

The WTO's negotiating function

Towards plurilaterals and new trade challenges

SUMMARY

A key function of the World Trade Organization (WTO) is to serve for its members as a forum for the negotiation of global trade rules. However, since the WTO's foundation in 1995, WTO members have largely failed to meet their self-defined negotiating objectives as set out in the comprehensive 2001 Doha Development Agenda (DDA). By the time of the 2024 Abu Dhabi Ministerial Conference, WTO members had settled on merely two multilateral agreements in almost 30 years: a 2013 agreement on trade facilitation and a partial agreement on fisheries subsidies, concluded in 2022.

As some of the DDA's trade liberalisation items were dropped and negotiations on other items have stalled, sub-sets of WTO members have found other ways to craft new trade rules outside the WTO: either through bilateral or regional preferential trade agreements or through plurilateral trade negotiations, leading to the fragmentation of rules and questioning of the WTO's legitimacy. Modelled on the successful conclusion in 1997 of the first WTO plurilateral agreement eliminating tariffs on information technology, groups of WTO members led by developed countries set up two separate tracks of plurilateral talks on liberalising trade in services and in environmental goods in 2013 and 2014 respectively. Both stalled in 2016 and virtually ended market access-enhancing efforts within the WTO. In 2017, a group of members launched three initiatives – on domestic services regulation, investment facilitation and e-commerce – to re-invigorate the WTO's negotiating function. The initiatives marked a shift from a new market access-seeking approach to an approach prioritising trade and investment facilitation with a strong development dimension. Albeit more successful, their incorporation into the WTO legal architecture has been challenging given opposition from some members. If opposition were overcome, plurilaterals could be a means of multilateralising new trade rules, as was the case for the 'codes of conduct' under the pre-WTO GATT (General Agreement on Tariffs and Trade) regime by 1995.

To retain legitimacy and relevance, experts suggest that the WTO could do more to leverage its role as a forum for deliberating emerging issues, such as plastics pollution, trade and gender, green and fossil fuel subsidies, trade and industrial policies, carbon border mechanisms and regulatory action, for sustainable trade towards concrete negotiated outcomes.



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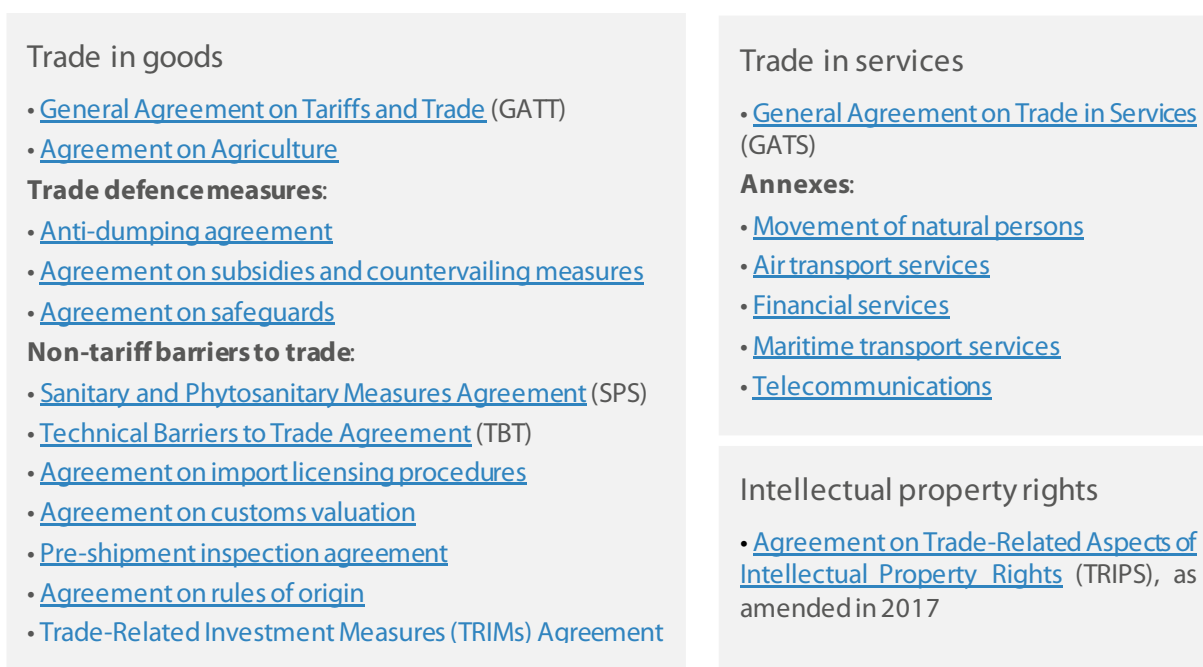
The WTO's main functions and legal architecture

The World Trade Organization (WTO) was set up on 1 January 1995 under the [Marrakesh Agreement on Establishing the WTO](#) at the end of the Uruguay Round of multilateral trade negotiations (1986-1994), held under the auspices of the 1947 General Agreement on Tariffs and Trade ([GATT](#)), the WTO's predecessor. The Marrakesh Agreement among other things sets out the organisation's scope, functions, structure, and decision-making. The WTO has the following major [functions](#):

- a **negotiating** (rule-making) function to craft new disciplines for global trade;
- a **deliberative** function [to debate](#) new challenges to global trade for potential future rule-making;
- a **monitoring** function to [follow](#) global trade trends and members' trade policies and implementation of WTO rules through the regular trade policy review mechanism for all members and transparency (notification requirements relating to member's trade policy measures);
- an **adjudication** function to settle trade disputes among WTO members;
- a **capacity building** function for developing countries.

