

## **Various Aspects of Treaty Frameworks Related to Free Trade in the Modern International Community**

### **Dynamism of Trade Liberalization Negotiations: —Interaction between Multilateral, Plurilateral, Bilateral and Regional Liberalizations—**

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#### **Abstract**

At a time when the Doha Round negotiations under the World Trade Organization (WTO) have remained stagnant for an extended period of time, there are ongoing efforts to explore a new framework of trade liberalization negotiations that could replace the framework of multilateral trade negotiations. In recent years, major countries have shifted the emphasis of trade liberalization negotiations to bilateral and regional free trade agreements (FTAs). In particular, significant results have been achieved in terms of trade liberalization through geographically broad FTAs that involve many countries, such as the Trans-Pacific Partnership (TPP). Some results have also been achieved in plurilateral trade liberalization negotiations, whereby like-minded countries negotiate the liberalization of trade in specific products and services under the WTO framework, with the negotiation results applied to all WTO member countries based on the most favored nation principle. This paper considers how the increasingly diverse frameworks of trade liberalization negotiations affect each other. It also considers how the WTO will be able to regain its position as a multilateral forum for liberalization negotiations.

Keywords: WTO, free trade agreement (FTAs), TPP, CPTPP, plurilateral agreements  
JEL Classification: F13, F53

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#### **I. Introduction**

As the Doha Round negotiations under the World Trade Organization (WTO) have remained stagnant for an extended period of time, there are ongoing efforts to explore a new framework of trade liberalization negotiations that could replace the framework of multilateral trade negotiations. In particular, significant results have been achieved in terms of trade liberalization through geographically broad FTAs that involve many countries. They are also important in achieving “deeper integration” among the parties that is needed under the contemporary global economy, where supply chains are getting more and more global. Besides this trend, plurilateral negotiations of trade liberalization within and outside of the framework of the WTO, focusing on specific goods or services and applying the results of negoti-

ations to all WTO Members on a most-favored nation (MFN) basis, have achieved positive results to a certain extent. These trends mean, on one hand, the diversification of the options of the framework for trade liberalization negotiations. Each option has advantages and disadvantages. Government officials in charge of trade liberalization negotiation are expected to adopt one option, bearing in mind advantages and disadvantages of each option, depending on the theme of negotiation and negotiation partner, or adopt multiple options for trade liberalization negotiations. As a result, there exist interactions among options for trade liberalization negotiations, namely, multilateral, bilateral, regional and plurilateral options, such as the difficulty in multilateral negotiations conduces to bilateral and regional negotiations, or parts of the results of bilateral and regional negotiations are adopted by plurilateral or multilateral negotiations. This chapter analyzes the interactions of such options for trade liberalization negotiations and the policy choices of major trading nations behind the interactions. It also considers how the WTO can be reinvigorated as a forum for multilateral trade liberalization negotiations.

Section II traces the history of the Doha Round and considers the causes of its deadlock. Section III focuses on the increase in the number of bilateral and regional free trade agreements (FTAs) and considers its background. It points out that the major reason for the increase of FTAs was the globalization of supply chains where production processes of goods (and services) disperse across borders. Section IV focuses on plurilateral trade liberalization negotiations within and outside of the WTO, traces their history and looks at its current state. Section V organizes the diversified frameworks for trade liberalization negotiations and analyzes their interactions from the view point of options for trade policy officials. Section VI considers the possibility and challenges of revitalizing the WTO as a forum for multilateral trade liberalization negotiations.

## **II. The deadlock of the Doha Round and its causes**

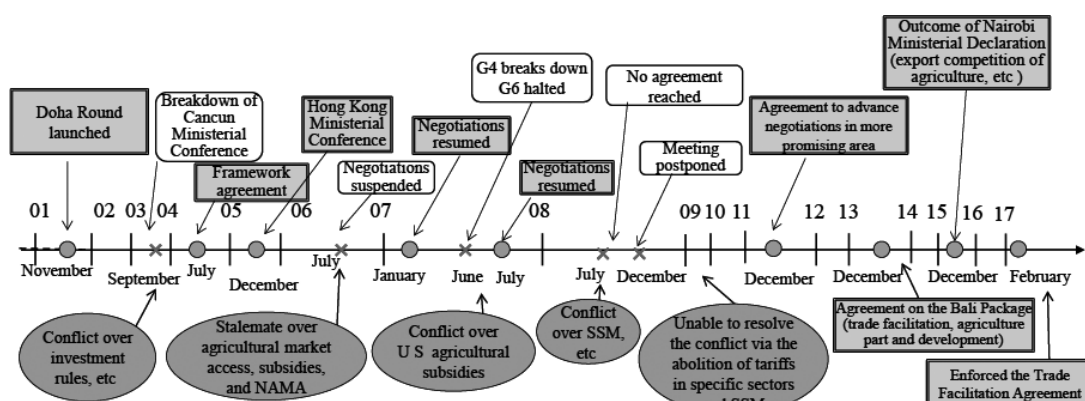
More than 18 years have passed since the start of the Doha Round. Although it has made achievements in the conclusion of the Trade Facilitation Agreement and in the negotiation on agriculture, it has failed in making achievements in the other items of the negotiation agenda. Why has the Doha Round been stymied? So as to elucidate the causes for the deadlock of the Doha Round, this section first traces the history of the Doha Round.

### *II-1. History of the Doha Round*

Figure 1 shows the history of the Doha Round.

The Ministerial Declaration of November 2001 that declared the start of the Doha Round listed about 20 items in the Work Programme, including the so-called built-in agenda, namely, agriculture and services that were the “leftovers” of the Uruguay Round, and non-agricultural market access (NAMA), negotiation on rules (trade remedies and preferential trade agreements (PTAs)), Dispute Settlement Understanding (DSU), trade related intellectual

Figure 1. History of the Doha Round



(Source: Ministry of Economy, Trade and Industry, *White Paper on International Trade and Economy 2018*, METI: 2019, p. 573, Figure III-1-4-2.)

property rights, trade and the environment, so-called Singapore issues on which discussion had started at the 1<sup>st</sup> Ministerial Conference (Singapore) (relationship between trade and investment, interaction between trade and competition policy, transparency in government procurement and trade facilitation).<sup>1</sup> These items were expected to be adopted as a whole (single undertaking) except the DSU.<sup>2</sup> However, as will be seen later, a framework agreement adopted by the General Council in July 2004 dropped three of the Singapore issues from the Doha Work Programme, and only trade facilitation remained within the Work Programme.<sup>3</sup> Table 1 is the list of major items of the Doha Work Programme.

