Which Way Forward for the WTO? The Plurilaterals Debate

Background Note

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The Challenge

Slow progress in the Doha Round, and the proliferation of preferential trade agreements (PTAs) and mega-regionals (TTIP and TTP), have prompted concerns that the WTO is becoming irrelevant. The Bali Agreement has helped assuage concerns but there is a general consensus among policy analysts that it harvested the 'low hanging fruit' and 'does not clearly strengthen the system' (Bonnekamp 2013) and did little more than get multilateralism 'out of the emergency room and into the intensive care unit' (Baldwin 2013). A recent *Financial Times* article quoted one developing country trade official as stating 'Bali was very small. We can't say it publicly . . . But the WTO is irrelevant' (Donnan 2014).

Concerns about the WTO's inability to deliver agreements have led to a series of proposals for reforming the WTO's negotiating function and making it more efficient. This handout gives an overview of the reform proposals and their implications, particularly for small developing countries. It focuses on proposals to move away from two of the WTO's core negotiating tenets: i) the Single Undertaking (SU) approach (i.e. nothing is agreed until everything is agreed) and ii) the consensus principle (nothing is agreed until everyone agrees). While they may enhance efficiency, such proposals are likely to have substantial costs, particularly for inclusiveness and its ability to deliver outcomes that support development, reducing the WTO's legitimacy. **The challenge then is to find ways to make the WTO negotiation function more efficient whilst retaining inclusiveness and ensuring outcomes support development, thereby preserving the WTO's legitimacy.**

Plurilaterals: A Way to Revitalize the WTO?

The Single Undertaking (SU) is criticized for being 'badly crafted' and overly complicated (Hoekman 2011; Elsig and Cottier 2011). The complexity of 160 member states negotiating across multiple highly technical issue areas to find a compromise is an inherently complex and multi-year process. A particular concern is that the WTO negotiating agenda does not evolve and is unable to respond to include new issues. Similarly, the consensus norm is seen as a source of inefficiency and deadlock (Stoler 2013).

A move to issue-based plurilateral agreements (PA) is viewed as the primary solution *within the WTO*, particularly by developed country members, in order to speed up negotiations, address new issues and further trade liberalization. Plurilateral agreements are not new - during the 'club-of-clubs' era of the 1960s and 70s most GATT agreements were plurilateral. Only the Uruguay and Doha Rounds have been negotiated under a SU approach (and with the exception of the Government Procurement PA which was annexed, these PAs were folded into the Uruguay Round negotiations and became an integral part of the final agreement). As progress in the Doha Round has been slow, members have started to look to PAs once again. In 2012 a PA on services was launched (Trade In Services Agreement, TISA) and off the heels of the Bali Agreement, the US, the EU, Japan, China and several other (mostly

developed country) members have announced the start of negotiations on a PA to liberalise trade in environmental goods.

PAs can be divided into two types: inclusive and exclusive (Draper and Dube 2013; Medonza and Wilke 2011). *Inclusive* PAs, also known as 'critical mass' agreements, are negotiated on an MFN basis and entail conditional, unilateral, sectoral liberalisation. Because they are negotiated on an MFN basis, they can be challenging to initiate as a 'critical mass' of participants is needed to create sufficient incentive for members to overlook the free-rider problem. This is traditionally taken to mean 90% of world trade, a standard to which most plurilaterals comply (Hufbauer and Schott 2012). Examples of inclusive PAs include the new environmental goods PA, and proposals for specific value chain PAs (Hoekman 2013).

In contrast, *exclusive* PAs are negotiated on a non-MFN basis and benefits are restricted to members. Examples include the Government Procurement Agreement (1994) and the International Services Agreement under negotiation. As there is no free-rider problem, these agreements can be initiated among a small group of members so do not necessarily cover a 'critical mass' of world trade. The Government Procurement Agreement for instance, only covers about 50% of world trade (Hufbauer and Schott 2012).

At present incorporating a new PA into the WTO (under Annex 4) requires the consensus of all WTO members. This means that approval of exclusive PAs is particularly hard to obtain: a PA that is designed to extend narrowly defined market access concessions only to those WTO Members who reciprocate is highly likely to be rejected by those who are excluded from (or simply decided not to participate in) the PA (Hoekman and Mavroidis 2013). Members wishing to negotiate an exclusive agreement have the alternative option of negotiating a PTA outside of the WTO and notifying under Article IV of GATT or Article V of GATS. However PTAs cannot be limited to a single-issue area, they must cover 'substantially all trade' between the partners. Thus while it is a possibility for the TISA, so long as it has sufficiently broad coverage of trade in services, it would not be an option for a narrow PA on a specific global value chain for instance.

