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Utilization of Plurilateral Agreements and Their Limitations -Contribution to trade rules *

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Abstract

Due to the expansion and diversification of the WTO membership, the complexity and conflict of economic interests, and the rise of economic security demands, consensus-based rulemaking in the WTO has become stagnant and chaotic, and concerns about unilateral measures and protectionism are increasing.

In this environment, since 2018, the WTO has been drawing attention to the importance of plurilateral agreements under the JSI, which has produced certain results.

It is also no exaggeration to say that the entire trade agreements since the inception of the WTO have been based on plurilateral agreements.

This paper will focus on the importance of plurilateral agreements.

This paper will discuss the background to the attention paid to plurilateral agreements, their definitions and extensions, the conditions and factors for the realization of plurilateral agreements, their contribution to WTO rules and the path to multilateralization and their potential and limitations based on analysis of actual cases. The current status and future issues of JSI (Joint Statement Initiatives) and WTO decision-making issues will also be touched upon.

Key words: WTO, plurilateral agreements, JSI, consensus, decision making

JEL classification: F13

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I. Awareness of the Issues and Background

In the context of the growing membership and diversity of the World Trade Organization (WTO), the rise of emerging economies such as those in the G20, the uniform and mandatory application of WTO rules under the single-undertaking approach, the increasing complexity and severity of the member countries' economic interests (including the US-China conflict), and the expansion of noneconomic concerns such as economic security, WTO rulemaking based on consensus has stagnated and become increasingly dysfunctional.

Furthermore, the previous model of liberalization and rulemaking through trade rounds, based on the strategic linkage of multiple negotiation issues, has collapsed. The Doha Round, initiated in 2001, remains suspended and has failed to reach a conclusion.

However, the second Trump administration (Trump 2.0), which began in January 2025, has intensified challenges to the WTO-based free trade regime. Countries such as the US are expected to introduce additional trade measures justified by security concerns, along with a continued rise in unilateral and protectionist actions.

In this shifting global landscape, urgent consideration and decisive action are required to advance rulemaking within the WTO, maintain global trade governance, and respond to the rapidly changing economic environment.

Since 2018, several WTO initiatives, such as the Joint Statement Initiative (JSI) on e-commerce and investment facilitation, have emerged from plurilateral consultations and have yielded tangible outcomes. These developments have brought renewed attention to the value and utility of plurilateral agreements (see Hoekman et al. 2022, 2023).

Beyond the WTO, multiple regional agreements similar to regional trade agreements (RTAs) and free trade agreements (FTAs), including the Indo-Pacific Economic Framework for Prosperity (IPEF) and the Digital Economy Partnership Agreement (DEPA), have been developed by groups of like-minded countries. These agreements are significantly influencing the broader international trade order and represent a wider evolution in the use of plurilateral mechanisms.

Plurilateral agreements hold considerable significance in trade rulemaking within and outside the WTO framework. They are increasingly viewed as viable pathways for

developing WTO rules, especially in circumstances where achieving full multilateral consensus is infeasible. In practice, making plurilateral agreements operational has become an urgent priority, as they appear to be the only realistic avenue for WTO rule development at this time.

Regarding the function and positioning of plurilateral agreement, the 2007 Warwick Committee report remains of pioneering importance. It evaluated the potential role of such an agreement in the face of the WTO's consensus challenges and the growing difficulty of aligning diverse member interests. While more recent studies by scholars such as Hoekman have advanced the discussion, it is fair to say that comprehensive debate remains insufficient.

Moreover, technical analysis of existing plurilateral agreements and their practical utilization has been limited. There remains a notable gap in the rigorous evaluation of specific examples.

Historically, several key WTO agreements, since 1995, such as the Information Technology Agreement (ITA), the 1997 Agreements on Telecommunication and Financial Services, and the 2013 Trade Facilitation Agreement, have exemplified how plurilateral agreements can be effectively incorporated into the WTO framework. These precedents underscore the instrumental role that plurilateral mechanisms have played in shaping trade rules. As will be discussed in this article, although the legal structures of these agreements differ, many shared features and challenges can be identified.

Japan played a central role in the establishment of several of these agreements, including the ITA (1997) and the Anti-Counterfeiting Trade Agreement (ACTA), signed in 2011. However, ACTA was ultimately not ratified by the European Union due to strong lobbying from EU-based NGOs and therefore did not enter into force.

(Note: The author was deeply involved in the negotiations of the ITA and ACTA as a Japanese representative (Nakatomi (2012a)).

Subsequent major agreements in the WTO have continued to originate from plurilateral processes, as examined in this article. For instance, negotiations launched under the JSI framework in 2018 have already achieved results: the agreement on domestic regulation of services was formalized as WTO rule during the 13th WTO Ministerial Conference

(MC13).

It is now essential to determine how to integrate the remaining JSI topics, such as investment facilitation and e-commerce, into the WTO framework. Given the continuing paralysis of multilateral rulemaking following the suspension of the Doha Round, the combined use of plurilateral agreements and FTAs is vital for sustaining and advancing trade governance. To ensure the WTO's revival and long-term relevance, it is essential to identify and prioritize future areas of negotiation following the precedent set by the JSI, and to conclude these negotiations in a timely and meaningful manner.

This article aims to examine the role that plurilateral agreements have played in shaping trade disciplines within and beyond the WTO, by analyzing actual cases, evaluating their utilization, and discussing their potentials and limitations.

1. Definitions and extensions

Trade-related agreements among multiple countries—commonly referred to as plurilateral agreements-- need to be clearly defined and discussed. Since the definition of plurilateral agreements requires precise definition and classification. Since scholars and commentators interpret the term in various ways, it is essential to clarify both its meaning and scope.

In its narrow sense, a plurilateral agreement refers to WTO agreements—typically those under Annex 4, such as the Agreement on Government Procurement—that apply exclusively to participating members. However, the term can also be extended to include RTAs and FTAs, as defined in GATT Article 24 and General Agreement on Trade in Services (GATS) Article 5, as well as issue-specific trade agreements concluded among multiple countries outside the WTO framework. The definition range of such agreements therefore demands clarification and structured discussion (see Chart 1).

