

Public Forum Panel on Making Plurilateral Negotiations Support the Multilateral Trading System, 30 September 2021

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I'd like to canvass *three* categories of plurilateral outcomes within the WTO in terms of their advantages and disadvantages. These are my own concepts and not official categories. The first two are in my view relatively less controversial and I will just talk briefly about them. But they are definitely worth our attention.

The first consists of *recommendations and declarations* by groups of Members. A good example is the package recently agreed by the Informal Working Group on MSMEs.

Some might regard this as a somewhat peripheral achievement in the legalistic WTO setting. I take a contrary view.

To me, it's a great example of a much needed *deliberative and policy-oriented* approach which has been sadly lacking in the WTO since its establishment. Sometimes we have to build brick by brick. Who knows where such approaches might lead in the long term? Perhaps Members might come back to issues like MSMEs in a few years' time and they will find that they have something to build on.

The WTO should not be all about binding legal commitments. There must be room for more debate about trade *policy*. The only occasion that has been provided in the past has been the annual overview of developments in the international trading environment under the TPR mechanism. Typically, debate has been distinctly desultory, with zero policy conclusions. It's unworthy of a so-called World Trade Organization in my opinion.

So, I congratulate those involved in the MSME exercise and hope others will follow in their footsteps.

The second option for accommodating plurilateral outcomes in the WTO is what I call *Concerted Autonomous MFN Scheduling*. 'CAMS' for short.

The examples we have are the Information Technology Agreement and the Basic Telecoms Reference Paper.

These involved groups of Members, having completed negotiations plurilaterally, assuming increased commitments *of their own volition* through their *individual* schedules, *on an MFN basis*.

However they did so in a *concerted* way so as to be assured of maintaining a 'critical mass' in terms of both coverage and quality. Techniques involved exchanging indicative draft schedules and, in the case of Telecoms, a reference paper and Protocol.

This is broadly the approach also being followed in the current JI on Services Domestic Regulation, which may well come to fruition, based on a reference paper, at MC12.

I know that there are some differences of opinion. However it would seem to me to be a travesty if Members were not even able *autonomously* to take on *additional MFN commitments in their own* schedules.

CAMS has been shown to be effective in the subject areas to which it has been applied to so far. Whether it could be applied to even more complex agreements in future, such as Investment Facilitation for Development, needs detailed consideration in context. Probably there are legal and practical limits.

Nevertheless, within these limits, this methodology is reasonably equitable in my view because of its MFN aspect; because participation is in principle open; and also because the procedures for technical certification of schedules allow for consideration of objections.

Finally, the third category concerns clubs of Members coalescing around certain issues. These clubs could be exclusive or open to others; and they could have an MFN aspect or to the contrary not.

Currently the WTO only accommodates the Plurilateral Trade Agreements in *Annex 4*. These are part of the WTO Agreement but do not create obligations or rights for Members that have not accepted them. They could be open to new Members joining, but most likely through an accession process, as in the GPA.

Under Article X.9 of the WTO Agreement, an agreement can only be added to [or deleted from] Annex 4 "*exclusively by consensus*". This is a very high bar, and indeed Annex 4 has not been expanded since the WTO was established.

Given the sluggishness of negotiations at the multilateral level over the last 25 years, influential groups on Members have launched a number of *open* plurilateral “Joint Statement Initiatives” on the margins of the WTO.

Much of the motivation is serious frustration with multilateral inertia. The Doha Round – launched almost exactly 20 years ago - was the last attempt to build a balanced WTO negotiating agenda with scope for trade-offs across the board. To my great regret, it failed.

There must now be a strong case for reviewing the conditions under which plurilateral agreements can be added to Annex 4, and allowing more flexibility in the types of agreements that can be accommodated. If both the multilateral and the plurilateral routes are blocked off, some Members will look elsewhere for solutions.

For example, a recent report from the Center for Strategic and International Studies has recommended the creation of a ‘Trade Compact’ between like-minded developed countries, as a competitor to the WTO.

Furthermore - and *paradoxically* - while clinging to the consensus requirement under Article X.9, the membership has simultaneously watered down the already-very-pliable rules for *Preferential Trade Agreements* (under GATT Article XXIV and GATS Article V). Although the latter may have a different legal nature as exceptions to WTO rules, the practical effects of PTAs and plurilateral agreements are similar.

The putative Trade in Services Agreement (not agreed in the end) is a case in point. Proponents envisaged this as an exclusive economic integration agreement under GATS Art. V, just because this was the path of least institutional resistance. But would that have been the best outcome for the system?

But modifying the conditions for Annex 4 is far from straightforward.

Among the issues which would need to be addressed is the question of *how open* any new plurilateral agreements should be, both during negotiations and to new adherents. If joining became a question of accession, this could favour first movers and result in asymmetry in levels of commitments.

The legal framework for Annex 4 might also have to accommodate agreements which conferred rights but not obligations on non-participants.

Another issue is the *scope of the subject matter* of, and *level of support* for, potential Annex 4 agreements. Should *any* trade-related issue be permitted, however controversial and *however limited* its support? Probably not.

Then there is the very real and important question of the *institutional capacity* of the large number of resource-constrained developing and least-developed countries. Would we need TFA-style arrangements so that they are not left behind against the background of an ever-expanding WTO agenda?

Then again, would we need safeguards against possible *inconsistency or overlap* with existing multilateral agreements?

There's now a degree of wistful thinking in some quarters about the *Tokyo Round 'Codes'* which comprised a set of plurilateral agreements.

My understanding is that this was no golden age. The system became fragmented. Even the adherents to the various Codes found over time that the level of participation was inadequate. Developing countries felt a sense of exclusion.

These deficiencies indeed led to the idea of the '*Single Undertaking*' in the Uruguay Round, meaning - in those days - that 'everyone is in every agreement'.

This is certainly not an argument against reviewing the conditions for Annex 4. The Tokyo Round could be seen either as an aberration or a precursor to a fully multilateral system. We should be aware of both the possible advantages and the pitfalls. We could also note that the institutional framework for plurilaterals is now more developed than it was in GATT times.

Rather it is very much an argument that Members need to engage in a serious debate about the modalities for allowing more access to it. Some ideas have been canvassed as a possible starting point – for example, a 'code of conduct'.

Resolving all the issues would not be easy or quick. But addressing them is becoming a pressing need. This, in a way, links back to my first point – which is that the Organization is crying out for serious engagement of matters of trade *policy*.

Summing up, I read recently the GC Chair's stock-taking of the issues Members would like to address at MC12. I was absolutely struck by the length and breadth of the list. In view of this, it's hard in my view to credibly

claim that the WTO is irrelevant. There is clearly enormous demand for its services.

But we can't just keep adding to the list for ever. Some issues have to be dealt with. Plurilateral agreements – carefully handled – offer part of the solution.