

# **The Future of Multilateralism and the Role of Plurilaterals**

Remarks of

**Alan Wm. Wolff**

Distinguished Visiting Fellow

Peterson Institute for International Economics.

at

Nanyang Technological University

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It is a pleasure to join you today to discuss this important topic “The Future of Multilateralism and the Role of Plurilaterals”.

Singapore plays an outsized role in world affairs.

It has often punched above its weight. This has been true for decades. It was impressed upon me when I visited with Lee Kwan Yew decades ago when I was a American government trade negotiator, and it is true in the WTO today.

Singapore is on the forefront of innovation in the WTO, as an original proponent of the joint statement on e-commerce, which will lead to an agreement that will be good for the entire world economy, not least Asia.

In addition, Singapore, through its talented Ambassador, Tan Hung Seng, has led the effort to help the very poorest of countries by working for an exemption from export limitations on food purchases by the World Food Program.

Your subject today is a crucial one for the world trading system, for the WTO. Plurilateral agreements have become and will remain the primary path forward for improving the conditions for international trade.

Insofar as the future health of the multilateral trading system is concerned, there are three alternatives:

- (1) coalitions of the like-minded will be able to conclude open plurilateral agreements within the WTO,
- (2) forward-leaning agreements are negotiated outside the WTO but become templates for the multilateral rules, or
- (3) the WTO becomes increasingly irrelevant to new global challenges and there is a consequent fragmentation of the world trading system.

There have been a number of plurilaterals concluded during the history of the WTO and its predecessor, the GATT. These include

- the Government Procurement Agreement (GPA) -- opening up national government purchasing markets to those who join the agreement.
- the Tokyo Round's Agreement on Civil Aircraft providing duty-free treatment to aircraft and parts from any source.
- the Information Technology Agreement and the Pharmaceutical Agreement providing duty-free treatment for those products.
- as well as plurilateral negotiations on telecom and financial services

The form of plurilateral of most interest to our discussion today was initiated at the WTO Ministerial Conference, MC11, held in Buenos Aires in 2017.

The negotiation of these plurilaterals is open to all WTO Members. They cover –

- domestic regulation of services,
- investment facilitation for development,
- expanding the benefits of the trading system for micro, small and medium enterprises (MSMEs), and
- e-commerce.

These Joint Statement Initiatives (JSIs) were designed to lead to the negotiation of Open Plurilateral Agreements (OPAs).

The perfect place to locate the negotiation of agreements in many respects should be the WTO:

- The WTO is the only global trade negotiating forum.
- It is open and inclusive. Current information is readily available to all WTO Members equally, parties and non-parties, as to what is transpiring with respect to a JSI.
- Any Member can participate in the process of shaping an agreement as it is being developed.
- In a multilateral setting with a diversity of WTO Member involvement, a wide variety of perspectives can help inform the molding of rules more fit for global application.
- The WTO has a ready-made, skilled Secretariat in place to support the negotiators.
- The WTO has a serviceable dispute settlement system to enforce binding commitments (even in current circumstances with some issues to be resolved or worked around).

But there are also some disadvantages to using the WTO as a negotiating venue:

- Negotiating in the WTO is often slow, due to its procedures and its large and diverse membership.
- The negotiating process can be bogged down in broader policy arguments such as with respect to special and differential treatment that may complicate reaching an agreement.
- Because of the consensus rule, any issue in the WTO may be held hostage to other, substantively, unrelated issues.
- Where the consensus rule (meaning unanimity) applies, non-parties may have a say in what the agreement provides, and in the maintenance and evolution of the agreement once concluded, although not may not be joining the agreement.
- Once negotiated, it is not clear what path can be taken to dock an OPA into the fabric of the WTO, to make it part of the WTO *acquis*, unless all WTO Members agree by consensus that it be located there. And
- The greatest of all potential hurdles -- what is to be done about nondiscrimination, or MFN. If all 164 WTO Members are to be riders, whether they paid for the trip or not, the paying riders may not find this acceptable. (Of course, this problem would exist for parties whether the locus of the negotiation of the plurilateral is within or outside the WTO, if WTO obligations would be contravened.)