The Warwick Report (2007), a pioneering document analyzing plurilateral agreements, focused on how to incorporate such agreements into the WTO framework given the diversity of member interests (a concept often described as variable geometry). A central issue was how to align plurilateral agreements with WTO rules under the organization's strict consensus-based decision-making procedures. The report also examined the possibility of establishing plurilateral agreements without consensus under certain

conditions (also Cottier (2006, 2009); Nakatomi (2012a)).

Within the WTO, the bar for adopting plurilateral agreements is high, as consensus is required for their incorporation, even for Annex 4 agreements that apply only to the signatories. These challenges persist in the realization of JSI, such as those launched in 2018, which continue to face the critical issues of how to be integrated into the WTO's legal structure.

In contrast, while WTO rulemaking has stagnated under the consensus rule, FTAs and RTAs have flourished as key instruments for trade liberalization and norm-setting since the early 2000s. More recently, more flexible, issues-specific plurilateral initiatives have emerged outside the WTO, such as the DEPA and the IPEF, which do not necessarily meet the legal criteria of GATT Article 24 or GATS Article 5.

Given these developments, it is increasingly urgent to examine the role, legal characteristics, and policy relevance of broadly defined plurilateral agreements, within and beyond the WTO framework. However, debates around such agreements are often muddled due to insufficient distinction regarding their nature and structural features.

This article aims to examine the essential features of plurilateral agreements while clearly distinguishing among their various forms.

Regarding Plurilateral Agreements, the following classification is possible:

1) Plurilateral Agreements in the WTO

- Annex 4 Agreement, such as the Government Procurement Agreement, represents the narrowest form of WTO plurilateral agreement (see Chart 1, A)

- Other Plurilateral Agreements within the WTO, such as incorporated into Annex 1 or embedded within existing agreements (see Chart 1, E))

2) Plurilateral agreements outside the WTO

- RTAs and FTAs (see Chart 1, D)

- Other issue-specific multilateral agreements, such as the IPEF, and DEPA, which do not fall under RTAs or FTAs (see Chart 1, B and C)

In this article, Category 1 is referred to as a narrowly defined plurilateral agreement, whereas Categories 1 and 2 combined are referred to as broadly defined plurilateral agreement.

Key issues and analysis of WTO Integration

A critical issue concerning plurilateral agreements is the method of establishing their content and legal obligations within the WTO framework. The methods and processes of what may be termed “WTO-ization” require careful analysis.

For example, how can the agreements reached by negotiating parties under the JSI be linked to the WTO legal system, and how can those be transformed into binding obligations? This article separately analyzes these questions, particularly regarding Chart 1. It explores the methods and processes of connecting agreements among multiple countries (as indicated in B or C) to formal WTO agreements (such as those under A or E.). Moreover, it will be necessary to examine cases that result in FTA (D), such as the case of the Trade in Services Agreement (TiSA).

As will be detailed, due to the high threshold of securing “consensus” within the WTO, many plurilateral agreements are likely to remain outside the WTO legal system as standalone agreements between specific parties.

2. Incorporation into the WTO and decision-making rules

The decision-making principles applicable to each category of plurilateral agreement are outlined below:

1) Plurilateral agreements within the WTO

Generally, these require consensus among all WTO members. This principle applies not only to agreements binding on all members (Annex 1 agreements, see Chart 1, E) but also to agreements limited to specific parties (Annex 4 agreements, see Chart 1, A). In these cases, consensus, including from WTO members who are not party to the agreement, is necessary.

Due to this stringent requirement, no new Annex 4 plurilateral agreements have been concluded since the WTO’s establishment.

During the GATT era (before the WTO's creation in 1995), the “single undertaking” principle, wherein all members were bound by the same rule, did not apply. Instead, selective agreements such as the Tokyo Round Code (e.g., on anti-dumping, subsidies) applied only to a limited number of signatories. Furthermore, GATT's dispute settlement system did not compel members to accept panel findings, making it relatively easier to incorporate plurilateral agreements.

By contrast, WTO operates under a single undertaking, and its rules are enforceable through a strengthened dispute settlement mechanism, under which parties generally cannot reject dispute outcomes.

Although consensus was also required in the GATT for new rules, it has become significantly more challenging to achieve consensus under the WTO framework.

This difficulty has catalyzed discussions on the importance of variable geometry, allowing for differentiated commitments, and highlighting the importance of plurilateral agreements. This is emphasized in the Warwick Commission Report.

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As analyzed herein, three key factors have influenced the growing role of plurilateral agreements:

- (1) The increasing difficulty of rulemaking through comprehensive trade rounds;
- (2) The need for targeted plurilateral agreements to address specific issues; and
- (3) The success of recent plurilateral outcomes on trade facilitation, fisheries subsidies, and domestic regulation in services.

Meanwhile, the challenges of achieving consensus-based multilateral agreements continue to be evident.

To move forward, it is essential to study both the development of practical case examples and the technical issues involved in building consensus around plurilateral agreement. This process also requires returning to the foundational ideas proposed during the Warwick Commission's work, particularly, reconsidering the need to relax the strict consensus requirement.

2) Plurilateral agreements outside the WTO

Parties to a plurilateral agreement may proceed as long as their actions do not violate WTO rules. The TiSA is an example where negotiations were ultimately unsuccessful, but efforts were made to establish an FTA based on Article V of the GATS. It is also conceivable that a form of mutual recognition could be pursued under GATS Article VII.

In the case of atypical, issue-specific plurilateral agreements that do not satisfy the requirements of an FTA (as illustrated in Chart 1, sections B and C), they must remain WTO-consistent. However, the applicable legal framework for such agreements remains indeterminate. As more issue-based plurilateral agreements emerge, we can expect differences and inconsistencies among their respective disciplines, resulting in a regulatory landscape similar to the so-called “spaghetti bowl” effect seen with FTAs.

