Plurilateral Agreements: Key to solving impasse of WTO/Doha Round and basis for future trade agreements within the WTO context[1]

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The Doha Development Agenda (DDA) launched in 2001 was supposed to achieve further trade liberalisation while at the same time taking into account the needs of developing countries. Ten years have passed since its inception and no end of the Round is in sight.[2] In this context, plurilateral agreements might constitute a solution to the impasse of WTO/DDA as well as a basis for future trade agreements within the WTO context. This policy article addresses the following questions: What are the different types of plurilateral agreements negotiated so far? How could a plurilateral perspective help solve the WTO/Doha Round impasse and contribute to strengthening of the multilateral trading system?

Plurilateralism: concept and role in Multi-level Economic Diplomacy

Negotiations in the context of the *economic diplomacy* are concerned with economic policies related to organisations such as World Trade Organization (WTO) or the Bank of International Settlements (BIS). Economic diplomats monitor and report on economic policies in foreign countries and advise the home government on how to best influence them. Economic diplomacy employs economic resources, either as rewards or sanctions, in pursuit of a particular foreign policy objective. (Saner 2008) In the actual system

[1] Written by Prof Dr Raymond Saner, Director Diplomacy Dialogue, CSEND with thanks for excellent research assistance to Mario Filadoro, MA,Trade Analyst, CSEND-TPGP and to Prof Dr Lichia Yiu, Director, CSEND for her comments at different stages of this policy brief.

[2] See CSEND Policy Brief Nr. 6, 'Doha stalemate: Implications and ways forward'

of complex international negotiations, there are multiple levels of interaction between actors: unilateral, bilateral, regional, plurilateral, multilateral, multi-institutional and multi-institutional – multi-actor negotiations.[3]

Unilateralism does not involve any negotiation. However, it is considered as a distinct level because, in trade negotiations, unilateral liberalization or protectionism has an impact on other economies by expanding or restricting the access to the markets.

Bilateralism consists of informal dealings between countries on a range of issues, or formal bilateral trade or investment treaties. Bilateral agreements contribute to building up more complex agreements (at the regional or global level). They could also have a role in determining how regional or multilateral rules should be interpreted. Bilateral negotiations can take on a multilateral air even when no other parties are officially involved. (Saner 2008)

Regionalism is relevant in economic diplomacy because agreements at this level are often politically motivated and offer a more rapid way of opening markets. The importance of this dimension has fluctuated over time. In the case of trade negotiations, a regional trade agreement must comply with the requirements established by Article XXIV GATT, Article V GATS and the "Enabling Clause" covering agreements between developing countries.[4]

Multilateralism consists of more than two parties present in negotiations. It provides for the involvement of all countries who are members of a multilateral organization and consists of the regimes embodied in the WTO, IMF, WB, and United Nations. According to Zartman (1994), multilateral negotiations are fundamentally different to bilateral negotiations because the initial position of the parties is not adversarial. In bilateral negotiations by definition there are two opponents, whereas in multilateral negotiations the process is structured according to the parties and issues and the different roles the parties play.

Strategic Negotiation Options: WTO Context

Options	Examples
a) Unilateral:	Countries may choose to impose ant-dumping measure against other WTO member countries
b) Bilateral:	Countries make requests and offers to other countries in early phase of Negotiation Rounds
c) Plurilateral:	A larger group but not all member countries agree to a sectoral agreement
d) Multilateral:	All member countries accept the same agreement
e) Multi-institutional:	Countries conduct parallel and simultaneous negotiations on related issue at different institutions (e.g. at WTO, WIPO, WHO)

Source: Saner, Raymond (2008). *The Expert Negotiator: Strategy, Tactics, Motivation, Behaviour and Leadership*. Leiden: Martinus Nitjoff Publishers, p.217

[3] For an overview of the different levels of complex international negotiations see Saner, Raymond (2008). *The Expert Negotiator: Strategy, Tactics, Motivation, Behavior and Leadership*. Leiden: Martinus Nitjoff Publishers, pp.203-212.
[4] For more information about regional trade agreements in the WTO context see http://www.wto.org/english/tratop_e/region_e/region_e.htm

In contrast to the multilateral approach to negotiations, there is a plurilateral perspective to the negotiations in institutional settings, rule-making mechanisms and settlement of disputes. This form of agreement is not exclusively applied in the WTO context; it is rather commonly used in different international fora.

Plurilateralism can be defined as "a shared interest among a limited number of governments that brings these together for interconnection" (Cerny 1993). Cerny suggests that at the end of the cold war there was a process of structural differentiation where different system levels were separated from each other and, at the same time, various functional dimensions became more distinct. According to this author, in plurilateralism, the international system is complex and volatile because it is not stabilized by any hierarchical or polar arrangement of power. At the same time, various crosscutting links and actions occur across both levels and functional structures. As each actor has a combination of characteristics and overlapping memberships, the system is pluralistic in nature.

The two main purposes of plurilateralism are: 1-"to provide a forum where national governments seek to reconcile domestic and international economic objectives, by a process of voluntary cooperation"; and 2-"to enable like-minded governments to develop agreed positions which they can then advance in wider multilateral contexts" (Bayne and Woolcock 2011)

Plurilateral negotiations are a sub-variety of multilateral negotiations where a minority of members of a multilateral body agree to a deal which they hope will be accepted by the rest of the members at a larger stage (that is, "multilateralized" later on). (Saner 2008)

The main difference between plurilateralism and regionalism is the number of countries participating in negotiations. While a regional negotiation includes countries from a particular region (or regions in the case of inter-regional negotiations), plurilateralism involves a larger group of countries within a multilateral organisations such as the WTO. In the WTO context, plurilateral agreement means that a group of member countries negotiate an agreement within the larger rules context of the WTO. Such a plurilateral agreement within the WTO can be of two kinds namely 1) restrictive (market access and obligations only for members who signed such an agreement) or 2) open to all WTO members (full application of MFN requirements. The plurilateral part of the second option refers here to the process of how this kind of plurilateral agreement was negotiated. (small number of member countries negotiate it, then open benefits to all other members even if they did not participate in the negotiation process

Zartman (1994) makes a distinction between plurilateral versus multilateral negotiations: the key element differentiating plurilateral from multilateral negotiations is size and complexity. Multilateral negotiations present a higher level of complexity because of the greater number of parties, issues, and time frame involved. Also, multilateral negotiations tend to take on a plurilateral structure by being reduced to a smaller number of leading parties-self-selected for various reasons with others playing a lesser, defensive, or single-issue role. In this context, multilateral negotiations are pluralized as part of the process of making their multilateral complexity manageable.

Another distinction between a plurilateral and a multilateral agreement is the availability of a limited number of reservations under a plurilateral agreement. Due to its limited nature (compared to a multilateral agreement), the full cooperation of the parties to the agreement is necessary to meet the

objectives of the agreement. As a result, reservations to plurilateral agreements are not allowed without the consent of all other parties to the agreement. (Feichtner 2012:284-285) This principle is codified in international law by Article XX (2) of the 1969 Vienna Convention on the Law of Treaties which states: "When it appears from the limited number of the negotiating states and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties."

A first level of higher complexity describes and analyses multi-actor negotiations within a single institution of multiple membership like the UN, WTO and related multilateral institutions where negotiations to reach consensus agreements in the form of plurilateral agreements (participation of limited number of members) or all members take part in the. Thus, an even more complex form of negotiations is the *multi-institutional negotiations*, when not only several different parties are involved, but the negotiations take palace in a number of rounds at a number of different locations. Examples of such negotiations are found almost only in the domain of the international organizations and conferences: members of the United Nations, for example, work together in over a hundred organizations and committees, with an enormous variety of issues like security, development, environment protection, refugees, and human rights, among many others. In addition, various UN specialized agencies and committees have their seat or meet in New York, Geneva, Vienna, Paris, Bangkok or Washington, to name only the most important cities. (Saner 2008)

The most complex form of negotiations are *multi-institutional – multi-actor negotiations* of state or non-state actors of a mix of them an example being the Oslo Mideast Peace Process which involved the delegations from the Israeli and Palestinian side, the Norwegian government as lead facilitator and supportive facilitator countries (USA, Canada, Japan, EU, Russia) who chaired separate theme specific negotiations (e.g. on water, refugees, regional economic development, arms control etc) in their respective capitals.

Complex multi-actor/multi institutional negotiations may involve conflict parties representing state versus non-state actors such as NGOs or Multinational Enterprises engaging in negotiations on bilateral, trilateral or multi-lateral basis as e.g. in the case of negotiating a global moratorium of bottom trawling fishery practice or Microsoft's negotiation on IP rights against the Chinese government with tacit support from the US government. (Saner 2009)

As defined by Bayne and Woolcock (2011: 205) "plurilateral institutions are composed of like minded countries, spanning several regions. Multilateral institutions are universal in membership, thought they may require tests on entry." Examples of plurilateral bodies are OECD[5], G8, G20, G-77, the Financial Stability Board (FSB), the Basel Committee on Banking Supervision (BCBS), the Commonwealth, the BRICS and IBSA.

The link between the different levels of economic diplomacy is important because agreements reached at one level can have implications for the other levels. For example, principles adopted with a plurilateral perspective may be converted into binding commitments at the regional level. Or, regulatory standards for

[5] OECD being a forum for the preparatory work for agreements on services and agriculture in the GATT and WTO (Bayne and Woolcock 2011).

example in food safety) adopted in regional agreements can provide a model for a wider application in a multilateral agreement.

Bayne and Woolcock (2011) have compared the differences between the plurilateral and the multilateral institutions. According to these authors, the main features of the plurilateral bodies are:

- Plurilateral bodies have a stronger political content and expand their membership in light of the changing international balance of power.
- Plurilateral institutions are better adapted for voluntary cooperation than rule-making. Sometimes they lack the power of enforcement.
- Give attention to multi-level activities. Voluntary cooperation can provide the content for tighter rules at national, bilateral, or regional level.