The negotiation practically started in 2002. Developed countries and developing countries disagreed on a number of topics, and the negotiation repeatedly stagnated and made progress. However, the negotiation has been stagnant since July 2008, when the General Council failed to reach agreement on the modalities of negotiation on agriculture and NAMA negotiation. At the 8<sup>th</sup> Ministerial Conference of December 2011, the Chairman's document titled "Elements for Political Guidance" adopted a policy that, where progress can be achieved, Members are allowed to reach provisional or definite agreements earlier than the full conclusion of the single undertaking.<sup>4</sup> Based upon this policy, the 9<sup>th</sup> Ministerial Conference of December 2013 adopted an Agreement on Trade Facilitation (TFA) as the first multilateral agreement since the establishment of the WTO. It also reached agreement on a few items on agriculture and development. Furthermore, the 10<sup>th</sup> Ministerial Conference of December 2015 adopted on export subsidies on agriculture. On the other hand, developed countries and developing countries disagreed on whether to end the Doha Round and tackle new issues (developed countries) or to continue the Doha Round (developing

<sup>1</sup> Doha Ministerial Declaration, 14 November 2001, paras. 12-42.

<sup>2</sup> *Ibid.*, para. 47.

<sup>3</sup> See WTO, Doha Development Agenda: Doha Work Programme, the July 2004 Package.

<sup>4</sup> WTO, Ministerial Conference, 8th session, Elements for Political Guidance, 30 November 2011, p.3, para.5.

Table 1. Major items of the Doha Work Programme

Agriculture	reduction of tariffs/domestic subsidies; elimination of export subsidies
NAMA	tariff reduction (Swiss formula, sectoral tariff reduction; elimination of non-tariff barriers
Service	liberalization (elimination of foreign exchange restriction) and acceleration; support to developing countries
Rules	strengthening disciplines on anti-dumping measures and subsidies
Trade facilitation	simplification and acceleration of customs procedures; support to developing countries
Development	special and differential (S&D) treatment of developing countries
TRIPS	multilateral notification system of the geographical indications (GI) of wine and spirits
Trade and environment	liberalization and facilitation of environment related goods and services

(Source: Ministry of Economy, Trade and Industry, *White Paper on International Trade and Economy 2018*, METI: 2019, p. 572, Figure III-1-4-1.)

countries). The Ministerial Declaration ended up referring to both of these conflicting opinions.<sup>5</sup> After the 10<sup>th</sup> Ministerial Conference, Members continued negotiations on the left-overs of the Doha Round, but they could not reach agreement by the 11<sup>th</sup> Ministerial Conference of December 2017. Still, at the Ministerial Conference, some Members adopted Joint Statements on electronic commerce,<sup>6</sup> investment facilitation for development<sup>7</sup> and services domestic regulation,<sup>8</sup> expressing their shared intention to start negotiations on these topics. Furthermore, among the items of the Doha Work Programme, a Ministerial Decision was adopted on Fisheries Subsidies, which confirmed the continuation of negotiation so as to reach agreement at the 12<sup>th</sup> Ministerial Conference of June 2020.<sup>9</sup>

<sup>5</sup> WTO, Ministerial Conference, 10<sup>th</sup> Session, Nairobi Ministerial Declaration, 19 December 2015, para. 30.

<sup>6</sup> WTO, Ministerial Conference, 11<sup>th</sup> Session, Joint Statement on Electronic Commerce, 13 December 2017. WT/MIN(17)/60.

<sup>7</sup> WTO, Ministerial Conference, 11<sup>th</sup> Session, Joint Statement on Investment Facilitation for Development, 13 December 2017. WT/MIN(17)/59.

<sup>8</sup> WTO, Ministerial Conference, 11<sup>th</sup> Session, Joint Statement on Services Domestic Regulation, 13 December 2017. WT/MIN(17)/61.

<sup>9</sup> WTO, Ministerial Conference, 11<sup>th</sup> Session, Fisheries Subsidies: Ministerial Decision of 13 December 2017. WT/MIN(17)/64.

## II-2. *Causes of the deadlock of the Doha Round*

Multiple causes resulted in the deadlock of the Doha Round. First, the power balance during the GATT era changed drastically. At the Round negotiations during the GATT era, a small number of major developed countries could bring their agreed results to plenary forums for adoption by consensus. One example was the Uruguay Round whose conclusion was resulted from the agreement between the US and EU of November 1992 on the reduction of subsidies on agriculture (Blair House Agreement). However, at the Doha Round, despite the fact that the US and EU offered concession on the reduction of subsidies on agriculture before the General Council of July 2008, Members couldn't reach agreement on this and other items of negotiation. Unlike the GATT era, not only the US and EU but major developing countries (India, Brazil and later China) have casting votes for the conclusion of negotiation. The five countries disagreed on such items as agriculture, NAMA and services, and this led to the deadlock of the Doha Round.

Another cause of the deadlock of the Doha Round is the decreasing enthusiasm of developed countries toward the Doha Round. Members started discussion on the agenda of the first multilateral trade negotiation at the 1<sup>st</sup> Ministerial Conference of 1995 in Singapore. The Singapore Ministerial Declaration decided to establish four working groups to examine relationship between trade and investment, interaction between trade and competition policy, trade facilitation and transparency in government procurement.<sup>10</sup> They are called Singapore issues and they were backed by developed countries. However, developing countries resisted against their inclusion in the agenda of negotiation. The framework agreement adopted by the General Council in July 2004 picked up only trade facilitation and dropped the other three topics from the agenda of negotiation.<sup>11</sup> On the other hand, developing countries succeeded in including topics of their interest in the agenda of negotiation, such as the expansion of special and differential (S & D) treatment to extend the grace period for the implementation of WTO agreements or a waiver for their obligations and reduction of agricultural subsidies of developed countries that will conduce to the expansion of agricultural exports from developing countries. Accordingly, most developing countries took this result of the General Council of July 2004 as a "victory". The formal title of the Doha Round, the Doha Development Agenda, also indicates the "victory" of developing countries. However, as a result, developed countries substantively lowered their expectation to the result of the Doha Round.

The three Singapore issues backed by developed countries, namely, relationship between trade and investment, interaction between trade and competition policy and transparency in government procurement were topics of utmost importance to the trade policy of developed countries. For instance, on investment, there is no multilateral treaty and bilateral invest-

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<sup>10</sup> WTO, Ministerial Conference, 1<sup>st</sup> Session, Singapore Ministerial Declaration, 13 December 1996, paras. 20-22.