To prevent this fragmentation, it is essential to clarify the nature of each plurilateral agreement and the development path it follows, in line with the trajectory toward multilateral rulemaking, as emphasized by Hoekman and Sabel (2019). Their analysis, discussed below, provides insight into the relationships between multicountry agreements and WTO rules, as depicted in Chart 1.

To avoid unnecessary complexity, we must accurately grasp the current status of plurilateral agreements, particularly those addressing non-trade concerns (NTCs), and assess the ideal structure and future direction of such discipline. It is well recognized that since the early 21st century, FTAs have become the primary mechanism for rulemaking in international trade, due largely to the difficulty of achieving consensus within the WTO framework. However, FTAs, which are grounded in GATT Article 24 and GATS Article V, require meeting high thresholds, thereby limiting their accessibility. Consequently, numerous plurilateral agreements that fall outside traditional FTA frameworks have proliferated, necessitating close attention to their legal character, ideal configuration, and compatibility with WTO disciplines.

II. Place and Importance of Plurilateral Agreements in the Trade Regime

The original rationale and framework for plurilateral agreement can be traced to the Warwick Report, which introduced the concept of variable geometry and proposed decision-making mechanisms not bound by the WTO’s consensus principles. This report

spurred further academic debate (see Cottier 2006, 2009; Nakatomi 2012a), but these discussions did not gain sufficient momentum thereafter.

More recently, Hoekman and Sabel (2019) have made a significant contribution by proposing the use of plurilateral agreements as a means to facilitate rulemaking in the current context of WTO paralysis. Under the existing consensus-based framework, multilateral progress is constrained.

Hoekman et al. advocate for rulemaking through non-discriminatory regulatory cooperation among willing countries, based on the principle of open plurilateral agreement. Their approach is characterized by

- (1) An issue-specific, and
- (2) An emphasis not exclusively on market access barriers.

Beyond FTAs and RTAs, the WTO framework includes two types of multilateral agreements:

- (1) Those under Annex IV, whose benefits are not extended to non-participants (e.g., the Government Procurement Agreement), and
- (2) Critical mass agreements, which share benefits with nonmembers (e.g., ITA). The extent to which shared free-riding by nonparticipating countries is a concern often determines the viability of each type.

The foundation of open plurilateralism lies in regulatory cooperation, not in discriminatory market access provisions. Instead, it emphasizes harmonizing divergent national regulations, promoting good regulatory practices, and fostering cooperation in international standards. The goal is multilateral convergence through open, nondiscriminatory regulatory alignment. Ultimately, this may involve establishing a “club” characterized by mutual recognition, equivalence, and enforceable commitments.

Such a structure assumes that benefits will be extended to all countries that meet established conditions. In this way, Hoekman et al. charts a potential trajectory linking multicountry cooperation to multilateral rulemaking. In terms of Chart 1, this may reflect a progression from zones B and C toward A and E.

The article presents a highly important recommendation and a thought-provoking analysis that points in the right direction. However, when examining the actual background and context of plurilateral agreements, it becomes evident that there are various obstacles to achieving open plurilateral cooperation.

1. Significant challenges remain regarding market access.

In both goods and services sectors, market access and regulatory harmonization continue to pose serious difficulties. It would be highly problematic to overlook these market access issues. In sectors where market access is contested, the risk of free-riding by nonparticipating countries becomes a major political issue when liberalization efforts move forward.

In this context, the U.S.-EU discussion on structuring TiSA as an FTA to prevent free-riding by nonparticipating members serves as a noteworthy precedent. Without this concern, there would have been no need to frame TiSA as a discriminatory FTA. (see Nakatomi 2015).

In the case of the ITA, the participation of countries forming a critical mass was a prerequisite for its conclusion. This was because participants considered the cost implications of extending the agreement's Most-Favored Nation (MFN) benefits to non-members. A similar rationale can be observed in the services sector, as exemplified by TiSA. Indeed, many argue that free-riding is an even more serious concern in services than in goods.

2. Regulatory harmonization is arguably more difficult than market access, as it is heavily shaped by each country's domestic circumstances. Given these variations, it would be challenging to allow unrestricted participation in an open plurilateral agreement.

3. The regulatory harmonization that open plurilateral seeks to achieve may ultimately amount to a lowest common denominator, an amalgam of disparate regulatory systems. This limitation is evident from the current state of plurilateral agreements and the JSIs. Therefore, while the open plurilateral approach is a valuable and promising proposal, it must be recognized that there are inherent limitations to the level of regulatory convergence it can realistically attain.

4. The development of a list of conditions for open plurilateral agreements is an important

step forward (see Annex 7: “Potential Elements of a Code of Conduct” in Hoekman et al. 2023). However, the stricter these conditions become, the more difficult it will be to realize an open plurilateral agreement in practice. Thus, while continued efforts to formulate such conditions are necessary, compromise and political negotiation will also be essential for their successful implementation.

III. Practical Examples

1. Subject of the analysis

Building on the above analysis, this section examines the fundamental conditions and characteristics of plurilateral agreements by reviewing key WTO-related plurilateral initiatives established since the WTO’s inception. This includes an exploration of the background, responses to the agreements’ realization, decision-making processes, legal forms adopted, and incorporation into WTO rules.

Specifically, for items 1–3 below, please refer to the author’s previous analyses (Nakatomi 2012a, 2013). For item 4, the analyses will focus on the perspectives outlined in section 2 (see “2. Perspectives”), based on the negotiation process, outcomes, and other relevant factors.

- 1) ITA1, Telecommunication and Financial Services Agreement (Case study from the early stage of WTO establishment (1997))
B \Rightarrow E (See Chart 1 for categorization; same applies hereafter). For details, refer to Chart 2.
- 2) ACTA (Not realized. Represents a plurilateral agreement that does not require a critical mass)
B \Rightarrow E (If it had entered into force).
- 3) TISA (Not realized. Negotiated as a potential FTA)
B \Rightarrow D (Reflects the intention of the US and EU).
- 4) Trade facilitation (multi-lateralization), fisheries subsidies (multi-lateralization), and domestic regulation of services
(Successful case of JSI).
These fall under the category of B \Rightarrow E.

