

## **Session 29: Plurilateralism against multilateralism? A multi-stakeholder perspective**

**Overall theme: Is multilateralism in crisis?**

### **Moderator**

Professor Raymond Saner, Director, Trade Policy and Governance Programme (TPGP), Centre for Socio-Eco-Nomic Development (CSEND)

### **Speakers**

H.E. Mr Yonov Frederick Agah, Ambassador and Permanent Representative of Nigeria to the WTO, Mission of Nigeria to the United Nations Office in Geneva

Mr Peter Draper, Senior Research Fellow, South African Institute of International Affairs (SAIIA)

Mr Stuart Harbinson, Former Permanent Representative of the Hong Kong Special Administrative Region of China to the WTO; former Senior WTO Official

Mr Lu Xiankun, Counsellor, Head of Division, Permanent Mission of China to the WTO

Mr Nicholas Niggli, Former Chairman, WTO Committee on Government Procurement; Counsellor, Deputy Head of the WTO Division at the Permanent Mission of Switzerland to the WTO and the European Free Trade Association (EFTA)

Mr Luzius Wasescha, Former Ambassador and Permanent Representative of Switzerland to the WTO and EFTA

Professor Robert Wolfe, School of Policy Studies, Queen's University, Canada

### **Organized by**

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## **Abstract**

The topic discussed by the panellists was to assess the potential impact of plurilateral agreements within the WTO multilateral trading system. Plurilateral agreements can be concluded by three or more WTO members and cover trade issues labelled WTO-plus, -extra and -minus. They can be adopted both within and outside the WTO framework. They can be “preferential” agreements or agreements based on the most-favoured-nation (MFN) principles. Future plurilateral trade agreements negotiated within the WTO could generate more transparency, and third parties’ rights could be better protected under the WTO dispute settlement procedure.

### **1. Presentations by the panellists**

#### *(a) Professor Raymond Saner, Director, TPGP, CSEND*

Professor Saner, who moderated the session, made introductory statements and introduced the speakers. The overview of this session was to discuss the concepts of multilateralism and plurilateralism in trade and to assess potential impact of new plurilateral agreements within WTO system.

In order to do so, panellists and the audience were invited to ponder the following questions:

- To what extent would it be possible to “multilateralize” new plurilateral agreements?
- How could new plurilateral agreements be negotiated?
- What are the implications of new plurilateral agreements for the multilateral trading system?
- Besides services (International Services Agreement, ISA), could other trade areas be negotiated through plurilateral approaches? If so, which areas?
- What are the strategies and tactics available to developing and least-developed countries should new plurilateral agreements be negotiated?

#### *(b) H.E. Mr Yonov Frederick Agah, Ambassador and Permanent Representative of Nigeria to the WTO, Mission of Nigeria to the United Nations Office in Geneva*

Plurilateralism was not a new concept, explained Ambassador Agah. Countries always come together in small groups to formulate, influence or negotiate multilateral frameworks. Plurilateralism represents a reaction to the failure of multilateralism – some countries are not willing to move forward with the liberalization process. Ambassador Agah then laid out the different approaches to plurilateral agreements:

- outside the WTO – regional trade agreements (RTAs), free trade agreements (FTAs) and preferential trade agreements (PTAs)
- inside the WTO – Tokyo Round “codes”, the Government Procurement Agreement (GPA) and the Information Technology Agreement (ITA)

- benefits extended to all members (MFN), whether or not they participate (“free riders”), while obligations bind only the initial members and others as they join
- benefits accrue only to participants who also undertake binding commitments.

Plurilateralism fragments and disrupts the larger multilateral process, including multilateral cooperation, on different issues. Furthermore, he continued, plurilateral agreements can violate the multilateral principles of universality, inclusiveness and transparency. These types of agreements imply a threat to the conclusion of the Doha Development Agenda (DDA), the “single undertaking” principle, and they favour the consolidation of RTA commitments and policy harmonization, sometimes going beyond the needs of some members.

Ambassador Agah concluded that any strategy for developing countries and least-developed countries (LDCs) vis-à-vis plurilateral agreements should support the following ideas:

- plurilaterals must preserve the multilateral character of the WTO
- plurilaterals cannot modify existing multilateral rules and disciplines, or introduce new obligations in any sector or agreement
- MFN application of all benefits
- an “opt in” and “opt out” approach
- plurilateral agreement to include favourable accession conditions.