As mentioned before, the plurilateral approach is not exclusively adopted in the WTO context. Plurilaterasim has also been analyzed from the perspective of the "global south". In this view, countries like India, Brazil, South Africa (that constitute IBSA), but also other countries like Russia and China (combined are the BRICS) use plurilateralism to in order to collectivize their advantage and leverage their global and regional influence. (Chenoy 2010)

The so-called "emerging markets" have started to build up strategic economic and geopolitical alliances to give them greater power status and balance the influence of their neighbors. These alliances are plurilateral in nature because they include a group of countries. The strength of the emerging countries lies in their distinction with the North and their linkages with the South. These alliances are seen as a strategy to seek resources and advantages from other countries: for example India and China have bought hundreds of thousands of hectares of land in Africa; China in Central Asia; South Africa in the rest of Africa.[6]

Another approach to plurilateralism is also proposed in the field of trade facilitation and the promotion of regional integration. For instance, in order to improve trade integration in the SAARC (South Asia Association for Regional Cooperation) regional trade facilitation is proposed with the aim of improving existing infrastructure and administrative procedures.[7] This strategy contemplates that, in the long term, a plurilateral approach is the way ahead in order to deal with the political hostility between the two largest economies and the uneven balance of power in the region. It is anticipated that with the realisation of economic benefits through plurilateralism, doors for negotiations and dialogue will open up which may further facilitate regional economic integration. (Dua and Abbas 2010) In addition, a plurilateral perspective to the negotiations in the field of trade facilitation (under the WTO umbrella) has been suggested as an alternative to allow any developing country to accede and to accept its standards according to the circumstances and pace of its own development. Such an approach would also allow the

[6] See Chenoy, Kamal Mitra (2010). "Plurilateralism and the Global South", paper presented in the IBSA Academic Forum 2010. Available from http://www.ipc-undp.org/pressroom/files/ipc138.pdf

[7] Dua, Kanika and Abbas, Seher (2010). "Plurilateralism and Trade Facilitation: The Way ahead for International Trade in South Asia" in *Asian Journal of Public Affairs*, Vol. 3 No. 2. Available from http://www.spp.nus.edu.sg/ajpa/pdf/issue6/3%20Kanika%20Dua%20and%20Seher%20Abbas.pdf

process of accession to be supported by negotiations for assistance. (Finger 2008) Last but not least, the National Foreign Trade Council, from the United States, has also proposed to conclude a trade facilitation agreement as a way to demonstrate the value of the WTO and to advance in the economic development and job creation.[8]

A plurilateral approach has also been applied to negotiations within the global telecommunications regime used in the area of trade and telecommunications. Agreements achieved in the area of trade and telecommunications are a result of the interplay between unilateral action, bilateral, plurilateral and multilateral processes. (Murphy Ives 2003) The evidence from Japan-U.S. bilateral negotiation, OECD and multilateral trade and telecom talks, shows that coercive pressure was a predominant factor in bringing about negotiated change.

Considering regional integration schemes from a plurilateral perspective was also supported by the United States, under the Clinton Administration. This strategy was suggested by the Council of Economic Advisers (CEA) to the President in their annual report for the year 1995. According to the CEA "Open regionalism refers to plurilateral agreements that are nonexclusive and open to new members to join. It requires first that plurilateral initiatives be fully consistent with Article XXIV of the GATT, which prohibits an increase in average external barriers. Beyond that, it requires that plurilateral agreements not constrain members from pursuing additional liberalization either with non-members on a reciprocal basis or unilaterally. Because member countries are able to choose their external tariffs unilaterally, open agreements are less likely to develop into competing bargaining blocs. Finally, open regionalism implies that plurilateral agreements both allow and encourage non-members to join. This facilitates the beneficial domino effect described above." [CEA (1995), p. 220].

The International Centre for Trade and Sustainable Development (ICTSD) is promoting the initiative of a a plurilateral Sustainable Energy Trade Agreement (SETA) that would eliminate the barriers to trade and investment in the new green technologies that are needed everywhere to spur sustainable growth.[9] SETA could bring together countries interested in addressing climate change and longer term energy security while maintaining open markets. Issues covered by this agreement would be addressed in two phases: a first phase would address clean energy supply goods and services, starting with solar, wind, small hydro and biomass and eventually extending to marine, geothermal, clean coal, and transport related biofuels; and a second phase could address the wider scope of energy efficiency products and standards, buildings and construction, transportation, and manufacturing. Such an agreement could be conceived within the WTO framework as a stand-alone plurilateral agreement similar to the Government Procurement Agreement (GPA) or, it could extend concessions on an MFN basis to all WTO Members, similar to the Information Technology Agreement (ITA), with such an extension conditional on the accession of a "critical mass" of members based on different trade, climate, or energy-related criteria. Alternatively, SETA could be conceived as a stand-alone plurilateral agreement outside of the WTO, open to other non-WTO Members (with the possibility of eventually incorporating such an agreement into the WTO framework at some point in the future).

[8] See http://www.nftc.org/newsflash/newsflash.asp?Mode=View&id=236&articleid=3420&category=All

[9] See ICTSD (2011). "Fostering Low Carbon Growth: The Case for a Sustainable Energy Trade Agreement", *ICTSD Global Platform on Climate Change, Trade and Sustainable Energy*. Available from http://ictsd.org/downloads/2011/12/fostering-low-carbon-growth-the-case-for-a-sustainable-energy-trade-agreement1.pdf

Within the WTO context, a plurilateral "Club-of-Clubs" approach has been proposed by the World Economic Forum (WEF) as a way to address the WTO reform and new emerging issues. [10] According to this vision, the WTO embodies elements of a club-of-clubs by having separate codes to which its members could subscribe. A plurilateral approach might be useful since it appears difficult to obtain agreement by all members to accept obligations on a range of new issue areas, an alternative approach entailing a more variable set of commitments. The WEF Global Agenda Council considers the WTO should only host clubs that are "(a) related to its mission; (b) enforceable by the means available to the organization and the members who join the club; (c) compatible with maintaining and enhancing legitimacy; and, (d) composed of some minimum threshold of members, be it measured in volume of trade represented, number of jurisdictions or some other criteria." All WTO members should be able to participate in the negotiations as in the case of the Government Procurement Agreements. Provision of benefits to non-members should not be required (the AGP model), but benefits could be allowed. Clubs should be required to use the WTO system for settling disputes. In particular, using a common Appellate Body would help assure cross-club consistency in the interpretation of the rules. Finally, a set of common provisions should be required of all clubs including: capacity-building and technical assistance (also exploring possibilities of providing special and differential treatment); binding obligations (adherence to club rules should be binding on all club members, and all clubs should be required to use the enforcement provisions); and minimum coverage (avoiding the establishment of clubs with a limited number of members, each club would need to meet a baseline membership requirement, be it volume of trade represented, number of countries, or some other agreed criteria).

Last but not least, this process of forming blocs conceptualized as plurilateralism is criticized by other analysts for being a disruptive process for the multilateral level because of its informal and fragmented character. According to Oelemoller (2007), "informal plurilateralism" has made policy making less transparent and democratic. Following the example of migration, the author argues that "ideas mooted and molded through these informal processes filter subtly through into technocratic systems of governance at the national level, where it is introduced and normalized into the formal, public discourse. In the few publications on this area, informal plurilateralism tends to be portrayed as a welcome addition to formal multilateralism (Channac 2002; Channac 2006), suggesting that on the basis of ideational affiliation, policy makers move to extra-institutional and opaque fora to consult on problems they commonly identify."

Summarizing, the plurilateral perspective to international negotiations is not new because it has been put in place since the end of the Cold War. This approach is not only adopted in the context of the WTO, but also in other international fora dealing with different subjects like finances, telecommunications, trade facilitation and migration. In the context of economic diplomacy, plurilateralism is seen by the analysts as one of the different levels of international negotiations where the agreements reached at one level can have implications for the other levels. Any plurilateral approach should consider the different levels of economic diplomacy in order to prevent informality and fragmentation of the larger multilateral system.

[10] See World Economic Forum (2011). "A Plurilateral "Club-of-Clubs" Approach to World Trade Organization Reform and New Issues", *Global Agenda Council on Trade. Available from* http://www3.weforum.org/docs/GAC10/WEF_GAC_Trade_Paper_2009-10.pdf

What is a plurilateral agreement in the context of the WTO?

According to the WTO definition, a plurilateral agreement involves only some (and not all) WTO members. [11] A plurilateral agreement implies that member countries would be given the choice to agree to new rules on a voluntary basis. This contrasts with the multilateral agreement, where all members are party to the agreement.[12]

The Marrakesh Agreement (WTO Agreement) establishing the World Trade Organization (WTO) contains a number of provisions that allow WTO members to negotiate plurilateral agreements. Article II states that the "*Plurilateral Trade Agreements do not create either obligations or rights for Members that have not accepted them.*"

According to Article III, the WTO shall provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements. Furthermore, the bodies provided for under these type of agreements shall carry out the functions assigned to them under those Agreements, shall operate within the institutional framework of the WTO and shall keep the General Council informed of their activities on a regular basis (Article IV).

