



RIS Discussion Paper # 325

Fragmenting the Multilateral Trade System: The Rise of JSIs at the WTO

Shailja Singh, Priyadarshi Dash and
Pragyan Agarwal



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RIS-DP # 325

March 2026

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Fragmenting the Multilateral Trade System: The Rise of JSIs at the WTO

Shailja Singh, Priyadarshi Dash and Pragyan Agarwal*

Abstract: The emergence of Joint Statement Initiatives (JSIs) at the WTO has raised fundamental questions about several core principles of the multilateral trading system, including consensus-based rule-making and the centrality of multilateralism. While some WTO Members view JSIs as a pragmatic response to negotiating paralysis and an important component of the broader WTO reform agenda, others including India, express concern that such initiatives may dilute Member-control, fragment the rule-based system, and sideline the issues of priority to the wider membership. The debate has acquired special significance in the run-up to the WTO's Fourteenth Ministerial Conference (MC14). Against this backdrop, this paper examines the current state of play regarding JSIs, analyses the positions of Members supporting and opposing these initiatives, and explores possible pathways, including safeguards, for addressing the institutional and systemic questions they raise.

Keywords: Consensus, E-commerce, Fragmentation, Investment facilitation, Joint Statement Initiatives (JSIs), Joint Initiatives, Marrakesh Agreement, Multilateralism, Plurilateral trade agreements, WTO

1. Background

The emergence of plurilateral initiatives such as the Joint Statement Initiatives (JSIs) and Joint Initiatives (JIs) marks a significant shift in the trajectory of rule-making efforts at the World Trade Organization (WTO). These initiatives do not have any multilateral mandate for negotiations and are structured as plurilateral negotiations involving a subset of WTO Members collaborating to discuss and/or new disciplines within the WTO.

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As the WTO and its Members prepare for the upcoming 14th Ministerial Conference, moves are underway to institutionalise, legitimise, and potentially mainstream these plurilateral processes and outcomes within the WTO framework, raising important questions and challenges for developing countries, such as India.

The JSIs emerged on the margins of the 11th Ministerial Conference of the WTO held in Buenos Aires, Argentina in 2017. At that time, a coalition of like-minded WTO Members delivered joint statements advancing discussions on E-Commerce,¹ Services Domestic Regulation,² framework on Investment Facilitation for Development (IFD),³ and establishing a working group on micro, small and medium-sized enterprises (MSMEs).⁴

Over time, this list has expanded to include three trade and environment specific Joint Initiatives (JIs), namely, the trade and environmental sustainability structured discussions (TESSD),⁵ the informal dialogue on plastic pollution and environmentally sustainable plastics trade,⁶ and fossil fuel subsidy reform.^{7,8} These initiatives arose against the historical backdrop of prolonged impasse in the Doha Development Agenda and increasing frustration among certain Members regarding the constraints of consensus-based rule-making at the WTO. They reflect a shift toward issue-specific coalitions operating within the WTO framework but without a prior negotiating mandate adopted by multilaterally by consensus.

The precise legal character of many of these JSIs and JIs remain uncertain. Broadly, two approaches appear to be under consideration, depending on whether participating Members extend Most-Favoured-Nation (MFN) treatment to non-participants. Under a “closed plurilateral” model, the negotiated benefits would be confined to participating Members. By contrast, an “open plurilateral” model would extend benefits on an MFN basis to all WTO Members. Regardless of the model ultimately adopted, the JSIs and JIs raise fundamental questions

concerning their compatibility with the WTO's foundational principles of multilateralism and consensus-based decision-making.

2. An Overview of the Plurilateral Agreements Including Joint Statement Initiatives and Joint Initiatives at the WTO

Since 2017, seven plurilateral agreements including four JSIs and three JIs have been launched at the WTO. Textual negotiations on three of them have been concluded, with the outcome of the JSI on Services Domestic Regulations already incorporated as additional commitments in the GATS schedule by several participants. The negotiations in respect of the JSI on E-Commerce and IFD have also been concluded, with several requests made to the General Council for their incorporation as an Annex 4 (Plurilateral Trade Agreement) at the WTO, without any success till date.

A brief description of the JSIs and JIs is provided in the Annex 7.1. A snapshot of the various JSIs and JIs, along with their salient features and the current state of play is provided in Table 1.