There are calls to change the approval process for PAs on the grounds that consensus is unnecessarily cumbersome. PAs (inclusive and exclusive) could be approved by waivers under Article IX:3, requiring approval from ¾ of members (Hufbauer and Schott 2012) or voting rules could be changed so that the same 2/3 applies as to accessions (Hoekman and Mavroidis 2013). Alternatively a rule could be created that allows a PA to go-ahead if it encompasses 'substantial coverage' of world trade (taken to be 40% or above) (Hufbauer and Schott 2012) or a 'critical mass' of world trade (where 90% of trade is the norm).

The advantages of PAs, especially in relation to PTAs, is self-evident – they can be issue-specific and thus don't entail a complex linkage of issues, are open to any country, can make use of the WTO's Dispute Settlement Mechanism and are largely transparent to outsiders (Hoekman 2013). Relying more on plurilaterals would 'move the WTO back towards a negotiating modality that has a proven track record of success' (Hoekman 2011) and would offer a mechanism for subsets of WTO Members to move forward on issues of common concern. (However it is noteworthy that a move to PAs would not unlock the impasse on market access issues that have been central to the deadlock in the Doha Round: ultimately large countries want more concessions in these areas than other members are willing to give.)

…or a Recipe for Loss of Legitimacy and Undermining Development?

A shift to facilitating plurilateral agreements within the WTO is justified on efficiency grounds and it is likely to lead to new agreements. Yet there are clear disadvantages, particularly for smaller developing countries, and it is important to weigh these carefully.

Developing countries have fought hard for a seat at the WTO negotiating table and to make the WTO more inclusive and transparent. Despite its shortcomings, the fact that the WTO is inclusive and all countries have a voice sets it apart from the other Bretton Woods Institutions (the World Bank and International Monetary Fund) and gives it more legitimacy. Just as important, inclusion of developing countries is vital for ensuring that trade agreements reflect their interests and the consensus norm is strongly supported by developing countries (Wolfe 2009; Vickers 2013).

The debate on plurilaterals has taken a relatively narrow approach, assuming that a club-like agreement is acceptable from a development perspective so long as it operates in accordance with the MFN principle of non-discrimination, or if, at a minimum it does not discriminate against LDCs (Hoekman and Mavroidis 2013). The implicit assumption that 'free-riding' on trade liberalization pursued by others is a major gain for small developing countries. Yet small developing countries require more from the negotiating function of the WTO than the ability to free-ride if agreements are to support their development. Five spring to mind:

1. Binding commitments from large players to rein in harmful and distortionary practices (e.g. cotton subsidies)
2. Financial support to overcome implementation and adjustment costs (e.g. Aid for Trade in trade facilitation, compensation for preference erosion to support economic restructuring)
3. A differential approach to rules including exemptions where rules would otherwise work against their interests
4. Provision for longer-phase in periods (e.g. TRIPS and LDCs)
5. Positive discrimination (e.g. Duty-free, quota-free access and the services waiver for LDCs)

What would be the implications of moving away from the consensus principle and Single Undertaking for the ability of small developing countries to secure these objectives?

The Consensus Principle

As PAs require consensus to come into force, any WTO Member can say no when the final text of a proposed PA is presented to them. Moving away from a consensus approach would have the advantage of preventing single countries or small groups from holding negotiations to ransom spurious reasons (Hoekman and Mavroidis 2013). Yet it is also the case that abandoning this norm would make it much more difficult for small developing countries to secure their interests.

Under a shift to majority voting (2/3 or 3/4) or automatic approval when a PA covers a 'critical mass' of market share, a substantial number of countries would be disenfranchised. A shift towards a critical mass approach is particularly problematic. A quick back-of-the-envelope calculation based on shares of world exports in some key sectors where members may wish to pursue a PA is a stark reminder that trade is often highly concentrated (Table 1) so only a handful of countries would need to be in the negotiating room.