On the other hand, Article X:9 of the WTO Agreement establishes that in order to include new agreements in Annex 4 (Plurilateral Agreements) a decision by consensus in the Ministerial Conference (or General Council) is required. It is also necessary to include such a new agreement in the list of plurilateral trade agreements in Appendix I of the DSU. This requires, according to Article X:8 of the WTO Agreement, a decision to amend by consensus in the Ministerial Conference (or General Council). Such a decision shall take effect for all Members upon approval by the Ministerial Conference. In contrast to the situation where an amendment is made to Annex I to the WTO Agreement, there exists no two-thirds majority fall-back option when consensus is not achieved. (Harbinson and De Meester 2012)

For the most part, all WTO members subscribe to all WTO agreements. After the Uruguay Round four agreements remained, originally negotiated in the Tokyo Round, which had a narrower group of signatories. These agreements, known as "plurilateral agreements", provided a means of breaking the impasse in the negotiations that led to the Tokyo Round, when countries like India were not prepared to accept the additional disciplines implied in the Tokyo Round codes. When the WTO was established in 1995, all other Tokyo Round agreements became multilateral obligations (obligations for all WTO members).[13]

The formal legal provisions for the establishment of plurilateral trade agreements should be considered in combination with a set of informal criteria which, according to Jackson (2000), would be used to persuade nations to refrain from exercising consensus-blocking techniques. The criteria include the following:[14]

[11]. See WTO Glossary, http://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm

[12] See Annex 1 for a list of WTO provisions allowing for the negotiation of plurilateral agreements.

[13] See http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm10_e.htm

[14] See Jackson, John H (2000). "Dispute Settlement and the WTO" in World Trade Organization (ed.), *From GATT to the WTO: the multilateral trading system in the new millennium*, Geneva, Switzerland, pp.79-80.

First, the proposed agreement would be consistent with any of the already existing other rules of the WTO and its Annexes (specially Annex I, GATT, GATS and TRIPS). The rules established by the new plurilateral agreement should not have a detrimental impact on those countries that would not be part of the agreement.

Second, the proposal for a plurilateral agreement should have a "substantial" number of proponents between the WTO members. Jackson (2000) suggests that 10 or 20 members would be a "substantial" amount, although he mentions that the minimum number would be left ambiguous, as long as it was not just a few members.

Third, the proposed plurilateral agreement should be open to accession by any WTO member and leave nothing further to be negotiated. The new agreement might contain some exception for a "scheduling" type apparatus analogous to GATT tariff schedules or GATS services schedules.

Fourth, it would be required that a majority vote of the Council would recommend the addition of the plurilateral proposal to Annex IV. This majority vote, suggests Jackson (2000) could be something of a supermajority (two thirds) but also other formulas of votes could be envisaged. The author warns that that a vital national interest declaration could be used to block consensus.

Finally, bringing the new plurilateral agreement under the WTO umbrella by adding it to Annex IV might have some financial implications for the costs of the secretariat, hence, Jackson (2000) suggests an additional principle to avoid consensus blocking could be at the financial costs of the additional activity created by the proposed plurilateral agreement. The author proposed that these criteria could help minimizing the risks of consensus blocking and that it could be developed via resolutions of the General Council or the Dispute Settlement Body in the form of "recommendations to members", providing informal practice which could be effective overtime.

What are the different types of plurilateral agreements negotiated so far?

Agreement on Trade in Civil Aircraft [15]

This agreement entered into force on 1 January 1980. Currently with 31 signatories[16], the agreement on trade in civil aircraft is one of two current plurilateral agreements signed by a smaller number of WTO members. The signatories to the Agreement are: Albania, Canada, the European Union (the following 20 EU Member States are also Signatories to the Agreement in their own right: Austria, Belgium, Bulgaria, Denmark, Estonia, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the

[15] See http://www.wto.org/english/tratop_e/civair_e/civair_e.htm

[16] The WTO website suffers from a lack of coherence in terms of countries that are party to the Agreement on Trade in Civil Aircraft. While in one section of the website is stated that this Agreement "now has 30 signatories" (http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm10_e.htm#civil), another section states that it "now has 31 signatories" (http://www.wto.org/english/tratop_e/civair_e/civair_e.htm). As stated in footnote 15, and according to the last Report of the Committee on Trade in Civil Aircraft, the Agreement on Trade in Civil Aircraft has 31 signatories.

Netherlands, Portugal, Romania, Spain, Sweden and the United Kingdom), Egypt, Georgia, Japan, Macao China, Norway, Switzerland, Chinese Taipei and the United States. [17]

The signatories of the Agreement on Trade in Civil Aircraft agreed to eliminate (on an MFN basis) import duties on all aircraft, other than military aircraft and other products covered by the Agreement (civil aircraft engines and their parts and components, all components and sub-assemblies of civil aircraft, and flight simulators and their parts and components), and to extend some procedural benefits to the products of other signatories. At its meeting of 16 July 1992, the Aircraft Committee established the Sub-Committee of the Committee on Trade in Civil Aircraft in which negotiations under Article VIII.3 of the Agreement would be conducted. This Sub-Committee has not met since its fourteenth meeting in November 1995.

As regards to its enforcement, the Agreement on Trade in Civil Aircraft has not been invoked in any of the disputes so far. However, there has been a dispute between the EU and the US related to measures affecting trade in large civil aircraft (Disputes DS316 and also DS347)[18], where other WTO multilateral agreements were cited like the Agreement on Subsidies and Countervailing Measures and the GATT 1994.[19]

Agreement on Government Procurement (GPA)[20]

So far, this is the only legally binding agreement in the WTO focusing on the subject of government procurement. GPA is a plurilateral agreement included in Annex 4 of the WTO Agreement. Its present version was negotiated in parallel with the Uruguay Round in 1994, and entered into force on 1 January 1996. As established by Article XXIV:7b of the GPA, its member countries engaged in 1998 in further negotiations in order to improve the agreement.[21]

The conclusion of a new GPA, together with the accession of Russia to the WTO, was one on the main deliverables of the WTO 8th Ministerial Conference. Before the official opening of the Ministerial Conference the Ministers belonging to the 42 parties to the Agreement[22] adopted the text of the revised Agreement and the annexes containing the commitments made for the expanded coverage. This

[17] Report of the Committee on Trade in Civil Aircraft (2011), WTO Document WT/L/827, available from http://docsonline.wto.org:80/DDFDocuments/t/WT/L/827.doc. WTO Members with observer status in the Committee are: Argentina, Australia, Bangladesh, Brazil, Cameroon, China, Colombia, Gabon, Ghana, India, Indonesia, Israel, the Republic of Korea, Mauritius, Nigeria, Oman, the Kingdom of Saudi Arabia, Singapore, Sri Lanka, Trinidad and Tobago, Tunisia, Turkey and the Ukraine. In addition the Russian Federation is also an observer. The IMF and UNCTAD are also observers.

[18] For more information about these disputes see http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds316_e.htm

[19] For a list of dispute settlement in the aircraft sector see http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm?id=G33#selected_subject

[20] For a comprehensive list of bibliography available in the field of Government Procurement see http://www.nottingham.ac.uk/pprg/documentsarchive/bibliographies/comprehensivepublicprocurementbibliography.pdf

[21] For an analysis of the background negotiations on the GPA see Nicholas Niggli´s article on "Enjeux et implications systémiques de la révision de l'AMP de 1994: vers un nouveau changement de paradigme?", March 2010, available from http://www.dievolkswirtschaft.ch/fr/editions/201003/pdf/Niggli.pdf

[22] For a list of Observer Governments to the GPA see http://www.wto.org/english/thewto_e/minist_e/min11_e/brief_gpa_e.htm

achievement is also expected to speed up the accession of new members: China and other eight WTO members, currently negotiating accession to the GPA Agreement.[23]

Parties to the GPA

Parties	Date of entry into force/accession
Armenia	15 September 2011
Canada	1 January 1996
European Union with regard to its 27 member States: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic and Slovenia	 1 January 1996 1 May 2004
Bulgaria and Romania	1 January 2007
Hong Kong , China	19 June 1997
Iceland	28 April 2001
Israel	1 January 1996
Japan	1 January 1996
Korea	1 January 1997
Liechtenstein	18 September 1997
the Netherlands with respect to Aruba	25 October 1996
Norway	1 January 1996
Singapore	20 October 1997
Switzerland	1 January 1996
Chinese Taipei	15 July 2009
United States	1 January 1996

Source: WTO website, http://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm

The revised text of the GPA makes the provisions of the Agreement more user-friendly and more updated taking into account the new developments in current government procurement practice like the inclusion of electronic tools in the procurement process. There is also a significant extension of the coverage of the Agreement: one Party agreed to cover all of its provinces and territories; other Parties added at least two hundred additional entities to be included in their schedules; also, additional services coverage has been added by almost all Parties.[24]

The GPA is based on the principles of openness, transparency and non-discrimination, which apply to Parties' procurement covered by the Agreement, to the benefit of Parties and their suppliers, goods and services. (Anderson and Osei-lah 2011) This agreement does not automatically apply to all government procurement of the Parties: the coverage of the Agreement is determined with regard to each Party in Appendix I Annexes specifying the central and sub-central government entities as well as other entities, such as public utilities, that each Party has committed to complying with the Agreement. The obligations apply to procurement:

[23] See http://www.wto.org/english/news_e/news11_e/gpro_15dec11_e.htm

[24] See http://www.wto.org/english/tratop_e/gproc_e/negotiations_e.htm

- by the procuring entities that each Party has listed in Annexes 1 to 3 of Appendix I, relating respectively to central government entities, sub-central government entities and other entities such as utilities;

- of goods;

- of services and construction services that are specified in lists, found respectively in Annexes 4 and 5 of Appendix I; and

- of an estimated value not less than certain threshold values, which are specified in each Party's Appendix I Annexes. The thresholds for some Parties are set at 130.000 SDR (Special Drawing Rights) (equivalent to 202,000 US$) for goods and services procured by central government (Annex 1) entities. Higher thresholds are applicable in respect of sub-central (Annex 2) and "other" (Annex 3) entities. A separate threshold which, for some Parties, is set at 5,000,000 SDR (equivalent to 7,777,000 US$) is applicable to construction services procured by all entities.[25]