<sup>11</sup> WTO, Decision adopted by the General Council, 1 August 2004, para. 1(g).

ment treaties and investment chapters of FTAs provide for investment protection and investment related dispute settlement. In contrast to the WTO dispute settlement mechanism in which states are parties, investment disputes are settled through arbitration between foreign investors and host states (investor-state dispute settlement or ISDS). ISDS has increasingly been the target of criticism, as it limits the legitimate right to regulate of host states to the benefit of foreign investors. If investment were added to the agenda of negotiation of the Doha Round, international discipline on investment and settlement of investment disputes might be totally different from the current situation. On the other hand, reduction of agricultural subsidies that developing countries expected of the Doha Round was a difficult topic for developed countries to make some concessions. Not only Japan has a number of sensitive products such as rice and beef but also the US and EU subsidize their domestic farmers and ranchers. Reduction of agricultural subsidies would, therefore, be strongly opposed in their domestic politics. If these countries were to reduce agricultural subsidies despite strong domestic opposition, they would need substantive quid pro quo. That would be trade liberalization, particularly substantive reduction of industrial products on the part of developing countries, particularly those with a large economy. This demand was, however, hard to accept for large developing countries such as India or Brazil. Accordingly, from the beginning, the Doha Round was deemed to fail, as it was unattractive to developed countries, and developed countries would not be able to meet the expectations of developing countries.

The third cause of the deadlock of the Doha Round was the adoption of the same negotiation formula as the Uruguay Round, namely, Members adopt the whole package of negotiation item by consensus (single undertaking). The combination of consensus and single undertaking enabled Members to “grand bargain” between concerns of developing countries and those of developed countries at the Uruguay Round.<sup>12</sup> The success of the Uruguay Round became a curse that prevented the conclusion of the Doha Round. The flip side of the consensus decision making is that any Member has a veto. It is symbolic that the General Council of July 2008 failed to agree on the modalities of agricultural market access and NAMA due to the insistence of India on a minor issue of the conditions of special safeguard measures (SSM) in agriculture.

However, as noted above, the 8<sup>th</sup> Ministerial Conference of December 2011 abandoned the single undertaking and adopted “an early harvest” approach that allows reaching provisional or definite agreements earlier than the full conclusion. Under this approach, Members adopted the Agreement on Trade Facilitation and agreed on some of the items on agriculture. Nonetheless, the principle of consensus decision making is still maintained, and the confrontation still exists between developing countries alleging the continuation of the Doha Round and developed countries alleging conclusion of the Doha Round and the launch of new negotiation.

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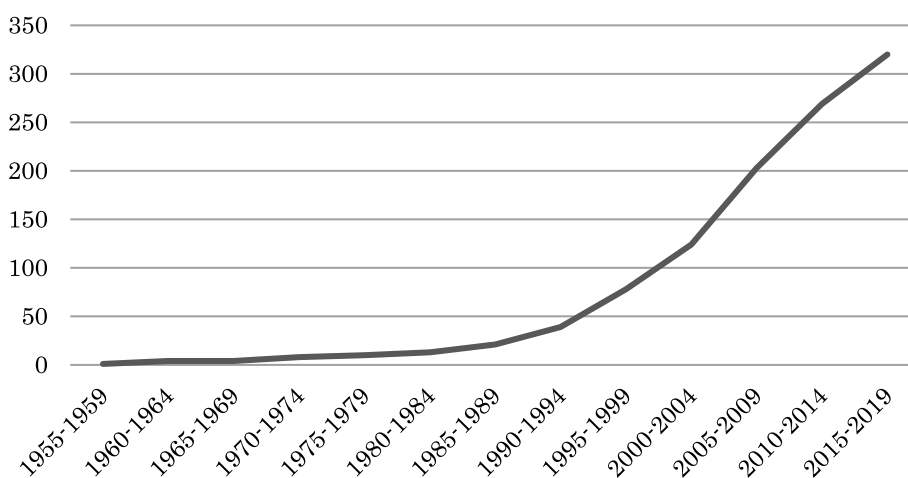
<sup>12</sup> See Ostry (2002).

### III. Trade liberalization by FTAs

#### III-1. Increase of FTAs and its background

While the Doha Round remained in a deadlock, major trading nations shifted the priority of their trade policy to negotiation of bilateral or regional FTAs. Figure 2 shows the number of FTAs in force. It shows that FTAs increased significantly after 2000.

Figure 2. Number of FTAs in force

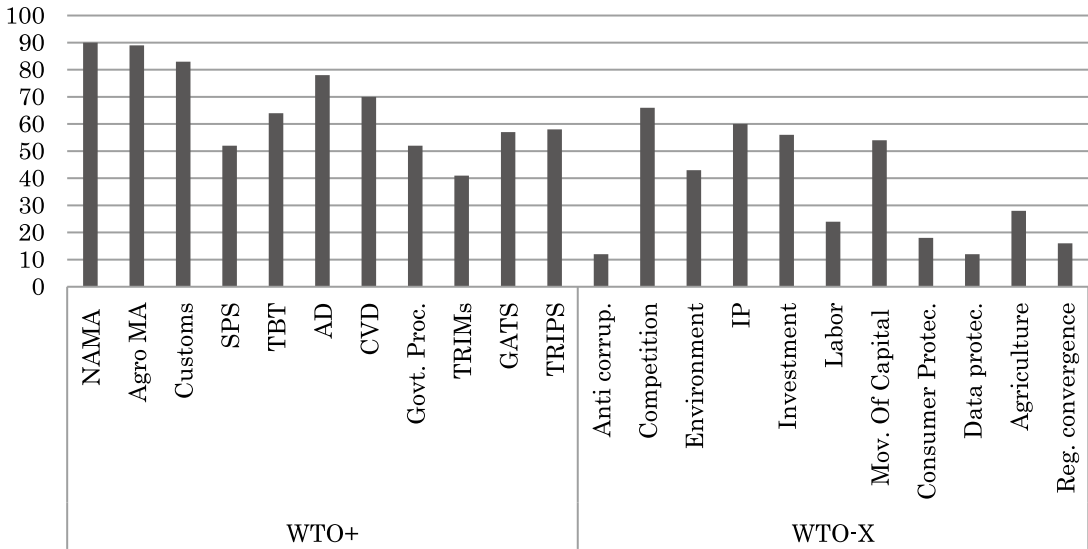


(Source: Made by the author based on JETRO, List of FTAs of the World and Japan, December 2019. <[https://www.jetro.go.jp/ext\\_images/\\_Reports/01/72c61ae87804b884/20190022.pdf](https://www.jetro.go.jp/ext_images/_Reports/01/72c61ae87804b884/20190022.pdf)>)

Why did FTAs increase after 2000? The deadlock of the Doha Round was undoubtedly one of the reasons for this, as FTAs takes shorter than the Doha Round in reaching conclusion. Furthermore, parties to FTAs can expect deeper liberalization of trade than multilateral negotiations such as the Uruguay Round and the Doha Round. When deep trade liberalization is achieved between parties to an FTA, trade between one party and a third party will decrease. To address such trade diversion effect, the third party will try to negotiate an FTA (or FTAs) with the party (or both parties). Such dynamism of competition,<sup>13</sup> or billiard ball effect, was another reason for the proliferation of FTAs after 2000. Nonetheless, these two reasons cannot wholly explain the recent increase of FTAs. So as to understand the recent increase of FTAs, we should examine the contents of recent FTAs. Figure 3 is the classification of the major 90 FTAs concluded after the 1990s. WTO+ stands for additional disciplines to the WTO agreements. WTO-X stands for disciplines which are not covered by the WTO agreements.

