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The Future of the WTO

Multilateral or Plurilateral?

BY JAMES BACCHUS

EXECUTIVE SUMMARY

Since its 1947 inception as the General Agreement on Tariffs and Trade, the World Trade Organization (WTO) has generally practiced an all-or-nothing approach to multilateral negotiations in which the consensus of all WTO members was for trade liberalization. Although this approach worked throughout the second half of the 20th century, its shortcomings were laid bare by the failure of the Doha Development Agenda and the inability of WTO members to achieve further broad, multilateral trade liberalization. Today, amid heightened animosity toward additional trade liberalization, prospects for the traditional consensus-based approach seem dimmer than ever.

WTO members should not abandon their long-standing aim of liberalizing trade on a multilateral basis. But they should consider addressing the most pressing world trade issues through *plurilateral* agreements, through which a subset of WTO members agree on new trade commitments

and then either extend the benefits to all members on a most-favored-nation basis or offer nonsignatories the opportunity to join the agreements in the future.

This approach is not unprecedented. Plurilateral agreements have been a feature of the trading system for decades, and members are currently pursuing several plurilateral initiatives. Although some WTO members oppose plurilateralism, it is largely misguided, in part because it has the effect of shifting new trade issues and disciplines outside the legal framework of the WTO.

Plurilateralism should not supplant multilateralism, nor is plurilateralism an appropriate means for resolving every issue on which deep divisions among WTO members exist. Yet, at a time when the traditional approach appears to be ineffective, the plurilateral alternative can spur willing members to address some complex issues and, in the process, help restore the WTO's centrality in world trade.



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INTRODUCTION

In June 2022, the World Trade Organization stepped back from the abyss of irrelevance.¹ For only the second time since the establishment of the international institution in 1995, its 164 member countries were able to conclude a multilateral trade agreement—an agreement that is accepted and is binding on all WTO members. Indeed, they concluded several multilateral agreements: a waiver on COVID-19 vaccines, a set of new disciplines on fisheries subsidies, an agreement on food security, and an extension of a moratorium on tariffs on electronic commerce. These agreements are all noteworthy, and they are reassuring evidence that all the members of the WTO can, in fact, come together to get some things done—some of the time.

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Yet each of these multilateral agreements is less than it could and should be. And the list is long of the topics of potential multilateral agreements that are much needed but were not able to make it onto the WTO agenda for the June 2022 ministerial conference. Despite the recent successes, at a time when the WTO has been pushed more and more to the periphery in world trade by the forces of economic nationalism, and when a shift toward retreat is prevailing almost everywhere over the commitment to international cooperation, the prospects for the WTO accomplishing much more toward further trade liberalization through all-or-nothing agreements that require a consensus of all 164 members of the organization are not encouraging.

The WTO should not set aside its commitment to multilateralism, which is much needed in trade as in many areas of global concern. A new approach, however, is needed to pursue trade multilateralism. As an alternative to seeking a consensus of 164 countries for every agreement, it makes practical sense on many issues for WTO members to move forward instead within the WTO legal framework through

plurilateral agreements on such topics as digital trade and investment facilitation among some, but not all, the WTO membership. These plurilateral agreements should be open to any WTO member that wishes to join them. The aim should be to expand these plurilateral agreements over time into fully multilateral agreements that include all WTO members, which is legally permissible under the WTO treaty and has been done successfully in the past. For the WTO today, plurilateralism is the best path to multilateralism.

THE CONSENSUS APPROACH

Since its original formation by 23 countries in 1947 as the General Agreement on Tariffs and Trade (the GATT), the multilateral trading system that now covers about 98 percent of all world trade has progressed incrementally in freeing more trade worldwide largely through a series of multilateral rounds of negotiations that have included all the members of the system. The eighth of those rounds—the Uruguay Round—concluded in 1994 and led to the transformation of the GATT into the WTO in 1995. The ninth round—the Doha Development Round—began in 2001 in the immediate aftermath of the September 11 terrorist attacks and, after 14 years of disappointment after disappointment, in effect ended with the failure of WTO members to conclude it at the WTO ministerial conference in Nairobi, Kenya, in 2015.

Generally, the approach taken by the members of the system toward concluding new multilateral trade agreements has been by consensus in a single undertaking. Nothing has been agreed until everything has been agreed to by everyone. Thus, any one negotiating country can, conceivably, block any and all agreement. Even so, for decades this approach, while it sometimes took years to work, nevertheless did work. In the first decades after the creation of the GATT in the wake of World War II, it was possible to conclude such all-or-nothing multilateral trade agreements among all the members of the trading system that gradually advanced the world toward more trade liberalization.

The mutual advantages of multilateral agreements liberalizing trade are considerable. The most basic rules of the multilateral trading system are rules against trade discrimination. One of those rules requires most-favored-nation (MFN) treatment, meaning that any trade advantage given by one WTO member to another WTO member—such

as a tariff cut on a particular product—must be given also immediately and unconditionally to all other WTO members.² Thus, if country A makes a trade concession to country B to eliminate its tariffs on imports of widgets from country B, then that same concession must also be granted immediately and unconditionally to the entirety of the rest of the global alphabet of WTO members.

This has the effect of lowering the barriers to trade in widgets—not just between the first two countries—but among all 164 countries that comprise the WTO-based multilateral trading system. This, in turn, has the effect of increasing the overall global volume in widget trade. And this, in consequence, increases the overall global economic gains from widget trade. The advantage of multilateral trade agreements is, thus, that through the operation of the rule of most-favored-nation treatment, they multiply the gains from trade and extend those gains worldwide. The gains can then be shared domestically in each country according to that country’s own distributional and other designs. Hence, the understandable bias in the WTO system for multilateral trade agreements.