Excepting some provisions referring to competition in government procurement (see Annex 2), the text of the GPA does not include any specific provision about investment, nor trade facilitation (Singapore issues).[26]

GPA is a plurilateral agreement comprising provisions under which adhering WTO members grant reciprocal benefits to each other but not to non-participants. It is administered by a Committee on Government Procurement, which includes the WTO members that are parties to the GPA, and is subject to WTO Dispute Settlement procedures.[27] Because of the plurilateral nature of the Agreement, Article XXII contains a number of special rules or procedures covered by its Article XXII:3,5-7. In particular, it is worth to highlight Article XXII:7, a provision disallowing the so-called "cross-retaliation": the suspension of concessions or other obligations under the GPA as a result of disputes arising under the other WTO Agreements as well as suspension of concessions or other obligations under any other WTO Agreement because of any dispute arising under the GPA. In the case of the GPA, there were 4 cases in the WTO DSB directly invoking this plurilateral agreement. The WTO members involved in these disputes (either as compliant or as respondent) were the United States, the European Union, Japan and Korea.[28]

Overall, there are three main areas in which WTO Members work to address the issue of government procurement in the multilateral trading system: the plurilateral Agreement on Government Procurement; the negotiations on government procurement in services pursuant to Article XIII:2 of GATS; and the work on transparency in government procurement in the Working Group established by the Singapore Ministerial Conference in 1996. Although complementary, each of these areas of work has its distinctive characteristics in terms of the type of work carried out, main principles, scope of application (coverage),

[25] For an overview of the countries´ thresholds in Annexes 1, 2 and 3 of Appendix 1 of the GPA see http://www.wto.org/english/tratop_e/gproc_e/thresh_e.htm

[26] See http://www.wto.org/english/thewto_e/whatis_e/tif_e/bey3_e.htm

[27] See http://www.thecityuk.com/assets/Uploads/Next-Generation-Negotiations-25-Oct-2011-FINAL.pdf, p.5

[28] For an overview of these cases see http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A15#selected_agreement

and nature of participation by WTO Members. These are summarized in the following table:

The three main areas of work in government procurement in the WTO

	Plurilateral Agreement on Government Procurement	General Agreement on Trade in Services	Working Group on Transparency in Government Procurement*
Type of work	administration of existing WTO agreement	negotiations based on Article XIII:2 of GATS	study and elaboration of elements for inclusion in an appropriate agreement
Main principles	transparency and non-discrimination	transparency and possibly non-discrimination	only transparency (preferences not affected)
Scope of work	goods and services, including construction services	only services	government procurement practices
Participation	plurilateral (not all WTO Members are Parties)	multilateral (all WTO Members involved)	multilateral (all WTO Members involved)

Source: WTO website, http://www.wto.org/english/tratop_e/gproc_e/overview_e.htm

The GPA also contains special provisions for developing countries in order to meet their specific development objectives (Article V:1). These objectives should be taken into account in the negotiation of coverage of procurement by entities in developed and developing countries (Article V:3,5-7). Article V also contains provisions on: technical assistance (Article V:8-11); establishment of information centers giving information on procurement practices and procedures in developed countries (Article V:11); special treatment for least-developed countries (Article V:12 and 13); and review of the application of Article V (Article V:14 and 15). As an exception to the general prohibition of offsets, developing countries may negotiate, at the time of their accession, conditions for the use of offsets provided these are used only for the qualification to participate in the procurement process and not as criteria for awarding contracts (Article XVI).

According to Müller (2011) the following transitional measures will potentially be available to the GPA acceding Parties: price preferences; offsets; phased-in addition of specific entities and sectors; and thresholds that are initially set higher than their permanent level. Furthermore, a provision has also been made for delaying the application of any specific obligation contained in the Agreement, for a period of five years following accession to the Agreement for Least Developed Countries (LDCs) or up to three years for other developing countries. Overall, these provisions on special and differentiated treatment under the new text are more focused on market protection measures and derogations on procedures and transparency rather than on preferential market access.

The GPA is becoming attractive for other WTO Members because of three main factors (Arrowsmith and Anderson 2011): the growing membership of the Agreement prospect accession to it by developing, transition and other economies; the prospect of a gradual broadening, its flexibility, user-friendliness and relevance; and increasingly important role that public infrastructure investment is playing as well as the critical importance of such spending based on fair and open competition to maximize value for taxpayers.

Within the European Union, the European Commission has recently proposed a new regulation to increase the incentives for EU's trading partners that open up their public procurement markets to EU

bidders. The proposal aims to ensure that: European businesses have fair access to worldwide public procurement markets; and that all companies (both European and non-European) are on an equal footing when it comes to competing for business in the EU's public procurement market.[29] Although the European Commission supports this initiative by stating that it is designed to end unfair competition, other countries have a critical position to it because they think that it could increase protectionism and initiate trade wars: companies could be blocked from bidding for public contracts in the EU if their home countries are thought to be excluding bids from EU firms. China seems to be the main target of the proposed legislation. Other countries that might be targeted are United States and Japan, both of which are signatories of the GPA.[30]

The case of Chinese Taipei could be viewed as an example of a country joining a plurilateral agreement not on a fully voluntary basis. According to Lo (2011), Chinese Taipei did not have a choice about whether or not joining the GPA because this was a request by its trading partners. However, following such pressure the country was fortunate to bring about some beneficial outcomes like providing domestic industries with opportunities to participate in the procurement markets in other GPA signatories. In addition, the commitment of accession has fostered a reform of the country´s government procurement regime.

In other cases accession has been facilitated by Members' participation in bilateral trade agreements containing government procurement chapters that are largely modelled on the GPA (Anderson *et al.* 2011). A great part of the regional trade agreements (RTAs) notified to the WTO in the recent years contains provisions on government procurement. The provisions on government procurement in RTAs are linked to the GPA in different ways: often, at least one of the parties to the agreement is a GPA party; also a considerable number of the RTAs contain references to broader international rules on government procurement (GPA among others). In those RTAs establishing detailed provision on government procurement, the Parties to these agreements have made efforts to avoid overlapping by modelling obligations on the basis of GPA and/or importing GPA provisions by reference.

Last but not least, it is important to mention that Government Procurement is not exclusively addressed in the WTO context but also by other international organizations like UNCITRAL, World Bank and OECD. UNCITRAL issued a Model Law on Procurement of Goods, Construction and Services in 1994 and a new version was adopted in 2011. (Nicholas 2011) This model constitutes a "template" for a system of public procurement regulation with the objective to increase trade through more harmonised public procurement procedures. On the other hand, the World Bank also assists its member countries in analyzing their

[29] The key aspects of the proposal for a Regulation are the following: 1) levels of openness of the EU's public procurement market are confirmed; 2) the Commission may approve that EU contracting authorities for contracts above €5 million exclude tenders comprising a significant part of foreign goods and services where these contracts are not covered by existing international agreements; in the event of repeated and serious discrimination against European suppliers in non-EU countries, the Commission will have at its disposal a mechanism allowing it to restrict access to the EU market, if the country outside the EU does not engage in negotiations to address market access imbalances. Any restrictive measures will be targeted, for example by excluding tenders originating in a non-EU country or imposing a price penalty; the proposal increases transparency on abnormally low offers in order to combat unfair competition by non-EU suppliers on the European market. According to the European Commission website, the EU commitments taken in the GPA and bilateral trade agreements are fully respected with this initiative. See http://trade.ec.europa.eu/doclib/press/index.cfm?id=788

[30] See the article "EU looks to protect home turf" by Stephen Castle, International Herald Tribune, 22 March 2012.

present procurement policies, organization, and procedures by undertaking a Country Procurement Assessment Report (CPAR). This instrument, designed in July 2000, is intended to be an analytical tool to diagnose the health of the existing system in a country and to develop and establish an action plan to improve a country's system for procuring goods, works, and consulting services.[31] Finally, the OECD has developed a set of Principles for Enhancing Integrity in Public Procurement based in four pillars: transparency; good management; prevention of misconduct, compliance and monitoring; and accountability and control.[32] The OECD supports and measures progress the implementation of these principles through a Toolbox of existing public procurement tools used in member and non-member countries, Public Procurement Reviews and analyses of public procurement.[33]

International Dairy Agreement and International Bovine Meat Agreement [34]

International Dairy Agreement and International Bovine Meat Agreement were part of Annex 4 of the WTO Agreement. This Annex contained 4 "plurilateral agreements" concerning trade in civil aircraft, government procurement, dairy and bovine meat respectively. These 4 agreements had originally been negotiated in the Tokyo Round but, after the conclusion of the Uruguay Round, had been applied to a narrower group of signatories.[35]

The agreements on dairy and bovine meat were terminated at the end of 1997; the signatory countries decided that those sectors were better handled under the Agriculture and Sanitary and Phytosanitary agreements. Some aspects of their work had been handicapped by the small number of signatories: for example, some major exporters of dairy products did not sign the Dairy Agreement, and the attempt to cooperate on minimum prices therefore failed — minimum pricing was suspended in 1995.

