements would seem to be a realistic possibility, although far from easy. The one important element missing of course is likely to be a common set of preferential rules of origin.

The more important question for the international trading system is whether this lead will be followed by the major emerging markets and the important developing countries. There is little indication that this will happen. Adoption of plurilateral agreements within the WTO requires a consensus. To press ahead with plurilateral agreements outside the WTO poses a real challenge to the multilateral system. This is problematic if you are of the view that all countries benefit from a viable multilateral trading system in the shape of the WTO.

A more inclusive approach that would enable plurilateral agreements to be brought within the trading system of the GATT/WTO, as all those to date have been, would have to satisfy a number of conditions. Offering MFN to non-participating countries would clearly help, but this runs counter to the currently strong sentiment against free-riders. The critical mass model of the ITA could be followed in which any commitments under a plurilateral agreement would be extended on an MFN basis once such a critical mass (of countries or markets) is achieved (Gallagher and Stoler 2009). In the current trading system a critical mass should surely include the current and potential future growth markets, in other words China, India and the other emerging developing economies. Anything short of

this is hardly likely to provide much value-added given the kind of bilateral liberalisation commitments already envisaged in the latest round of preferential trade negotiations discussed above.

Inclusion of the emerging-developing economies can however only be expected if two further conditions are met. First, they would need to be included in the negotiation of the plurilateral agreement and second, such agreements would probably need to provide for the progressive application of commitments depending on their level of development. Such an inclusive approach will probably be needed if the issue of 'differentiation' is to be addressed. As the experience with the GPA over three decades has shown, an approach based on negotiating a 'gold standard' agreement, in other words one that suits the most developed countries only and then expecting developing countries to accede to it, is unlikely to gain much support. In the case of the GPA it has proved necessary to include explicit S&DT provisions and scope for progressive liberalisation measures in order to interest developing countries. The counter argument to this is that network externalities will persuade non-participating economies to join, as was arguably the case with the ITA. This may hold for some market opening aspects of services, but more comprehensive rules touch upon overriding domestic sensitivities in many countries that will work against accession. A plurilateral agenda then becomes nothing more than a means of pursuing a rather narrowly focused competitive liberalisation strategy.

This leads to a third factor that might help to ensure emerging-developing economies support a plurilateral approach, and this is the topics covered by such a strategy. The history of plurilateral initiatives shows that the main protagonists and thus agenda setters have been the offensive sector interests (predominantly in the United States). This was the case for the Tokyo Round codes and the GPA in the 1970s, it was the case for the ITA in the late 1990s and it is the case in the current push for plurilaterals in the shape of a services negotiation. If the single undertaking blocks progress in negotiations this affects all parties. And if plurilateralism is good for some it should also be good for others. Therefore if a plurilateral approach is to be credible it would need to be more broadly based and include issues of interest to a wider range of stakeholders.

### **PTAs are the more likely route**

The approach adopted to plurilateral negotiations, such as in services, appears to more of a top-down, exclusive approach. This seems most unlikely to gain the level of support needed for inclusion 'within the WTO', in other words there is little prospect of a consensus in the WTO on such an approach. As all WTO members will wish to avoid a blatant rupture of the WTO regime by concluding an agreement outside the WTO, the most likely legal basis for agreements between WTO members seeking to move ahead is Art XXIV GATT or Art V GATS. GATS Art V appears to be the legal form preferred by 'The Really Good Friends of Services' group. But it can surely no longer be contested that the alternative of preferential agreements is undermining the incentive to conclude multilateral negotiations. The real challenge for the trading system is therefore to reassess the systemic effects of PTAs with a view to consolidating them. This might be done via the mutual recognition of tariff concessions route. In other words the parties to PTAs extend the same tariff liberalisation commitments to other PTAs. This would then come close to a plurilateral agreement for tariff liberalisation.

The rules elements of PTAs also need to be addressed because divergent rules would add to trade costs and be more difficult to multilateralise. Enhanced transparency for PTAs that included a careful and comprehensive comparison of the detailed provisions could provide the basis for work on best practice norms for PTAs or a voluntary-peer-reviewed code. Such a code would, like any plurilateral agreement, need to include provisions to facilitate the progressive adoption of commitments depending on the level of development of economies.

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