In addition, this article will analyze new, atypical plurilateral agreements, such as the

DEPA and IPEF, focusing on their status and legal nature.

2. Perspectives

Each agreement is analyzed through the following elements:

- Outline of the agreement
- Participating countries
- Achievement of critical mass
- Decision-making method (including treatment of nonparticipating/opposing countries)
- Legal form
- Implementation incentives
- Implementation schedule (including phased implementation)
- Exemptions from obligations
- Dispute settlement procedures
- Use of concession tables
- Use of reference documents
- Considerations for developing countries (specific provisions)
- Transparency
- Conditions for new participation

The analysis also addresses the conditions, challenges, and potential paths toward convergence with WTO rules.

(See Chart 2, which reorganizes Nakatomi (2012a) [Comparison of Trade-Related Plurilateral Agreements], and incorporates subsequent developments, the above perspectives, and related agreements).

3. Methods and characteristics of each agreement

Detailed analyses based on the perspectives above are presented in Chart 2. JSIs are discussed in Section IV.

ITA

The ITA aims to eliminate tariffs on semiconductors, semiconductor manufacturing

equipment, computers, telecommunications equipment, and related products. Initiated by the US and EU, with the participation of Japan and Canada, the agreement was realized under quadrilateral leadership in 1997.

Efforts were made to involve Asian countries and other stakeholders to achieve a critical mass. The agreement was implemented through updates to each country's concession schedule. Importantly, non-participating countries also benefit from the agreement through the MFN extension of tariff concessions.

The 2015 ITA expansion negotiations significantly increased product coverage. In the context of multilateral goods market access agreements, the ITA serves as a model: it achieved critical mass and extended benefits on an MFN basis, establishing an effective legal framework. This approach may apply to other commodities and sectors.

Financial and Telecommunication Services Agreement

These Agreements were concluded in 1997 with participation from countries comprising a critical mass. They represent a deepening of GATS commitments in financial and telecommunication services.

ACTA

Anticounterfeiting trade agreement (ACTA) was negotiated primarily by the US, Japan, and the EU to combat the international distribution of counterfeit and pirated products.

It aimed to supplement and deepen the TRIPS Agreement by leveraging the minimum standards approach (see Article 1 of TRIPS) and the lack of MFN exceptions (see Article 4). Unlike other plurilateral agreements, ACTA did not pursue a critical mass or include countries suspected of violations.

Although ACTA was finalized under a legal framework separate from TRIPS, if it had entered into force, it could have been incorporated into the WTO legal system. It holds potential precedential value for future efforts to strengthen the TRIPS Agreement.

TiSA

The Trade in Services Agreement (TiSA) was a comprehensive initiative led by the U.S. and the EU to liberalize service sectors. It was structured as a FTA under Article 5 of the GATS. However, the negotiations ultimately did not result in a finalized agreement.

Trade Facilitation Agreement

The Trade Facilitation Agreement, which aims to enhance the transparency and efficiency of trade procedures, is the first multilateral agreement concluded since the WTO's establishment.

It is characterized by a flexible implementation schedule, provisions for technical assistance, and special considerations for developing countries, all of which helped secure consensus among WTO members.

Fisheries Subsidy Agreement

The Fisheries Subsidy Agreement, which aims to conserve marine resources and reduce harmful subsidies, was developed through negotiations among several member states. It was incorporated into the WTO legal framework through the 2022 Revised Protocol and placed in Annex 1 of the WTO Agreement.

Like the Trade Facilitation Agreement, it features flexible implementation timelines, technical assistance, and development-oriented provisions designed to gain consensus.

IV. The JSI Experience and the Future

Since 2018, the WTO has engaged in rulemaking through plurilateral initiatives under the JSI, culminating in the incorporation of domestic regulatory practices for services into the outcomes of MC13.

This is a major milestone, opening a new pathway for integrating plurilateral agreements into the WTO framework.

However, MC13 also revealed a limitation: it blocked the inclusion of investment facilitation into the WTO rulebook due to opposition from a few members, notably India. As for e-commerce, conditions are not yet ripe for the adoption of comprehensive rules. A consolidated text covering 13 relatively straightforward issues has been published, but more complex matters remain unresolved.

This section evaluates and analyzes the current state, achievements, and future trajectory of these plurilateral agreements under the JSI framework, while also drawing on the analysis presented in Section III (see also Nakatomi 2024). Furthermore, we examine the

direction of future issues and challenges that need to be addressed in the evolution of the JSI process.

At present, a standardized procedure for incorporating plurilateral outcomes into WTO agreements has not been established.

In the case of goods, a precedent exists, such as the ITA and its expansion, which employs the MFN principle, relying on a “critical mass” approach and extending benefits to non-participants.

In contrast, no such structure exists for rulemaking. WTO members are still searching for a way to build consensus or design a framework that can mitigate the risk of vetoes.

As discussed in Section III, the Trade Facilitation Agreement offers some instructive elements, including:

- (1) Consideration of developing countries;
- (2) Flexibility in the implementation period,
- (3) Phased implementation; and
- (4) Provision of technical assistance.

A cautious approach to mandatory obligations is another defining feature.

Although a full analysis of the MC13 outcomes concerning JSI-based negotiations is required, we can offer a preliminary evaluation of the main items currently under discussion.

Services Domestic Regulatory Practices

Negotiations on domestic regulatory practices in services were completed relatively early, and their legal status was clarified in MC13 through a reference document. In effect, this constitutes a landmark agreement, similar to the TBT Agreement, but within the services sector.

As with the Trade Facilitation Agreement, this achievement was enabled by:

- General consideration for developing countries,
- Flexibility regarding implementation periods, and
- Provision of technical assistance, along with

- The formation of a critical mass.