Where there is a need to provide structure and content to regularize international cooperation, as has proved to be the case in the emergence of the global digital economy,

countries will find the means to be responsive in the WTO or outside of it. There are alternative fora – with respect to e-commerce, CPTPP, was a pathfinder, reflected subsequently in the USMCA, and the U.S.-Japan Digital Agreement. The Regional Cooperation Economic Partnership Agreement (RCEP) also has some digital trade provisions.

More pertinently, there is the most recent example, Singapore, New Zealand, and Chile’s Digital Economy Partnership Agreement (DEPA).

In the health crisis of these last nearly two years, groups of like-minded Members have found the means to cooperate. Very early in the pandemic – a month after it was painfully clear to all that the world was in grip of a pandemic, Singapore and New Zealand announced on April 15, 2020, a Declaration on Trade in Essential Goods for Combatting the COVID-19 Pandemic, declaring it to be:

*an “open plurilateral” initiative, with other countries able to join at any point. It provides that participants will, for example,*

- *“eliminate all customs duties and all other duties and charges of any kind . . . with respect to all products listed in Annex I”;*
- *“not apply export prohibitions or restrictions . . . with respect to listed products”;*
- *“expedite and facilitate the flow and transit of these products across borders.*

This declaration was subsequently joined by Canada, Australia, Chile, Brunei, China, Laos, Nauru, the UAE, Uruguay, and Myanmar.

Separately, Canada led 49 WTO Members to declare that each would forswear imposing export restrictions on agricultural commodities during the pandemic.

Now, a year and a half later, the WTO is attempting to adopt a trade and health initiative at the upcoming 12<sup>th</sup> Ministerial Conference. No doubt, the earlier examples of plurilateral action have informed this WTO endeavor.

What comes next? If the WTO does not move multilaterally to deal with climate change, groups of like-minded countries crafting their own solutions. The equivalent of JSIs for three environmental subjects is planned for a launch at the upcoming WTO Ministerial Conference. These are directed at trade and environmental sustainability, plastics pollution and fossil fuel subsidies.

Global problems need global solutions.

The only practical way forward for the WTO is through open plurilateral agreements. Otherwise, Members who are looking for solutions will view the WTO as being increasingly irrelevant. The WTO to thrive needs to become more flexible.

Notionally, various subjects can be negotiated on their own, in disparate venues, each unrelated to the other, without full transparency, without interested countries having a say. That is a recipe for global incoherence. It is the opposite of what is needed.

Where trade is a vitally important aspect of meeting a global challenge – such as a pandemic or climate change, there is no clear alternative venue for addressing fully countries’ needs. The WTO must be pressed into service.

It is time for the WTO’s Members to take the next step and embrace the open plurilateral agreements being negotiated now and those that are going to be launched to meet their needs for the 21<sup>st</sup> century.

Thank you.

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Full text as summarized in remarks:

### **The Future of Multilateralism and the Role of Plurilaterals**

Plurilateral agreements have become and will remain the primary path forward for improving the conditions for international trade. Insofar as the future health of the multilateral trading system is concerned, there are three alternatives: (1) coalitions of the like-minded will be able to conclude open plurilateral agreements within the WTO, (2) forward-leaning agreements are negotiated outside the WTO but become templates for the multilateral rules, or (3) the WTO becomes increasingly irrelevant to new global challenges and there is a consequent fragmentation of the world trading system.

A plurilateral is literally simply an agreement that has more parties than two, more than a bilateral agreement. It has come to mean more: a coalition of like-minded WTO members, intent on addressing an international trade problem, who act together to reach an agreement which does not have the participation of all WTO Members.