Table 1: Possible Representation Challenges in 'Critical Mass' Plurilaterals

Sector	**Number of Countries At the Negotiating Table (assuming 90% of total exports = threshold)**	**Developing Countries Included**
Automotive products	8	Mexico, China, Korea, Thailand, Turkey
Pharmaceuticals	7	China, India, Panama
Textiles	16	China, India, Turkey, Hong Kong, Pakistan, Indonesia, Viet Nam, Thailand, Mexico, UAE
Financial Services	8	Hong Kong, India

Source: Automotive, Pharmaceuticals and Textiles data from *Comtrade and Eurostat data accessed at WTO Statistics Database.*
Financial Services data from ITC, UNCTAD, WTO joint dataset accessed at ITC TradeMap

Of course other countries could seek to join a PA negotiation and many argue that the WTO should have a rule of open membership. However in practice, once a 'coalition of the willing' is formed that meets the requisite minimum criteria, this core group has no incentive to include other members if their interests and negotiating objectives are substantially different (the current TISA negotiations are a case in point). Inclusiveness is particularly threatened if reaching a 'critical mass' of market share is the basis for approval, as so few countries would be required. However even under a system of majority voting, the interests of 40-50 members could be brushed aside (note that the Africa Group has 48 WTO members, the LDC group 34, and the SVE group 20).

One objection to PAs, made by India in WTO discussions, is that this could open the door to agreements among subsets of countries on controversial issues such as labor or environmental standards. For issues that a very substantial number of countries finds problematic or a PA that is highly discriminatory, it may well be the case that a 2/3 or 3/4 majority can be relied on to block them (Hoekman and Mavroidis 2013). Yet sub-groups of small developing countries often have specific interests (of the type listed above) where they require action from other members, and the consensus principle enables them to exert leverage. Under the present rules governing PAs, it is possible to envisage a scenario where a small group of developing countries refuses to approve a PA unless action is taken on an issue that is of importance to them, which may or may not be linked to the PA in question. Take the example of cotton subsidies. Outside of a negotiating arrangement based on consensus, how would four West African countries have even managed to put this issue on the agenda?

A related concern is with the precedent-setting effect of PAs. Agreements are likely to reflect the interests and current practices of the initial signatories that may not be appropriate for developing countries, particularly the least developed. Yet developing countries may find themselves under competitive pressure to adhere to new rules in order to compete in PA-participating markets (Draper and Dube 2013). It is not clear under current WTO rules how much scope non-participants would have for insisting that substantive changes are made to the agreed text at the point of approval, although this may be one option for influencing PA texts. Subsequent accession is more problematic as accession is typically based upon would-be entrants satisfying conditions unilaterally imposed by incumbents. Incumbents may seek to impose a heavier price than they paid on new entrants so that WTO Members seeking to join a PA might find the door closed (Hoekman and Mavroidis 2013).

Given present geopolitics, in practice, any of these options for moving away from consensus is likely to result in PA negotiations revolving around an alliance of OECD countries together with 'like-minded' middle-sized developing countries (in the case of an approach based on market shares) or an alliance of OECD countries and small developing countries (who could provide the numbers for an approach based on majority voting). This would enable OECD countries (the main proponents of PAs) to isolate large developing countries with very different negotiating positions (although given China's growing market share in many sectors it is increasingly hard to meet a 90% threshold without including China).

Under either scenario (market-share or majority voting) it will be harder for small groups of developing countries (like the cotton-four) to advance an agenda, although the prospects for larger coalitions of small developing countries (such as the Africa and LDC groups) would be mixed. Under a majority-voting scenario, coalitions may find themselves able to use their votes to secure action from the larger players (whether OECD or large developing countries) on specific issues. However they may also be perceived by larger states as vulnerable targets and easy to 'pick-off' for relatively small concessions. Under a market-share scenario, even coalitions of small developing countries would be able to exert little influence.

Overall, abandoning the consensus principle is likely to have high costs for the WTO's legitimacy and the ability of small developing countries to secure their interests. One way to allay fears of consensus unnecessarily slowing down negotiations would be to set some limits to its operation by, for instance, requiring countries to explicitly justify any decision to withhold their consent on the grounds of vital national interest and to present their case in writing

(Sutherland Report 2004). In addition to preserving the consensus principle in PA approval, options to safeguard inclusion and development in PAs include i) requiring the WTO Ministerial Conference or the General Council to launch PA negotiations, thereby implying a collective decision by all WTO Members; ii) establishing criteria for the determination of what constitutes a critical mass on a case-by-case basis, taking into account the political and economic position of individual countries; iii) providing for particular 'opt out' provisions for WTO Members in negotiation clauses; and iv) applying all agreements on an MFN basis (Mendoza and Wilke 2011).