The WTO is member-driven. Its secretariat has merely a support function – it is not empowered to take measures against WTO members for non-compliance with WTO rules. WTO members take decisions when they meet biannually at ministerial conferences or outside of these in the General Council (GC). The [institutional set-up](#) includes a Goods Council, a Services Council, and a TRIPS Council and [committees](#). After the 2024 [accession](#) of Comoros and Timor-Leste, the WTO's membership grew to 166 countries and customs territories accounting for [98 %](#) of global trade. The WTO continues the GATT practice of taking decisions [by consensus](#) only, forgoing the option to proceed to a vote for which [rules](#) are set out in Articles IX and X of the Marrakesh Agreement.

Figure 1 – Basic structure of the trade agreements included in the Marrakesh Agreement



Source: [WTO](#).

The Uruguay Round [agreements](#) listed above can be found in [Annexes](#) 1A to 1C of the Marrakesh Agreement. Annex 2 covers the [Dispute Settlement Understanding](#). Annex 3 contains the [Trade Policy Review Mechanism](#). Annex 4 lists two plurilateral trade agreements concluded as an exception to the WTO's most favoured nation (MFN) principle: the [Agreement on Trade in Civil Aircraft](#) and the [Agreement on Government Procurement](#).

Negotiation of multilateral agreements

The strict consensus principle that governs WTO negotiations, the diversity of interests within an increasingly heterogeneous membership, and growing geopolitical and geo-economic tensions have created challenges for members to adopt the new global trade rules – such as for digital trade – that are needed for global trade governance to keep pace with a rapidly changing international trade environment. Although at the 2001 Doha Ministerial Conference, an ambitious negotiating agenda was adopted under the [Doha Round](#), most of its items have not materialised. The Doha Development Agenda (DDA) [work programme](#) listed 21 negotiating items, such as agriculture, trade in services, market access for non-agricultural products, and intellectual property issues. By 2008, however, negotiations had stalled, albeit lingering on for several years. The 2015 Nairobi Ministerial Conference [declaration](#) suggested a lack of consensus on whether the Doha Round mandates should be pursued, with the [EU](#) and the United States ([US](#)) open to new trade issues and approaches. From 1995 to 2024, members agreed on two multilateral agreements, one only partially.

Trade Facilitation Agreement

The [Trade Facilitation Agreement](#) (TFA) was the first multilateral trade agreement concluded under the WTO umbrella at the 2013 [Bali](#) Ministerial Conference. In 2014, the TFA was incorporated into Annex 1A of the WTO Agreement and [entered into force](#) in 2017. The 1996 Singapore Ministerial Conference was the [starting point](#) for preparatory work for negotiations on trade facilitation, one of the four '[Singapore issues](#)' that also included trade and competition, trade and investment, and transparency in government procurement. In 2004, a negotiating mandate for a TFA was agreed and became the last item to be added to the DDA. The mandate focused on improving GATT Articles V (freedom of transit), VIII (import- and export-related fees and formalities) and X (transparency), to facilitate the movement, release and clearance of goods, including goods in transit. It has thus sought to eliminate red tape at the border to facilitate trade.

The negotiations broke new ground in that they were conducted in an open-ended, de-centralised and inclusive bottom-up manner based on delegations' proposals, with a chair acting predominantly as a facilitator to broker a compromise. This approach was a sharp departure from the WTO's traditional informality of '[green room](#)' negotiations between major global players only, which were frequently criticised as non-representative and non-inclusive and 'died' in 2008, experts [argue](#). A novel aspect was to consider the implementation of commitments early on and incorporate a new [principle](#), according to which the obligation of a developing or least developed country (LDC) to implement the agreement's provisions are conditioned on that country's technical capacity. The agreement has been referred to as [unique](#), as it allows developing countries and LDCs to set their own [timetables](#) for implementation in line with their capacities and to draw on the implementation capacity through WTO support. However, some experts have [argued](#) that the format may be 'ill-suited' for dealing with other issues such as agricultural and industrial subsidies.

In 2014, the WTO TFA Facility was set up to provide assistance for capacity building. As of 15 April 2024, the

TFA's benefits so far

WTO estimates [suggest](#) that TFA implementation from 2017 to 2019 generated an increase in global trade of 1.17 %, in goods manufacturing of 1.5 % and in agricultural goods of as much as 5 %. These increases were largely driven by the trade growth in LDCs, where agricultural exports rose by 17 %, manufacturing exports by 3.1 %, and total exports by 2.4 %. Research finds a surge of 16 to 22 % in agricultural trade between developing countries that made TFA commitments.