Distinctive features of this agreement include the use of a reference document (as seen in the protocol in financial and telecommunication services), the clear specification of legal obligations in members' GATS schedules, and built-in flexibility regarding the scope of commitments.

In addition, the fact that domestic regulation was a "built-in agenda" of the GATS (see Article VI), along with India's emphasis on trade in services, likely influenced its successful inclusion.

E-Commerce

In the area of e-commerce, Japan, Australia, and Singapore led negotiations but postponed agreements on more difficult issues, particularly those related to cross-border data flows, data localization, and source code transfer restrictions, as articulated in the CPTPP. Instead, participating countries reached a consensus on a single text covering 13 basic topics for e-commerce, chosen to minimize concerns from developing countries.

These 13 topics include

- (1) Electronic authentication and signatures
- (2) Electronic contracts
- (3) Trade-related electronic documents
- (4) Publicly available government data
- (5) Online consumer protection
- (6) Unsolicited commercial messages
- (7) Transparency
- (8) E-commerce frameworks
- (9) Cybersecurity
- (10) Open internet access
- (11) E-invoicing
- (12) Single window
- (13) Protection of personal data.

Although the agreement does not include high-level commitments, such as the CPTPP's three principles on data flow and localization, it nonetheless establishes basic and useful principles for e-commerce and digital trade. Despite their legal status in the WTO, these

principles represent meaningful progress.

Looking ahead, it is hoped that negotiations will intensify on more complex and contentious matters, including the three CPTPP principles. While MC13 did not explicitly address the incorporation of the text into WTO laws, efforts similar to those for domestic regulation of services should be pursued to bring these rules into the WTO framework.

The Co-Chairs' July 2024 document (Japan, Australia, and Singapore) emphasizes:

- (1) The importance of reaching a critical mass;
- (2) The desirability of incorporating the agreement into the WTO; and
- (3) The potential for further textual refinement.

Although the implications of (3) remain somewhat ambiguous, incorporation into the WTO, possibly through Annex 4, is likely the most feasible and pragmatic course, especially if deeper negotiations are postponed.

A political decision is now required: should the agreement be deepened further (which is more difficult), or consolidated in its current form (which is more manageable)?

Investment Facilitation

Negotiations on investment facilitation have been primarily promoted by Korea and Chile, with a focus on enhancing investment opportunities in developing countries. However, at MC13, India and several other countries strongly opposed incorporating the rules into the WTO as an Annex IV agreement, and as a result, this incorporation was not realized.

Significant progress has been made under the JSI, especially in the area of domestic regulation of services and its potential incorporation into the WTO legal framework. This progress holds considerable significance for the future development of a multilateral agreement.

There is hope that a rule-making process based on plurilateral agreements can move forward within the WTO's consensus-based framework. (⇒ In practice, there has been strong criticism of what some perceive as an abuse of the consensus principle by India and others. At the same time, there are calls for the promotion of a “responsible consensus” approach in response to such criticism)

Although, regrettably, MC13 did not result in the incorporation of investment facilitation and e-commerce rules into the WTO framework, strategic efforts must continue toward eventual inclusion.

With ongoing concerns regarding the paralysis of the WTO's legislative function, the stage for a merely theoretical discussion about plurilateral agreements has passed. What is now required are concrete decisions, coordinated actions, and tangible outcomes from member countries.

In my view, assuming the extension of MFN treatment to the outcomes, the direction forward would involve either a formal WTO agreement or the insertion of negotiated terms into schedules of concessions or similar mechanisms.

In particular, regarding investment facilitation, the time has come for participating countries to make a clear decision on WTO incorporation. In either scenario, the initial step must be for the countries involved in the plurilateral agreement to voluntarily commit to implementing its provisions.

A similar approach could be taken with e-commerce. If the countries driving the initiative objectively analyze the current status of the agreement and define the intended level of regulatory discipline, they could set clear goals for a WTO agreement. At present, the JSI text on e-commerce has not been incorporated into the WTO legal framework, and decisions and further negotiations are required to formalize its legal standing.

In the face of a challenging environment, including the Trump 2.0 administration, it is essential to reconfirm the trajectory of plurilateral negotiations under the existing JSI framework. This remains the only de facto mechanism for WTO rule-making at present. Ahead of MC14 and beyond, it is critical to identify the next set of "feasible" and "meaningful" candidates for plurilateral agreements and to secure immediate outcomes. The urgency of delivering results through the plurilateral rule-making process cannot be overstated.

1. Selection of the next JSI candidate and discussion of the way forward

1) Candidate areas

(1) Evaluation and deepening of existing JSI achievements

Efforts could focus on further solidifying the outcomes of current JSIs. For instance, a high-level agreement on e-commerce could be pursued based on the finalized text and its incorporation into WTO rules. For domestic regulation of services, entering a second phase of deepening the agreement may also be a viable objective.

(2) Supply chain facilitation and resilience

A renewed rule-making framework could be established based on a plurilateral agreement aimed at enhancing digital trade and supply chains. This approach should avoid over-reliance on a few specific participants. Drawing insights from initiatives like the DEPA, which seeks regulatory harmonization in the digital space, and the IPEF, which focuses on supply chain strengthening, may prove useful.

However, whether such common ground can be found amid competing national interests on a global scale remains uncertain.

(See Nakatomi (2012b) and Makiyama (2011) for analyses on multilateral supply chain facilitation)

(3) Liberalization and rule-making for environment-related goods and services

Environmental issues are increasingly central to global trade discussions. However, given their broad and complex nature, it may be prudent to first define the scope of discussions. (WT/CTE/W/264, Japanese Government Paper).

One proposal is for a JSI initiative to focus on the harmonization of CO₂ emission calculation methodologies, the elimination of tariffs on environmental goods, and the liberalization of environmental services, all critical to addressing environmental concerns and advancing green transformation (GX).

(4) Strengthening and deepening disciplines in Intellectual Property (IP) and services

Although the ACTA never entered into force, reinforcing IP promotion remains important amid rising technological competition. ACTA could serve as a reference point for strengthening the TRIPS Agreement through plurilateral agreements. Likewise, the experience of the TiSA, a plurilateral initiative that sought to deepen service-related rules,

could offer valuable lessons.

