

## WTO Public Forum 2021

### **Making plurilateral negotiations support the multilateral trading system**

**30 September, 2021  
1130-1230 CEST (3pm-4pm IST)**

#### **Panellists:**

1. **Peter Draper** (University of Adelaide)
2. **Stuart Harbinson** (Senior Consultant, Retired WTO official)
3. **Hamid Mamdou** (Senior Counsel, King & Spalding, Geneva & Cairo)
4. **PSM**

**Moderator:** **Raymond Saner** (Director, Centre for Socio-Eco-Nomic Development (CSEND))

#### **Draft Speaking Note – Suggested Pointers**

We can focus on Question 3 (*What are the implications of plurilateral agreements for the multilateral trading system?*) and Question 5 (*What are the strategies and tactics available to developing and least developed countries in the negotiation of plurilateral agreements?*) posed by Raymond.

#### **1. Introduction**

1.1 The WTO's negotiation function is today being challenged from all directions. There is criticism of the WTO's failure to achieve consensus in multilateral negotiation rounds (that the WTO is not doing enough and is no longer fit for purpose). There is also criticism of the WTO when its members try to negotiate in smaller groupings plurilaterally (that the WTO should not deviate from its consensus-based negotiation structure and become a club of clubs).

1.2 Plurilateral agreements are not new to the world trading system. Many of the current multilateral WTO agreements (such as TBT, Antidumping Agreement) first emerged as plurilateral codes, starting from the Kennedy and Tokyo Round negotiations. Yet, there is a major difference between then and now – there was no multilateral trade organisation administering trade agreements at that time. Since the inception of the WTO, there is a sense that any efforts towards trade liberalisation should converge at the multilateral level.

## **2. The Prospects of Plurilateralism**

2.1 WTO members, particularly developing members, are now increasingly aware of the implications of taking on newer WTO obligations. It is a fact that the entire membership will not agree on issues easily, and reaching consensus will be challenging. A single WTO member can veto a decision to expand the negotiation agenda.

2.2 The WTO has always been member-driven, with limited roles for the Secretariat staff. Plurilateral initiatives like the four Joint Statement Initiatives (JSIs) that emerged at the 2017 Buenos Aires Ministerial can best symbolise this “member-driven” approach. Some JSIs have over half the WTO membership participating. Having separate plurilateral discussions does not imply abandoning issues that are already being discussed multilaterally.

2.3 It may be preferable that members negotiate plurilaterally while staying within the WTO umbrella, rather than negotiating new (*WTO+*) issues only in Regional Trade Agreements (RTAs) or plurilaterals outside the WTO. While it is difficult for new members to accede to RTAs after they have been signed, plurilateral agreements are relatively easier to join for new members.

### **3. The Perils of Plurilateralism**

3.1 At the Uruguay Round, it was the ‘grand bargain’ and the single undertaking approach that led to a successful negotiation. Consensus-based negotiation requires trade-offs and concessions to reach a result. While it is tedious, consensus-based negotiation allows countries with different comparative advantages in different products and services to balance their advantages and vulnerabilities. The scope for such trade-offs is limited in plurilateral negotiations. Similarly, “groups” of like-minded members have always played an important role in steering negotiations at the WTO. This will be lost in plurilaterals.

3.2 For developing countries, the WTO’s multilateral rules have allowed a way to externalise the domestic political and adjustment costs of reforms. Countries could point to rules collectively agreed by the WTO membership as giving them no choice but to comply. Plurilateral negotiations reduce the scope for such externalisation of domestic political costs. Even an open plurilateral does not have the same level of political buy-in that a multilateral agreement, negotiated by consensus, does.

3.3 Developing countries and LDCs still have diplomatic capacity constraints. While their capacity to engage in technical negotiations has improved, their numbers of diplomatic personnel remain low. The same officials have to attend not just multiple meetings within the WTO, but also meetings at other Geneva-based IOs. A proliferation of plurilaterals will increase the number and pace of such meetings. This is a clear capacity issue for DCs and LDCs.

3.4 There has been a challenge to the concept of Special & Differential Treatment (SDT) recently. The move towards more plurilateral agreements may

further erode SDT in the WTO framework, as it is unclear how SDT provisions will be dealt with in any plurilateral agreement. Similarly, it is not clear whether JSI outcomes will be enforceable under the Dispute Settlement Understanding (DSU).

3.5 Even if plurilaterals are concluded as “open plurilaterals” (*participation is optional, if the participants arrive at a negotiated outcome, the benefits will be shared on an MFN basis*), the issue is the lack of a say in the decision making process. JSIs are essentially issue-specific trade liberalisation. Who decides which are the potential areas on which agreement can take place plurilaterally? Even if the negotiated outcomes are not discriminatory and applied on an MFN basis, countries don’t know whether these outcomes will be aligned with their national interests.

3.6 There is a concern that plurilaterals with differing memberships within the WTO may give rise to inconsistencies with the existing WTO agreements.

3.7 After the Bali Ministerial in 2013, India opposed ratification of the Trade Facilitation Agreement (TFA) unless a (*temporary*) solution for public stockholding for food security purposes (PSH) was also approved. The single undertaking, consensus-driven model meant that the WTO membership had to agree, and both outcomes became a reality. If plurilaterals keep expanding, there is a threat of more outcomes in limited, newer areas, and a continuing stalemate on long-pending issues with global stakes.

#### **4. Way Forward**

4.1 We need to be pragmatic and accept that negotiation flexibility will be required in a changed world for the WTO to remain relevant. We need to find a balance between ushering in new negotiations (*plurilaterally/without consensus*) and moving forward on pending issues (*multilaterally/which require consensus*).

4.2 The new JSIs have a greater focus on regulatory issues like e-commerce and investment facilitation. These have very different levels of penetration in different countries. They are thus very sensitive issues, particularly for developing countries and LDCs. There is a need to first develop domestic regulatory capacity in these countries, before rules can be shaped internationally.

4.3 Existing multilateral mechanisms, such as the various WTO Committees, remain under-utilised. They can be used to conduct exploratory talks on new issues, instead of directly opting for the JSI-route.

4.4 We need to be cautious that the expansion of plurilaterals does not become a path to a complete destruction of the consensus principle at the WTO. Plurilaterals can complement and support a functioning multilateral system, but they cannot be a tool to fix larger systemic problems.