3. Different Perspectives on the Legal and Systemic Issues Concerning JSIs

Deep divergences exist within the WTO membership regarding both the legal basis of the JSIs and the systemic ramifications they entail. It is noteworthy that the Marrakesh Agreement establishing the WTO (Marrakesh Agreement) provides for two broad categories of agreements involving the members (Table 2). Annexes 1–3 contain Multilateral Trade Agreements binding on all Members, while Annex 4 contains Plurilateral Trade Agreements (PTAs) binding only on Members that accept them. Further, Annex 4 contains limited number of agreements, underscoring the exceptional nature of plurilateral instruments within the WTO structure. In fact, out of the four PTAs that were brought into force at the time of creation of the WTO on account of historical reasons, only two continue to be in force; both existed before the creation of the WTO – indicating the extraordinary nature of these instruments.¹⁰

Table 1: Snapshot of Joint Statement Initiatives and Joint Initiatives and Their Current Status

Initiatives	Status	No. of Participants	Key Participants	Key Non-Participants ⁹
Joint Statement Initiatives				
<i>Electronic Commerce</i>	Textual negotiations concluded (proponents have sought inclusion of E-Commerce Agreement as an Annex 4 Agreement (WT/GC/W/963/Rev.1)	72	EU, Australia, Japan, Singapore, Canada, China	India, South Africa, Indonesia, USA
<i>Investment Facilitation for Development</i>	Textual negotiations concluded (proponents have sought inclusion of IFD Agreement as an Annex 4 Agreement) (WT/GC/W/927/Rev.4)	128	China, EU, Japan, Australia	India, Türkiye, South Africa, USA
<i>Micro, Small, and Medium enterprises (MSMEs)</i>	Work ongoing. Published MSME Package of 6 Recommendations in 2021 (INF/MSME/4/Rev.2); Databases; Websites	104	Australia, EU, Japan, UK, China, USA	India, South Africa
<i>Services Domestic Regulation</i>	Textual negotiations concluded. Declaration with Reference Paper on Services Domestic Regulation published in 2021 (WT/L/1129). Conclusion of Certification procedures for GATS Schedule concluded for 55 WTO Members	72	USA, EU, Australia, Japan, Singapore, Canada, China	India, South Africa, Indonesia

Table 1 continued...

Continued Table 1...

Initiatives	Status	No. of Participants	Key Participants	Key Non-Participants ⁹
Joint Initiatives				
<i>Dialogue on Plastics Pollution</i>	Work ongoing; Released Draft MC14 Statement (INF/TE/IDP/W/20/Rev.1)	83	EU, China, New Zealand, Singapore, Switzerland, USA	India, South Africa
<i>Trade and Environmental Sustainability Structured Discussions (TESSD)</i>	Work ongoing; Released the TESSD Document for MC14 (INF/TE/SSD/W/40/Rev.2); Factual Report of the Trade-Related Plastics Measures (TrPMs) Survey (INF/TE/IDP/W/11)	79	USA, Australia, Canada, Costa Rica, EU, China, Japan, Mexico	India, South Africa
<i>Fossil Fuel Subsidy Reform</i>	Work ongoing	48	New Zealand, EU, UK	India, USA, China, UAE, Qatar

Source: WTO.

4. Position in Support of JSIs

JSI participants view plurilateral initiatives as a legitimate path towards making advancements in functioning of the WTO. This reading draws support from paragraph 19 of the 2015 Nairobi Ministerial Declaration, which, while recognizing the centrality and primacy of the multilateral trading system expressly affirmed that WTO Members ‘have also successfully worked and reached agreements in plurilateral formats’, thereby lending ministerial recognition to the legitimacy of such approaches.¹¹

The participants further contend that the Marrakesh Agreement imposes no requirement of consensus to initiate negotiations in a plurilateral format. Neither Article III:2 nor Article X:9 requires a prior multilateral mandate before a group of Members begins negotiating. They argue that consensus is required only at the time when Members seek to add the resulting agreement to Annex 4 of the WTO Agreement. A requirement for multilateral pre-approval of plurilateral negotiations could have been prescribed in the WTO Agreement, but was not.¹²