Likewise, the traditional bias in the system for reaching multilateral agreements by consensus is understandable. If a consensus were not required to conclude a new multilateral trade agreement—if, for example, WTO members employed the alternative provided in the WTO Agreement of deciding by a majority vote—then the new trade obligations in that agreement would be imposed on WTO members that may have abstained or voted against them.³ This is contrary to the basic principles of international law. Moreover, this is hardly the way to increase free trade, advance the cause of multilateral cooperation, and restore the WTO to its rightful place at the center of world trade. Clearly, countries should be bound only by those treaty obligations to which they have agreed. Anything other than that would lead to the rapid demise of the multilateral trading system.

During the first decades of the trading system, there were fewer negotiating countries. The United States and its European and other allies accounted for a large share of global GDP and thus were able to steer the negotiations toward their trade-liberalizing ends. There were also fewer divisive issues. For the most part, the early negotiating rounds dealt with tariff cuts. But then, in the latter decades of the 20th century, more countries became part of the system, developing

countries acquired a larger voice in the system, and the trade issues confronted by the system gradually extended beyond the mathematics of tariff cuts into the sensitive complexities of behind-the-border nontariff trade discrimination, thus facilitating deeper economic integration. The Tokyo Round, concluded in 1979, first began to grapple with some of these nontariff trade issues. The Uruguay Round, concluded in 1994, delved more deeply into them, producing a series of multilateral agreements on such nontraditional trade issues as trade-related health and safety concerns and the trade-related aspects of intellectual property rights.

Yet as the effects of trade globalization and other forms of international economic integration began to be felt, there was a growing political backlash against trade liberalization. This was especially so in developed countries that had made few provisions for cushioning the negative effects of trade liberalization on traditional manufacturing workers, who were confronting increased foreign competition because of lower tariffs and other lower trade barriers. The impetus for freeing trade subsided in these developed countries and in other parts of the world, and it became ever more difficult to reach new multilateral liberalizing trade agreements.

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The political possibility of concluding another major multilateral trade round by consensus of all 164 WTO members began to dim with the global financial crisis that began in 2008 and continued through 2011. It diminished further with the global retreat from international cooperation in trade and the embrace of a resurgent and spreading trade protectionism led by then president Donald Trump starting in 2017. Now, there is continued resistance to further trade liberalization in many countries amid the confluence of COVID-19 and the economic consequences of the Russian invasion of Ukraine.

To be sure, several new multilateral agreements have been concluded since the turn of the century, among them a public health waiver relating to HIV-AIDS drugs in 2001, a trade facilitation agreement in 2013, a prohibition on agricultural export subsidies in 2015, and the new agreements concluded at the ministerial conference in Geneva in June 2022. These are all hard-won achievements. These agreements, however, have been limited in scope. There is no current likelihood or impetus for undertaking broader multilateral negotiations that would confront the full range of trade and trade-related issues that increasingly confront policymakers. And the list of these largely unaddressed issues is lengthening with every passing day as the global economy continues to evolve into increasing complexity.

As it is, any one WTO member—for any reason—can, under the consensus approach, veto the conclusion of any multilateral trade agreement, even if all the other 163 members agree on it. This, too, is not the way to advance trade liberalization and achieve other WTO goals. Recalcitrant countries, we have seen, are not above threatening to torpedo years, even decades, of multilateral negotiations if they do not get their way. The sad tale of the slow death of the Doha Development Round is abundant evidence that, in the current state of geopolitics, the consensus approach that worked in the previous century will not work in the imminent and foreseeable future of this one.

What, then, is the alternative?

THE PLURILATERAL OPTION

It is widely lamented that the WTO is dysfunctional because it can no longer conclude multilateral agreements on the multiplying proliferation of trade and trade-related issues confronting the global economy. But despite what many politicians and other policymakers seem to think, WTO members are not required by the WTO treaty to agree on new trade obligations *only* through multilateral agreements that include all 164 WTO members. Plurilateral agreements that cover less than “substantially all the trade” between and among some, but not all, WTO members are clearly permitted by the WTO Agreement.⁴ (Such agreements are to be distinguished from free trade agreements that do cover “substantially all the trade” between and among the parties to them, which are also permitted,

as an exception to the basic MFN obligation.)⁵ These plurilateral agreements add new obligations and rights for the WTO members that are parties to them, but they “do not create either obligations or rights for Members that have not accepted them.”⁶

No permission slip is needed by WTO members to negotiate a plurilateral trade agreement on any matter falling within the scope of the WTO Agreement. That agreement “places no constraint on how plurilateral negotiations are initiated and organized. . . . There is no legal constraint on sub-sets of WTO Members discussing any aspect of trade policy among themselves and formulating policies to improve it.”⁷ With respect to plurilateral agreements on trade in services, new obligations can be added by modifying the existing WTO schedules of services commitments.⁸ With respect to plurilateral agreements on trade in goods, new agreements can be added to an annex in the WTO Agreement, which is where other plurilateral agreements have previously been placed.⁹ But new plurilateral agreements on trade in goods can be added to this annex only “exclusively by consensus,” and therein lies the political rub.¹⁰

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Why block a consensus to add a new plurilateral agreement? Some WTO members may not wish for the trading system to venture into a new policy area that may facilitate even deeper international economic integration. Or some members may be apprehensive that, even though they are not parties to a new plurilateral agreement, it may nevertheless, in its effect, add to their obligations or subtract from their rights as a member. And some members are so firmly committed to the principle of multilateralism in the trading system that they do not wish to allow any departure from it through something less than a fully

multilateral agreement, whether they support the policy goals of the proposed agreement or not. Then, too, the blocking of a consensus may, from time to time, be mainly an exercise in obstructionism for purely political reasons.

Members have successfully negotiated and implemented these deals on both an MFN and non-MFN basis (Table 1). Twenty-one parties comprised of 48 WTO members have concluded the plurilateral Government Procurement

Agreement, which provides for the mutual opening of government purchasing markets and has opened government purchases valued at \$1.7 trillion annually.¹¹ Eighty-two WTO members, representing 97 percent of world trade in information technology products, have entered into the plurilateral WTO Information Technology Agreement.¹² In 2015, an additional 201 products valued at more than \$1.3 trillion were added to the coverage of this agreement.