For our purposes, these plurilateral agreements have a single focus, differentiating themselves from agreements that cover a broad panoply of issues, such as regional trade agreements such as CPTPP or RCEP. Even that nomenclature is going to be inappropriate, however, for CPTPP, if the UK accedes to the agreement, that agreement will move towards being a global agreement, but it is not the kind of plurilateral that we are discussing today.

There have been a number of plurilaterals concluded both within the GATT and the WTO. The term meant no more than “not all Members signed on,” so the agreement was not multilateral. The most formidable of these WTO plurilaterals is the Government Procurement Agreement (GPA). It is non-MFN, that is, only signatories get the promised access, which allows them to compete for the purchases by other signatories’ government agencies’ listed purchasing entities. The concept of this form of plurilateral agreement, based on reciprocity, was accepted as

a legitimate part of the multilateral trading system first as part of the Tokyo Round, when a Government Procurement Code was adopted, and later as part of the Uruguay Round. The GPA, updated in 2012, has 21 signatories, including the EU as one. As a result, 48 procurement markets are covered. Another form of plurilateral is nondiscriminatory in providing benefits to all. The Tokyo Round's Agreement on Civil Aircraft provided duty-free treatment to aircraft and parts from any source. The signatories presumably considered that free-riding was not a problem.

There are two other WTO tariff agreements that have fewer than all signatories but provide benefits to all. These are the Information Technology Agreement and the Pharmaceutical Agreement. The issue of nondiscrimination was side-stepped in the two agreements by having enough signatories covering some 90% of global trade in covered products. This made extending benefits to non-participants feasible. Again, the potential for free-riding was limited and therefore not so costly to signatories as to destroy the purpose of the agreement, at least at its inception. As China and India now count for substantial shares of world pharmaceutical production and have not joined that agreement, coverage has dropped to perhaps around 60%.

There have been plurilateral negotiations on trade in telecommunications services, with 108 WTO Members making commitments regarding the establishment of new telecommunications companies, foreign direct investment in existing companies and cross-border transmission of telecoms services. Most of these Members also commit to allow competition in basic telecommunications. Regulatory principles are provided under a Telecoms Reference Paper, with the commitment of 82 WTO Members to live by the enumerated best practices. Plurilateral negotiations on financial services expanded access in this sector on an MFN basis, to which have been added over time the commitments of acceding countries. (These two plurilaterals are the Fourth and Fifth Protocols under the GATS (1997), on telecom and financial services, respectively).

The form of plurilateral of most interest to our discussion today was initiated at the WTO Ministerial Conference, MC11, held in Buenos Aires in 2017. The negotiation of these plurilaterals is open to all WTO Members. They each focused on single subjects: domestic regulation of services, investment facilitation for development, expanding the benefits of the trading system for micro, small and medium enterprises (MSMEs), and e-commerce. These so-called Joint Statement Initiatives (JSIs) were designed to lead to the negotiation of Open Plurilateral Agreements (OPAs).

The perfect place to locate the negotiation of agreements in many respects should be the WTO:

- The WTO is the only global trade negotiating forum.
- It is open and inclusive. Current information is readily available to all WTO Members equally, parties and non-parties, as to what is transpiring with respect to a JSI. Any Member can participate in the process of shaping an agreement as it is being developed, serving its interests as a potential signatory.

- In a multilateral setting with a diversity of WTO Member involvement, a wide variety of perspectives can help inform the molding of rules more fit for global application.
- The WTO has a ready-made, skilled Secretariat in place.
- The WTO has a serviceable dispute settlement system to enforce binding commitments (even in current circumstances with some issues to be resolved or worked around).