A second strand of the proponents’ argument focuses on the structural architecture of the Marrakesh Agreement itself. Article II:3 explicitly provides that agreements included in Annex 4 are part of the WTO Agreement but binding only on those Members that have accepted them. This two-tier design wherein Annexes 1–3 are binding universally, Annex 4 binding only on accepting parties demonstrates that the Marrakesh Agreement was deliberately constructed to accommodate instruments of variable binding mandate. Proponents argue that denying the possibility of any new Annex 4 agreement would deprive Article X:9 of its purpose and render it a dead letter (EU Statement at the General Council, 16–17 December 2025).¹³ Proponents of the JSIs are clear that Article X:9 does not bypass the consensus requirement since incorporating a plurilateral agreement into Annex 4 still requires a unanimous decision of the Ministerial Conference. Their objection is that consensus being used as a tool to permanently block any such decision from ever being taken, rather than as the final approval step it was designed to be.

Table 2: Relevant Extracts from the Marrakesh Agreement

Preamble:

Resolved, therefore, to develop an integrated, more viable and durable multilateral trading system....

Article II.1:

The WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement.

Article III.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 III.2:

The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations,...

Article X.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.

A third argument draws on the systemic consequences of the WTO's negotiating paralysis. The single undertaking approach has demonstrably failed to modernise the WTO rulebook on critical twenty-first-century issues including digital trade, services domestic regulation, and investment

facilitation. JSIs represent the most effective available mechanism for keeping rule-making anchored within the WTO rather than migrating it to the proliferating patchwork of bilateral and regional agreements. The EU's Trade Policy Review warned that if no formula is found to integrate plurilateral agreements in the WTO, there would be no alternative but to develop such rules outside the WTO framework. This would directly contradict the preamble's objective of an 'integrated' multilateral trading system.¹⁴ Incorporating open plurilaterals under the WTO umbrella, subject to the Article X:9 consensus gateway, keeps agreements open to all Members and subject to WTO scrutiny and transparency norms. Some of the downsides of the rules developed outside the WTO are that rules would not be subject to the WTO's notification and transparency requirements, would not be open to accession by all Members on equal terms, and would fall outside the jurisdiction of the WTO dispute settlement system. Keeping such agreements within the WTO framework therefore preserves the coherence and integrity of the multilateral trading system, even where not all Members choose to participate.¹⁵

Further, according to the proponents, participation in JSIs has been broad and voluntary across the range of initiatives. Each JSI incorporates special and differential treatment provisions, implementation flexibilities, and extended transition periods. Proponents argue that blocking incorporation on systemic grounds denies the development aspirations of a major part of the membership that has affirmatively chosen to participate, and amounts to a misuse of the consensus norm under Article IX:1. This amounts to, the proponents of JSI argue, misuse of the consensus requirement under Article IX:1 by allowing a small number of members to indefinitely block an outcome that the major part of the membership actively supports (EU Statement at the General Council, 16–17 December).¹⁶

In the specific case of the IFD Agreement, proponents have also addressed the subject-matter objection that 'investment' falls outside the WTO's mandate to govern 'trade relations'. They argue that investment is not foreign to the WTO since the TRIMs Agreement governs investment measures related to trade in goods. They also argue that the GATS defines

‘trade in services’ to encompass commercial presence, which in most cases involves foreign direct investment. Additionally, the ASCM agreement disciplines subsidies that affect investment decisions. In the language of the proponent, the IFD Agreement is not a traditional investment agreement rather it is narrowly tailored to administrative facilitation, transparency, and procedural streamlining, expressly excluding market access, investment protection, and investor-state dispute settlement. Proponents further contend that the 2004 General Council Decision, which is invoked by opponents as a negative mandate, pertained only to multilateral negotiations on the broad ‘relationship between trade and investment’ within the Doha Work Programme. This, they argue, cannot be read as a prohibition extending to a narrowly scoped plurilateral initiative pursued on a separate legal pathway.¹⁷

5. Position against JSIs

A number of WTO Members, most prominently India, Namibia and South Africa, have mounted a comprehensive legal and systemic challenge to JSIs. Their objections, set out formally in The Legal Status of ‘Joint Statement Initiatives’ and their Negotiated Outcomes (WT/GC/W/819/Rev.)^{1,18} proceed on the premise that the WTO was established as an institution premised on multilateralism, consensus-based decision-making, and the single undertaking, and that JSIs are irreconcilable with each of these foundational pillars.