A 2022 Economic and Social Commission for Asia and the Pacific study [found](#) that TFA implementation reduces trade costs by 1 to 4 % on average. The TFA's trade cost-reducing impact is strongest between Organisation for Economic Co-operation and Development (OECD) and non-OECD economies, with trade costs reduction ranging between 3 and 5 %. The study shows that South–South trade costs reductions from TFA participation are less than 2 %, and those between advanced economies to be not significant.

[Facility](#)'s website indicates that TFA ratification by 156 countries stood at 95.1% and implementation at 79.3%. Moreover, with regard to the special and differentiated treatment (SDT), an individual, country-by-country and measure-by-measure approach was pursued, rather than a one-size-fits-all approach of providing transition periods and flexibilities attached to the status of being a developing country or LDC. The agreement was [expected](#) to be used as a model for defining the SDT in future negotiations and to set new standards for a new negotiating style.

Agreement on Fisheries Subsidies

Since the late 1970s, the percentage of stocks fished at biologically unsustainable levels grew from 10% in 1974 to 35.4% in 2019, according to the 2022 State of World Fisheries and Aquaculture [report](#) of the United Nations (UN) Food and Agriculture Organization (FAO). When in 2001, over-exploited stocks had for the first time [exceeded](#) non-fully exploited stocks as defined by the FAO, WTO members [added](#) fisheries subsidies to the DDA's negotiating items, given concerns that overfishing and overcapacity caused by fisheries subsidies programmes had resulted in depleted fishery stocks. The 2005 Hong Kong Ministerial Conference adopted a more detailed [mandate](#) to 'strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and overfishing'. The mandate moreover stipulates that 'appropriate and effective SDT for developing and least developed members should be an integral part of the fisheries subsidies negotiations, taking into account the importance of this sector to development priorities, poverty reduction, and livelihood and food security concerns'. Negotiations gained fresh impetus from the adoption in 2015 of the UN Sustainable Development Goals (SDGs), notably [SDG Target 14.6](#) that calls for the prohibition, by 2020, of certain forms of fisheries subsidies that contribute to overcapacity and overfishing and the elimination of subsidies that contribute to illegal, unreported, and unregulated (IUU) fishing.

IUU fishing and forced labour

A 2023 [report](#) by the US National Oceanic and Atmospheric Administration identifies Angola, Grenada, Mexico, the People's Republic of China (PRC), Taiwan, The Gambia, and Vanuatu as economies that have vessels that engaged in IUU fishing. Moreover, it claims to have information that the [PRC](#) and [Taiwan](#) have produced seafood-related goods through forced labour mostly involving migrant workers from Indonesia and the Philippines. The US has been a [strong advocate](#) of including a provision in the Agreement on Fisheries Subsidies to address concerns about forced labour in the ocean-fishing sector.

At the 2022 Geneva Ministerial Conference, WTO members settled on a partial agreement on fisheries subsidies that contains several key disciplines, while continuing talks on disciplines for some outstanding forms of harmful subsidies to be added to the agreement at a later stage. While talks continue for a duration of a maximum of 4 years ('[sunset clause](#)') following the entry into force of the agreement, after which it would expire, ratification of the partial agreement is ongoing. For the agreement to enter into force, acceptances from two thirds of WTO members are required. By 15 April 2024, [46 WTO members](#), counting the EU-27 as one, had transmitted their instruments of acceptance.

The partial agreement [sets out](#) the three main substantive areas in which WTO members have agreed on new rules and prohibitions:

- subsidies that contribute to IUU fishing;
- subsidies for fishing and fishing-related activities regarding overfished stocks; and
- other subsidies, including those provided to fishing in the unregulated high seas, to re-flagged vessels, and to fishing on unassessed stocks.

Several crosscutting issues are addressed, including horizontal SDT provisions, transparency and notification, institutional issues, and dispute settlement. A [WTO Fisheries Funding Mechanism](#) was set up to provide technical assistance for developing and LDCs to implement the agreement's provisions.

Those provisions on which members were not able to agree at the 2022 Geneva Ministerial Conference, in particular subsidies that contribute to overcapacity and overfishing, were presented as a [draft text](#) to the 2024 Abu Dhabi Ministerial Conference; however, India as the only WTO member [blocked](#) adoption, maintaining that 'its core interests were not being addressed'. Commentators have [regretted](#) the lack of a definition of artisanal fishing 'to avoid deceptive practices'.