<sup>13</sup> Urata (2010).

Figure 3. WTO+ and WTO-X of major FTAs after the 1990s



(Source: Made by the author based on the WTO, Updated dataset on the content of PTAs. [https://www.wto.org/english/res\\_e/publications\\_e/wtr11\\_dataset\\_e.htm](https://www.wto.org/english/res_e/publications_e/wtr11_dataset_e.htm))

Figure 3 shows that FTAs concluded after the 1990s not only provide for additional disciplines on areas covered by the WTO agreements (WTO+) but also provide for disciplines on areas not covered by the WTO agreements (WTO-X). WTO-X is salient on such areas as competition policy, investment, assurance of the freedom of capital transfer and intellectual property. As a result, FTAs concluded after the 1990s provide for disciplines on wider areas than the WTO agreement. They aim at improving the competition conditions and regulatory environment for firms of a party when they engage themselves in trade and investment in the other party. To put it simply, recent FTAs aim at deeper integration that are achieved by liberalization and facilitation of trade and investment and improvement of the business environment.<sup>14</sup> This coincided with the increase in the number of bilateral investment treaties (BITs) for the liberalization and protection of investment.<sup>15</sup>

Behind this trend was the movement of dispersing production processes across borders according to optimal locations based on the innovations of information and communication technologies and transportation technologies. This is called globalization of supply chains or value chains. Globalization of supply chains needs the combinations of the following international transactions: ① trade in goods, especially parts and components and other intermediary goods, ② international investment for the construction of production facilities, training workers, transfer of technology and construction of a long-term transaction relationship, ③ utilization of logistical infrastructure services for efficient adjustment and development

<sup>14</sup> Lawrence (1996).

<sup>15</sup> The number of BITs and investment chapters of FTAs has been increasing since the 1990s. Its total number was 2658 at the end of 2018. See UNCTAD (2019: 99).



of production activities across borders (e.g., telecommunication, the internet, express delivery, air freight transportation, trade related finance, customs clearance, etc.), ④ provision of patents, trademarks and know-how of management and marketing. R. Baldwin coined these as the trade-investment-services-IP nexus.<sup>16</sup> In other words, the globalization of supply chains requires an optimal location of the components of supply chains from procurement, processing, production to marketing, and provision of policy environment for the efficient and smooth management of the whole supply chain. According to Fukunari Kimura, Table 2 classified these components into two groups of policies, namely, ① policies for the reduction of service link costs that connect each segment of the supply chain, and ② policies for the reduction of production costs of each segment. The underlined components are generally covered by FTAs and BITs.

Table 2. Policies for the globalization of supply chains

Policies for the reduction of service link costs	<u>tariff reduction, elimination of non-tariff barriers, trade facilitation, construction of logistical infrastructure, provision of logistical infrastructure services, liberalization and facilitation of business persons, harmonization of regulation and the economic system</u>
Policies for the reduction of production costs of each segment	tax law (reduction of corporate taxes, etc.), human resources development, finance and other production services, <u>liberalization and facilitation of investment, access to government procurement, protection of IPR, competition policy,</u> construction of logistical infrastructure, <u>provision of logistical infrastructure services,</u> supporting industry development, development of industrial clusters, <u>harmonization of regulation and the economic system</u>

(Source: Made by the author based on Kimura (2012: 9 Table 1-1))

To sum up, the globalization of supply chains made progress after the 1990s, and it required trade agreements to provide a new set of policies. As the Doha Round of the WTO could not respond to the requirements in a timely manner, FTAs and BITs were mobilized to make up for the gap. This was the major cause for the increase in the number of FTAs and BITs after the 1990s.<sup>17</sup>

<sup>16</sup> Baldwin (2013: 24).

<sup>17</sup> Nakagawa (2013: Chapter 8)

### III-2. *The significance of mega-FTAs*

It must be noted that FTAs have a serious limit as a mean of sustaining the globalization of supply chains. First, as FTAs are generally concluded between two countries, a number of FTAs needs to be concluded to cover the whole supply chain, which will take time and costs. Secondly, even if many FTAs are concluded that cover the whole supply chain, an optimal policy environment may not be achieved, because the contents of the FTAs are not the same.<sup>18</sup> The variation of the contents of FTAs has been noted as a “spaghetti bowl” issue resulting from differences in the rules of origin that decide the applicability of preferential tariff rates.<sup>19</sup> However, a “spaghetti bowl” is not limited to the rules of origin. Divergence of rules exist in many areas covered by FTAs, such as trade in services, investment or intellectual property. WTO+ and WTO-X provisions of FTAs differ, and we cannot expect the same rules in these areas. So as to tackle such fragmentation of FTAs, APEC undertook the task of drawing up model provisions of FTAs. The APEC Ministerial Meeting of 2012 adopted a model FTA chapter on transparency.<sup>20</sup> This is, however, limited to the transparency of regulations and institutions, consisting of publication of rules or establishment of enquiry points, and the other regulatory areas are not covered. It is also a non-binding instrument and its effect of eliminating regulatory fragmentation is limited.