Table 1

WTO members have negotiated plurilateral agreements for decades

Agreement name	Purpose	Year effective	Number of WTO members	Coverage	MFN/Non-MFN
Trade in Civil Aircraft	Eliminate duties on all non-military aircraft and other covered products, and discipline government procurement and financial support for the civil aircraft sector.	1980	41	All civil aircraft; all civil aircraft engines and their parts; all other parts and components of civil aircraft; and ground flight simulators and their components.	Non-MFN
Government Procurement	Liberalize certain government procurement markets to international competition.	1981	48	Government procurement of goods and services specified by each party, and at or above a value specified by each party.	Non-MFN
Pharmaceuticals	Eliminate tariffs and other duties and charges on certain pharmaceutical products and their inputs.	1995	34	All finished pharmaceutical products and more than 7,000 active pharmaceutical ingredients (APIs) and chemical components.	MFN
Information Technology (ITA)	Eliminate tariffs on certain information technology products.	1997	82	High-technology products such as computers, telecommunications equipment, semiconductors, semiconductor manufacturing and testing equipment, software, scientific equipment, and their parts and components.	MFN
Information Technology Expansion (ITA 2)	Update and expand on the first ITA by eliminating tariffs on an additional 201 products, for which trade is valued at \$1.3 trillion per year.	2015	52	Additions include next-generation semiconductors and semiconductor testing and packaging equipment; optical lenses; GPS navigation equipment; and modern medical equipment, such as MRI products.	MFN
Services Domestic Regulation	Set out common rules on best domestic regulatory approaches to facilitate trade in services.	2021	70	No additional services trade liberalization. Parties commit to enhanced transparency, cooperation, and efficiency when adopting and enforcing domestic regulations affecting the provision of services by foreign entities.	MFN

Sources: “Agreement on Trade in Civil Aircraft,” World Trade Organization; “Agreement on Government Procurement,” World Trade Organization; “The WTO’s Pharma Agreement,” World Trade Organization; “Information Technology Agreement,” World Trade Organization; and “Services Domestic Regulation,” Geneva Trade Platform.

Notes:

- Only agreements that are currently in force are included. Sectoral agreements negotiated during the Uruguay Round, other than the Pharmaceutical Agreement, are excluded from this list.
- Member states of the European Union are counted on an individual basis.
- All members of ITA 2 are members of the original ITA.
- Commitments reached as part of the negotiations on Services Domestic Regulation do not exist as a standalone agreement, but are incorporated into the signatories’ liberalization schedules under the General Agreement on Trade in Services (GATS).

Option 1: Critical Mass Most-Favored-Nation Plurilaterals

One way to minimize the chances that a proposed plurilateral agreement will be denied a consensus is to stipulate up front that the benefits of the agreement will be extended to all WTO members, whether or not they have become parties to the agreement and undertaken its new obligations. The agreement is applied on an MFN basis. Thus, WTO members that have not signed the plurilateral agreement will be allowed to be free riders. Generally, the countries negotiating the agreement will be willing to do this if, altogether, they represent a critical mass of the global trade in the product or products that are covered by the agreement. What constitutes a “critical mass”? The WTO Agreement does not say, nor does economics offer any definitive answer; however, as a rule of thumb in trade negotiations, a critical mass is generally thought to be 90 percent.

An example of a plurilateral agreement that has been applied on an MFN basis is the Information Technology Agreement, which was originally agreed in 1996, includes 82 WTO members, and provides for duty-free treatment of information technology products. The agreement covers 96 percent of world trade in these products, thus minimizing any potential concern about free riders.¹³ Other plurilateral agreements concluded on an MFN basis since the establishment of the WTO in 1995 are two protocols to the General Agreement on Trade in Services (GATS): an agreement on basic telecommunications services and an agreement on financial services.¹⁴ Inherited from the GATT, and updated since the creation of the WTO, is an agreement on trade in pharmaceutical products.¹⁵

Option 2: Non-Critical-Mass, Non-Most-Favored-Nation Plurilaterals

Where there is no critical mass, and where the concessions in a plurilateral agreement would provide significant market access for free riders who are not parties to it if it were applied on an MFN basis, parties to the agreement may wish to deny its benefits to those WTO members that are unwilling to sign it and thereby accept its obligations. Economists, including many Cato Institute scholars, rightly contend that it makes perfect sense for any country to eliminate its trade barriers unilaterally, irrespective of whether its trading partners eliminate their own trade barriers. As a political matter, however,

the lowering of a trade barrier is described in the WTO as a “concession,” reflecting the reality that mercantilist reciprocity continues to drive most national trade policy. Thus, WTO members negotiating a plurilateral agreement will often seek a consensus of all WTO members to incorporate it into the WTO Agreement on a non-MFN basis. Only those WTO members that have signed the agreement will be entitled to its benefits.

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The Government Procurement Agreement (GPA) is such a non-MFN agreement.¹⁶ Agreed in 1979, it was incorporated into the WTO Agreement in 1994 and revised and updated in 2012.¹⁷ The 48 WTO members that are parties to the GPA have agreed to open their markets for government purchases of goods and services to the other parties to the agreement. Other WTO members, though, are reluctant to do so. Government purchases often represent a sizeable share of the national economy and, in many countries, domestic political pressures make opening these purchases to foreign competition difficult. Other WTO members are free to join the GPA, but if they do so, they must refrain from trade discrimination against other parties to the agreement. Because the GPA is non-MFN, the parties to it continue to discriminate in their government purchases against the goods and services of WTO members that are not GPA parties.

OBSTACLES TO NEGOTIATING PLURILATERAL AGREEMENTS INSIDE THE WORLD TRADE ORGANIZATION

The expectation of some of the founders of the WTO in the 1990s was that the WTO would become a framework for numerous plurilateral agreements—MFN and non-MFN

alike—that would gradually evolve into fully multilateral agreements. At first, this seemed to be happening with the conclusion of the Information Technology Agreement and the two protocols to the General Agreement on Trade in Services dealing with basic telecommunications services and financial services. The era of comprehensive all-or-nothing single undertakings in which nothing was agreed until everything was agreed by everyone on a whole array of trade concessions was thought to be over.