Negotiation of plurilateral agreements

At the WTO's creation in 1995, a set of plurilateral agreements (then called 'codes of conduct') that had previously been negotiated among a sub-set of GATT members were incorporated into the WTO's legal architecture as 'multilaterals' binding all members. Two plurilaterals kept their status and were attached to Annex 4 as deals that only bind those WTO members that signed them: (i) the sector-specific [Agreement](#) on Trade in Civil Aircraft, which includes tariff reductions and disciplines on related government procurement, and (ii) the [Agreement](#) on Government Procurement, both concluded on a non-MFN basis.¹ These plurilaterals were not multilateralised and not listed under Annex 1, as they were of interest to only a small number of WTO members, and the area of government procurement was excluded from the coverage of GATT [Article III](#) (National treatment). [Article II.3](#) of the Marrakesh Agreement provides the legal basis for the conclusion of new plurilaterals² and sets out their legal status:

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

A third sector-specific plurilateral, the Agreement on Trade in Pharmaceutical Goods, sets out tariff reductions made by a sub-set of members representing a 'critical mass' of trade. When it entered into force in 1995, its commitments made on an MFN basis, benefiting also non-participating members, were incorporated into the schedules of the WTO members concerned following a [certification process](#).³ After 1995, WTO members only reached one single sectoral plurilateral [agreement](#) – that on tariff liberalisation for information technology products (ITA) in 1997, updated in 2015. Its success served as an example for two later plurilateral initiatives: the negotiations for a plurilateral agreement on [liberalising trade in services](#) and one on [liberalising trade in environmental goods](#) began in 2013 and 2014. However, both negotiations became gridlocked at the end of 2016, as the geopolitical environment had changed with China's rise and the global trade distortions its [non-market practices](#) generated, and with the US's [partial retreat](#) from the multilateral trading system. As the US-led trade liberalisation [slowed down](#) after the Uruguay Round and was [superseded](#) after 2016 by the re-emergence of [protectionism](#) and [industrial policies](#) also referred to as 'polite' protectionism, alongside endeavours to [level the playing field](#) with non-market economies and de-risking approaches to foster [supply chain resilience](#) relating to the green and digital transition, a revival of these negotiations appears unlikely.

Against the backdrop of the slow pace with which WTO multilateral deals are negotiated (about two decades on average) and of growing opposition among WTO members to liberalising trade in goods and services, at the 2017 Buenos Aires Ministerial Conference, like-minded groups of WTO members [issued](#) four Joint Statement Initiatives (JSIs) to reinvigorate the WTO's negotiating function. They mark a shift from primarily seeking new market access commitments for trade in goods and services to facilitating investment and (digital) trade in goods and services, notably with and in developing countries. They also included the launch of a working group on micro-, small and medium-sized enterprises. Although the negotiations of plurilaterals under the 2017 JSIs have been more successful than the earlier plurilateral talks on new market access commitments, they have nonetheless faced [political](#) and legal challenges when it comes to multilateralising them. A few WTO members – [including](#) India, Namibia, and South Africa – have been [opposed](#) to plurilaterals in general, irrespective of whether they are negotiated on an MFN or non-MFN basis, arguing they are

a tool to circumvent the WTO's core tenets of multilateralism.⁴ However, many WTO members and [stakeholders](#) consider them a legitimate way of overcoming WTO deadlock.

Table 1 provides an overview of all plurilateral agreements that are part of the WTO Agreement's Annex 4 and those whose negotiations were concluded, have stalled or are ongoing. The number of participants of most plurilaterals may still be subject to change, especially of the open and inclusive plurilaterals that are part of the 2017 JSIs.

Table 1 – WTO plurilaterals at different stages of development, as of April 2024

Name of the agreement	Participation	MFN/non-MFN	Status
Agreement on Trade in Civil Aircraft	34 after Brazil's 2023 accession	Non-MFN	In force since 1980
Government Procurement Agreement	49	Non-MFN	1981, updated 2012
Agreement on Trade in Pharmaceutical Products	34	MFN	In force since 1995
Information Technology Agreement (ITA)	82	MFN	1997
ITA expansion	53	MFN	2015
Trade in Services Agreement (TiSA)	50	Non-MFN	Talks suspended
Environmental Goods Agreement (EGA)	46	MFN	Talks suspended
Services Domestic Regulation Agreement	72	MFN	Final text 2021
Agreement on Investment Facilitation for Development	more than 125	MFN	Text published February 2024
E-commerce Agreement	90	Tbd	Ongoing

Source: J. Bacchus, [The Future of the WTO: Multilateral or Plurilateral?](#), CATO, May 2023, and WTO websites.

Agreement on Trade in Pharmaceutical Products

In 1994, when the [Agreement](#) on Trade in Pharmaceutical Products was concluded, it covered [90 %](#) of global trade in pharmaceuticals. However, this coverage shrunk to [65 %](#) by 2016, after new key players such as [China](#) and [India](#) entered the global pharmaceuticals supply chains. Both countries did not join the agreement's signatories (Canada, the EU, Japan, Macao (China), Norway, Switzerland, the United Kingdom and the US). The agreement has been revised four times, the last time in 2010, but has [not kept up](#) with the developments in global pharmaceuticals trade. It covers only medicines and their inputs that carry an average MFN tariff of [2.1 %](#). Its scope thus excludes a much bigger basket of what is referred to as 'medical goods', for which the WTO average MFN tariff at 4.8% is twice as high. The medical goods category includes medical supplies (WTO average MFN tariff: 6.2 %), medical equipment and technology (3.4%), and personal protective products (10.5%). Import tariffs for medical goods vary considerably, with China levying 4.5 %, the EU 1.5 %, and the US 0.9 % on average. Only four WTO

Dynamics in pharmaceuticals trade

Recent [research](#) has shown that import tariffs for pharmaceutical imports decreased on average from 4.9 % in 2001 to 3.4 % in 2018, although some countries still apply import tariffs of up to 20 % (Pakistan). Moreover, to compensate for foregone tariff revenue, some countries have increased the number of tariff lines. India for instance reduced its average tariff rates by 24 % between 2001 and 2018 while increasing the categories of medicines subject to tariffs in the same period from 9 to 141.

members – Macao, Hong Kong, Iceland, and Singapore – eliminated all duties on all medical products.