They argue that the legal challenge to JSIs is constitutional in character, not merely procedural. Opponents read Articles II:1 and III:2 of the Marrakesh Agreement conjunctively as confining the WTO’s institutional mandate to governing ‘multilateral trade relations’ within the covered agreements. Article III:2 grants the WTO a forum function for ‘further negotiations’, but only on matters of ‘multilateral trade relations’ and only ‘as may be decided by the Ministerial Conference’. This, they argue, means that any new negotiating agenda requires a prior consensus-based mandate. JSIs, launched without any such mandate, fall outside the WTO’s institutional authority on this ground.

A second objection is grounded in the historical design of the WTO. Opponents emphasise that the transition from the GATT to the WTO in 1995 was a deliberate repudiation of the GATT à la carte model of the Tokyo Round, under which optional codes produced fragmented rules binding only subsets of contracting parties. The negotiators of the Uruguay Round consciously opted for a single undertaking and universal membership, with the Appellate Body in Brazil – Desiccated Coconut later confirming that the WTO’s architects intended to end that fragmentation. Opponents read the Preamble’s resolve to build an ‘integrated, more viable and durable multilateral trading system’ as a binding interpretive commitment foreclosing a return to variable-geometry rule-making. Opponents have also examined the two examples that JSI proponents most frequently point to as precedents — the Telecommunications Reference Paper and the Information Technology Agreement (ITA). In both cases, they argue, the comparison does not hold good. The telecommunications negotiation was not an independent initiative by a group of like-minded Members rather it was part of the Uruguay Round outcome, formally authorised by a decision of the full WTO membership that set out the negotiating mandate, the scope of the talks, and how the results would be recorded. Similarly, the ITA was adopted as a Ministerial Decision at MC1, with all Members agreeing to it. In both instances, the wider membership had given its approval before negotiations were initiated; which did not happen with the current JSIs indicating serious breach of an established practice within the WTO scheme of negotiations.¹⁹

Further, the proponents argue that the letter and spirit of consensus-based decision making are enshrined and reiterated at several places in the Marrakesh Agreement and have never been deviated from by WTO Members. For instance, Article IX.1 on Decision Making clearly states that the “The WTO shall continue the practice of decision-making by consensus...”. A similar approach can also be seen in Articles IX.3(a), X:1, X.8, and X.9 in different contexts. The commitment to this approach underscores the importance of collective agreement and cooperation in the functioning of the WTO, ensuring that all Member voices are heard and respected in the decision-making process.

In fact, the detractor of the JSIs argue that every concluded plurilateral initiative at the WTO till date had received a consensus-based ‘blessing’ from the Members for their initiation.²⁰ This is hardly surprising given that the WTO’s built-in objective of having an “integrated” and non-fragmented trading system, necessitates any deviation to take place only with the consensus of the Membership.

Another objection concerns the bypassing of WTO’s amendment procedures. Opponents draw a clear distinction between amendments to WTO rules which is governed by Article X of the Marrakesh Agreement, requiring consensus or voting followed by formal acceptance and modifications to Schedules of Concessions under GATT Article XXVIII or GATS Article XXI, which proceed through less onerous procedures. JSI participants have inscribed the outcome of the Services Domestic Regulation disciplines as additional commitments under GATS Article XVIII, bypassing established multilateral procedures. Opponents reject this, contending that JSIs are substantive rule-making exercises that add new disciplines and alter existing rights and obligations which has to pass the requirements of Article X.²¹ In the case of JSIs such as e-commerce and IFD, inscribing outcomes into GATS schedules is in any event not viable, since their disciplines range across GATT, GATS, TRIPS, and TRIMs and cannot be appended to any single schedule.²²

Further, certain procedural sequencing concerns have also been raised. Opponents argue that the incorporation of a plurilateral agreement under Article X:9 of the Marrakesh Agreement can only take place where the agreement has already been concluded, since the provision refers to the term “parties”. In support of this view, reference is often made to the Vienna Convention on the Law of Treaties (VCLT). Article 2(g) of the VCLT defines a “party” as “a State which has consented to be bound by the treaty and for which the treaty is in force”. Read together with Article X:9 of the Marrakesh Agreement, this interpretation would suggest that a request to add a plurilateral agreement to Annex 4 may only be made after the participating Members have completed their domestic procedures for signature and ratification, and once the plurilateral agreement has entered into force among them.²³