Then, when launching the Doha Development Round after the 9/11 terrorist attacks in 2001, WTO members, without evident reflection on the pros and cons of doing so, chose once more to embrace the traditional consensus approach. This choice ultimately doomed the round when, despite years of trying, developed and developing countries could not come together on a balance of mutual concessions on which all WTO members could agree. During the same period, efforts to conclude plurilateral agreements on environmental goods and services trade likewise failed.

“Ironically, the members of the WTO that oppose plurilateral agreements are being put precisely in the situation they have feared: they are being surrounded by new rules for trade that they did not play a part in writing but that they need to embrace if they are going to continue to trade successfully in the new world economy.”

Today, this impasse persists on many of the issues relating to the elimination of the remaining—and, recently, mounting—barriers to manufacturing and agricultural trade. Some of these long-standing issues can only be resolved multilaterally. For example, why would a few countries agree in a plurilateral agreement to eliminate their agricultural subsidies if other countries outside that agreement do not? There are, however, numerous old and new trade issues that can be addressed plurilaterally. Quite a few of them are more likely to be addressed successfully—at least in the near term—if

they are addressed on a non-MFN basis. Cumulative success in addressing these issues plurilaterally could contribute to building the political momentum needed to set aside the lingering anguish in the trading system over the fate of the Doha round and return to the negotiating table on some of the long-intractable manufacturing and agricultural issues that were central to it.

Yet, today, it is doubtful that any new non-MFN plurilateral agreement such as the Government Procurement Agreement could be approved within the WTO by the required consensus of WTO members. The preference for the first-best choice of multilateral solutions is deep-seated in the WTO, particularly among developing countries that are apprehensive of what they perceive as the possibility of having new trade obligations imposed upon them indirectly through their acquiescence to the inclusion of more non-MFN plurilateral agreements in the WTO Agreement. If, for example, a subset of WTO members comprised of some of the largest developed countries in the world agreed on a technical standard relating to digital trade or a professional standard relating to trade in services, then how, as a practical matter, could other countries keep from embracing it? Among the developing countries, India and South Africa have been notably outspoken in opposing plurilateral agreements, portraying them as potential threats to the principles of nondiscrimination and multilateralism that form the foundation of the WTO-based trading system.¹⁸

OPPOSITION TO PLURILATERAL AGREEMENTS WITHIN THE FRAMEWORK OF THE WORLD TRADE ORGANIZATION IS MISGUIDED

Yet, on this matter, these developing countries have been outsmarting themselves. Their adamant opposition to plurilateral trade agreements has not prevented the conclusion of such agreements. Rather, it has pushed the negotiation and conclusion of plurilateral trade agreements outside the legal framework of the WTO. Frustrated by their inability to address the new trade issues of the 21st century inside the WTO, many WTO members have concluded that they have had no choice but to go outside the WTO to deal with them. Hundreds of free trade agreements and other preferential trade arrangements have been reached outside the WTO

since the turn of the century. This has been a major factor in the shift of the WTO away from what was intended to be its central place in world trade. And, ironically, the members of the WTO that oppose plurilateral agreements are being put precisely in the situation they have feared: they are being surrounded by new rules for trade that they did not play a part in writing but that they need to embrace if they are going to continue to trade successfully in the new world economy.

“Past experience provides evidence that the negotiation of plurilateral agreements can be a pathway toward multilateralism within the WTO trading system.”

Of course, the economic downside of the piling up of these bilateral and plurilateral agreements outside the WTO is also exactly what these same WTO members have feared: trade discrimination. In the absence of the application of the MFN principle, an agreement to give favored treatment to one trade partner is also an agreement not to give that same favored trade treatment to another trade partner. It is discrimination. If a non-MFN plurilateral agreement has been approved by consensus of the members of the WTO to be annexed into the WTO Agreement, then other WTO members are able to eliminate any discrimination against them simply by agreeing to join the agreement, which will afford them its rights in exchange for their agreement to comply with its obligations. But, if that non-MFN plurilateral agreement is concluded outside the legal framework of the WTO, then WTO members—as with, say, the Comprehensive and Progressive Trans-Pacific Trade Partnership—will have to apply for membership to eliminate the discrimination and attain the agreement’s trade benefits. In the first case, *inside* the WTO, acceptance into the club upon expressing a willingness to abide by its terms is automatic. In the second case, *outside* the WTO, it is not. The current opposition of India and South Africa to concluding plurilateral agreements inside the WTO is simply leading to the conclusion of agreements outside the WTO of which India, South Africa, and other developing countries are not a part and in which they have no say.

There is abundant precedent for multilateralizing a WTO plurilateral agreement. In the Tokyo Round, which concluded in 1979, the contracting parties to the GATT concluded nine plurilateral GATT codes that applied only to those GATT signatories that agreed to be bound by them. Five of the GATT codes were later made fully multilateral by their incorporation in the WTO Agreement: the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the antidumping agreement); the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (the customs valuation agreement); the Agreement on Subsidies and Countervailing Measures; the Agreement on Technical Barriers to Trade; and the Agreement on Import Licensing Procedures. Without the 15 years of experience with the operation of these GATT codes, it is unlikely that a consensus on making them multilateral as part of the package of agreements reached in the Uruguay Round in 1994 could have been achieved. Learning by doing applies in trade as in much else, and this past experience provides evidence that the negotiation of plurilateral agreements can be a pathway toward multilateralism within the WTO trading system.

What, then, are the current opportunities for pursuing the plurilateral path toward multilateralism in the WTO?