Information Technology Agreement

The last successfully concluded WTO plurilateral agreement aiming to liberalise trade in goods was the 2015 expansion of the Information Technology Agreement (ITA) originally signed in 1996 by [82 WTO members](#). This initiative was not part of the DDA. At the outset, the ITA covered about 97% of global trade in IT products. The conclusion of negotiations on ITA-II among 53 WTO members was [announced](#) at the 2015 Nairobi Ministerial Conference. ITA-II reduced tariffs on an MFN basis for a wide range of technology products including [medical equipment](#), and thus complemented some of the gaps of the Pharmaceutical Agreement mentioned above. In 2021, [Lao](#) joined both agreements as the first LDC.

Trade in Services Agreement (TiSA)

In March 2013, [23 WTO members](#), including the then [EU-28](#) and the US, but excluding major emerging markets such as Brazil, China and India, [launched](#) negotiations outside of the WTO on a plurilateral agreement aimed at liberalising trade in service ([TiSA](#)) on a non-MFN basis. At the time, the group accounted for roughly [70%](#) of global trade in services. It was their response to [stalled](#) multilateral negotiations under the DDA in view of updating the GATS. The proposed plurilateral agreement was set to further liberalise trade in services and possibly multilateralise the negotiation outcome by incorporating the commitments made into the respective WTO members' GATS schedules.

However, experts [argued](#) that 'the real economic benefits would be reduced by the fact that a number of participants have already exchanged significant concessions amongst themselves through bilateral preferential trade agreements'. Experts also [warned](#) against high hopes for a smooth multilateralisation of the prospective TiSA, on both procedural (closed-door talks) and substantive grounds (departure from existing GATS rules). The [most controversial](#) negotiating items were public services and data protection. The negotiations' lack of transparency and concerns about the potential adverse impact of TiSA deregulation on the EU's right to regulate public services sparked strong [criticism](#) from civil society. TiSA talks were expected to be finalised in 2017. No negotiating rounds were scheduled for 2017, including owing to the [uncertainty](#) of the US position after Donald Trump's election as US president. The Biden administration has pursued trade initiatives in line with its '[worker-centered trade policy](#)' that do not include tariff and market access provisions. Without the US as a main driver of TiSA in the past and a major [services provider](#), reviving TiSA talks appears to be unlikely for now.

Towards an ITA-III?

The US Information Technology and Innovation Foundation [estimates](#) that a new tariff liberalisation round for an ITA-III among the 82 members of ITA-I could provide a US\$766 billion boost to the global economy within 10 years. Expressed as a cumulative 10-year gross domestic product (GDP) growth derived from tariff reductions under a potential ITA-III, the US would benefit the most, with US\$208 billion, followed by China with US\$147 billion, and India with US\$101 billion. The EU would merely gain US\$28.7 billion. Research shows that ITA-III membership would generate economic growth for all countries assessed, and that for many of them, tax revenue generated from enhanced economic growth would more than compensate for tariff revenue forgone.

Untapped potential in services trade

The 2019 [WTO World Trade Report](#) predicted that by 2040, the share of services in global trade could increase by 50%. It found that owing to regulatory divergence and the lack of transparency, the cost of trading in services was about twice as high as the cost of trading in goods. It moreover found that the cost of trading was highest for services trade among developing countries.

A 2021 OECD/WTO [joint research paper](#) estimated that the full implementation of the Services Domestic Regulation's disciplines would yield annual trade cost savings of US\$150 billion.

Environmental Goods Agreement

Although the DDA [mandated](#) WTO members to negotiate 'the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services', and WTO members pursued multilateral negotiations in the WTO Committee on Trade and Environment Special Session (CTESS) and in the non-agricultural market access (NAMA) negotiations, these negotiations remained inconclusive.

At the 2014 World Economic Forum in Davos, the then EU-28 and 13 other WTO members, including mostly developed but also some emerging economies such as China, calling themselves 'Friends of Environmental Goods', [announced](#) their intention to launch negotiations on an Environmental Goods Agreement (EGA), to liberalise global trade in environmental goods (EGs) by slashing tariffs modelled on the ITA. The then participants in the EGA talks represented almost [90%](#) of trade in EGs under negotiation. Rather than negotiating a definition of an EG in order to determine the scope of the EGA tariff reduction talks, participants [used](#) as a starting point several lists of EGs compiled either by themselves or by other organisations, [including](#) the Asia-Pacific Economic Cooperation (APEC).