A key challenge will be identifying a common axis among countries that share values related to service liberalization and regulation, and determining whether a FTA approach can be adopted.

Beyond the existing JSI, it is essential to select additional topics vital to maintaining a functional global trade regime in light of emerging non-traditional challenges (NTCs). It is also crucial to begin prioritizing themes among volunteer countries to prevent bottlenecks in the rule-making process.

Given the current volatility in the global trade environment, especially with the uncertainties linked to a Trump 2.0, the JSI must strive to produce immediate, concrete outcomes in key areas through a plurilateral approach.

2) Way forward

In addition to identifying new issue areas, it is essential to organize and evaluate best practices in existing plurilateral agreements (Section III) and to address the decision-making challenges inherent in such agreements, including the exploration of alternative rulemaking mechanisms beyond full consensus.

The concept of open participation, a framework allowing countries that meet certain conditions to join plurilateral agreements, is considered a promising and widely supported pathway toward ultimately linking such agreements with the WTO legal system. Further exploration and concrete operationalization of this concept are warranted.

For negotiations involving multiple countries, it is crucial to establish a clear and realistic landing zone (Nakatomi (2012a)). This should be based on the complexity of the subject matter, divergences in national positions, and the maturity of existing discussions. The number of participating countries, the ambition of the agreement, and the time required for completion are closely interrelated. Negotiations must proceed with a well-defined vision of the intended outcome.

In general, high-level discipline tends to result in fewer participating countries, while broader participation is typically associated with lower-level commitments. This

relationship can be illustrated as follows:

Figure 1. Dilemma between the level of agreement and number of participating countries

		Level of Agreement	
		High	Low
Participating Countries	Many	A	B
	Few	C	D

Reaching a high-level agreement by (Quadrant A) by consensus from the outset is extremely difficult. Therefore, the following scenarios represent more realistic pathways:

- Scenario 1: Directly targeting Quadrant A is unrealistic under current conditions.
- Scenario 2: Begin with broad participation and lower-level commitments (B), then gradually deepen the agreement to reach high-level commitments (A).
- Scenario 3: Start with a small group of like-minded countries committed to high-level rules (C), and then expand participation over time to reach A.

Assuming that Quadrant A remains the ultimate goal, either Scenario 2 or Scenario 3 may be pursued, depending on the context of specific negotiations. For instance, in the case of e-commerce, the current decision lies between:

- Finalizing the existing text with broader participation (Scenario 2), or
- Advancing high-level content with fewer participants, with expansion envisaged later (Scenario 3).

This fundamental tension between the level of ambition and breadth of participation is a recurring issue in plurilateral rulemaking. It must be taken seriously, not only in terms of technical consensus-building but also in devising strategies to eventually integrate such agreement into WTO rules.

V. Potential and Limitations of a Plurilateral Agreement

As discussed throughout this article, rulemaking and liberalization efforts within the WTO have increasingly relied on plurilateral agreements as a way to navigate the

challenges posed by the consensus principle. In the absence of decision-making reform, plurilateralism will likely remain an indispensable tool for advancing multilateral trade rules. This approach holds significant potential for shaping future rulemaking.

However, as previously analyzed, the establishment of a plurilateral agreement within the WTO framework, while circumventing the limitations of consensus, faces several restrictions and requires careful consideration of various legal, procedural, and political factors. Without satisfying the conditions discussed earlier, integrating such agreements into the WTO legal architecture will be difficult.

That said, these constraints are not absolute. Since the founding of the WTO, progressive efforts and institutional innovations, such as those seen in the development of JSI, have helped reduce the rigidity of these constraints and fostered a more standardized approach to plurilateral negotiation. Continued efforts to build upon these precedents and past successes will be critical to expanding the practical unity of plurilateralism.

A core requirement for the successful realization of any plurilateral agreement is the political will of the participating countries. For example, in the case of investment facilitation, it appears that the current state of negotiations has reached a point where WTO integration could feasibly be achieved through a concerted political decision.

Conversely, a quasi-FTA, an agreement among multiple countries negotiated outside the WTO framework, must be carefully designed to avoid contravening existing WTO rules. Most importantly, they must not impose new obligations on non-participating members or treat them unfavorably. While these legal safeguards are essential, once satisfied, such external agreements offer a high degree of flexibility. It is both logical and beneficial to use these mechanisms as platforms for shaping future trade rules, as demonstrated by frameworks like the DEPA and IPEF.

Nonetheless, even broadly defined plurilateral agreements must remain consistent with WTO core principles, such as MFN treatment and national treatment. Violations of these principles are impermissible, regardless of the agreement's format or scope.

Transparency and openness are also vital. The principle of open plurilateralism, where agreements remain accessible to all WTO members that meet pre-established conditions, should be a foundational element in ensuring the future integration of plurilateral

arrangements into the multilateral trading system.

Failing to observe these principles could lead to the fragmentation of global trade rules and the emergence of exclusionary trade blocs. This risk echoes past concerns surrounding the proliferation of FTAs and the resulting “spaghetti bowls” of origin rules. Similar caution must be exercised today to avoid a comparable “spaghetti bowls” effect in the architecture of plurilateral trade agreements. The strategic and inclusive design of such agreements is essential to prevent inconsistency, legal conflicts, and systematic division.