THE PLURILATERAL OPPORTUNITIES

Encouragingly, a plurilateral negotiation was concluded successfully in 2021 on services domestic regulation. This is a notable achievement; apart from the early agreements on protocols on basic telecommunications services and financial services, little had been accomplished to liberalize services trade in the more than a quarter of a century since the adoption of the General Agreement on Trade in Services in the Uruguay Round. Negotiations on services got nowhere during the long years leading to the failure of the Doha Development Round. In the aftermath of the collapse of that round, in 2017, 59 WTO members launched a Joint Statement Initiative aimed at “increasing transparency, predictability and efficiency of authorization procedures for service providers hoping to do business in foreign markets.”¹⁹ They sought “new disciplines to help services trade flow more easily and to reduce unintended trade restrictions resulting from licensing requirements and procedures, qualification requirements and procedures, and technical standards and other measures.”²⁰

In December of 2021, 67 WTO members adopted a declaration announcing the successful conclusion of their negotiations.²¹ Since then, three more members have joined this group.²² In furtherance of this declaration, new disciplines on trade in services are in the process of being incorporated as additional commitments in the GATS schedules of specific commitments of the 70 WTO members that have adopted this declaration. These new disciplines are contained in a Reference Paper on Services Domestic Regulation.²³ They “focus mainly on the transparency, predictability and effectiveness of procedures that businesses have to comply with to obtain authorization to supply their services. They have been designed to apply to all sectors where participants have undertaken commitments in their schedules for trade in services.”²⁴

“Encouragingly, there is increasing interest by WTO members in addressing other and newer trade issues within the legal framework of the WTO in a plurilateral process.”

India and South Africa have questioned the legality of this approach to adding new commitments to the GATS.²⁵ Others have defended this approach.²⁶ Because the benefits of this plurilateral declaration will be extended to all WTO members on an MFN basis—including India and South Africa—it seems doubtful that those two dissenting countries will challenge the structuring of these additional services concessions in WTO dispute settlement. (It is, in any event, exceedingly difficult to apply, say, a licensing standard, to the services suppliers from one country and a different licensing standard to those from other countries.) The parties to the declaration on domestic regulation of services are proceeding with talks on potential additional disciplines, including on certification procedures.²⁷ After decades of stalemate, this breakthrough shows the way forward for future progress on further liberalization in trade in services.

As with domestic regulation of services, on some other issues WTO members are already shifting toward the plurilateral path. Despite the modest successes at the ministerial conference in Geneva in June 2022, there is

still scant political support for trying again in a multi-lateral negotiation to address the long-standing divides over manufacturing, agriculture, and more that were the focus of the agenda of the Doha Development Round. But encouragingly, there is increasing interest by WTO members in addressing other and newer trade issues within the legal framework of the WTO in a plurilateral process. This interest is being displayed on a number of fronts, both in formal negotiations and in discussions among various subsets of the WTO membership on specific trade topics that could lead to formal negotiations (Table 2). Procedurally, as with domestic services, most of these efforts have emerged from Joint Statement Initiatives (JSIs) announced by these assorted subsets of WTO members.²⁸ These current endeavors are opportunities for the WTO to build on the momentum emerging from the ministerial conference and make real progress toward restoring the role of the WTO at the center of world trade.

Pharma Agreement

Surprisingly missing from the list of topics that are most often mentioned as opportunities for plurilateral progress is the Agreement on Trade in Pharmaceutical Products, which was the only plurilateral agreement reached at the conclusion of the Uruguay Round in 1994.²⁹ The Pharma Agreement, as it is known, eliminates tariffs and other duties and charges on a sizeable number of pharmaceutical products and the substances used to produce them. Thirty-five WTO members are currently parties to this agreement. The scope of the product coverage of the agreement has been extended four times, most recently in 2010. Even so, it has not kept up with the growth and the diversity of the global trade in pharmaceuticals.

The parties to the agreement represent about two-thirds of all pharmaceutical trade, but, since the conclusion of the Uruguay Round, other WTO members have entered the pharmaceuticals market without also signing the Pharma Agreement. As a percentage of the burgeoning trade in pharmaceuticals, the coverage of the Pharma Agreement has shrunk. In 1994, the agreement accounted for about 90 percent of world trade in the covered products. At present, it accounts for only about 66 percent of that trade. Furthermore, the Pharma Agreement deals only with the tariffs on international trade in medicines and in what goes into

making them. It does not address the tariffs on the growing trade in other medical goods.

Thus, tariff-free trade in medical goods other than medicines remains mostly an aspiration for the WTO. To their credit, four WTO members—Macao, China; Hong Kong,

China; Singapore; and Iceland—have eliminated all duties on all medical products.³⁰ The other 160 WTO members have not. While most of the world continues to struggle to secure essential medicines and other medical goods at affordable prices to battle the ongoing COVID-19 pandemic (and perhaps

Table 2

Several plurilateral agreements and initiatives remain in progress; others have stalled

Agreement name	Type	Purpose	Year initiated	Number of WTO members	MFN/Non-MFN	Current status
Trade in Services (TiSA)	Agreement	Liberalize trade across different services sectors, in essence updating the General Agreement on Trade in Services.	2013	50	Non-MFN	Negotiations suspended indefinitely
Environmental Goods	Agreement	Reduce tariffs and liberalize trade in “green” goods.	2014	46	MFN	Negotiations suspended indefinitely
Investment Facilitation	Agreement	Facilitate foreign direct investment by improving the transparency of investment measures, streamlining and speeding up administrative procedures, and enhancing international cooperation.	2017	112	MFN (reportedly)	Text-based negotiations ongoing
Trade and Gender	Informal Working Group	Bolster efforts towards improving women’s participation in international trade.	2017	127	N/A	Active
Micro, Small, and Medium-Sized Enterprises (MSMEs)	Informal Working Group	Identify ways the WTO could support the integration of MSMEs in international trade.	2017	91	N/A	Active
Electronic Commerce	Agreement	Agree common rules in areas including enabling electronic commerce, promoting openness and trust in e-commerce, cross-cutting issues, telecommunications and market access for e-commerce firms.	2017	86	TBD	Negotiations ongoing
Trade and Environmental Sustainability Structured Discussions (TESSD)	Discussions	Promote discussions on trade-related practices and measures that can promote environmental sustainability.	2020	57	N/A	Active
Plastics Pollution	Discussions	Identify how the WTO could contribute to efforts to reduce plastics pollution and promote more environmentally sustainable trade in plastics.	2020	62	N/A	Active
Fossil Fuel Subsidies Reform	Discussions	Increase dialogue and information-sharing at the WTO with the aim to limit and, eventually, phase out fossil fuel subsidies.	2021	48	N/A	Active

Sources: “Trade in Services Agreement,” Office of the United States Trade Representative; “Environmental Goods Agreement (EGA),” World Trade Organization; “WTO Plurilaterals,” Geneva Trade Platform.