But there are also some disadvantages to using the WTO as a negotiating venue:

- Negotiating in the WTO is often slow, due to its procedures and its large and diverse membership. For those who see a need to move quickly, the WTO can be too calcified as a venue to make it attractive.
- The negotiating process can be bogged down in broader policy arguments such as with respect to special and differential treatment that may complicate reaching an agreement.
- Because of the consensus rule, any issue in the WTO may be held hostage to other, substantively unrelated issues, such as not negotiating “new” issues until the Doha Round or other issues have been successfully addressed.
- Where the consensus rule (meaning unanimity) applies, non-parties may have a say in what the agreement provides and in the maintenance and evolution of the agreement once concluded, although not believing that they have a clear stake in having a workable agreement.
- Once negotiated, it is not clear what path can be taken to dock an OPA into the fabric of the WTO, to make it part of the WTO *acquis*, unless all WTO Members agree by consensus that it be located there; and
- The greatest of all potential hurdles -- what is to be done about nondiscrimination, or MFN. If all 164 WTO Members are to be riders, whether they paid for the trip or not, the paying riders may not find this acceptable. (Of course, this problem would exist for parties whether the locus of the negotiation of the plurilateral is within or outside the WTO, if WTO obligations would be contravened.)

If there is no consensus to make an agreement part of the WTO *acquis*, there will be a challenge as to how to make the commitments enforceable. The consensus obstacle seems to be being overcome or circumvented in the case of the JSI on domestic regulation of services by the OPA parties simply adding their commitments to their WTO/GATS schedules. This solution may not be palatable or feasible for other OPAs.<sup>1</sup>

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<sup>1</sup> *Plurilateral Trade Agreements: An Escape Route for the WTO?*, Hamid Mamdouh, Rudolf Adlung, Journal of World Trade, Volume 52, Issue 1 (2018) pp. 85 – 111

Where there is a need to provide structure and content to regularize international cooperation, as has proved to be the case in the emergence of the global digital economy, countries will find the means to be responsive in the WTO or outside of it. The TPP, and subsequently the CPTPP, was a pathfinder with respect to e-commerce (among other issues). This was followed by upgrading the NAFTA to address digital trade issues in what became the USMCA, and in the U.S.-Japan Digital Agreement. The Regional Cooperation Economic Partnership Agreement (RCEP) also has some digital trade provisions. Singapore, New Zealand, and Chile chose to negotiate a Digital Economy Partnership Agreement (DEPA) among themselves, not waiting for either the e-commerce negotiations to conclude within the WTO JSI.

The UK's application to join the CPTPP clearly moves the Agreement out of the regional agreement category and into something more global. With China's expression of interest in joining the CPTPP and DEPA, the broad multi-subject (née regional) plurilateral and the potentially global sectoral agreements become forms of agreements that can either diminish the relevance of the WTO or be precursors of and templates for future enhancements of the multilateral trading system.

In the health crisis of these last nearly two years, groups of like-minded Members have chosen to reach agreements outside the WTO. Very early in the pandemic – a month after it was painfully clear to all that the world was in grip of a pandemic, Singapore and New Zealand announced on April 15, 2020, a Declaration on Trade in Essential Goods for Combatting the COVID-19 Pandemic, declaring it to be:

*an “open plurilateral” initiative, with other countries able to join at any point. It provides that participants will, for example,*

- *“eliminate all customs duties and all other duties and charges of any kind . . . with respect to all products listed in Annex I”;*
- *“not apply export prohibitions or restrictions . . . with respect to all products listed in Annex I”;*
- *“intensify consultations with a view to removing non-tariff barriers on all products listed in Annex I and Annex II”;*
- *“expedite and facilitate the flow and transit of all products listed in Annex I and Annex II through their respective sea and airports”;*
- *“endeavour to expedite the release of such products upon arrival [,] including adopting or maintaining procedures allowing for submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of products”;*
- *“uphold [the] ICAO [International Civil Aviation Organization] Covid-19 Declaration, adopted by the ICAO Council on 9 March 2020, and ... endeavour to facilitate, entry, transit and departure of air cargo containing essential medical supplies” (link added); and*
- *“endeavor to not apply export prohibitions or restrictions with respect to the products listed in Annex II, unless they fall within exceptions set out in GATT 1994.” (emphasis supplied).*

This declaration was subsequently joined by Canada, Australia, Chile, Brunei, China, Laos, Nauru, the UAE, Uruguay, and Myanmar.