The objectives of the International Diary Agreement were: *"to achieve the expansion and ever greater liberalization of world trade in dairy products under market conditions as stable as possible, on the basis of mutual benefit to exporting and importing countries"* and *"to further the economic and social development of developing countries."* On the other hand, the objectives of the International Bovine Meat Agreement were: *"1. to promote the expansion, ever greater liberalization and stability of the international meat and livestock market by facilitating the progressive dismantling of obstacles and restrictions to world trade in bovine meat and live animals, including those which compartmentalize this trade, and by improving the international framework of world trade to the benefit of both consumer and producer, importer and exporter; 2. to encourage greater international cooperation in all aspects affecting the trade in bovine meat and live animals with a view in particular to greater rationalization*

[31] A full list of CPARs is available from http://www-wds.worldbank.org/external/default/main?pagePK=64187835&piPK=64620093&theSitePK=523679&menuPK=64187283&siteName=WDS&pageSize=20&docTY=540617

[32] See http://www.oecd.org/document/25/0,3746,en_2649_34135_42768665_1_1_1_1,00.html

[33] A list of OECD Public Procurement Reviews is available from http://www.oecd.org/document/5/0,3746,en_2649_34135_41883909_1_1_1_1,00.html#reviews3

[34] See http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm10_e.htm#dairyandbeef

[35] See http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=565

and more efficient distribution of resources in the international meat economy; 3. to secure additional benefits for the international trade of developing countries in bovine meat and live animals through an improvement in the possibilities for these countries to participate in the expansion of world trade in these products by means of inter alia: (a) promoting long-term stability of prices in the context of an expanding world market for bovine meat and live animals; and (b) promoting the maintenance and improvement of the earnings of developing countries that are exporters of bovine meat and live animals; the above with a view thus to deriving additional earnings, by means of securing long-term stability of markets for bovine meat and live animals; 4. to further expand trade on a competitive basis taking into account the traditional position of efficient producers." The International Bovine Meat Agreement applied to the bovine meat products listed in its Annex and to any other product that may be added by the International Meat Council.

The International Diary Agreement and the International Bovine Meet Agreement are examples of termination of a plurilateral agreement. When parties to an existing Plurilateral Trade Agreement wish to see it terminated (deleted from Annex 4), the Ministerial Conference may decide the matter by consensus, as was the case for the International Diary Agreement and the International Bovine Meet Agreement that were terminated by consent of the participating Members. (Footer 2006:147)

Information Technology Agreement (ITA) [36]

The Ministerial Declaration on Trade in Information Technology Products (ITA) was concluded by 29 participants at the Singapore Ministerial Conference in December 1996. The ITA provided that it would only enter into force when the participants that notified their acceptance of the ITA would represent approximately 90 per cent of world trade in information technology Products.[37] This threshold was met by 1 July 1997, when the ITA entered into force. (Harbinson and De Meester 2012)

A formal Committee under the WTO was established after the ITA came into being, by the Implementation of the Ministerial Declaration on Trade in Information Technology Products. The Committee held its first meeting on 29 September 1997 and established a set of rules of procedure, similar to other WTO bodies and involving a diverse agenda related to the ITA.[38]

Since 1996, the number of participants has increased to the current 74 WTO members, representing about 97 per cent of world trade in information technology products.[39] The Committee of Participants in the Expansion of Trade in Information Technology Products confirmed, on 28 March 2012, that Colombia is joining ITA after completing its negotiations and committing to a schedule of liberalization.

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[36] See http://www.wto.org/english/tratop_e/inftec_e/itaintro_e.htm

[37] Annex to the Ministerial Declaration on Trade in Information Technology Products, paragraph 4.

[38] See WTO Document G/IT/3, available from http://www.wto.org/english/tratop_e/inftec_e/git3.doc. On the participation of observers in the Committee, the document states that *"Members of the World Trade Organization which are not participants to the Ministerial Declaration and Governments which are observers to the Council for Trade in Goods may follow the proceedings of the Committee of Participants on the Expansion of Trade in Information Technology Products, hereinafter referred to as the 'Committee', in an observer capacity."*

[39] The schedules of concessions for tariff reductions by ITA signatory countries are available from http://www.wto.org/english/tratop_e/inftec_e/itscheds_e.htm. The schedule of the European Communities comprises the commitments of the 25 member states (Bulgaria and Romania have individual schedules).

Parties to the ITA by economic status, 1996–2008

Year joined ITA	Developed countries	Developing countries		
	Economic status (based on World Bank income classification			
	High income	Upper middle income	Lower middle income	Low income
1996	Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, South Korea, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Chinese Taipei, United Kingdom, United States	Turkey	Indonesia	
1997	Czech Republic, Estonia, Israel, Macao, New Zealand, Slovakia	Costa Rica, Malaysia, Poland, Romania	El Salvador, India, Philippines, Thailand	
1998		Panama		
1999	Croatia	Latvia, Lithuania, Mauritius	Albania, Georgia, Jordan	Kyrgyzstan
2000	Cyprus, Oman, Slovenia			
2001		Bulgaria	Moldova	
2003	Bahrain		China, Egypt, Morocco	
2004	Hungary, Malta			
2005			Nicaragua	
2006	Saudi Arabia	Dominican Republic	Guatemala, Honduras	
2007	United Arab Emirates			Vietnam
2008		Peru	Ukraine	

Source: Anderson and Mohs (2010)

ITA was originally negotiated by a "critical mass" of WTO members. But it is universal in its application because the adhering members each schedule their commitments in their WTO/GATS schedules; and the resultant benefits are extended to all WTO members on an MFN basis.[40] ITA has not been included in Annex 4 of the Marrakesh Agreement with the other plurilateral agreements (Trade in Civil Aircraft, Government Procurement and Diary and Bovine Meet). Following Harbinson and De Meester (2012), "the "critical mass" approach used in trade in goods facilitated the conclusion of an agreement among a subset of WTO Members. The additional obligations in the agreement can be incorporated in the WTO framework for those Members accepting them by making a reference to the new agreement in these Members' tariff schedules. Hence, such inclusion does not need a decision by consensus in the Ministerial Conference or General Council, contrary to the inclusion of plurilateral agreements in Annex 4 to the

[40] See http://www.thecityuk.com/assets/Uploads/Next-Generation-Negotiations-25-Oct-2011-FINAL.pdf, p.4

WTO Agreement. The benefit of such agreements must be extended, by virtue of Article I:1 of the GATT 1994, on an MFN basis to all WTO Members."

ITA is solely a tariff cutting mechanism: it provides for participants to completely eliminate duties on IT products covered by the Agreement. Developing country participants have been granted extended periods for some products. There are no binding commitments concerning NTBs: ITA encourages the signatories *"to consult on non-tariff barriers to trade in information technology products"*.[41] In November 2000 the ITA Committee approved a one-year work programme on non-tariff measures on ITA products consisting of three phases: phase I would identify NTMs which are impediments to trade in ITA products; phase II would examine the economic and developmental impact of such measures on trade in ITA products and the benefits which would accrue to participants from addressing their undue trade-distorting effects; and phase III would be the formal consideration by the Committee of the outcomes of phases I and II.[42]

Different meetings of the ITA Committee emphasized the importance of the work on NTBs in the ITA sector and also reported the developments in the NAMA negotiations on NTBs where, at the meeting of the Committee on May 2011, two delegations made their proposals on NTBs in the electronic sector, pertaining to the electrical safety and electromagnetic compatibility of electronic goods in the context of NAMA. It was agreed that to revert to this issue at next Committee meeting continue the discussion on NTBs.

ITA sets three basic principles: 1) all products listed in the Declaration must be covered, 2) all must be reduced to a zero tariff level, and 3) all other duties and charges must be bound at zero. There are no exceptions to product coverage. The text of the Agreement does not include special provisions for developing countries, although it is contemplated the possibility for sensitive items to have an extended implementation period.[43] According to the text of the Agreement *"each party shall bind and eliminate customs duties and other duties and charges of any kind ... through equal rate reductions of customs duties beginning in 1997 and concluding in 2000, recognizing that extended staging of reductions and, before implementation, expansion of product coverage may be necessary in limited circumstances."* Commitments undertaken under the ITA in the WTO are on an MFN basis, and therefore the benefits must be extended to all other WTO Members.

As regards to the status of implementation of the Agreement, according to the Committee of Participants on the Expansion of Trade in Information Technology Products, as of May 2011 El Salvador had indicated that implementation would begin after the completion of domestic legal procedural requirements; and Morocco had not yet submitted the formal documentation.[44] In addition, Panama´

[41] See http://www.wto.org/english/tratop_e/inftec_e/itaintro_e.htm

[42] See http://www.wto.org/english/news_e/pres00_e/pr198_e.htm

[43] A list of schedules of concessions for tariff reductions by ITA signatory countries is available from http://www.wto.org/english/tratop_e/inftec_e/itscheds_e.htm

[44] For an overview of the status of implementation as of October 2011 see WTO Document G/IT/1/Rev.45 available from http://docsonline.wto.org/DDFDocuments/t/G/IT/1R45.doc

schedules of concessions are not available yet.[45] Also, other countries have longer implementation periods.[46]

Like in the case of the Agreement of Trade in Aircraft, the ITA has not been invoked either in the settlement of disputes related to information technology products. In the three cases that took place so far, the EU was a respondent and different GATT 1994 provisions were invoked by the complainants (United States, Japan and Chinese Taipei, respectively).[47]

Recently, there were some events that showed the relevance and interest of the WTO membership on this plurilateral agreement. At the meeting of the ITA Committee on 24 October 2011, the EU reiterated its proposal to expand the coverage of products and participants under the ITA in written replies to questions from the ASEAN members. According to the EU views, negotiating an IT sectoral in the ITA Committee seems now to be more promising than in the NAMA Negotiating Group, given the current state of play in the negotiations. The EU also suggested that non-tariff barriers in the IT sector that have been discussed in NAMA could also be taken up in the ITA Committee. Philippines, Japan and the United States are still studying the EU paper. On the other hand, the Russian Federation announced its plans to join the ITA to encourage the IT industry in that country, and would be submitting a letter to the ITA Committee Chair to this effect, including a schedule of its commitments.[48]

All in all, so far the signatories of the ITA have failed to re-negotiate the coverage of the agreement due to a longstanding dispute amongst its members. The disagreement between ITA signatures has been attributed to the fragmentation of supply chains in the ICT sector but also to the fact that several products have been developed in the new digital economy, while others were merged while others were merged or become obsolete. (Lee-Makiyama 2011) In order to face these new challenges a proposal "proofing" ITA by creating an International Digital Economy Agreement has been suggested. According to Lee-Makiyama (2011), this new agreement should cover new members like Argentina, Brazil, Chile, Mexico, Russian Federation and South Africa which, although accounting altogether for 6.7 % of ICT trade, they might soon develop the same complications as negotiations at the multilateral level.