*(c) Mr Peter Draper, Senior Research Fellow, SAIIA*

Mr Draper asked whether plurilateral agreements were necessary to save the Doha Round, and answered that they were necessary to save the WTO. He explained that the political economy had shifted and new approaches were needed. Plurilaterals could be part of the solution.

There are two broad types of plurilaterals:

- non-exclusive – MFN-type with benefits to all members, such as the ITA
- exclusive – PTAs, such as the Trans-Pacific Partnership (TPP) Agreement, and Annex 4, such as the GPA.

With MFN-type agreements, there are no issues. Almost all the WTO members are negotiating PTAs, and no problem is envisaged either. Mr Draper explained that an Annex 4-type agreement raised a problem because of the need to reach a consensus. In addition, there is the problem of free riders. He believed the next question should be on how to facilitate this consent.

The World Economic Forum (WEF) named a code of conduct including a range of things. Multilateralizing the benefits should be optional in the view of the WEF. A further consideration is to make the benefits available for LDCs. One important question to bear in mind is what would happen with the issues negotiated if a plurilateral way were adopted.

*(d) Mr Stuart Harbinson, Former Permanent Representative of the Hong Kong Special Administrative Region of China to the WTO; former Senior WTO Official*

There are two options to negotiating a plurilateral agreement, began Mr Harbinson. One is by getting a waiver under Article 9 of the General Agreement on Tariffs and Trade (GATT) (only exception for a limited time). The other is Annex 4, which requires consensus. There are two Annex 4 agreements: Trade in Aircraft and the Government Procurement. Alternatively, there are preferential agreements under Article 24 GATT and Article 5 of the General Agreement on Trade in Services (GATS), and there are also standalone agreements, such as the Anti-Counterfeiting Trade Agreement (ACTA).

Mr Harbinson also spoke of the plurilateral negotiating techniques used in the WTO context. These are used every time, he explained, giving an example in Services negotiations of the collective request-offer approach at the Hong Kong Ministerial Conference.

He added that there was a critical-mass approach to consider when conducting an agreement like the ITA: the agreement is expressed through the schedules and extended to all members through MFN. Some areas in which plurilateral approaches are being suggested is the agricultural sector. In the case of the plurilateral ISA, he posed the question: Why not ask LDCs to join and allow them to free-ride?

*(e) Mr Lu Xiankun, Counsellor, Head of Division, Permanent Mission of China to the WTO*

Mr Lu believed the main reasons for pursuing plurilateral agreements included a long stalemate of multilateral trade talks and like-minded groups liberalizing trade for the sake of their mutual interests to create incentives for multilateral agreement. An analysis should be carried out on a case-by-case basis, and he listed the considerations such as:

- whether to launch within the framework of the WTO
- whether adequate transparency is provided
- whether it would be subject to the WTO rules, including Dispute Settlement Body
- the possibility for latecomers to join
- the possibility to be “multilateralized”.

Some members took Services to negotiate a “plurilateral” agreement. There are views against this initiative: it diverts members’ attention, there is ignorance of development dimensions, it discriminates against developing countries, it breaks the DDA mandate and it ignores the negotiations results. However, there is also support: it creates momentum for revitalizing the DDA and it is beneficial to developing countries – the Warwick Commission Report on the future of the WTO was one such example given by Mr Lu.

In concluding, Mr Lu did not see FTAs or plurilateral agreements as an alternative for DDA. The implications for developing countries of negotiating those types of agreements are that they have fewer bargaining chips and it is hard to form broad interests groups. There is also less chance to balance among different topics and an inability to push topics of their own interest.

*(f) Mr Nicholas Niggli, Former Chairman, WTO Committee on Government Procurement; Counsellor, Deputy Head of the WTO Division at the Permanent Mission of Switzerland to the WTO and EFTA*

Maybe we are looking for the wrong scapegoat, asked Mr Niggli. There is nothing new about plurilaterals – most of them have been successful and have expanded.

Doing nothing was not an option, he continued, and making some progress was always better. The important thing is not the approach the agreement takes but its content. Plurilateral agreements by themselves are not important.