Although participants [sought](#) to conclude negotiations during the [18th negotiation round](#) in December 2016, they [failed](#) to do so because of [disagreements](#) on the definition of an EG and after China submitted a new list of products at a very late stage. China was eager to include bicycles, which the [EU](#) and the [US](#) opposed, since they had [imposed](#) anti-dumping duties on imports of Chinese-made bicycles. Disagreements also concerned [dual use goods](#), a [mismatch of goals](#) (China's 'green mercantilism', i.e. its focus on gaining bigger market access for domestic EGs, while limiting foreign competition at home), and more broadly the scope of the talks that excluded environmental services and non-tariff barriers such as licensing practices. Non-participating developing countries with high import tariffs were concerned about a tariff elimination potentially resulting in a surge in cheap imports from high- or middle-income countries with [various](#) comparative advantages. Finally, the election of US President Donald Trump in November 2016 brought about a [reversal](#) of Barack Obama's [climate change policies](#) and a US inclination to raise rather than lower tariffs in what turned into Trump's [tariff war](#) with several countries.

On the sidelines of the 27th session of the Conference of the Parties of the UNFCCC (COP 27) in 2022, WTO Director-General Ngozi Okonjo-Iweala [stated](#) that exploratory discussions about a possible revival of negotiations on a global environmental trade deal had begun, but that some countries had expressed concerns. She highlighted that tariffs for fossil fuel products were lower than for renewables in many countries, and that a potential agreement should also cover environmental services where trade barriers have remained [considerable](#). Subsequently, she [kept calling](#) for a revival of the stalled talks, perhaps on a shorter list of EGs to accelerate the green transition.

Boosting trade in EGs to tackle climate change

A 2022 WTO report [estimates](#) that the elimination of tariffs and the 25% reduction in the ad valorem equivalent of non-tariff barriers to trade in energy-related EGs and environmentally preferable products would create new trading opportunities. By 2030, the increased value of trade in these goods would amount to US\$109 billion and US\$10.3 billion respectively. The report also [shows](#) that from 2000 to 2020, exports of EGs from middle-income countries with lower import tariffs than those of low-income countries increased more rapidly than those from high-income countries, while exports of EGs from low-income countries stagnated.

Services Domestic Regulation

At the end of the 2017 Buenos Aires Ministerial Conference, a group of [59 WTO members](#) decided to accelerate talks on domestic regulation outside of the [WTO Working Party on Domestic Regulation](#), which had failed to deliver results. The group issued a Joint Ministerial Statement on Services Domestic Regulation aimed at addressing the trade-restrictive impact of measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards and at [enhancing](#) transparency, predictability and legal certainty. Unlike the

stalled TiSA talks, the negotiations on the Agreement on Services Domestic Regulation did not cover market access for trade in services. It aimed to facilitate trade in services based on existing GATS market access schedules by cutting red tape for the import of services, improving the business climate, creating modern rules and thereby lowering trade costs.

In December 2021, an enlarged group of 69 WTO members, representing [92.5%](#) of global trade in services, [announced](#) the conclusion of the negotiations and set out the disciplines agreed in a [Reference Paper](#) on Services Domestic Regulation. The rules also include SDT provisions. The participating WTO members have sought to incorporate these disciplines into their respective GATS schedules as additional commitments under Article XVIII GATS through the WTO certification process. These disciplines do not affect existing rights and obligations of non-participating WTO members: they are only binding on those members that have included them in their GATS schedules, while service providers from all WTO members benefit from them on an MFN basis. Some members [raised objections](#) to the certification process, but [withdrew](#) them later. Following the 2024 Ministerial Conference, the number of participating WTO members [increased](#) to 72.

Agreement on Investment Facilitation

At the 2017 Buenos Aires Ministerial Conference, 70 WTO members in a [Joint Ministerial Statement](#) called for structured discussions aimed at developing a framework for investment facilitation for development to increase investment flows to developing countries. In September 2020, the group formally launched negotiations on an agreement on investment facilitation (IFA). In July 2023, more than [110 WTO members](#) concluded the negotiations, and in December 2023, the text was finalised. The agreement [differs](#) from bilateral investment agreements in that it excludes market access, investment protection and dispute settlement provisions under a 'firewall provision'.

The IFA is [focused](#) on attracting and retaining investment in all economic sectors by enhancing regulatory transparency and predictability and speeding up administrative procedures to cut red tape. It includes a dedicated section on SDT [modelled](#) on the corresponding TFA provisions. It contains provisions on a self-assessment of developing countries as to their needs in terms of capacity building and technical assistance to ensure the IFA's implementation. For the first time in a WTO agreement, it also addresses cross-cutting issues on sustainable investment, as it incorporates provisions on responsible business conduct and measures against corruption. The initiative has been open to all members and has attracted more members to join after the conclusion of talks. The [123 parties](#) to the agreement (as of February 2024) have [sought](#) the IFA's integration at the 2024 [Abu Dhabi](#) Ministerial Conference into the WTO legal architecture as an [Annex 4](#) open-ended plurilateral agreement whose [benefits](#) would accrue to all other WTO members on an [MFN basis](#).