In addition, the following points can be cited as common features of all plurilateral agreements to date:

1. Consensus remains central in the WTO. It is fundamental to establish consensus based on a multi-country agreement, either by allowing opposing countries to participate or by preventing them from blocking the formation of consensus.
(⇒ See Financial and Telecommunication Agreements, ITA, Trade Facilitation, Fishery Subsidy, and Domestic Regulation of Services).
Conversely, WTO rulemaking through a plurilateral approach becomes impossible when consensus cannot be achieved.
2. Several elements and measures have been employed to facilitate consensus-building, including:
 - 1) Permitting free-riding on the condition that a critical mass is achieved, i.e., extending benefits to non-participating countries.
(⇒ See: Financial and Telecommunication Agreements, ITA, Trade Facilitation, and Domestic Regulation of Services).
 - 2) Emphasizing transparency and reporting as the basis of the agreement, while minimizing binding obligations or mandatory clauses.
 - 3) Exempting the agreement from dispute settlement procedures or limiting their scope (e.g., by restricting them to participating countries or limiting enforceable obligations).
(⇒ See: Financial and Telecommunication Services Agreements, Trade Facilitation, Fishery Subsidy, and Domestic Regulation of Services)
 - 4) Basing the agreement on voluntary commitments, supported by reference documents, concession tables, and commitment tables, with parties voluntarily selecting their concession content.
(⇒ See: Financial/Telecommunication Services Agreement, ITA, and

Domestic Regulation of Services).

5) Introduction adjustment and flexibility into the implementation schedule, (including staging).

(⇒ See: ITA, Trade Facilitation, Fishery Subsidy, and Domestic Regulations of Services).

6) Providing capacity building and technical assistance.

(⇒ See: Financial and Telecommunications Agreement, ITA, Trade Facilitation, Fishery Subsidies, and Domestic Regulation of Services).

3. Of course, the environment in which consensus can be achieved varies by negotiation. However, forcing an agreement by imposing mandatory rules on all members, including non-participants, and incorporating it into WTO laws (especially under the DSU) would be extremely difficult, if not impossible, without meeting the above conditions.
4. Therefore, unless the consensus principle, underpinning WTO decision-making, is revised, incorporating a plurilateral agreement with strict disciplines and binding obligations into WTO rules will remain a highly difficult, time-consuming, and perhaps infeasible task. (See, for example, ACTA, which leveraged the minimum rule nature of the TRIPS Agreement; TiSA also avoided binding WTO decision-making by using the legal framework of FTAs).
5. As is clear from the above, the conception, development, and realization of a plurilateral agreement, and its incorporation into the WTO, must be underpinned by thorough strategy planning, technical deliberation, and international cooperation.

Negotiations on consensus-based plurilateral agreements must proceed with a clear understanding of these factors.

In addition, given the critical state of the WTO, intensified by scenarios such as Trump 2.0, it is also necessary to revisit the possibility of plurilateral agreements that do not require full consensus, under clearly defined conditions. This includes re-examining the Tokyo Round Code system as a potential model.

It is vital to pursue this line of discussion in parallel, as a means of restoring the WTO's

legislative function. The trade rule environment has changed drastically since the Warwick Report era. A comprehensive reassessment of free trade and rules-based order is now required, one that reflects current WTO realities and global supply chain transformations, including those under Trump 2.0.

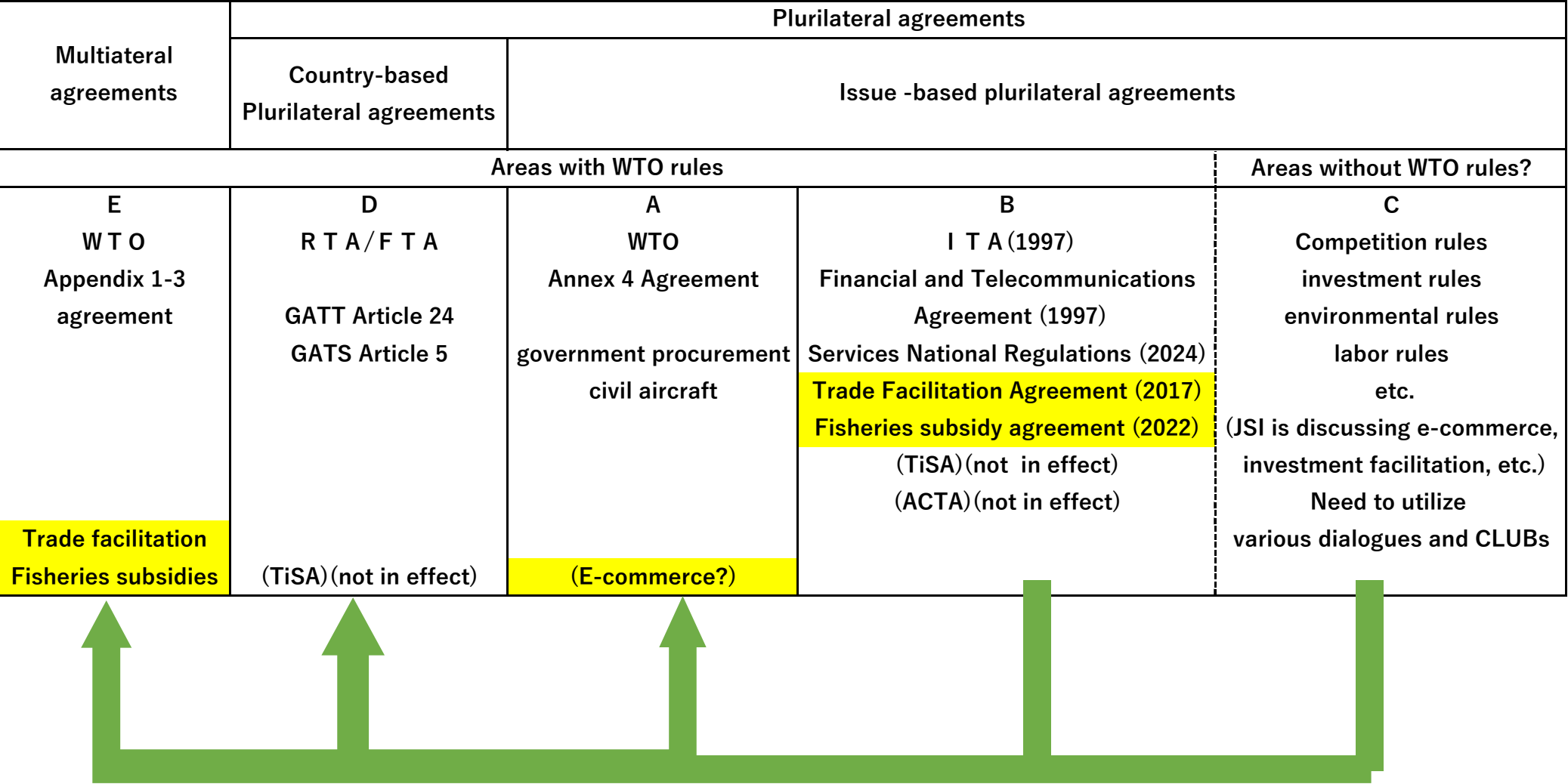
In today's climate, where protectionism and abuse of security exceptions are widespread concerns, understanding and leveraging the nature and functions of plurilateral agreements, alongside RTAs and FTAs, is critical. These tools offer substantial potential to complement and support the WTO's legislative role.