Notes:

- Informal Working Groups are formed with the aim of presenting nonbinding recommendations for action by WTO members. Discussions, meanwhile, are more informal arrangements with the aim of exploring potential avenues for action by the WTO and its members on the issues at hand.
- The Trade in Services Agreement (TiSA) was negotiated outside the WTO, but reportedly with the ultimate goal of incorporating it into the WTO framework.
- Member-states of the European Union are counted on an individual basis.
- GATS = General Agreement on Trade in Services.

prepare for future pandemics), most WTO members continue to apply tariffs that limit international trade in those products. Despite the labors of the like-minded Ottawa Group of WTO members, proposals to liberalize medical trade have not gotten far in the WTO, not least because of the puzzling opposition of the United States under the Biden administration.

“Although digital trade is growing exponentially internationally, regulatory restrictions on international digital trade are increasing at the same pace, if not more rapidly. WTO rules are much needed to limit these restrictions on digital trade by drawing agreed lines that clarify which restrictions are appropriate and which are not.”

To the list of initiatives that many WTO members are already undertaking, they should add the need to eliminate all tariffs on medicines and other medical goods, which would do much to contribute to the health of people throughout the world. Practically speaking, this could be done, in part, by expanding both the membership and the scope of the Pharma Agreement as part of a broader effort to include a comprehensive agreement within the WTO on trade and health.³¹ All WTO members should become parties to the Pharma Agreement, making it fully multilateral. And the scope of coverage of the agreement should be expanded to cover trade in all medicines and also trade in all other medical goods. This pandemic is not over. And this pandemic will not be the last one.

Environmental Goods Agreement

Also conspicuously missing from the agenda at the June 2022 ministerial conference was the proposed Environmental Goods Agreement. For more than 20 years, WTO members have been pursuing freer trade in environmental goods. The aim is twofold: to increase trade and to speed the spread of new environmental technologies worldwide. These innovative goods can be helpful tools for

confronting the many perils to the planet. They are especially needed in developing countries, which do not always have access to the advanced technologies of the developed countries. Global distribution of these environmental goods can best be accomplished through international trade. The lower the prices of these goods, the more that will be sold, and the greater the volume of trade in them will be. The border taxes we call tariffs add to the prices of goods and thus limit sales. The WTO members seeking to remove these impediments to trade are right in trying to do so.³²

When the multilateral negotiations in the Doha Development Round collapsed, 46 members representing nearly 90 percent of all world trade in environmental goods began negotiations on what would be an MFN plurilateral agreement. Yet this group of negotiating countries has been unable so far to agree on what constitutes an “environmental good.” All are agreed on including wind turbines, solar panels, and the like. But beyond this, the absence of an agreement on the scope of what more should be included within the meaning of environmental goods has impeded success from the outset. In their long effort to reach agreement, the trade negotiators have not tried to define environmental goods, they have only tried to list them. There was hope that a list of goods would be agreed to in time for the June 2022 ministerial conference, but that did not happen and the Environmental Goods Agreement did not make it to the agenda of the conference. Thus, the hopes were dashed—once again—for concluding this long-sought plurilateral agreement. Without question, these negotiations must move ahead, at last, to a mutually agreed conclusion.

Digital Trade

Trade is “increasingly defined by flows of data and information.”³³ About 12 percent of all goods traded internationally are purchased online, and about half of global trade in services is digital. The McKinsey Global Institute reports that, since 1990, the global economy is 10 percent larger than it would have been without those increased data and information flows—an added global economic output equivalent to \$7.8 trillion. Moreover, “Data flows account for \$2.8 trillion of this effect, *exerting a larger impact on growth than traditional goods flows*” [emphasis added].³⁴ Yet, there are no specific WTO rules on digital trade.

Although digital trade is growing exponentially internationally, regulatory restrictions on international digital trade are increasing at the same pace, if not more rapidly. WTO rules are much needed to limit these restrictions on digital trade by drawing agreed lines that clarify which restrictions are appropriate and which are not. If the members of the WTO can agree on rules for digital trade, then the abundant benefits of digital trade will spread more rapidly and more widely throughout the world. If they cannot agree on rules for digital trade, then the WTO will surely be relegated to the periphery of world trade; it will become increasingly irrelevant to the continuing advance of trade through digital connections of all kinds.

Eighty-six members of the WTO are currently negotiating on possible rules for digital trade pursuant to the announcement of a joint initiative on electronic commerce at the WTO ministerial conference in Buenos Aires in 2017. They are aiming for what they have described as a “high standard outcome” but have not yet defined. Their intention is to put in place more than merely the bare rudiments of a legal framework for governing digital trade.³⁵ It is unclear whether they intend for any agreement they reach to be MFN or non-MFN. They have completed a draft text, but it contains many provisions that have been put in brackets because the content of those provisions has yet to be decided. Meanwhile, bilateral and small plurilateral digital trade agreements outside the legal framework of the WTO are proliferating. These include the Digital Economy Partnership Agreement among Chile, New Zealand, and Singapore, which has a modular approach that would be a good a model for how the 86 WTO members might best proceed in structuring a WTO agreement.³⁶ In the 21st century, a world trading system without rules on digital trade is not truly a world trading system.