Mega-FTAs negotiated at the initiative of major developed countries and with a larger membership have a possibility of overcoming the limits of FTAs mentioned above. When the deadlock of the Doha Round became evident in 2008, movement toward negotiation of mega-FTAs began in earnest. The following are categorized as mega-FTAs: the Trans-Pacific Partnership (TPP) negotiated at the initiative of the US, Transatlantic Trade and Investment Partnership (TTIP) between the US and the EU, Economic Partnership Agreement (EPA) between Japan and the EU, and the East Asia Regional Comprehensive Economic Partnership (RCEP) among ten ASEAN member countries, Japan, China, Korea, Australia, New Zealand and India. The TPP is the forerunner and its negotiation started in March 2010, and it was signed in March 2016. As the US withdrew itself from the TPP, it fell into a crisis of extinction because of the failure of meeting the condition for its entry into force. The remaining 11 parties, however, sought to negotiate a Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and signed the CPTPP in March 2018 by freezing about 20 articles of the TPP. The CPTPP entered into force in December 2018. The EPA between Japan and the EU entered into force in February 2019. The negotiation of the TTIP has been suspended since the inauguration of the US Trump Administration. Finally, parties have been negotiating the RCEP toward its conclusion by the end of 2020.

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<sup>18</sup> FTAs concluded by the US are likely to be similar in their contents, as their contents are proposed by the US and adopted accordingly because of the strong negotiation power of the US. See Gantz (2013: 197-198). However, this is an exceptional case. FTAs concluded by Japan, for instance, are not similar.

<sup>19</sup> Bhagwati (1995).

<sup>20</sup> 2012 APEC Ministerial Meeting, Annex A – Model Chapter on Transparency for RTAs/FTAs for APEC.

The comparative advantages of mega-FTAs to bilateral FTAs are twofold. First, common rules are applied among the parties to mega-FTAs. Moreover, for those mega-FTAs equipped with accession clauses, parties may expect the increase of their membership. Accordingly, geographical coverage of supply chains of their parties and the mega-FTAs may substantively overlap, that may increase the effectiveness of the mega-FTAs as a means of supporting globalization of supply chains. For instance, rules of origin of the CPTPP and the EPA between Japan and the EU provides for complete accumulation, namely they enable accumulation of both products and production processes.<sup>21</sup> Under both mega-FTAs, firms are eligible for preferential rules of origin over a broad range of products within their supply chains covered by the mega-FTAs. Likewise, these mega-FTAs provide for high standard rules on the facilitation of customs procedures, and these rules are expected to contribute to the smooth management of supply chains of firms within the territory of the mega-FTAs.

Secondly, the CPTPP and the EPA between Japan and the EU provide for a wide range of high standard rules on trade and investment enabling deeper integration that support the globalization of supply chains. The rules on state owned enterprises (SOEs) and E-commerce of the CPTPP and the rules on subsidies of the EPA between Japan and the EU are the examples. These rules of the mega-FTAs that entered into force ahead of other mega-FTAs may be referred to in the negotiation of other mega-FTAs and may become de facto global standards.<sup>22</sup>

On the other hand, none of these mega-FTAs can eliminate the limits arising from their legal form as FTAs. First, supply chains of Japanese firms cover East and Southeast Asia including China and the ASEAN members and North America including the US. However, the CPTPP does not cover these whole regions. The EPA between Japan and the EU has a similar disadvantage. Secondly, the contents of the CPTPP and the EPA between Japan and the EU are not identical, and different rules are applied over the same topic. For instance, when we compare the rules on E-commerce of these mega-FTAs, while the same rules are applied on such topics as non-imposition of customs duties over cross-border electronic transmission,<sup>23</sup> prohibition of disclosure requirement of source codes<sup>24</sup> and the validity of electronic authentication and electronic signature,<sup>25</sup> a different rule is applied on cross-border transfer of information by electronic means. While the CPTPP requires the parties to allow it “when this activity is for the conduct of business”,<sup>26</sup> the EPA between Japan and the EU does not provide for this subject matter. Instead, it provides that the parties shall reassess the need for

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<sup>21</sup> See Article 3.10 of the CPTPP and Article 3.5.1 of the Economic Partnership Agreement between Japan and the EU.

<sup>22</sup> For instance, the European Commission expressed their intention to adhere to the rules of the TPP on financial preference to state owned enterprises and on regulatory coherence in the negotiation of the TTIP. See European Commission, Directorate General for Trade, Directorate E, Unit E1, Trade Relations with the United States and Canada, Note for the Attention of the Trade Policy Committee, Transatlantic Trade and Investment Partnership (TTIP), Initial Position Papers on Regulatory Issues – Cross-Cutting Disciplines and Institutional Provisions, and Antitrust & Mergers, Government Influence and Subsidies, 20 June 2013. <[https://insidetrade.com/sites/insidetrade.com/files/documents.jul2013/wto2013\\_2105a.pdf](https://insidetrade.com/sites/insidetrade.com/files/documents.jul2013/wto2013_2105a.pdf)>

<sup>23</sup> See Article 14.3 of the CPTPP and Article 8.72 of the EPA between Japan and the EU.

<sup>24</sup> See Article 14.17 of the CPTPP and Article 8.73 of the EPA between Japan and the EU.

<sup>25</sup> See Article 14.6 of the CPTPP and Article 8.77 of the EPA between Japan and the EU.

<sup>26</sup> See Article 14.11.2 of the CPTPP.

inclusion of the provision on the free flow of data within three years of the date of entry into force of the Agreement.<sup>27</sup> Another example is the prohibition to require a party's firms to establish computer related facilities and utilization within the territory of a party as a condition of their doing business in that territory. While the CPTPP provides for this,<sup>28</sup> the EPA between Japan and the EU does not.

#### IV. Trade liberalization by plurilateral arrangements

While the Doha Round was bogged down, plurilateral negotiations were conducted by subsets of WTO Members. There are two types of plurilateral negotiations. One is a negotiation by a subset of Members on specific goods or services and the result is applied to all WTO Members on a most-favored nation principle. The other is a negotiation by a subset of Members and the result is applied only to those Members (so called plurilateral agreements).

Information Technology Agreement (ITA) of 1996 is an example of the former. 29 Members agree to abolish tariffs on about 180 information technology products (semiconductors, semiconductor manufacturing products, computers, communication devices, etc.) by 2000. Subsequently, its parties increased to 54 (82 if we count individual EU member countries).<sup>29</sup> At the 9<sup>th</sup> Ministerial Conference, the revised ITA was adopted by 52 Members (80 if we count individual EU member countries) that cover 201 information technology products. In either case, eliminated tariffs were applied to all WTO Members.

In 2014, negotiation over the environmental goods agreement was commenced by 14 Members (42 if we count individual EU member countries) so as to abolish tariffs of environmental goods.<sup>30</sup> The origin of the negotiation dates back to the Doha Ministerial Declaration of 2001. The Declaration declared the launch of negotiation for the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.<sup>31</sup> As the negotiation made no progress at the Doha Round, APEC took over the topic. An Annex on Trade and Investment of Environmental Goods and Services to the Honolulu Declaration adopted at the APEC Summit Meeting of November 2011 declared that APEC economies pledged to lower tariffs of environmental goods to 5% or less and to prepare a list of "environmental goods".<sup>32</sup> The list of environmental goods, consisting of 54 items, was published in an annex to the APEC Vladivostok Leaders' Declaration.<sup>33</sup> The negotiation was commenced under the WTO in July 2014, based on the above list with 18 Members (46 if we count individual EU member countries).