Expected IFA welfare gains

A 2021 [study](#) on the agreement's economic impact concluded that the expected global [welfare gains](#) from investment facilitation reforms ranged between 0.56% and 1.74% of GDP in different scenarios. It would be particularly beneficial for China and Russia. The gains were nonetheless projected to be smaller for low- and middle-income countries as an aggregated group than the gains accruing to the EU-27 or G20. If it were to participate, India – unlike the US – would gain significantly. The study was [updated](#) in 2024.

However, the integration into the body of WTO agreements requires consensus from all 166 WTO members as of March 2024, some of which have been [opposed](#) to such a move, arguing that only rules negotiated by all WTO members should be added to the WTO rulebook.⁵ Only a small minority ([9%](#)) of WTO members has never participated in a WTO plurilateral agreement. [India](#) blocked the IFA's ratification at the 2024 Abu Dhabi Ministerial Conference, [joined](#) in March 2024 by South Africa and Türkiye, questioning the viability of negotiating plurilateral agreements and multilateralising them successfully afterwards. By March 2024, IFA participants grew to more than [125](#).

E-commerce

Currently, e-commerce negotiations at the WTO are pursued under two tracks. The multilateral track was created in 1998 (see box below). The plurilateral track was initiated at the 2017 Buenos Aires Ministerial Meeting by a sub-set of 71 WTO members who agreed to launch exploratory work towards future negotiations on trade-related aspects of e-commerce under the [Joint Initiative on E-commerce](#). In January 2019, 76 WTO members confirmed in a [joint statement](#) their intention to start these negotiations. As the talks are inclusive and open to all WTO members, the number of participants has risen since the inception of talks. [By October 2023, 90 WTO members](#) participated in the discussions, accounting for over 90% of global trade.

The plurilateral talks' original aim was to [combine](#) trade facilitation and market access rules with digital policy issues such as cross-border data flows and data localisation, access to the source code and open internet access (network neutrality). Major [issues of disagreement](#) have included market access and the e-commerce moratorium. The broad negotiating approach was adjusted in October 2023 when the US [withdrew](#) Trump-era [proposals](#) on particularly contentious issues including data flows, data localisation and forced transfer of source code (all of them [rejected](#) by China and thus not very likely to find common ground). The US argued it had to take into account regulatory objectives, balancing the right to regulate in the public interest and the need to address anticompetitive behaviour in the digital economy.

In December 2023, a roadmap for a staged approach was [decided](#). The first stage would be focused on finalising the negotiation of [issues](#) on which agreement is within reach for a partial early harvest agreement (modelled on the fisheries subsidies negotiations). In a second stage, outstanding issues could be negotiated. In November 2023, talks on [13 articles](#) had concluded. Ongoing negotiations are focused on topics including telecommunications services, cryptography-utilising products, e-payments, the legal architecture, the moratorium of duties on electronic transmissions, and the development dimension. According to a leaked [draft Chair's text](#) of January 2024, the future agreement is structured around five sections:

- enabling electronic commerce (e-contracts, e-invoicing, etc.);
- openness and e-commerce (customs duties on e-transmissions, access to and use of the Internet for e-commerce, etc.);
- trust and e-commerce (online consumer protection, personal data protection, cybersecurity, etc.);
- transparency, domestic regulation and cooperation and development; and
- telecommunications.

WTO e-commerce moratorium

In 1998, WTO members launched the [work programme on e-commerce](#), agreeing on a moratorium on customs duties on electronic transmissions. The moratorium has since been regularly [extended](#), while the [definition](#) of 'electronic transmissions', as well as the moratorium's scope and impact, have remained controversial. The debate on a further extension has increasingly pitted industrialised countries such as the [EU-27](#) and the [US](#), which support the moratorium, against developing countries such as India and South Africa, which have called for [ending](#) it. The latter have long [claimed](#) that, adding to the growing digital divide between developed and developing countries, the moratorium prevents developing countries from taking advantage of the growing imports of electronic transmissions. At the 2024 Abu Dhabi Ministerial Conference, WTO members [agreed](#) that the moratorium and the work programme would expire at the next ministerial conference or on 31 March 2026, whichever is earlier.

According to a 2023 OECD [study](#), the cost of terminating the moratorium would be considerable. The trade of low-income countries would be [most adversely impacted](#) from an end of the moratorium. A 2023 International Monetary Fund [report](#) emphasises other methods of revenue collection resulting from digital trade. As of December 2023, [differences](#) among WTO members on the moratorium's future persist, 'including the need for more discussions on its definition, scope and impact'.