Lastly, specific to IFD, India has also contended that when WTO Members discussed investment in the context of the Working Group established during the 1996 Ministerial Conference in Singapore, the focus was on the ‘relationship between trade and investment’, which clearly shows the separation that WTO Members apply between the two concepts. IFD is not a ‘trade’ agreement, and hence, it does not meet the conditions of Article X.9, and the foundational principle of the WTO governing multilateral “trade relations”, putting it outside the scope of the WTO’s mandate.²⁴ In fact, as per India, there exists a ‘negative mandate’ to discuss investment at the WTO.

Beyond the legal objections, opponents have raised serious systemic and developmental concerns. The JSI model risks creating a two-tier WTO where the negotiating agenda is set by the willing few rather than by the membership as a whole. Long-standing development priorities in the Doha Development Agenda including agriculture, development finance, and LDC flexibilities have been progressively marginalised as institutional resources flow into JSI processes. Opponents note that JSIs can also displace existing multilateral mandates: the JSI on Services Domestic Regulation conducted negotiations in parallel to the WTO’s Working Party on Domestic Regulation, which held a consensually established mandate under GATS Article VI:4 that was never formally discontinued.²⁵

Similarly, by negotiating rules on e-commerce outside the multilateral framework, JSI proponents have effectively subverted the non-negotiating multilateral mandate of the 1998 Work Programme on E-Commerce, regularly reaffirmed by all WTO Members. Opponents also contend that the claim that JSI outcomes extended on an MFN basis require no multilateral consensus conflates two distinct categories: schedule modification, where MFN extension without consensus has a recognised legal basis, and rule-making, which requires compliance with Article X.²⁶

India has sought to translate these concerns into a constructive institutional proposal. Rather than an outright rejection of plurilateral engagement, India’s position contemplates a structured, consensus-based

framework governing each stage of plurilateral initiatives, from pre-initiation subject-matter assessment and mandate verification, through consensus approval by the Ministerial Conference for formal launch, to transparency obligations and non-participant engagement during negotiations, and finally to incorporation in compliance with Article IX or the relevant covered agreement procedures.²⁷ Taken together, opponents of the JSI model do not advocate for a static WTO incapable of rule modernisation; rather, they insist that any such modernisation must occur through the Member-driven multilateral processes that give the WTO its legal authority and legitimacy.

6. Proposals on Plurilaterals as Part of the WTO Reforms Agenda (2025-26)

In recent discussions at the WTO, plurilaterals have featured prominently in some of the WTO reforms related proposals. For instance, in a proposal made by the United States, it unequivocally states that if the WTO is to have a future as a negotiating forum, it is likely to be for plurilateral negotiations, where benefits and responsibilities would be limited to the signatory Members, i.e. akin to a ‘closed plurilateral’.²⁸ Notably, the United States appears to treat plurilateral initiatives not as a complement to multilateral negotiations, but as a substitute for them, effectively advocating a ‘plurilateral-only’ future for the WTO.

The European Union also submits that the future of the WTO will be more-multilayered with different types of JSIs, indicating a return to variable geometry of the GATT era.²⁹ It supports accommodating different types of plurilateral approaches, emphasizing the need to not allowing plurilaterals to be blocked by a small set of countries, particularly where the outcomes are to be based on MFN, i.e., in the case of open plurilaterals.

Along similar lines, China also proposes to reform WTO governance and decision making, inter alia, through enabling flexible plurilateral initiatives with balanced and inclusive guardrails, without getting into their specifics.³⁰ Paraguay proposes to have modalities governing plurilateral initiatives so that they do not undermine multilateral

Table 3: Recent WTO Reform Proposals on Plurilaterals

Country	Document Number	Position on JSIs / Plurilaterals	Key Elements Proposed
United States	WT/GC/W/984 15 December 2025	Strongly supports plurilateral agreements as the future of WTO negotiations	- Argues that consensus among 166 Members is unrealistic for new rules. - Calls for a path forward for plurilaterals whose benefits and responsibilities are limited to consenting parties. - States that if WTO cannot accommodate plurilaterals, it risks irrelevance. - Suggests that trade negotiations will move outside WTO if flexibility not allowed.
European Union	WT/GC/W/986 21 January 2026	Advocates flexibility and supports different plurilateral approaches within WTO reform	- Proposes closer economic cooperation through plurilaterals. - Proposes that plurilaterals cannot be blocked by a single or small group of non-participating members, in particular when they are MFN-based. - Supports accommodating different types of plurilateral approaches

Table 3 continued...