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<sup>27</sup> See Article 8.81 of the EPA between Japan and the EU.

<sup>28</sup> See Article 14.13.2 of the CPTPP.

<sup>29</sup> See WTO, Information Technology Agreement. <[https://www.wto.org/english/tratop\\_e/inftec\\_e/inftec\\_e.html](https://www.wto.org/english/tratop_e/inftec_e/inftec_e.html)>

<sup>30</sup> See WTO, Environmental Goods Agreement. <[https://www.wto.org/english/tratop\\_e/envir\\_e/ega\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/ega_e.htm)>

<sup>31</sup> Doha Ministerial Declaration, supra n.1, para. 31(iii).

<sup>32</sup> See APEC, 2011 Leaders' Declaration, Annex C – Trade and Investment in Environmental Goods and Services, 13 November 2011. <[https://www.apec.org/Meeting-Papers/Leaders-Declarations/2011/2011\\_aelm/2011\\_aelm\\_annexC.aspx](https://www.apec.org/Meeting-Papers/Leaders-Declarations/2011/2011_aelm/2011_aelm_annexC.aspx)>

<sup>33</sup> See APEC, 2012 Leaders' Declaration, Annex C – APEC List of Environmental Goods, 8 December 2012. <[https://www.apec.org/Meeting-Papers/Leaders-Declaration/2012/2012\\_aelm/2012\\_aelm\\_annexC.aspx](https://www.apec.org/Meeting-Papers/Leaders-Declaration/2012/2012_aelm/2012_aelm_annexC.aspx)>

These are the plurilateral negotiations aiming at liberalization of trade in goods. Besides them, there are precedents of plurilateral negotiations aiming at deregulation of trade in services. As the Uruguay Round could not reach agreement on maritime transportation, financial services, telecommunications and movement of natural persons, negotiations continued on these services trade. By the end of 1997, negotiations were concluded on three areas except maritime transportation, and some WTO members made commitments to liberalize services trade of these areas.<sup>34</sup> A Reference Paper on domestic regulation was annexed to the Fourth Protocol on basic telecommunications, and it was implemented by Members through its adoption in their Schedules of Commitments. As of May 2019, 82 (110 if we count individual EU member countries) Members adopted it in their Schedules of Commitments.<sup>35</sup>

Example of a plurilateral trade agreement under Annex 4 of the WTO Agreement is the Protocol Amending the Agreement on Government Procurement adopted in 2012. The Protocol entered into force in 2014. As of May 2019, 19 (45 if we count individual EU member countries) Members are the parties.

In the case of the first type of plurilateral agreement, namely, an agreement by a subset of Members on specific goods or services and is applied to all WTO Members on a most-favored nation principle, it has an advantage that its negotiation may be concluded earlier than multilateral negotiation. Another advantage is that the benefit of trade liberalization spills over all WTO Members including those who didn't participate in the negotiation. On the other hand, WTO Members who didn't participate in the negotiation receive benefits without committing trade liberalization, and they are thus free riding the agreement. Nonetheless, free riding is not a serious problem as parties occupy a critical mass of trade in the targeted products.<sup>36</sup>

In the case of the second type of plurilateral agreement, free riding is not an issue, because the agreement is applied solely to those countries who participated in the negotiation. On the other hand, this type of agreement divides WTO members into those who are the parties to the agreement and those who are not. So as to promote trade liberalization, increasing the number of the parties is the next goal. Currently, 10 WTO Members including China are conducting accession negotiation to the Agreement on Government Procurement.<sup>37</sup>

These are the examples of plurilateral agreements negotiated under the WTO. Besides these, some countries are negotiating plurilateral liberalization of trade in services outside of the WTO, namely the Trade in Services Agreement (TiSA). Frustrated by the Doha Round on services negotiation, some Members began seeking negotiation outside of the WTO

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<sup>34</sup> See The Second Protocol of the GATS (financial services), adopted on 24 July 1995; The Third Protocol of the GATS (movement of natural persons), adopted on 24 July 1995; The Fourth Protocol of the GATS (basic telecommunications), adopted on 30 April 1996; The Fifth Protocol of the GATS (financial services), adopted on 3 December 1997.

<sup>35</sup> See WTO, Telecommunication Services. <[https://www.wto.org/english/tratop\\_e/serv\\_/telecom\\_e/telecom\\_e.htm](https://www.wto.org/english/tratop_e/serv_/telecom_e/telecom_e.htm)>

<sup>36</sup> In the case of the Information Technology Agreement, parties occupy 97% of the global trade in information technology products. See WTO, Information Technology Agreement, *supra* n. 30.

<sup>37</sup> See WTO, Agreement on Government Procurement, Parties, observers and accession. <[http://www.wto.org/english/tratop\\_e/gproc\\_e/membos\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/membos_e.htm)>

around 2011, and the negotiation was launched in the spring of 2013.<sup>38</sup> 23 (51 if we count individual EU member countries) countries participated in the negotiation, and 21 meetings were held by the end of 2016.<sup>39</sup> Since the inauguration of the US Trump Administration, however, the negotiation has been suspended. Although the negotiation of the TiSA has been conducted outside of the WTO, negotiating countries have not decided about the legal form of the result of negotiation. Options include an economic integration agreement (EIA) under Article 5 of the GATS and a plurilateral agreement in Annex 4 of the WTO Agreement. At any rate, countries are negotiating the TiSA on the basis that it will be applied solely to those who participate in the negotiation.<sup>40</sup>

As we saw in Section II above, at the 11<sup>th</sup> WTO Ministerial Conference of December 2017, some Members issued Joint Statements on E-commerce, trade facilitation for development and services domestic regulation. Subsequently, on E-commerce, after consultation among the Members who joined the Joint Statement, 48 (76 if we count individual EU member countries) Members announced their intention to launch negotiation on “Trade related aspects of E-commerce” in January 2019.<sup>41</sup> The negotiation started in March 2019.<sup>42</sup> It is not decided whether the end result will be applied to all WTO Members according to the principle of most-favored nation treatment or it will be applied solely to the Members who participate in the negotiation and agree on the end result.