Anti-Counterfeiting Trade Agreement (ACTA)[49]

The ACTA was signed on 1 October 2011 by Australia, Canada, the European Union (represented by the European Commission, and the European Union Presidency and the EU Member States), Japan, the Republic of Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States.

[45] See http://www.wto.org/english/tratop_e/inftec_e/itscheds_e.htm

[46] For instance, for instance, Kuwait schedule of tariff concessions states 2011 and 2012 as years of implementation (http://www.wto.org/english/tratop_e/inftec_e/752.pdf) whereas Egypt states 2005 and 2007 (http://docsonline.wto.org/imrd/directdoc.asp?DDFDocuments/t/WT/LET/459-00.doc)

[47] For a list of disputes related to information technology products see http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm#selected_subject

[48] See http://www.wto.org/english/news_e/news11_e/ita_24oct11_e.htm

[49] The final text of the ACTA (May 2011) is available from http://www.mofa.go.jp/policy/economy/i_property/pdfs/acta1105_en.pdf

The objective of the ACTA is to put in place international standards for enforcing intellectual property rights in order to fight more efficiently the growing problems of counterfeiting and piracy. It aims to establish an international legal framework for targeting counterfeit goods, generic medicines and copyright infringement on the Internet. The agreement covers three areas: improving international cooperation, establishing best practices for enforcement, and providing a more effective legal framework.[50]

Chapter V of ACTA establishes a Committee with attributes to: review the implementation and operation of the Agreement; consider matters concerning its development; consider any proposed amendments; decide the terms of accession to the Agreement of any Member of the WTO; and consider any other matter that may affect the implementation and operation.

The ACTA is an example of a "plurilateral" agreement wholly outside the WTO framework. It provides for any WTO member to be able to accede on a voluntary basis and sets up a new international legal framework run by its own governing body, outside existing international institutions such as the WTO or the World Intellectual Property Organization (WIPO).[51] However, in relation to other agreements already in place, Article 1 of ACTA states that *"Nothing in this Agreement shall derogate from any obligation of a Party with respect to any other Party under existing agreements, including the TRIPS Agreement."*

The Agreement does not include any direct reference to developing countries. The preamble refers to the proliferation of counterfeit and pirated goods as activities that undermine legitimate trade and sustainable development of the world economy, posing also risks to the public. In addition, Article 35 sets the framework for assistance in capacity building and technical assistance in improving the enforcement of intellectual property rights to the Parties to this Agreement and, where appropriate, to prospective Parties. According to this article, capacity building and technical assistance may cover such areas as: enhancement of public awareness on intellectual property rights; development and implementation of national legislation related to the enforcement of intellectual property rights; training of officials on the enforcement of intellectual property rights; and coordinated operations conducted at the regional and multilateral levels.

Trans-Pacific Partnership (TPP)

The Trans-Pacific Partnership (TPP) is an initiative proposed by a number of Asia-Pacific Economic Cooperation (APEC) members including the United States to jointly attempt to address problems related to the lack of uniformity and coverage. As expressed in a note titled "next generation" services negotiations by TheCityUK, the TPP proposes " to take existing FTA agreements and test whether they could be expanded to include non-covered areas such as public procurement, intellectual property rights (IPR), investment protection, non-tariff barriers, and regulatory cooperation through adoption of mutually agreed trade principles (like the recent US-EU trade principles for Information and Communication Technology (ICT)). The resultant agreement could then be proposed as a template to other countries. It is

[50] See http://www.dfat.gov.au/trade/acta/

[51] See http://www.thecityuk.com/assets/Uploads/Next-Generation-Negotiations-25-Oct-2011-FINAL.pdf, p.5

too soon to say whether the TPP approach will work, how extensive it will be, and whether it will carry lessons of more regional or global general application."[52]

According to the USTR website, the TPP Agreement will "feature new cross-cutting issues not previously included in trade agreements, such as making the regulatory systems of TPP countries more compatible so U.S. companies can operate more seamlessly in TPP markets and helping small- and medium-sized enterprises, which are a key source of innovation and job creation, participate more actively in international trade." [53]

On November 12, 2011, the Leaders of the nine Trans-Pacific Partnership countries – Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, Vietnam, and the United States – announced the achievement of the broad outlines of the TPP agreement.[54] According to the outlines of the TPP, it aims to enhance trade and investment among the partner countries, promote innovation, economic growth and development, and support the creation and retention of jobs. The resultant agreement could then be proposed as a template to other countries. The TPP agreement is being negotiated as a single undertaking that covers all key trade and trade-related areas. The TPP tariff schedule will cover all goods, representing some 11,000 tariff lines. The nine countries are also developing common TPP rules of origin, and are weighing proposals now for how to do this most effectively and simply. Services and investment packages will cover all service sectors. Negotiations are conducted on a "negative list" basis, which presumes comprehensive coverage but allows countries to negotiate specific exceptions to commitments in specific service sectors. Also government procurement packages are being negotiated. [55]

The Trade Ministers of the negotiating parties identified five key features of the future TPP: a comprehensive market access; a fully regional agreement to facilitate the development of production and supply chains among TPP members; the incorporation in TPP of cross-cutting trade issues to build on work being done in APEC and other fora (e.g. regulatory coherence, competitiveness and business facilitation, small and medium-sized enterprises and development[56]); the promotion of trade and investment in innovative products and services in order to face the new trade challenges; and to enable the updating of the agreement as appropriate to address trade issues that emerge in the future as well as new issues that arise with the expansion of the agreement to include new countries.

The United States recently proposed to link the TPP to the WTO´s plurilateral Information Technology Agreement (ITA). According to the portal World Trade Online "Obama administration is proposing that current and future members of the Trans-Pacific Partnership be required to join the World Trade Organization's Information Technology Agreement, a plan intended to respond to fast-paced

[52] See http://www.thecityuk.com/assets/Uploads/Next-Generation-Negotiations-25-Oct-2011-FINAL.pdf, p.3

[53] See http://www.ustr.gov/tpp

[54] Among the current group of nine countries involved in the negotiations of the TPP, the United States, New Zealand, Australia, have recently manifested that are not yet ready to let new interested countries join the talks. In contrast, all other members would be willing to allow other potential members like Canada, Mexico and Canada join the TPP negotiating talks in the near term. See http://insidetrade.com/

[55] See http://www.ustr.gov/about-us/press-office/fact-sheets/2011/november/outlines-trans-pacific-partnership-agreement

[56] "Cooperation and Capacity Building" is one of the issues under negotiation. According to the USTR website, TPP countries recognize that capacity building activities can be an effective tool in helping to address specific needs of developing countries in meeting the high standards the TPP countries have agreed to seek.

technological innovations and often lagging tariff policies."[57] This proposal is part of Obama administration´s initiative to expand ITA´s coverage. Among the nine countries that are currently party to the TPP negotiations, only Vietnam, Brunei and Chile are not party to the ITA. Mexico, has expressed an interest in joining the TPP, but has also long resisted joining the ITA (the benefits of which parties must extend to all WTO members on a MFN basis). Furthermore, other countries have also been requested to join the plurilateral ITA as part of their commitments of other agreements. Colombia is in the process of joining the ITA as part of its commitment to do so under the U.S.-Colombia free trade agreement, and that Russia is doing so as part of its accession to the WTO.

All in all, such a plurilateral agreement following the TPP-type would be designed to conform with Articles V of GATS and XXIV of GATT, and could be either MFN based in effect or non-MFN with benefits shared only among participants. In addition, this agreement could be either within the WTO framework (WTO Dispute Settlement provisions applied) or outside the WTO framework (with its own provisions on dispute settlement).[58]

Overview of plurilateral agreements

Agreement	Within WTO framework	Most Favored Nation principle applies	WTO Dispute Settlement (DS) provisions apply
Agreement on Trade in Civil Aircraft	✓	✓	✓
Agreement on Government Procurement (GPA)	✓	✗	✓
International Dairy Agreement and International Bovine Meat Agreement	✓	✗	✓
Information Technology Agreement (ITA)	✓	✓	✓
Anti-Counterfeiting Trade Agreement (ACTA)	✗	✗	✗
Trans-Pacific Partnership (TPP) (not concluded yet)	?	?	?

Source: own elaboration. Legend: ✓=Yes; ✗=No; ? =Not available

The plurilateral agreements described above are not homogeneous and present differences among each other. Taking the experience of the existing plurilateral agreements negotiated as a basis, some aspects seem to be crucial for adopting a plurilateral approach to solve the DDA/WTO impasse. These areas are: the frame in which the plurilateral agreements are negotiated (should they be part of the already existing WTO framework or not); the principles adopted by the agreements (they were based on the MFN principle and, the resultant benefits would be extended to all the WTO members); and the possibility to apply the WTO Dispute Settlement provisions or not.

In sum, there are various alternative forms of plurilateral agreements. The ITA is an example of an agreement which is "plurilateral" in its negotiation origin, based on the MFN principle with benefits extended to non-participant WTO member countries. The GPA is an example of a conditional MFN-based "plurilateral" WTO agreement with benefits confined to participant WTO members only; adhering

[57] See http://insidetrade.com/

[58] See http://www.thecityuk.com/assets/Uploads/Next-Generation-Negotiations-25-Oct-2011-FINAL.pdf, p.5

WTO members grant reciprocal benefits to each other but not to non-participants. The ACTA might be an example of a "plurilateral" agreement wholly outside the WTO framework without (or with little) reference to the provisions of the WTO agreements. Finally, and although it is too soon to say whether the TPP approach will work, the TPP might be an example of a "plurilateral" agreement having regard to the "economic integration" provisions of the WTO Agreements (Articles XXIV GATT, Article V GATS and Enabling Clause), with its own provisions for ongoing consultation between the parties, dispute settlement, etc.[59]

Which are the WTO members supporting/rejecting a plurilateral approach to help solving the DDA/WTO impasse?