Continued Table 3...

Country	Document Number	Position on JSIs / Plurilaterals	Key Elements Proposed
Paraguay	WT/GC/W/987 3 February 2026	Seeks guardrails to ensure plurilaterals do not undermine multilateralism	- Calls for clearer definition of plurilateral initiatives - Proposes exploring minimum number of Members required to launch a plurilateral - Emphasizes that plurilaterals must not detract from multilateral negotiations
China	WT/GC/W/989 18 February 2026	Supports flexible plurilateral initiatives with inclusive guardrails	- Advocates enabling flexible plurilateral initiatives while respecting consensus - Suggests for balanced and inclusive guardrails

Source: WTO.

negotiations, including deciding upon the minimum number of Members needed to launch such an initiative.³¹ The key elements of these proposals are illustrated in Table 3.

Taken together, these proposals reveal an emerging divergence in Members' approaches to the role of plurilateral initiatives in the WTO. While some Members, such as the United States and the European Union, appear to favour greater flexibility and a more central role for plurilateral negotiations in advancing rule-making, others emphasize the need for clearer modalities and institutional guardrails to ensure that such initiatives remain anchored within, and do not undermine, the multilateral framework of the WTO. The proposals thus reflect an ongoing debate on how to reconcile the perceived need for negotiating flexibility with the preservation of the WTO's multilateral character.

7. Conclusions and Recommendations

In conclusion, although Joint Statement Initiatives (JSIs) have increasingly emerged as a negotiating pathway for a number of WTO Members, they raise important systemic concerns for the WTO as an institution founded on multilateralism, inclusivity and consensus-based decision-making. At present, there remains no shared understanding among the Members regarding the modalities governing the launch and conduct of such initiatives, with divergent interpretations advanced on the relevant provisions of the Marrakesh Agreement. In these circumstances, any shift in the WTO's rule-making architecture warrants careful and considered deliberations by the full membership. Short-term negotiating expediency should not come at the cost of the long-term predictability and stability of the multilateral trading system. Pending greater clarity in the ongoing discussions on WTO reform, India's continued caution and its principled position on the matter remain both justified and consistent with the preservation of the multilateral trading system.

Nevertheless, should the WTO Membership decide to explore guardrails for existing and future plurilateral initiatives, certain institutional and procedural safeguards may merit consideration. In this regard, a structured, consensus-based approach to plurilateral

initiatives could be developed -one that preserves Member-control over the rule-making process and safeguards the multilateral character of the organization, as proposed below.

7.1. Possible Safeguards for the Pre-Initiation Stage of Plurilateral Negotiations

Before launching any plurilateral initiative, interested Members may be required to first assess whether the subject matter is already covered under existing multilateral mandates and attempt to pursue or revive discussions in the appropriate WTO body. Only if such efforts fail, and with the consensus of the entire Membership, may a plurilateral initiative be launched. Such a requirement would help prevent situations where plurilateral initiatives are pursued in parallel with, or in place of, ongoing multilateral discussions, as occurred in the case of initiatives on services domestic regulation and electronic commerce.

Another threshold requirement could be that the proposed subject matter qualifies as a “trade” matter within the meaning of Article X:9 of the Marrakesh Agreement, which permits only a “trade agreement” to be incorporated into Annex 4 as a Plurilateral Trade Agreement. Such a requirement would help avoid situations like those observed in the context of the JSI on Investment Facilitation for Development (IFD), where questions regarding whether the subject falls within the WTO’s trade mandate continues to remain contested among the wider Membership, after years of negotiations.

Safeguards may also be necessary to address the possibility of competing plurilateral initiatives on the same or closely related subject matter. In the absence of clear disciplines, parallel negotiations involving different groups of Members could lead to fragmentation of rules, duplication of institutional resources, and the emergence of overlapping or inconsistent regulatory frameworks within the WTO. Establishing mechanisms for transparency, coordination, and prior consultation and consensus among Members could therefore help ensure coherence in rule-making and prevent the proliferation of competing plurilaterals addressing substantially similar issues.