Investment Facilitation

At the ministerial conference in Buenos Aires in 2017, a group that now consists of 111 WTO members, comprising both developed and developing countries, endorsed a joint statement agreeing to start “structured discussions with the aim of developing a multilateral framework on investment facilitation.”³⁷ Examples of what an agreement on investment facilitation would contain include strengthened “electronic governance,” such as a “single electronic

window” that would publish investment documents and help streamline applications and admissions procedures for incoming investments, creating a national focal point for mediating and facilitating investor concerns with public authorities, voluntary standards of corporate social responsibility, and guarantees of transparency.³⁸

Ideally, this new WTO framework on investment facilitation would accompany, and perhaps be an expansion of, the multilateral Trade Facilitation Agreement, which was concluded in Bali in 2013 and is being phased into full implementation.³⁹ It, too, could be phased in over time, and it could contain differing obligations for WTO members at different stages of development. Moreover, it could be accompanied by technical assistance. Should WTO members not be able to proceed multilaterally on this topic, then it should be the subject of a WTO plurilateral agreement that could evolve into a fully multilateral pact.

“Ideally, this new WTO framework on investment facilitation would accompany, and perhaps be an expansion of, the multilateral Trade Facilitation Agreement, which was concluded in Bali in 2013 and is being phased into full implementation.”

The proposed investment facilitation agreement does not cover the difficult issues of market access, investment protection, and investor-state dispute settlement that are most significant to stimulating the flow of foreign direct investment, especially to developing countries. Rather, it focuses on the red-tape issues that frustrate foreign direct investment (FDI), mainly at the border. It could, though, help build the basis for addressing the tougher FDI issues later, once the investment facilitation agreement is in place. There are numerous issues relating to FDI that fall outside the scope of the WTO Agreement, but quite a few investment issues are trade-related, as evidenced by the core commitment of MFN treatment included in the WTO Agreement on Trade-Related Investment Measures.⁴⁰ Those WTO members wishing to add

to the limited obligations in this agreement can do so plurilaterally with the goal of extending the new obligations to more members, and eventually all members, over time.

Micro, Small, and Medium-Sized Enterprises

Yet another focus of plurilateral initiative is micro, small, and medium-sized enterprises (MSMEs). According to the WTO, “Today, 95% of companies across the globe are MSMEs, accounting for 60% of the world’s total employment.” Large multinational corporations have the wherewithal and the in-house technical know-how to navigate international trade, but many smaller businesses do not. In Buenos Aires in 2017, 88 WTO members announced an initiative to explore ways to provide better support for the participation of MSMEs in international trade.⁴¹ This group has now grown to include 94 WTO members, representing about 80 percent of global exports and 65 percent of global GDP.⁴²

In 2020, the WTO members engaged in the informal working group of this JSI endorsed a package of recommendations for facilitating this participation.⁴³ Their approach is “a developmental one” that emphasizes that “helping MSMEs to trade supports economic development by bringing new opportunities and connections to businesses in developing economies.”⁴⁴ Notably absent from this working group is the United States, although there are many thousands of American MSMEs that could benefit from the recommendations urged by this working group. At this point, the main objectives of the working group on MSMEs are trade facilitation, transparency and due process in domestic regulation, access to trade data, and access to trade finance. It is unclear whether this initiative will lead to a plurilateral agreement.

Gender Equity and Women in Trade

One more JSI launched in Buenos Aires in 2017 was an attempt to increase the participation of and elevate the role of women in trade.⁴⁵ At the outset, 115 WTO members were engaged in this initiative; today, that number has increased to 127. Like the initiative on MSMEs, the initiative on women in trade is not now aimed at changes in WTO rules. Instead, it is centered on sharing experiences, best practices, and best methods and procedures for bringing women more

fully into trade so that they can share in the benefits of trade and the multilateral trading system. It seeks inclusive trade policies that “can contribute to advancing gender equality and women’s economic empowerment, which has a positive effect on economic growth and helps to reduce poverty.”⁴⁶

A joint report by the WTO and the World Bank in 2020 shows how men and women are currently affected by trade differently.⁴⁷ The report “confirms that trade is largely beneficial to women, although many women continue to face discrimination and challenges.” Furthermore, it “shows that women have unique opportunities to benefit from new trends in global trade, specifically the rise in services, global value chains, and the digital economy. However, for women to fully reap these trade gains, different public policies aimed at reducing discrimination toward women in trade policy, supporting women’s capacity to engage in international trade and mitigating the risks from trade faced by women might be necessary.”⁴⁸

“The Joint Statement Initiative that presents the greatest potential for significant change in the WTO trading system is the structured discussion on trade and environmental sustainability.”

These new public policies must be a part of an overall endeavor to make trade more inclusive by sharing its benefits more widely. This is primarily a domestic challenge, but more can be done through the multilateral trading system to help facilitate such policies and ensure their success. Toward this end, in November 2021 the WTO members working on this matter issued a declaration affirming their commitment to a two-year plan for their continued work, looking ahead to the presentation of something more specific at the 13th WTO ministerial conference, for which the date and venue have not yet been set. They stressed in this declaration that “women constitute an economic force globally, that increasing their participation in the labour market to the same level as men’s and ensuring full recognition of women’s economic rights will raise Members’ GDP; and that the WTO can provide a venue to engage on trade and gender to positively

impact women’s economic empowerment and to achieve sustainable economic growth.”⁴⁹

Trade and Environmental Sustainability

The Joint Statement Initiative that presents the greatest potential for significant change in the WTO trading system is the structured discussion on trade and environmental sustainability—or, in the inevitable acronym, TESSD. Confronting the connections between trade and the environment was long on the back burner for the WTO, but pressures to do so have been increasing in recent years. In November 2020, 50 WTO members announced their intention to intensify work on issues at the nexus between trade and environmental sustainability. This has been gradually emerging as a major issue in world trade and will, unavoidably, move toward the center of the work of the WTO in the years to come.⁵⁰ At present, 74 WTO members are engaged in these structured discussions, accounting for 84 percent of all world trade.⁵¹ The statements relating to these discussions do not expressly say so, but the work of this JSI could become a prelude to formal negotiations.