During the recent 8th Ministerial Conference (MC8), WTO members considered two different directions on the negotiating approaches that the DDA should take. On the one hand, some members supported the idea to seek plurilateral agreements, including new issues such as climate change, energy or food security which should be discussed within the WTO in order for the WTO to maintain its centrality and universal coverage. Exploring new pathways for negotiations through plurilateral agreements was proposed by the United States that, in particular, proposed a plurilateral agreement in services. The initiative carried by the United States and Australia aims to explore how various services commitments could be merged into a broader agreement, involving senior officials from Australia, Canada, Chile, Colombia, the EU, Hong Kong, Japan, Mexico, New Zealand, Norway, Pakistan, Singapore, South Korea, Switzerland and Taiwan.[60]

In line with the idea to seek a plurilateral agreement within the WTO framework, the National Foreign Trade Council (NFTC) in the United States has recently released a paper on "A 21st Century Work Program for the Multilateral Trading System" outlining new ideas to advance the multilateral trade agenda. The NFTC paper recommends that the WTO pursue the following key initiatives: conclude a trade facilitation agreement; negotiate a services agreement; take steps to discuss and address 21st Century global challenges, including optimizing the digital economy and movement of information across borders, improving global health outcomes and lowering obstacles to the development and adoption of clean technologies; and consolidate trade liberalization under the WTO framework.[61] The paper also features a detailed legal analysis of WTO-consistent approaches to plurilateral and non-MFN Trade Agreements. According to Harbinson and De Meester (2012), a "collective request" through a plurilateral approach could serve as starting point for new efforts to assess sectors where a "critical mass" may be available. Such an agreement, the authors think, should cover services that will be developed in the future by advancing on a negative "list basis".

The Coalition of Service Industries (CSI) from the United States also supports the negotiation of a plurilateral agreement in services covering an ambitious agenda "that embraces all the regional and

[59] See http://www.thecityuk.com/assets/Uploads/Next-Generation-Negotiations-25-Oct-2011-FINAL.pdf, pp.4-5
[60] Geneva Watch, January 2012, http://chicken.ca/upload/Documents/Geneva_Watch_January23_2012.pdf
[61] National Foreign Trade Council, February 2012, http://www.nftc.org/newsflash/newsflash.asp?Mode=View&id=236&articleid=3420&category=All

bilateral efforts to create open and fair services markets, would be greatly facilitated by a services free trade agreement - an International Services Agreement (ISA) - opening markets across sectors. An element of an ISA could be a binding agreement on data flows that would bar arbitrary blockages of data or requirements of forced localization of data infrastructure within a country, but reserve the right to regulate under agreed guidelines for public safety, privacy, public morals, and national security for example. The ISA would overarch and incorporate the services provisions of existing FTAs and the Trans Pacific Partnership, and new initiatives stemming from the EUUS High Level Dialogue, for example."[62] CSI suggests addressing both traditional negotiating topics and emerging 21st century issues related to the internet and trade facilitation in a plurilateral agreement under Article V of GATS but also to "extend to ongoing trade negotiations, for example in the Trans-Pacific Partnership talks, the Obama administration's initiative for the Middle East and North Africa, the Transatlantic Economic Council with the European Union, and other fora as well."

Other members of the WTO expressed opposition to the plurilateral perspective proposed by the United States. These countries were concerned by the fact that the inclusion of new issues would exceed the existing mandate of the DDA shifting away from the development dimension of the round. This position had notably been defended by the "Friends of Development", an informal grouping of G90 (African Group + ACP + Least-Developed Countries)[63] and BICS countries, who had required that development was at the core of all WTO work and aimed for giving priority to LDCs concerns. Emerging economies such as Brazil, India[64], China and South Africa have openly expressed opposition to plurilateral approaches as the way forward to the negotiations at the MC8, expressly calling for a continuous bottom-up, transparent and inclusive negotiations.[65]

The criticism towards a plurilateral approach to WTO negotiations has been also expressed to other plurilateral agreements outside the WTO context. Both ACTA and TPP have been questioned recently by developing countries like India, concerned about the potential impacts of these agreements on public health, international exhaustion, border measures and digital goods and internet freedom. During the last TRIPS Council at the WTO India stated that "that the adverse effect of the TRIPS plus enforcement provisions contained in ACTA and other plurilateral agreements in the pipe line would not only affect the developing countries but could also have an impact on the developed countries. It is therefore essential that collective efforts must be made to protect the policy space needed not only to access affordable medicines but also to provide freedom to let the nascent digital industry prosper in the interest of the mankind."[66]

If WTO members decide to pursue a plurilateral approach, the question remains open as to what type of plurilateral agreement could be adopted. As mentioned above, there are different types of plurilateral agreements where the MFN principle applies, others where it does not. There is also the question on how

[62] Gresser, Edward (2012), "Services Trade Liberalization as a Foundation of Global Recovery", *United States Coalition of Service Industries Study*, p.17, available from http://uscsi.org/images/files/press-releases/Gresser%20White%20Paper%20FINAL.pdf

[63] See http://wto.org/english/tratop_e/dda_e/negotiating_groups_e.htm

[64] In particular, India has warned against the use of Paragraph 47 of the Doha Ministerial Declaration (see Annex 1).

[65] See DG Trade Civil Society Dialogue, "WTO Work After the 8th Ministerial Conference, Incl. On the DDA", December 2011, http://trade.ec.europa.eu/doclib/docs/2012/january/tradoc_148953.pdf

[66] CUTS Trade Forum, March 2012.

would plurilaterals be consistent with Article 1 of the GATT, the principle of non-discrimination among WTO members.

How could plurilateral agreements help solve the WTO/Doha Round impasse and contribute to strengthening of the multilateral trading system?

Plurilateral agreements could provide a way out of the current impasse of the DDA/WTO and offer an alternative to the ever growing FTAs, RTAs and BITs.[67] Plurilateral agreements could encourage WTO members to come forward and make commitments within the framework of the WTO and allow other countries to join the Agreement later at their own time if seen useful.

Several of the DDA negotiation topics could be put into a plurilateral agreement. Agreeing to such Plurilateral Agreeements would offer WTO members: a) a way out of the ongoing impasse of the DDA and b) give countries something to agree to and fine-tune through constructive negotiations. Such plurilateral solutions imply that different groups of members achieve a "critical mass" as other WTO members join such plurilateral agreements.

Plurilateral agreements can be the way forward because this could help consolidate an agreement in those areas (not only GATS/services) where there has been a consensus among the parties but, due to the "Single Undertaking" approach to negotiations, it has not been possible so far to conclude with an agreement. In other words, a plurilateral approach could offer an opportunity to find common ground on policy issues that cannot command the support of enough countries to agree on a multilateral basis.[68]

Plurilateral solutions could offer a means to contain the continuous erosion of the WTO caused by the increasing number of RTAs, FTAs and BITs since plurilateral agreements allow WTO members to make further commitments within the WTO system. Hence, a plurilateral approach to solve the impasse of the DDA should be within the WTO framework (not outside); and offer other WTO members the option to join over time as seen fitting their respective countries' trade strategies[69]; and offer market access based on reciprocity (China's current negotiation for membership of the GPA is an example) and be attached to the MFN principle to minimize the free-rider question of non-participant members benefiting from the agreement. According to Harbinson and De Meester (2012), in order to avoid the extension of benefits to non-members on an MFN basis, there would be a need for a waiver decision by the Ministerial Conference or the General Council. Alternatively, the interested parties could sign a preferential trade

[67] Proposed by Prof. Saner at several WTO Conferences during 2009-2011. Approach for plurilateral negotiation of services was proposed by the US representative at the WTO 8th Ministerial Conference (November 2011). The reacting of the WTO members was mixed: some members were in favour, but others strongly against.

[68] For further alternatives to restructuring the trade talks to get past the prolonged impasse see Hoekman, Bernard (2011), "Proposals for WTO Reform: A Synthesis and Assessment", World Bank Policy Research Working Paper 5525. Available from http://www.iadb.org/intal/intalcdi/PE/2011/07634.pdf

[69] For an analysis on coherence and coordination in trade policy making see Saner, Raymond (2010), "Trade Policy Governance through Inter-Ministerial Coordination: A Source Book for Trade Officials and Development Experts", Republic of Letters - Publishing, Dordrecht.

agreement outside the WTO that would comply with the conditions established by Article 24 of the GATT 1994 and Article 5 of GATS.

Conclusions

Plurilateral agreements strengthen multilateralism, they do not weaken it. A plurilateral approach could offer a higher degree of specialization in the negotiation agenda and, at the same time, allocate political resources on those goals or results that are likely to be reached.

Plurilateral agreements might constitute a solution to the impasse of WTO/DDA as well as a basis for future trade agreements within the WTO context. This approach would help WTO members to reach an agreement on those issues in which there might be a consensus and offer other WTO members options to join over time according to their respective countries' trade strategies. If the plurilateral deals are well conceived and designed, non-participant WTO members would have an incentive to join them at some later point.

Within the WTO framework there are legal provisions allowing for plurilaterals. However, any proposal for a new agreement in order to be viable needs to follow a set of informal criteria in order to be included under the WTO Umbrella. However, and as suggested by the experience of Chinese Taipei, in some cases a country joining a plurilateral agreement might be pressured to join the agreement for example, because of its main trading partners have joint it.