I hope this report contributes to a better understanding and more effective utilization of plurilateral agreements.

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Chart 1



The boundary between B and C is not clear. (e.g., there is TRIM for investment rules)

There is also a transition from C to B depending on the interpretation of the agreement and the accumulation of panels.

⇒ (1) shows the process by which a plurilateral agreement becomes a WTO rule.

WTO rulemaking methods vary from agreement to agreement.

In B, ITA, financial and telecommunications agreements, and domestic regulation of services are incorporated into the WTO legal framework following distinct rulemaking approaches (see Chart 2 for details.)

	Structure of each agreement												
	WTO (Multilateral agreement)	RTA/FTA (Country-based plurilateral agreements)	plurilateral agreement										
			issue -based plurilateral agreement										
			areas with WTO rules								areas without WTO rules ?		
			WTO Annex IV Agreement	Services (financial and telecommunication)	ITA(tariff)	A C T A	T I S A	trade facilitation	Fishery subsidy	Services Domestic Regulations	D E P A	I P E F	Other
participating nations	164	2 ~	2 ~	Critical Mass (70 countries financial, 69 telecom)	Critical Mass approx. 90% (trade volume) (97% as of 2024, 83 countries)	37 countries (10 + EU27) (at the time of negotiation) (not in effect)	23 countries/regions including the U.S., EU, and Japan (not in effect)	157 countries (as of June 2012)	63 countries?		Chile, Singapore, NZ, Korea, etc.	U.S.A., Japan, India, Australia, etc.	2 ~
basic rules	Agreement Establishing the WTO Annexes 1-3	GATS Article 24 (substantially all trade) GATS Article 5 (substantial sectoral coverage)	Agreement establishing the WTO Annex 4	GATS Financial Services Protocol Telecom Services Protocol	G A T T	T R I P S Utilizing the characteristics of the TRIPS Agreement (Article 1), which provides for the minimum requirement	GATS Article 5	Added to WTO Placed in Annex 1 in the 2014 Protocol	Added to WTO Placed in Annex 1 in the 2022 Protocol.	G A T S	?	14 countries	?
entry into force		by participating nations	Unanimity of WTO Members Voting not possible	Financial and Telecommunication Protocol (unanimous agreement of WTO members) -> Table of commitments of participating countries + MFN exception table amendment attached	Ministerial Declaration by participating parties → Amendment of the Table of Concessions of participating countries	by participating nations	by participating nations	Unanimity of WTO members	Unanimity of WTO members	Reference document on domestic regulation of services → reflected in GATS commitment tables of participating countries	by participating nations	by participating nations	? (To be determined for each field)
revision		WTO members unanimous Vote possible	by participating nations	by participating nations	Amendment under GATS Article 21	Participating Parties (in the sense that each Participating Party's Concession Table is amended)	by participating nations	by participating nations	Unanimity of WTO members	Unanimity of WTO members	Unanimity of WTO members	by participating nations	by participating nations
Obligations under the WTO Agreement	Y E S	N O	Y E S	Y E S after revision of the commitment table	Y E S Concession Table Revised	N O	N O	Y E S after acceptance	Y E S after acceptance	YES	N O	N O	? Depends on the content of the agreement
MFN extension of benefits	YES (in principle)	N O	N O (Aircraft and Government Procurement Agreement, though may be possible for future agreements)	Y E S	Y E S	Y E S TRIPS has no MFN exception clause	N O	Y E S	Y E S	In principle YES?	N O	N O	YES (in principle?) REF:(L/4950) Depending on the disciplines and agreements in the relevant WTO agreements
critical mass	full participation by all members	×	×	○	○	×	×	○	○	○	×	×	—
Implementation period	principle of identity	principle of identity	principle of identity	principle of identity	With country-specific exceptions	principle of identity	principle of identity	Phased implementation (Articles 14-19)	Phased implementation (Articles 3.8 and	Depends on the participating country	principle of identity	principle of identity	—
Developing Country treatment/Incentives	By agreement	By agreement	By agreement	Yes	Tariff reductions, special provisions for staging, etc. available	Basically, the obligations are identical.	Yes	Yes (Articles 13, 21, 22)	Yes (Articles 6 and 7)	There is a degree of freedom by participating countries		Yes	—
Concession and commitment tables	By agreement	Yes	By agreement	Yes (commitment table)	Yes	None	Agreement is reflected in the commitment table	None (with duty classification table)	None	Yes (commitment table)	None	None	—
reference document	By agreement	—	—	Yes	There is an informal document of agreement	None	Yes	None	None	Yes	None	None	—
Conditions for new participation	Unanimity of Member States	By agreement	By agreement	Developing country clause available	Unanimity of Member nations	Unanimity of Member nations	Unanimity of Member nations	Unanimity of Member nations	Unanimity of Member nations	Acceptance of reference documents	presumed acceptance of participation by countries that meet the conditions	Agreement of the participating parties	—
D S	WTO D S U	DS by agreement	D S U	D S U	D S U	D S U	DS by agreement	DSO (Article 20 with DS grace period)	D S U	D S U	DS by agreement	DS by agreement	—