“Perhaps most controversially in the wider world, pursuant to a statement they issued in June 2022 in Geneva at the 12th ministerial conference, 48 WTO members have embarked upon a high-level work plan that will set up a forum for dedicated discussions on the trade relevance of fossil fuel subsidies in the multilateral trading system.”

At this time, these discussions are centered on four issues relating to the links between trade and environmental sustainability: the relationship between trade and climate change; trade in environmental goods and services; a circular economy that provides incentives to use products more efficiently and to reuse them rather than scrapping them and then extracting new resources; and sustainable supply

chains. The discussants have noted the plethora of “issues where trade, environmental and climate policies intersect, including on circular economy; natural disasters; climate change mitigation and adaptation; fossil fuel subsidies reform; plastic pollution; combatting illegal, unreported and unregulated fishing and ensuring legal and sustainable trade in wildlife; the conservation and sustainable use of biodiversity; sustainable oceans; facilitating access to green technology; sustainable tourism; sustainable agriculture as well as trade in environmental goods and services.”⁵² This is a lengthy list indeed, and it is a list that will surely grow longer over time. For now, two of these issues are the subjects of parallel initiatives by some of these same WTO members.

Plastics Pollution and Environmentally Sustainable Plastics Trade

In November 2020, the same month that the structured discussions on trade and environmental sustainability were announced, a group of seven WTO members announced the beginning of an Informal Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Pollution.⁵³ At present, 72 WTO members are participating in this informal dialogue, representing countries that produce more than 75 percent of global plastics waste.⁵⁴ The aim of this dialogue is to identify “how the WTO could contribute to efforts to reduce plastics pollution and promote the transition to more environmentally sustainable trade in plastics.” Subjects of this dialogue include “improving transparency, monitoring trade trends, promoting best practices, strengthening policy coherence, identifying the scope for collective approaches, assessing capacity and technical assistance needs, and cooperating with other international processes and efforts.”⁵⁵ The other international undertakings this subset of the WTO membership are cooperating with include those of the United Nations, which approved in March of 2022 a plan to negotiate and conclude the first-ever global plastics pollution treaty.⁵⁶ Those engaged in the WTO dialogue on plastics pollution have emphasized their desire to complement, and not overlap, this UN endeavor.

Fossil Fuel Subsidies Reform

Perhaps most controversially in the wider world, pursuant to a statement they issued in June 2022 in Geneva at the 12th

ministerial conference, 48 WTO members have embarked upon a high-level work plan that will set up a forum for dedicated discussions on the trade relevance of fossil fuel subsidies in the multilateral trading system.⁵⁷ Notably, apart from Norway, the major producers of fossil fuels are not among these 48 members. In parallel with the work on subsidies by the TESSD, the 48 WTO members participating in these talks on fossil fuel subsidies reform are seeking “the rationalization and phase out of inefficient fossil fuel subsidies that encourage wasteful consumption along a clear timeline.” They aim to “elaborate clear options” for attaining this goal by the time of the 13th WTO ministerial conference. As with the WTO discussions on plastics pollution, these talks in the WTO on fossil fuel subsidies are part of wider discussions at the international level involving a number of international institutions.⁵⁸

The global stakes involved in the reform of fossil fuel subsidies were made clear in a presentation in the TESSD in March of 2022 by the International Institute for Sustainable Development. At a time when the members of the United Nations have committed in the Paris climate agreement to move away from the use of fossil fuels to reduce carbon dioxide and other greenhouse gas emissions, the calculation of annual global fossil fuel subsidies ranges from \$345 billion (Organisation for Economic Co-operation and Development) to \$440 billion (International Energy Agency) to \$5.9 trillion (International Monetary Fund). These numbers vary so widely because of the different forms of direct and indirect subsidies that are included in the calculations. These subsidies can distort trade by reducing the market share of a competitor, displacing the imports from a competitor, and reducing the competitiveness of alternative fuels that are more climate friendly.⁵⁹ Distorting the market by subsidizing the production and consumption of fossil fuels at a time when the world has agreed to reduce its dependency on fossil fuels for energy is, as a matter of public policy, perverse. Whether the WTO can play a role in reforming these fossil fuel subsidies depends on the outcome of this informal dialogue.

Food, Energy, and Industrial Inputs

Additional opportunities abound for concluding new plurilateral agreements—both sectoral and topical—within the

legal framework of the WTO. During a time of insecure supply chains and skyrocketing food and energy prices, particular opportunities are presented for negotiating plurilateral agreements related to food, energy, and industrial inputs. A plurilateral agreement could provide new disciplines for the dangerous imposition of food export restrictions. A plurilateral agreement could discipline energy export restrictions while also stimulating more sustainable energy practices and trade. A plurilateral agreement could remove tariffs and help harmonize standards on trade in many of the basic inputs that go into the making of industrial products. To date, none of these opportunities has been pursued seriously within the WTO. Now is the perfect time to pursue them.

CONCLUSION

These, and perhaps other plurilateral initiatives yet to come, can proceed toward the conclusion of plurilateral agreements within the WTO, while the members of the WTO struggle simultaneously to turn the WTO back toward effective multilateralism. To some, this may seem a contradictory thought. However, in the current trade climate, the best way to return to multilateralism is to embrace plurilateral approaches that can produce plurilateral agreements that can be extended over time to become fully multilateral, applying to all 164 WTO members. Just as the modest multilateral successes at the June 2022 ministerial conference in Geneva have given the WTO trading system a jolt of optimism, so, too, can successes that result from these plurilateral initiatives that are now being pursued by various subsets of the WTO membership. In the WTO, success can build upon success, whether of a plurilateral or multilateral kind. New rules that apply to some members can ultimately apply to all members once they are willing to accept them. As in the past, the watchful experience of new rules by those who have not yet accepted them can help lead to the eventual acceptance of those rules. In the meantime, the WTO will no longer be as limited as it is now in what it can achieve toward further trade liberalization. The WTO can become what it was meant to be by those who founded it: an ongoing and overarching architecture for addressing new trade and trade-related issues as they arise for all WTO members that are willing to address them.

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