There is a need to move beyond sterile opposition. However, he warned that it was not easy to go the plurilateral way, and they could help rather than harm the system. Gradual multilateralization – critical mass permitting it – might be an option. The stepping-stone approach – instead of a stumbling block – should be done by doing the splits: be ambitious enough and welcoming but demanding.

*(g) Mr Luzius Wasescha, Former Ambassador and Permanent Representative of Switzerland to the WTO and EFTA*

Instead of looking into the substance, the focus is put on the form, reminded Mr Wasescha. This happened in the Uruguay Round. By looking at the content, we should make a distinction between market access and rule making.

There is a lack of trust among WTO members. This is the real problem and cannot be solved at the WTO only. It can help to do the technical work, creating possibilities to strengthen the system. If the core of the WTO is development, then it should not be surprising that market access happens somewhere else, for example, through PTAs.

Mr Wasescha believed the challenge was to bring in those members who were a little bit stronger to make agreements on some things. It is clear that the free-riding problem exists when there is a heterogeneous group of countries. However, this is not always the case. The ITA is an example: Brazil never participated in this agreement and it was their choice to not participate in this value chain.

*(h) Professor Robert Wolfe, School of Policy Studies, Queen's University, Canada*

According to Professor Wolfe, the institutional design of a plurilateral agreement involves less than full WTO membership, a limited range of issues, and critical-mass decision-making and not consensus. There is also a problem of asymmetry of interests on issues and partners. He then posed a series of questions.

Are rounds unnecessary for liberalizations? Who matters in a plurilateral agreement? Is a package a “single undertaking”?

He explained that there are three meanings of the single undertaking:

- The Doha Round package as re-defined through Hong Kong and July 2008.
- Negotiation has to be a package – the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking.

- The WTO acquis – “the WTO Agreement shall be open for acceptance as a whole”. The accumulated rules and practices must be accepted by new members, and all members must apply all agreements to all other members.

Professor Wolfe believed that other states were unlikely to conclude any negotiation with the United States without some version of “fast track”. The United States needs a package deal that does not unravel once submitted to Congress. Given heterogeneity of Congress, any deal has to have something for many different constituencies. The logic will tend to favour deals with a critical mass of issues and participants.

In concluding, he questioned to what extent it was possible to “multilateralize” plurilaterals? Most WTO negotiations are a linked set of self-selected critical-mass building blocks. The necessary bundling is in effect a single undertaking. At some stage, members have to agree on what is a necessary part of the bundle – to close the deal or to maintain integrity of the WTO acquis.

## **2. Questions and comments by the audience**

*Would a plurilateral agreement on subsidies be a WTO-minus or a WTO-plus type of agreement?*

It seems legally possible to make a plurilateral agreement in subsidies, but the benefits are not clear. This leads to the single undertaking issue, and experience shows that giving up subsidies is more efficiently done multilaterally.

*How can the lack of trust among WTO members be resolved?*

Governments are not looking at what is happening in the world but at what is it happening in their own “village”. The systems that we have do not reflect these realities. Trust is a key issue linked to the declining levels of competitiveness of some players. Nowadays, some states are talking about “re-industrialization” when other countries are at an early stage of industrialization. This is the problem for the WTO: different players in different situations with a lack of trust. A “coalition of the willing” seems to be a coalition for pressure: if the state does not join the negotiations, then it will be left behind. All in all, this is not a specific trade problem. A lack of trust happens everywhere during an absence of political leadership. The WTO has been successful in many things, like dispute settlement.

## **3. Conclusions**

Future plurilateral trade agreements negotiated within the WTO could bring more transparency, and third parties’ rights would be better protected under the WTO dispute settlement procedure.

If a plurilateral agreement were adopted outside the WTO framework, other WTO members would not need to be included and negotiations would not include other WTO members not

party to the agreement. It would then lead to the creation of a “soft law”, since a plurilateral agreement outside the WTO would not have the same legal and political weight and could not aspire to an “international standard”.

On the other hand, a plurilateral trade agreement within the WTO that extends MFN benefits to non-treaty WTO members would avoid trade distortions. Conversely, if a WTO-based plurilateral trade agreement is kept as a PTA (non-MFN), it would avoid free-riding by non-members and provide an incentive for others to join.