

RIETI-JETRO Symposium
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- For Protecting Free Trade -
Handout

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PLURILATERAL AGREEMENTS AND DEVELOPING COUNTRIES

IN SEARCH OF THE 90% CRITICAL MASS IN G-90?

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PRESENTATION OUTLINE

- Options for Plurilateral Agreements
- Developing country positions
 - BRICS and G-90
 - Reactions at MC8
 - GPA, ITA, ISA, ACTA
- Moving forward



MULTILATERAL VS. PLURILATERAL AGREEMENTS?

- GATT characterised by legal fragmentation
- WTO Agreement is a single treaty instrument which was accepted by WTO Members as a single undertaking
- But, WTO rules leave room for subsets of Members to conclude WTO-related plurilateral agreements – 5 options
 - As long as such a plurilateral agreement does not add to the obligations, or diminish the rights of other Members without their consent.



FIVE OPTIONS FOR PLURILATERAL AGREEMENTS

1. Agreement added to Annex 4 by consensus
GPA, Civil Aircraft
2. Agreement with WTO waiver by consensus
Lóme (WTO plus), Kimberly scheme (WTO minus)
3. Side agreement, without consensus, but extending
benefits to all WTO Members
ITA, Services Protocols
4. Regional Trade Agreement
TPP, EU, NAFTA
5. Agreement outside scope of WTO
Competition, migration, investment



	Annex 4 Plurilateral Trade Agreement	Plurilateral agreement covered by waiver	Other trade-related plurilateral agreement	RTA	Plurilateral agreement outside scope of WTO
Agreement integrated into the WTO Agreement?	Yes	No	Yes (Protocol or modification of schedules)	No	No
Legal coverage under the WTO Agreement?	Annex 4 under Art. X:9	Waiver decision under Art. IX:3	MFN provisions apply	GATT Art. XXIV, GATS Art. V, Enabling Clause	None
Agreement enforceable under WTO dispute settlement as between the parties?	Yes	No	Yes	No	No
Agreement adds to obligations or diminishes rights of third WTO Members?	No	No	No	No	No
WTO dispute settlement by third WTO Members?	No	Yes	Yes	Yes	No
Benefits must be shared with third WTO Members (MFN)?	No	No	Yes	No	No
Specific control by third WTO Members?	Yes	Yes	Yes	No	None
Examples	GPA, Civil Aircraft Agreement	Kimberly Process Certification Scheme, ACP-EC Preferential Trade Agreements, AGOA	ITA, Pharma, Services Protocols and Reference Paper, Bananas Agreement	EU, NAFTA, East African Community, MERCOSUR	Treaty on the Non-Proliferation of Nuclear Weapons, Rome Statute of the International Criminal Court

COUNTRY CLASSIFICATION IN THE WTO

- 155 WTO Members - plus 27 in accession & 2 waiting for ratification
 - Developed Members
 - Developing Members
 - Least developed Members (32)
- Various groupings in WTO negotiations
 - BRICS
 - G90



CRITICAL MASS 90%

- Top 30 traders account for the 90% of world merchandise trade
- Top 25 traders account for the 90% of world commercial services trade



BRICS AND G-90

Table: Shares in world exports and imports (percentage) and the ranking

		Merchandise trade	Commercial services trade
BRICS (minus Russia)		17.5	11.6
		16.1	14.3
	China	13.3 (2)	6.1 (3)
		11.6 (3)	7.1 (3)
	India	1.8 (14)	3.9 (6)
		2.7 (8)	4.3 (5)
	Brazil	1.7 (16)	1.1 (18)
		1.6 (14)	2.2 (10)
	South Africa	0.7 (24)	0.5 (26)
		0.8 (22)	0.7 (26)
	Russia	3.4 (7)	1.6 (12)
		2.1 (12)	2.6 (9)
G90 (66 Members)			
	LDC Group (32 Members)	1.1	0.5
		1.2	1.0
	African Group (41 Members)	3.7	2.3
		3.1	4.0
	ACP Group (59 Members)
	

Source: World Trade Report 2011

RECENT DISCUSSIONS ON PLURILATERALS

Doha Development Agenda

“... Members need to more fully explore different negotiating approaches, while respecting the principles of transparency and inclusiveness.”