7.2. Possible Safeguards for the Initiation Stage of Plurilateral Negotiations

In light of the letter and spirit of the Marrakesh Agreement, the formal initiation of plurilateral negotiations could require consensus approval by the Ministerial Conference or the General Council, consistent with Articles III, IX, X and X:9. Such an approach would help preserve institutional legitimacy and facilitate the possible incorporation of any negotiated outcome into the WTO framework. This proposal builds upon earlier submissions made by India. Even for Members that may hold a different view on the need for consensus at this stage, greater clarity on this issue could still prove useful, as it would help avoid potential difficulties at the stage of adoption after Members have invested significant time, resources and negotiating effort.

A minimum threshold of Members could also be specified for the initiation of plurilateral negotiations, ensuring that WTO institutional resources are directed toward initiatives that command a reasonable degree of support and are likely to benefit a broader segment of the membership. Such a threshold could also take into account representation across different levels of development, and could be set higher in the case of closed plurilateral agreements. This proposal builds upon the suggestion put forward by Paraguay.

7.3. Possible Safeguards for the Negotiations Stage of Plurilateral Negotiations

Throughout negotiations, transparency and inclusivity must be ensured by allowing non-participating Members to attend meetings and articulate concerns, which participating Members should seek to address.

The WTO Secretariat should undertake technical work relating to plurilateral initiatives only with the consensus of WTO Members. Such authorization could form part of the consensus decision taken at the stage of initiating the plurilateral negotiations.

In view of the additional resources that may be required to support plurilateral initiatives, WTO Members may consider requiring supplementary financial contributions from participating Members to

the WTO budget. The methodology for determining these additional contributions should be agreed upon by the Membership.

While the incorporation of any negotiated outcome arising from the plurilateral initiatives into the WTO shall adhere to the existing rules outlined in the Marrakesh Agreement, other covered agreements, and any relevant Decisions of the Members, certain post incorporation safeguards may also be considered, as elaborated below.

7.4. Safeguards for the Post-Incorporation Stage

The requirement of Member-control and consensus may also be extended to any subsequent modification of a PTA after its incorporation into Annex 4 of the Marrakesh Agreement, in order to prevent material alterations to its essential structure and nature post-incorporation. Since amendments to a PTA are undertaken in accordance with the procedures set out in the agreement itself, there may otherwise be no oversight by the broader WTO Membership once a PTA becomes part of Annex 4. In such circumstances, it is hypothetically possible for the signatories to introduce future changes that could substantially alter the character of the agreement, not in line with the WTO's mandate.

Notwithstanding the above safeguards, even if modalities relating to plurilaterals may eventually be clarified upon by the WTO Members, it is critical to appreciate the systemic risks posed by a WTO witnessing a proliferation of plurilateral initiatives, particularly in light of the growing number of Joint Statement Initiatives (JSIs). The current approach of JSIs, of picking and choosing from among a host of trade and non-trade issues, creates a risk of select WTO Members cherry-picking areas of their interest, without any meaningful gains for all Members, specifically the developing and the least developed ones. Demands of developing countries, particularly those raised under the Doha Development Agenda, have increasingly been relegated to the sidelines, resulting in a gradual erosion of their bargaining power within the multilateral negotiating framework. The JSIs have also led to a diversion of the negotiating capital of the participating Members and WTO's limited institutional resources to areas that may not be a

priority for the entire pertaining to plurilaterals so that their interests get adequately reflected in the negotiations.

Overall, WTO Members should approach this matter with considerable caution, mindful of its potential implications for the coherence, inclusiveness, and long-term credibility of the multilateral trading system.

Endnotes

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Annexure 1

A Brief Description of the JSIs

Investment Facilitation for Development (IFD)

Textual negotiations on the Investment Facilitation for Development (IFD) Agreement have been concluded. The participating Members have formally requested its incorporation into Annex 4 of the Marrakesh Agreement pursuant to Article X:9, through document WT/GC/W/927/Rev.4. The draft General Council decision proposes that the IFD Agreement be added to Annex 4 upon its entry into force. The Agreement currently has the support of over 120 WTO Members, including the European Union, the United States, China, Japan, Australia, Brazil, Indonesia, and a large number of developing countries. India and Türkiye, however, are not parties to the Agreement. The United States, while not a party, has no objection to its adoption.