As a basis for future trade agreements within the WTO context, a plurilateral approach would bring transparency to the system, allow related disputes to be solved through the WTO Dispute Settlement Body and be based on the MFN principle. Such an option should carefully consider the "free rider" question: the fact that countries could benefit from the agreements without undertaking any obligations whatsoever, if the plurilateral agreement is based on MFN basis. This is an issue that seems to be better tackled on a case by case basis.

The plurilateral agreements negotiated so far, as well as the provisions in the WTO Agreements, show that it is possible to start a new plurilateral agreement within the WTO framework. One way to do it would be through negotiations amongst WTO members until a "critical mass" has been reached of WTO members who support the new plurilateral agreement following the ITA example covering e.g. 90% of world trade in a specific sector. The additional obligations in such a new plurilateral agreement could then be incorporated into the WTO framework for those Members who accept them by making a reference to the new agreement in these Members' tariff schedules. Hence, such inclusion does not need a decision by consensus in the Ministerial Conference or General Council, contrary to the inclusion of plurilateral agreements in Annex 4 to the WTO Agreement. "The obligations are thus "multilateralized" so that all WTO Members receive the benefits. This methodology admittedly allows a limited number of "free riders" but this is considered acceptable as long as the critical mass has been achieved."[70]

In terms of enforceability of the plurilateral trade agreements, the experience with the plurilateral agreements in place shows that when it concerned information technology and civil aircraft, the

[70] Comment kindly contributed by Mr. Stuart Harbinson.

plurilateral agreements were not invoked by the complainants. Instead, they cited multilateral agreements like GATT 1994 or the Agreement on Subsidies and Countervailing Measures. The case of the GPA is the exception to this trend because there were 4 cases directly invoking this plurilateral agreement. The countries involved in these disputes (either as compliant or as respondent) were the United States, the European Union, Japan and Korea.[71]

Plurilateral solutions could offer a means to contain the continuous erosion of the WTO caused by the increasing number of RTAs, FTAs and BITs since plurilateral agreements allow WTO members to make further commitments within the WTO system. Hence, a plurilateral approach to solve the impasse of the DDA should be within the WTO framework (not outside); and offer other WTO members the option to join over time as seen fitting their respective countries' trade strategies; and offer market access based on reciprocity (China's current negotiation for membership of the GPA is an example) and be attached to the MFN principle to minimize the free-rider question of non-participant members benefiting from the agreement. According to Harbinson and De Meester (2012), in order to avoid the extension of benefits to non-members on an MFN basis, there would be a need for a waiver decision by the Ministerial Conference or the General Council. Alternatively, the interested parties could sign a preferential trade agreement outside the WTO that would comply with the conditions established by Article 24 of the GATT 1994 and Article 5 of GATS.

All in all, for plurilateralism to be effective and sustainable it has to be linked to the multilateral norms and principles. Any plurilateral approach should provide room for flexibility to facilitate final convergence within the multilateral level. Like in the case of the GPA negotiations, it also seems important that collaborative work among other international organizations addresses topics that are part of a plurilateral negotiation.

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[71] For an overview of these cases see http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A15#selected_agreement

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Annex 1:

Provisions allowing for the negotiation of plurilateral agreements in the WTO framework

Marrakesh Agreement[72]

Article II: Scope of the WTO

3. The agreements and associated legal instruments included in Annex 4 (hereinafter referred to as "Plurilateral Trade Agreements") are also part of this Agreement for those Members that have accepted them, and are binding on those Members. The Plurilateral Trade Agreements do not create either obligations or rights for Members that have not accepted them.

[72] The text of the Marrakesh Agreement is available from: http://www.wto.org/english/res_e/booksp_e/analytic_index_e/wto_agree_01_e.htm

Article III: Functions of the WTO

1. The WTO shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.

Article IV: Structure of the WTO

8. The bodies provided for under the Plurilateral Trade Agreements shall carry out the functions assigned to them under those Agreements and shall operate within the institutional framework of the WTO. These bodies shall keep the General Council informed of their activities on a regular basis.

Article IX: Decision-Making

5. Decisions under a Plurilateral Trade Agreement, including any decisions on interpretations and waivers, shall be governed by the provisions of that Agreement.

Article X: Amendments

9. The Ministerial Conference, upon the request of the Members parties to a trade agreement, may decide exclusively by consensus to add that agreement to Annex 4. The Ministerial Conference, upon the request of the Members parties to a Plurilateral Trade Agreement, may decide to delete that Agreement from Annex 4.

10. Amendments to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XII: Accession

3. Accession to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XIII: Non-Application of Multilateral Trade Agreements between Particular Members

5. Non-application of a Plurilateral Trade Agreement between parties to that Agreement shall be governed by the provisions of that Agreement.

Article XIV: Acceptance, Entry into Force and Deposit

4. The acceptance and entry into force of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement. Such Agreements shall be deposited with the Director-General to the CONTRACTING PARTIES to GATT 1947. Upon the entry into force of this Agreement, such Agreements shall be deposited with the Director-General of the WTO.

Article XV: Withdrawal

2. Withdrawal from a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XVI: Miscellaneous Provisions

5. No reservations may be made in respect of any provision of this Agreement. Reservations in respect of any of the provisions of the Multilateral Trade Agreements may only be made to the extent provided for in those Agreements. Reservations in respect of a provision of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Annex 4: Plurilateral Trade Agreements

- Annex 4(a) Agreement on Trade in Civil Aircraft[73]
- Annex 4(b) Agreement on Government Procurement[74]
- Annex 4(c) International Dairy Agreement[75]
- Annex 4(d) International Bovine Meat Agreement[76]

Doha Ministerial Declaration[77]

Paragraph 47

47. With the exception of the improvements and clarifications of the Dispute Settlement Understanding, the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking. However, agreements reached at an early stage may be implemented on a provisional or a definitive basis. Early agreements shall be taken into account in assessing the overall balance of the negotiations.

Hong Kong Ministerial Declaration[78]

Annex C: Services Paragraph 7

7. In addition to bilateral negotiations, we agree that the request-offer negotiations should also be pursued on a plurilateral basis in accordance with the principles of the GATS and the Guidelines and Procedures for the Negotiations on Trade in Services. The results of such negotiations shall be extended on an MFN basis. These negotiations would be organized in the following manner:

(a) Any Member or group of Members may present requests or collective requests to other Members in any specific sector or mode of supply, identifying their objectives for the negotiations in that sector or mode of supply.

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[73] The text of the Agreement is available from http://www.wto.org/english/docs_e/legal_e/air-79_e.pdf

[74] The text of the Agreement is available from http://www.wto.org/english/docs_e/legal_e/gpr-94_e.pdf

[75] This Agreement was terminated end 1997. The text of the Agreement is available from http://www.wto.org/english/docs_e/legal_e/ida-94_e.pdf

[76] This Agreement was terminated end 1997. The text of the Agreement is available from http://www.wto.org/english/docs_e/legal_e/ibma-94_e.pdf

[77] The text of the Doha Ministerial Declaration is available from http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm

[78] The text of Annex C of the Hong Kong Ministerial Declaration is available from http://www.wto.org/english/thewto_e/minist_e/min05_e/final_annex_e.htm

(b) Members to whom such requests have been made shall consider such requests in accordance with paragraphs 2 and 4 of Article XIX of the GATS and paragraph 11 of the Guidelines and Procedures for the Negotiations on Trade in Services.

(c) Plurilateral negotiations should be organised with a view to facilitating the participation of all Members, taking into account the limited capacity of developing countries and smaller delegations to participate in such negotiations.

Ministerial Declaration on Trade in Information Technology Products[79]

Annex: Modalities and Product Coverage

4. Participants shall meet as soon as practicable and in any case no later than 1 April 1997 to review the state of acceptances received and to assess the conclusions to be drawn therefrom. Participants will implement the actions foreseen in the Declaration provided that participants representing approximately 90 per cent of world trade (2) in information technology products have by then notified their acceptance, and provided that the staging has been agreed to the participants' satisfaction. In assessing whether to implement actions foreseen in the Declaration, if the percentage of world trade represented by participants falls somewhat short of 90 per cent of world trade in information technology products, participants may take into account the extent of the participation of States or separate customs territories representing for them the substantial bulk of their own trade in such products. At this meeting the participants will establish whether these criteria have been met.

(2) This percentage shall be calculated by the WTO Secretariat on the basis of the most recent data available at the time of the meeting.

Annex 2:

Provisions making reference to competition in the GPA

Article 6: Technical Specifications

4. Entities shall not seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement.

Article 7: Tendering Procedures

2. Entities shall not provide to any supplier information with regard to a specific procurement in a manner which would have the effect of precluding competition.

[79] The text of the Ministerial Declaration on Trade in Information Technology Products is available from http://www.wto.org/english/docs_e/legal_e/itadec_e.htm#fn2

Article 10: Selection Procedures

1. To ensure optimum effective international competition under selective tendering procedures, entities shall, for each intended procurement, invite tenders from the maximum number of domestic suppliers and suppliers of other Parties, consistent with the efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.

Article 15: Limited Tendering

1. The provisions of Articles VII through XIV governing open and selective tendering procedures need not apply in the following conditions, provided that limited tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination among suppliers of other Parties or protection to domestic producers or suppliers:…

b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, or in the absence of competition for technical reasons, the products or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;…

4. However, entities may decide that certain information on the contract award, contained in paragraphs 1 and 2(c), be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.

Article 19: Information and Review as Regards Obligations of Parties

1. The government of an unsuccessful tenderer which is a Party to this Agreement may seek, without prejudice to the provisions under Article XXII, such additional information on the contract award as may be necessary to ensure that the procurement was made fairly and impartially. To this end, the procuring government shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the government of the unsuccessful tenderer provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders, this information shall not be disclosed except after consultation with and agreement of the Party which gave the information to the government of the unsuccessful tenderer.

4. Confidential information provided to any Party which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers shall not be revealed without formal authorization from the party providing the information.