The Single Undertaking Approach

Evaluating the implications of abandoning the Single Undertaking approach is harder. The Single Undertaking approach was introduced during the Uruguay to stem the fragmentation that resulted from a plurilateral-based approach in the 1960s and 70s. From a negotiating perspective, the major advantage of the Single Undertaking is that it facilitates agreement by allowing countries to trade-off concessions across issue areas. Indeed a broad-based Doha Round based on the Single Undertaking was seen as necessary to break out of the deadlock of the unsuccessful single-issue negotiations on agriculture and services generated by the Uruguay Round's built in agenda, and reinstate issue-linkage as a negotiating construct (Vickers 2013).

During the Doha Round the negotiating agenda arguably became over-laden and the Single Undertaking approach made it extremely hard to reach agreement on everything simultaneously. For this reason, a number of analysts argue that the negotiating agenda should immediately move to plurilaterals (Hufbauer and Schott 2012, Hoekman 2011). However many developing countries are rightly concerned that an immediate move to plurilaterals will raise the level of ambition beyond the Doha Mandate (i.e. lead to the extraction of further commitments from developing countries in new areas) and leave the long-standing issues of interest to developing countries unaddressed (Vickers 2013). Indeed African Trade Ministers called upon all WTO Members to 'fully commit themselves to the successful conclusion of the DDA as the only agenda for the WTO's post-Bali work program' (Addis Declaration, Oct 2013).

To address the outstanding Doha issues, one compromise option might be for developed countries to back down from their current negotiating positions and enable the major elements of the Doha Agenda (including the 2008 chairs' texts on agriculture and NAMA) to be concluded. In return, developing counties could agree to authorize future negotiations on a specified list of plurilaterals agreements (including through potentially exclusive approaches) (Odell 2013). Beyond the Doha Round, countries need to reflect on whether the Single Undertaking per se is problematic, or whether this approach can work (and indeed facilitate agreement by providing issue-linkage) so long as the agenda is not overloaded. If the latter, then a mechanism is needed for restricting the issues on the negotiating table.

Conclusion

The plurilaterals debate is currently framed as developing countries having to make a tough choice between the proliferation of 'discriminatory PTAs' and accepting PAs that are subject to the multilateral discipline of the WTO. Many argue that the latter is the 'least-worst' option for developing countries (e.g. Odell 2013). Yet whether PAs are indeed an attractive alternative to PTAs depends greatly on how they are governed. Great care has to be taken in considering whether and how to move away from the consensus principle and Single Undertaking. A move (back) to a plurilateral-based negotiating set-up may lead to greater efficiency, as new agreements would be reached, but the costs for developing countries could be high, as the outcome is likely to be skewed towards the interests of the major trading powers (see also Draper and Dube 2013).

How can the WTO negotiation function be made more efficient whilst retaining inclusiveness and legitimacy, and ensuring outcomes support development? Preserving the consensus norm appears to be the most important priority for small developing countries as this ensures they have some leverage and influence over negotiating outcomes. It is also of wider importance to the WTO as an institution, as the consensus norm is central to the WTO's legitimacy as an international organization. While developing country members may wish to agree to limitations on the consensus

norm (such requiring countries to clearly justify moves to block a PA) or even consent to some plurilaterals with very clearly circumscribed mandates, there are good reasons to think very carefully before agreeing to abandoning consensus in favour of majority or market-share voting mechanisms.

Moving immediately away from the Single Undertaking would be counter to the 'rebalancing' spirit of the Doha Round as it would leave key issues of long-standing importance to developing countries unaddressed. To secure progress, one option developing countries could consider is linking approval of specific plurilaterals, governed by a clear code of conduct, to the conclusion of key elements of the Doha talks, including agriculture and NAMA. A code of conduct could ensure that PAs adhere to principles of inclusiveness, transparency and multilateralism (Vickers 2013,). This could include requirements on, *inter alia*, non-discrimination (operate on an MFN basis and are open to full participation by all WTO members), full transparency during negotiations so that non-participating countries can follow the negotiations, and provide special and differential treatment as well as technical assistance and support for implementation.

In sum, the current reform debate is overly-focused on improving the efficiency of the WTO and ensuring that it delivers agreements and verges on 'securing-agreement-at-any-cost'. Yet the WTO has a mandate to further sustainable development, and inclusiveness is vital for its legitimacy. Proposals to move away from the consensus principle may increase efficiency in the short-term but have to be carefully weighed against damage to its ability to support development and its legitimacy, which would greatly undermine the WTO in the medium-term.

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