In another example of a plurilateral approach, when there were serious concerns on the part of some countries that the availability of food might be curtailed, Canada led 49 WTO Members to declare that each would fore swear imposing export restrictions on agricultural commodities during the pandemic.

Twenty months after the pandemic was felt with such obvious force as to close the WTO building, the WTO is attempting to adopt a trade and health initiative at the upcoming 12<sup>th</sup> Ministerial Conference. The pledges sought are broader, but not as deep as the Singapore-New Zealand open plurilateral,<sup>2</sup> nor as binding as the Canadian-led action on agricultural aspects. But if successful, the trade and health initiative will be both multilateral and more comprehensive in the subjects covered. No doubt, the earlier examples of plurilateral action have informed this WTO endeavor.

What comes next? If the WTO does not move multilaterally to deal with climate change, one could envisage groups of like-minded countries crafting their own solutions. The equivalent of JSIs for three environmental subjects is planned for a launch at the upcoming WTO Ministerial Conference. These are directed at trade and environmental sustainability, plastics pollution and fossil fuel subsidies.

To be most effective in a crisis, whether regarding human health during pandemics or human lives and livelihoods threatened with climate change, what makes the most sense given that these are global problems, is that there be an attempt to find and implement global solutions. It is impractical for all to move forward together in a convoy. It is likely that the world will first see those countries willing to innovate in finding solutions take the first steps on a path forward.

For the WTO, the venue where deliberations and negotiations take place is an existential question. Whether the issue involved is a global challenge, or just to improve international cooperation<sup>3</sup>, open plurilateral negotiations within the WTO will be needed. Agreements supported by all WTO Members with the idea that all would become parties have proved to be impossible during the 26-year history of the WTO, with one exception, the Trade Facilitation Agreement. This Agreement is likely not readily replicable for other subjects as it balanced the interests of the developing and the developed world on familiar issues and processes. This is not like e-commerce, venturing into a field of rapidly evolving technology, threatening unknown developments. Nevertheless, the only way forward for the WTO is through open plurilateral agreements. Otherwise, Members who are looking for solutions will view the WTO as being increasingly irrelevant. The WTO to thrive needs to become more flexible.

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<sup>2</sup> “New Zealand; Singapore: New Declaration on Trade in Essential Goods for Combating the COVID-19 Pandemic,” *Library of Congress*, April 17, 2020. <https://www.loc.gov/item/global-legal-monitor/2020-04-17/new-zealand-singapore-new-declaration-on-trade-in-essential-goods-for-combating-the-covid-19-pandemic/>.

<sup>3</sup> Bernard Hoekman and Charles Sabel. 2019. “Open Plurilateral Agreements, International Regulatory Cooperation and the WTO,” *Global Policy* 10(3): 297-312. <https://onlinelibrary.wiley.com/doi/full/10.1111/1758-5899.12694>,

Universal membership in an institution that cannot adapt to evolving needs will not be seen by its members -- from the smallest to the largest -- as being adequate. Inclusiveness is an important attribute of the WTO only to the extent that it means inclusion in addressing the most pertinent and common challenges its Members face.

Notionally various subjects can be negotiated on their own, in disparate venues, each unrelated to the other, without full transparency, without interested countries having a say. That is a recipe for global incoherence. It is the opposite of what is needed. Where trade is a vitally important aspect of meeting a challenge – such as a pandemic or climate change, there is no clear alternative venue for addressing WTO Members’ needs. The multilateral trading system evolved from the GATT to the WTO to meet the changing needs of the world economy nearly three decades ago. It is time for its Members to take the next step and embrace the open plurilateral agreements being negotiated now and those that are going to be launched to meet their needs for the 21<sup>st</sup> century.