- Elements for Political Guidance”
adopted at MC8



REACTIONS FROM DEVELOPING COUNTRIES

- “... we will not encourage or support plurilateral approaches, or any other negotiating modality that may compromise or weaken the multilateral nature of the negotiations”
 - BRICS Trade Ministers at MC8
- “... any new approaches ... must be multilaterally acceptable and in keeping with the basic principles of MFN”
 - African Union Trade Ministers at MC8



REACTIONS FROM DEVELOPING COUNTRIES

- “Reaffirm the need for upholding the multilateral and consensus-based decision making process of the DDA, and avoiding any attempt to pursue plurilateral approaches to circumvent the multilateral process”
 - LDC Trade Ministers at MC8
- “... reaffirm our commitment to the single undertaking and to a truly transparent and inclusive multilateral negotiating process”
 - G-20 Trade Ministers at MC8



REACTIONS FROM DEVELOPING COUNTRIES

- “... we do not support the adoption of a plurilateral approach to concluding the Round or parts of it, because it goes against the principles of multilateralism and inclusiveness”
 - “Friends of Development” at MC8
- “... strongly support respect of the principle of single undertaking in achieving the Doha development mandate...”
 - Ministers of the Informal Group of Developing Countries at MC8



REACTIONS FROM DEVELOPING COUNTRIES

- “Acknowledge that there may be a need to explore different negotiating approaches in the future within the Doha mandate.”
 - Ministers of Small, Vulnerable Economies at MC8
- “... recognise that it is the responsibility of every WTO Member to consider new and alternative ways to deliver a successful outcome.”
 - ASEAN Ministers at MC8



REASONS TO SUPPORT PLURILATERALS

- Addressing specific issues/areas
- Flexibility in the choice of participants
- Getting around the WTO consensus decision-making
- Responding to the changing needs of industries
- Preparation for future multilateral rules making



REASONS TO OPPOSE PLURILATERALS

- Plurilateral agreements vs approaches
 - Concerns more about the process than the substance
 - Information deficit
 - Exclusion from the negotiation process
 - Diminishing the value of multilateralism
- Plurilateral agreements: Market Access vs Rules
- Single undertaking



RECENT DISCUSSIONS ON PLURILATERALS

- Government Procurement Agreement (GPA) – Amendment to the 1994 agreement reached on the margins of MC8
- Proposed expansion of the Information Technology Agreement (ITA) at the 15th Anniversary in May 2012
- International Services Agreement (ISA) – led “Really Good Friends of Services” after MC8
- TRIPS Discussion on Anti-Counterfeiting Trade Agreement (ACTA) since 2010