## V. Interaction among the diversified frameworks for trade liberalization negotiations

### V-1. *Diversified frameworks for trade liberalization*

As the deadlock of the Doha Round has been protracted, alternative frameworks for trade liberalization have been adopted, namely, bilateral and regional FTAs and mega-FTAs. Plurilateral negotiations have been conducted both under the WTO and outside of the WTO. Table 3 lists these alternative frameworks for trade liberalization, according to the subject matter, participating countries, scope of application, and applicable rules of the WTO agreements.

### V-2. *Options of frameworks for trade liberalization negotiations and their interaction*

From the standpoint of government trade policy officials, choosing which framework for trade liberalization is a matter of policy decision. Depending on the goal(s) of their policy, they choose one of these frameworks taking into account such factors as the subject matter, participating countries, expected time for concluding negotiation, and the feasibility of con-

<sup>38</sup> See Ministry of Foreign Affairs, Office of Trade in Services, Negotiation of a new agreement on trade in services, July 2016. <<https://www.mofa.go.jp/mofaj/files/000156098.pdf>>

<sup>39</sup> Fefer (2017: 15).

<sup>40</sup> *Id.*

<sup>41</sup> Joint Statement on Electronic Commerce, 25 January 2019, WT/L/1056.

<sup>42</sup> “In first WTO e-commerce meeting, U.S. stresses ‘same obligation’ for all”, *Inside U.S. Trade*, 7 March 2019.

Table 3. Frameworks for trade liberalization after the start of the WTO

Subject matter	Participants	Scope of application	WTO rules	Example
broad	all WTO members	all WTO members	none	Doha Round
	2 or regional	participants	Art. 24 GATT; Art. 5 GATS	FTAs; mega-FTAs
narrow	all WTO members	all WTO members	none	Trade Facilitation Agreement
	participants (plurilateral)	all WTO members	none	ITA; GATS Third Protocol; Fourth Protocol; Fifth Protocol; Environmental Goods Agreement
		participants	Art. 10.9 Marrakesh Agreement	Agreement on Government Procurement
		participants	not decided	TiSA

(Source: Made by the author.)

cluding the negotiation. This subsection will explain the options for trade liberalization and their interactions from the standpoint of policy choice by major trading countries.

#### V-2-1. Plurilateral negotiations preceding the Doha Round

Under the WTO, before the launch of the Doha Round, two plurilateral trade negotiations were conducted. One was the liberalization negotiation of trade in services targeting basic telecommunication, financial services and movement of natural persons. The other was the negotiation of the ITA aiming at the elimination of tariffs on information technology products. The former can be categorized as an extension of the Uruguay Round, as it dealt with unfinished negotiation of liberalization of trade in services conducted by the Uruguay Round. The latter was conducted in the early years of the WTO initiated by major developed countries called by the US backed by its information technology industry. It was concluded fairly rapidly, comprising WTO Members who occupied the vast majority of global trade in information technology products.<sup>43</sup> It was negotiated before the launch of the Doha Round, and the negotiating Members could ease complaints from non-participating Members by al-

lowing them free riding. The ITA became a precedent of a critical mass approach, where some WTO Members negotiate liberalization of a specific category of goods and they apply the result on a most-favored nation basis to non-participants. The same approach was adopted by the revision of the ITA and environmental goods negotiation.

### V-2-2. FTA negotiations concurrently with the Doha Round

When the Doha Round started by all WTO Members on a wide range of subject matters, plurilateral negotiation under the WTO shifted to a low key. On the other hand, however, negotiations of bilateral and regional FTAs were conducted concurrently with the Doha Round. For instance, Japan abandoned its policy to prioritize multilateral liberalization of trade and started negotiation of an EPA with Singapore in January 2001.<sup>44</sup>

Bilateral and regional FTAs and multilateral trade negotiation have a complementary relationship as a means of negotiation for trade liberalization covering a wide range of themes. Negotiation of FTAs may be concluded earlier than multilateral trade negotiations, as the former are conducted by a limited number of countries. Likewise, negotiation of FTAs may yield deeper integration. Accordingly, negotiating FTAs and multilateral trade negotiation concurrently is a rational policy choice. These are the general observations of the relationship between FTA negotiations and multilateral trade negotiation. However, in the course of the launch of the Doha Round, a different relationship was created between FTA negotiations and multilateral trade negotiation.

We observed in Section III-1 that the FTA negotiations boomed concurrently with the Doha Round because of, first, the dynamics of completion arising from the trade diversion effect of FTAs, and, secondly, FTA negotiators' expectation toward FTAs covering wider topics and achieving deeper integration. Globalization of supply chains made progress and this required trade agreements to cover new policies supporting global supply chains. As the Doha Round could not satisfy such requirement, FTAs were chosen as an alternative means to the Doha Round. The Doha Round and negotiation of FTAs were, thus, alternative forums for trade liberalization and rule-making to support global supply chains. As the former was not viable, the latter was chosen. The flip side was that accumulating FTAs might yield "spaghetti bowls" and fragmentation of rules. Mega-FTAs might overcome this inconvenience to some extent. Major trading nations started negotiating mega-FTAs after 2010, shifting their preference of framework for trade liberalization negotiation from bilateral and regional FTAs.

### V-2-3. Spinoffs from the Doha Round

To tackle the deadlock of the Doha Round, attempts were made to spin off items of the negotiation agenda for early conclusion. One was the Agreement on Trade Facilitation (TFA). As we saw in Section II, trade facilitation was the only theme of the Singapore Issues

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<sup>43</sup> On the detailed history of the ITA negotiation, see Okamoto (2001: 47-52).

<sup>44</sup> Oyane (2012: Chapter 9).



that were supported by developed countries as agenda items for the Doha Round. The 8<sup>th</sup> Ministerial Conference of December 2011 abandoned the single undertaking formula and adopted a policy that Members may reach definite agreements earlier than the full conclusion of the single undertaking. Based on this policy change, the TFA was adopted in December 2013 and entered into force in February 2017. It is the first and currently the only multi-lateral trade agreement concluded under the WTO.

So as to enhance implementation by developing countries, the TFA classifies the text of the Agreement into three categories. Developing countries are required to instantly implement Category A provisions that are of highest priority for trade facilitation (Articles 1 through 12), but least developed countries (LDCs) are allowed to set a transition period in implementing them. Then, developing countries are allowed to self-designate Category B provisions with respect to which they may decide grace periods at their own choice. The remaining provisions are categorized as Category C with respect to which they may decide grace periods at their own choice and conditional to technical assistance and other support from developed countries.

Another example of spinoff from the Doha Round is the negotiation of environmental goods. The theme was spun off from the Doha Work Programme. We saw in Section IV that the APEC played an important role in this process.