Deliberations on new trade policy challenges

The WTO hosts various informal working groups, discussions or dialogues (see Table 2 below) on new trade policy challenges outside of the WTO General Council and its subsidiary bodies. In 2020, two informal working groups were set up: one on [trade and gender](#), to increase women's participation in global trade, and another on [micro-, small and medium-sized enterprises \(MSMEs\)](#), recognising that 95 % of global firms are MSMEs, accounting for 60 % of the world's total employment. Following its 2020 [announcement](#) that it would organise structured discussions on trade and environmental sustainability, a group of WTO members launched the Trade and Environmental Sustainability Structured Discussions (TESSD), whose work [includes](#) trade and climate change, trade in environmental goods and services, circular economy, and sustainable supply chains. In 2022, four informal working groups (WGs) on [environmental goods and services](#), trade-related climate measures, circular economy and circularity, and subsidies were created. Their 2023 activities finished with a [summary report](#). In 2020, an [Informal Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade](#) was added with a view of addressing the rising environmental, health and economic cost of plastics pollution. In 2021, discussions on [fossil fuel subsidies reform](#) were launched. In 2023, the WTO hosted an [informal retreat on trade and industrial subsidies](#). These initiatives could be leveraged to restore the WTO's [legitimacy](#) and relevance – if, as experts believe, they [received formal recognition](#) within the WTO as an international forum for global trade governance. The WTO in June 2023 [held](#) an informal meeting on WTO reform, focused on harnessing the WTO's deliberative function with a view to setting a roadmap for the 2024 Abu Dhabi Ministerial Conference, which produced [several declarations](#) of ongoing work of these informal discussions. The European Commission – which in February 2023 [submitted](#) to the WTO proposals on deliberations on trade policy and state intervention to support industries; trade and global environmental challenges; and trade and inclusiveness for reinvigorating the WTO's deliberative function – [regretted](#) that at the 2014 Ministerial Conference, deliberations on key trade challenges such as trade and industrial policy were supported by most but blocked by few.

Table 2 – WTO informal working groups and discussions as of February 2024

Name	Participation	Type/creation	Creation
Trade and gender	128	Informal WG	2017
Micro-, Small, and Medium-Sized Enterprises (MSMEs)	98	Informal WG	2017
Trade and Environmental Sustainability Structured Discussions (TESSD)	76	Discussions	2020
Plastics Pollution and Environmentally Sustainable Plastics Trade	78	Dialogue	2020
Fossil Fuel Subsidy Reform	48	Discussions	2021
Trade and industrial policies (WTO reform)	n/a	Informal retreat	2023

Source: J. Bacchus, [The Future of the WTO: Multilateral or Plurilateral?](#), CATO, May 2023, and WTO websites.

On 22 January 2024, the European Commission [held](#) a civil society dialogue, titled 'Tackling global trade challenges – is multilateralism still the answer?', with Executive Vice-President Dombrovskis and WTO Director-General Okonjo-Iweala ([recording](#)). The latter [revealed](#) recently initiated WTO efforts in cooperation with other multilateral organisations (e.g. The World Bank, the IMF, the OECD and UNCTAD) towards a global framework for carbon pricing, against which the methodologies underlying the 73 different systems currently in existence across the world could be measured.

European Parliament position

The European Parliament has regularly adopted its [position](#) ahead of WTO ministerial conferences. On 8 February 2024, Members held a [debate](#) ahead of the Abu Dhabi Ministerial Conference following a statement from the European Commission and adopted a [resolution](#). Parliament, among other things, expects 'the WTO reform to create an easier path for open plurilateral agreements to be integrated into the multilateral architecture in order to ensure progress in areas not mature enough for the entire membership'. It reiterates its call to WTO members 'to reflect on a way to develop a new system, with clear principles and a minimum of members that should participate in a plurilateral initiative, and on that basis establish a straightforward mechanism that allows the resulting agreements to be incorporated into the WTO structure'. It 'supports the incorporation of [the IFA] into the WTO rulebook under Annex 4 on Plurilateral Trade Agreements... and considers that this can serve as a model for future plurilateral agreements'.

FURTHER READING

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ENDNOTES

¹ B. Hoekman and P. Mavroidis, '[WTO "à la carte" or WTO "menu du jour"? Assessing the Case for More Plurilateral Agreements](#)', *European Journal of International Law*, Vol. 26(2), May 2015, pp. 319-343, p. 322.

² B. Hoekman and P. Mavroidis, '[WTO "à la carte" or "menu du jour"?](#)', p. 320.

³ From a technical perspective, revising schedules has to be certified by participants, but non-participants can block new commitments they believe affect their existing rights. X. Tu and R. Wolfe, '[Reviving the negotiation function of the WTO: Why the onus falls on the three major powers](#)', Chapter 1 in: B. Hoekman, X. Tu, and D. Wang (eds), [Rebooting Multilateral Trade Cooperation: Perspectives from China and Europe](#), London, Centre for Economic Policy Research (CEPR), 2021.

⁴ G. Van der Loo, '[Getting the WTO's dispute settlement and negotiating function back on track: Reform proposals and recent developments](#)', Leuven Centre for Global Governance Studies, Working Paper No. 232, September 2022.

⁵ J. Kelsey, '[The Illegitimacy of Joint Statement Initiatives and Their Systemic Implications for the WTO](#)', *Journal of International Economic Law*, Vol. 25(1), March 2022, pp. 2-24.

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