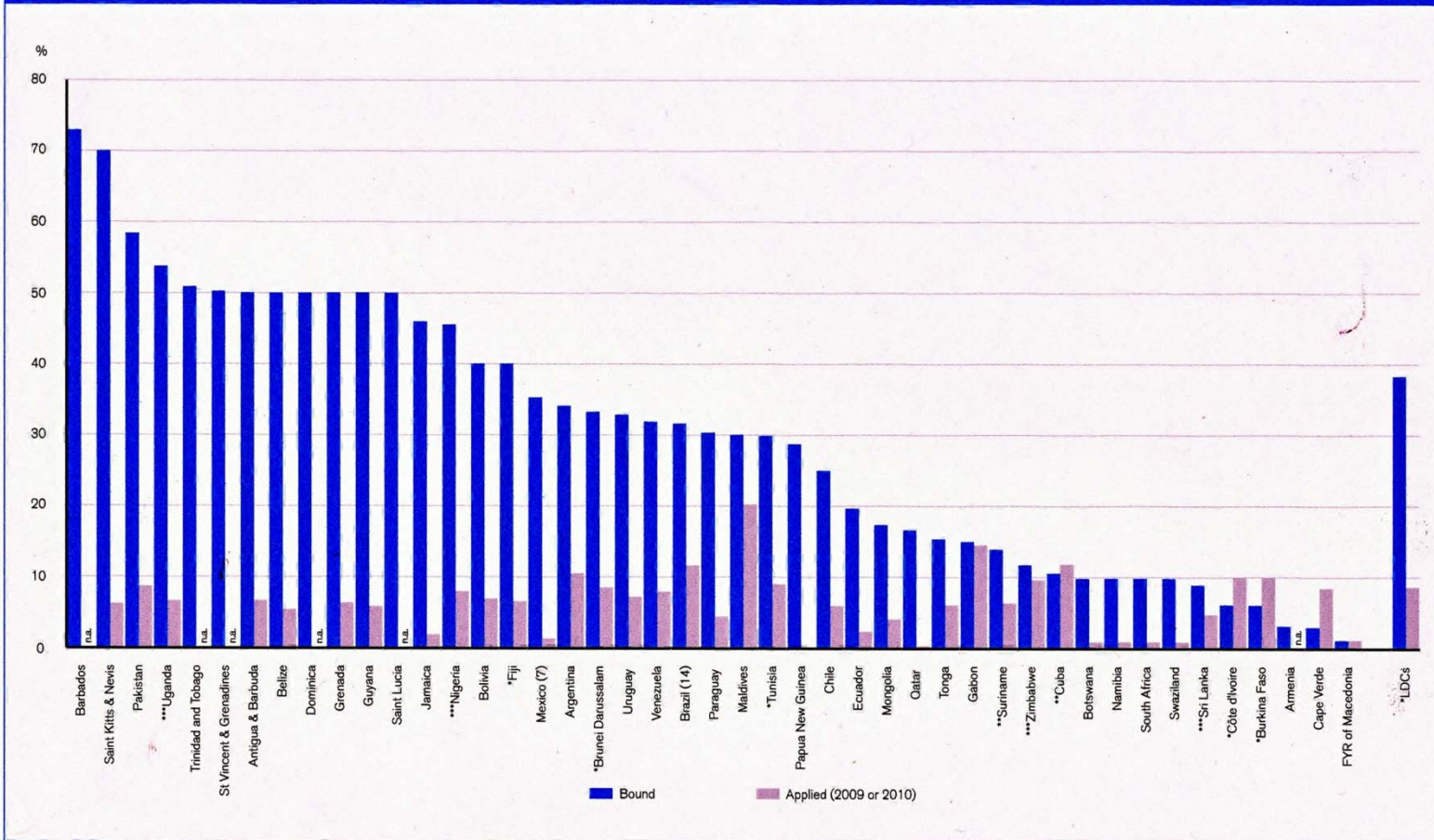


GOVERNMENT PROCUREMENT AGREEMENT (GPA)

- 42 participants, representing 2.64% of world GDP
- A revised GPA concluded in December 2011
- 22 Observers
 - 9 in accession for membership, including China
 - Include India (2010), Cameroon (2001)
- GP markets represent 15-20% of GDP.
- Two other pillars of GP work – no progress
 - Services procurement negotiations the Working Group on GATS Rules
 - Working Group on Transparency in Government Procurement



Figure 3.4. Average bound and applied tariffs on IT products for WTO members not part of the ITA



Source: WTO Secretariat, based on WTO schedules, CTS and IDB databases.

Notes: Excluding members with fully unbound IT products. Asterisks indicate less than 90% binding coverage for non-agricultural products. ***<10%, **10≤50%, *50<90%.

INFORMATION TECHNOLOGY AGREEMENT (ITA)

- 74 participants: covering 97% of IT trade
 - BRICS – China (27.5%), India (0.3%)
 - G-90 - Dominican Rep, Egypt, Mauritius, Morocco
- ITA non-participants
 - BRICS – Brazil (0.1%), South Africa (0.0%)
 - Many have already low applied rates i.e. average 6%
- Proposed expansion of ITA
 - Led by Japan, US, EU, China, Australia, Canada, Costa Rica, Hong Kong, Israel, Malaysia, Norway, Singapore, Korea, Taiwan and Thailand
 - Reluctance from India, Egypt and El Salvador



INTERNATIONAL SERVICES AGREEMENT (ISA)

- 19 participants: over 70% services trade
- GATS Art. V as legal basis to avoid free riders
- BRICS
 - Concern about the loss of trade-offs
 - China(4.6%), India(3%), Brazil(0.8%), S. Africa(0.5%)
- G-90 (African Group)
 - Concerns about information deficit and non-MFN application
 - Growing importance of services sector – over 50% of GDP and 35% of employment



ANTI-COUNTERFEITING TRADE AGREEMENT (ACTA)

- 11 participants, covering over 70% of world trade, concluded in 2011 outside the WTO to strengthen the enforcement of IPRs.
 - No BRICS, but Morocco
- Discussion at TRIPS Council
- BRICS & G90
 - Process – “secretive” & “by-passing the multilateral process”
 - Substance – “TRIPS-Plus” & “changing the balance in favour of right holders”



SUMMARY AND MOVING FORWARD ON PLURILATERALS

- Providing some impetuses in WTO discussions, although led mostly by developed countries
- Reaction of developing countries vary, but the process is more important than substance, especially for small players
- Need for outreach and identification of players interested in using the participation in plurilaterals as self-interest and self-promotion
 - Linking to domestic reforms
 - Being part of the global supply chains



SUMMARY AND MOVING FORWARD ON PLURILATERALS

- Need for a package with technical co-operation and capacity building
- Balance between pragmatism/practicality, and transparency/inclusiveness
- Multilateralism
- Country classification



Thank you for your attention!