The TiSA negotiation may be categorized as a spinoff from the Doha Work Programme. However, the result of the negotiation will not be applied to all WTO Members on a most-favored nation basis. There are two types of agreements whose contents are applied to solely participants, namely, preferential trade agreements such as FTAs and plurilateral agreements in Annex 4 of the WTO Agreement. It has not decided which type the TiSA will take.

#### V-2-4. From mega-FTAs to plurilateral negotiations under the WTO

Mega-FTAs have made an achievement in making rules to support globalization of supply chains. Rules on E-commerce and state owned enterprises (SOEs) are examples. However, the capacity of mega-FTAs is limited in that respect, as the rules of mega-FTAs are applied solely to their parties. The territorial scope of the rules of mega-FTAs is expanded with accession thereto by new parties, but this takes time. So as to expand the territorial scope of the rules, they should be transferred to the WTO. The recent initiative of negotiating WTO rules on E-commerce is an example of such transfer. There are two types of negotiating rules under the WTO, namely, multilateral negotiation by all WTO Members and plurilateral negotiation by some WTO Members. Consensus is required to launch multilateral negotiation on E-commerce.<sup>45</sup> As India, South Africa and other Members object to launching multilateral negotiation on E-commerce, the negotiation was launched as plurilateral negotiation by some WTO Members.

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<sup>45</sup> See Article 9.1 of the Agreement Establishing the WTO. "The WTO shall continue the practice of decision-making by consensus followed under the GATT 1947."

## VI. Possibility of reinvigorating the WTO as a forum for trade liberalization negotiation

With the deadlock of the Doha Round, the WTO became dysfunctional as a forum for multilateral negotiation of trade liberalization. We saw the appearance of alternative forms of negotiation of trade liberalization, namely, bilateral and regional FTAs, mega-FTAs, and plurilateral negotiations.

The causes for the dysfunction of the Doha Round are substantively structural, namely, the change in the power balance of WTO Members, decrease in the expectation of developed countries, and single undertaking and consensus decision making. These causes will not change in the near future. This means that multilateral negotiation covering a wide range of subject matters, such as the Uruguay Round and the Doha Round, is not feasible in the near future. There needs to be alternative framework for negotiation of trade liberalization. In addition to liberalization of trade in goods and services, it should cover rules that support globalization of supply chains. Rules contained in mega-FTAs such as the CPTPP and the EPA between Japan and the EU are strong candidates. They are E-commerce, regulation of state owned enterprises (SOEs) and investment. Options for dealing with these themes are ① FTAs with wide subject matter coverage (bilateral, regional and mega-FTAs), ② multi-lateral trade agreements focusing on specific theme(s), and ③ plurilateral trade agreements focusing on specific theme(s).

Of these options, FTAs have been utilized the most. Notably, mega-FTAs such as the CPTPP and the EPA between Japan and the EU are effective as a means of supporting globalization of supply chains by achieving wide coverage of trade and investment liberalization and by making high standard rules on a wide range of subject matters. Japan is the party to both of these mega-FTAs. Japan should strive to expand the territorial coverage of the CPTPP utilizing its accession clause. Japan is also participating the negotiation of the RCEP. It should aim at creation of de facto global standards through the convergence of the rules of these mega-FTAs by assimilating the rules of the RCEP with the CPTPP and the EPA between Japan and the EU.

It must be noted, however, that mega-FTAs have a limited number of parties. The rules of mega-FTAs are not applied to non-parties. So as to expand the territory of the rules of mega-FTAs, they should be transferred to either multilateral or plurilateral trade agreements focusing on specific theme(s). If multilateral trade agreements are concluded, the WTO will be restored as a forum for negotiation of trade liberalization. However, for the time being, there is a scarce possibility of realizing this scenario, because of strong resistance of India, South Africa and other developing countries against the termination of the Doha Round, which makes consensus decision making to launch a new multilateral trade negotiation most unlikely.

Accordingly, the realistic option is to launch a plurilateral negotiation on a specific theme(s). The launch of negotiation by some WTO Members on E-commerce is a movement along this scenario. Besides this, investment facilitation for development and services do-

mestic regulation, which were dealt with by the Joint Statements adopted at the 11<sup>th</sup> Ministerial Conference of December 2017, are also two candidates for plurilateral negotiation.

As we saw in Section IV, consensus is not required to launch plurilateral negotiation, which is in contrast to the launch of multilateral negotiation. On the other hand, there are three optional exits of plurilateral negotiation, namely, multilateral trade agreement, plurilateral agreement whose result is applied to all WTO Members on a most-favored nation basis, and plurilateral agreement whose result is applied solely to participating Members.

Even if negotiation is launched among some WTO Members, if all WTO Members agree, the result will be adopted as a multilateral trade agreement. To attain such result, however, a specific mechanism to support implementation by developing countries must be invented, as was done by the Agreement on Trade Facilitation (TFA). As we saw in Section V-2-3, the TFA allows developing countries to self-designate grace periods for implementation, and obliges developed countries to provide technical assistance to developing countries in implementing some provisions of the Agreement. The TFA, thus, aims at securing full implementation of all WTO Members ultimately.

In contrast, the other two optional exits do not suppose acceptance by all WTO Members. The difference between the two lies in whether to allow free riding of non-parties or not.

If we are to restore the WTO as a forum for trade negotiation, the first option should be the priority. However, this will take time. If we prioritize early conclusion of negotiation, the second option or the third option will be taken. The second option has precedents such as the ITA and its revision, Annexes of the GATS on financial services, telecommunication and the movement of natural persons. On the other hand, consensus is required to adopt the result of negotiation according to the third option.<sup>46</sup> This means that all WTO Members, including those Members who did not participate in the negotiation, must agree to its adoption. This is a highly unlikely scenario.<sup>47</sup> Accordingly, the second option is the most realistic option.<sup>48</sup> The flip side of this option is that it creates the division of WTO Members between those who are the parties to the agreement and those who are not. Efforts should be made to minimize this deficit, such as opening the negotiation process and allowing latecomers or inserting an accession clause to let in non-parties after the entry into force of the agreement.<sup>49</sup>

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<sup>46</sup> See Article 10.9 of the Agreement Establishing the WTO.

<sup>47</sup> See Hoekman and Mavroidis (2015: 341) (Asserting relaxation of the consensus requirement for addition of plurilateral agreements to Annex 4 of the WTO Agreement.)

<sup>48</sup> See Adlung and Mamdouh (2018).

<sup>49</sup> Draper and Dube (2013) and Adlung and Mamdouh (2018) also support such “open” plurilateral agreement.

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