Annex Table 1: Overview of the IFD Agreement

Key Commitments in IFD Agreement
The IFD Agreement covers: - Transparency of investment measures (publication, notification, single information portals, advance publication); - Streamlining and time-bound processing of authorization procedures; - Use of electronic applications and online payments; - Regulatory coherence and focal points; - Special and Differential Treatment through categorised implementation schedules; - Responsible business conduct and anti-corruption measures; - Dispute settlement under the WTO DSU.

The Agreement expressly excludes market access commitments and investor–state dispute settlement. Nevertheless, its obligations are enforceable among parties under WTO dispute settlement.

Agreement on Electronic Commerce

Negotiations under the Joint Statement Initiative on Electronic Commerce have similarly concluded. The participating Members have requested incorporation into Annex 4 through document WT/GC/W/963/Rev.1, invoking Article X:9 of the Marrakesh Agreement. The draft Agreement is subscribed by around 72 WTO Members, including the EU, Australia, China and Canada.

Annex Table 2: Overview of the Agreement on Electronic Commerce

Key Commitments in the Agreement on Electronic Commerce
The Agreement on Electronic Commerce contains disciplines concerning: - Legal frameworks for electronic transactions and authentication; - Electronic contracts, invoicing and paperless trading; - Single-window interoperability and electronic payments; - Customs duties on electronic transmissions; - Access to and use of the internet; - Consumer protection, unsolicited communications, personal data protection and cybersecurity; - Development provisions including technical assistance; - General and security exceptions.

Participants include the European Union, Australia, Japan, China, Singapore, Canada, the United Kingdom and others. India and several developing countries are not parties. Like the IFD Agreement, its incorporation remains pending a decision by the WTO membership.

Services Domestic Regulation (SDR)

The Joint Initiative on Services Domestic Regulation concluded in 2021 through the Declaration contained in WT/L/1129. Rather than pursuing Annex 4 incorporation, participants agreed to inscribe the disciplines as “additional commitments” under Article XVIII of the GATS.

Participants include several developed and developing Members; India is not a participant. This approach created a hybrid model

whereby plurilateral disciplines acquire legal force through scheduled commitments rather than formal Annex 4 status.

Annex Table 3: Overview of the SDR Reference Paper

Key Commitments in the SDR Reference Paper
The Reference Paper elaborates disciplines relating to: - Licensing and qualification requirements; - Technical standards; - Transparency of procedures; - Timeframes for processing applications; - Electronic submissions and review mechanisms.

MSMEs

The Informal Working Group on MSMEs aims to promote the fuller integration of micro, small and medium-sized enterprises into global trade. The Group committed to identifying solutions to help companies, particularly MSMEs, enhance their participation in international trade, while also taking into account the specific needs and challenges of developing countries. The Informal Working Group has also, inter alia, adopted non-binding recommendations in addressing data collection, regulatory inclusion, trade facilitation and access to finance (INF/MSME/4/Rev.2).

Environmental Initiatives

There are three environmental initiatives at the WTO. The Fossil Fuel Subsidy Reform (FFSR) initiative aims to promote the rationalization, gradual phase-out, or elimination of harmful fossil fuel subsidies by making use of existing mechanisms or by exploring new avenues for reform. It also encourages WTO Members to exchange information and share experiences in order to support and advance discussions on the issue within the WTO.

The Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade (DPP) was established to explore how the WTO could

contribute to efforts to reduce plastics pollution and promote the transition to more environmentally sustainable trade in plastics.

The Trade and Environmental Sustainability Structured Discussions (TESSD) were launched in November 2020 with the objective of advancing dialogue on the relationship between trade and environmental sustainability. The co-sponsors acknowledge that international trade and trade policy can play an important role in advancing environmental and climate objectives. They also agreed to explore concrete actions that participating Members could undertake, individually or collectively, to expand opportunities for environmentally sustainable trade.

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Acknowledgements

Authors are grateful for the comments and suggestions received from reviewers for finalising the Discussion Paper. Thanks are also due to the publications team at RIS, comprising, Mr. Sanjay Singh, Mr. Sachin Singhal, Mr. Sanjeev Karna and Ms. Karanpreet Kaur Sodhi for arranging the production of this Discussion Paper.

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