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# Plurilateralism

## *A New Form of International Economic Ordering?*

*Georgios Dimitropoulos* | ORCID: 0000-0001-5492-8101  
College of Law, Hamad Bin Khalifa University, Doha, Qatar  
*gdimitropoulos@hbku.edu*

*Richard C. Chen* | ORCID: 0000-0002-2589-9353  
School of Law, University of Hawai'i at Mānoa, Honolulu, Hawai'i  
*rcchen@hawaii.edu*

*Julien Chaisse* | ORCID: 0000-0001-8793-0590  
School of Law, City University of Hong Kong, Hong Kong, China  
*julien.chaisse@cityu.edu.hk*

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### Abstract

Plurilateralism is gaining recognition as an overarching strategy for international economic governance beyond its traditional role in trade negotiations. This approach involves multi-party, sector-specific agreements within international organizations or broader multilateral frameworks. It distinguishes itself from Preferential Trade Agreements and informal coalitions. Plurilateralism focuses on targeted cooperation among a smaller set of members, and has the capacity to foster focused (plurilateral) agreements among a smaller cohort of countries. This mode of governance may bolster the efficacy of existing institutions such as the WTO, although it may also occur in new institutions. However, the potential for increased fragmentation and the risk of sidelining developing nations remain significant concerns. This article examines the influence of plurilateralism and plurilateral agreements on contemporary international economic governance. This article, as well as the broader Special Issue, provides a fresh outlook on the strategic use of plurilateralism, underlining its significance and

limitations as a parallel approach to multilateral negotiations in navigating the complex issues of international economic relations.

## Keywords

Cornwall Consensus – economic governance – economic integration – Indo-Pacific Economic Framework for Prosperity (IPEF) – multilateralism – trade liberalization

## 1 Introduction

The international institutions of the post-World War II era are undergoing a fundamental reassessment, and international economic law is at the center of the critiques.<sup>1</sup> As dominant orthodoxies are being challenged, scholars and policymakers alike are proposing ideas for redesigning the legal and institutional setup of international trade, investment, finance, and tax. The proposals for a new world order vary considerably. Some suggest the dismantling of the dense network of multilaterals in favor of looser forms of collaboration;<sup>2</sup> others still believe in the path of multilateralism and seek ways to refine it.<sup>3</sup> Treasury Secretary Janet Yellen, speaking in 2022, put forward the idea that the US would have to focus on a ‘network of plurilateral trade agreements’ with

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- 1 See generally Michael Waibel, Asha Kaushal, Kyo-Hwa Chung and Claire Balchin, *The Backlash Against Investment Arbitration: Perceptions and Reality* (Kluwer 2012); Malcolm Langford, Daniel Behn and Ole Kristian Fauchald, ‘Backlash and State Strategies in International Investment Law’ in Tanja Aalberts and Thomas Gammeltoft-Hansen (eds), *The Changing Practices of International Law* (CUP 2017) 70; Georgios Dimitropoulos, ‘The Conditions for Reform: A Typology of “Backlash” and Lessons for Reform in International Investment Law and Arbitration’ (2020) 18(3) LPICT 416.
  - 2 Dani Rodrik and Stephen Walt, ‘How to Construct a New Global Order’, HKS Faculty Research Working Paper Series RWP21-013 (May 2021); Dani Rodrik and Stephen M Walt, ‘How to Build a Better Order’ (*Foreign Affairs*, 6 September 2022), <<https://www.foreignaffairs.com/world/build-better-order-great-power-rivalry-dani-rodrik-stephen-walt>> accessed 10 September 2024.
  - 3 See, for example, Thomas L Friedman, ‘Has Our Luck Run Out?’ (*New York Times*, 30 April 2019) <<https://www.nytimes.com/2019/04/30/opinion/trump-climate-change.html>> accessed 10 September 2024 (‘[V]irtually every problem destabilizing the world in this plastic moment is global in nature and can be confronted only with a coalition that is global ...’).

friendly countries ‘to achieve free but secure trade.’<sup>4</sup> Not long after, the US government started rolling out its approach to plurilateralism.<sup>5</sup>

The standard public international law understanding defines a plurilateral agreement as one that is more than bilateral but lacks the widespread membership associated with multilateral treaties.<sup>6</sup> For the purposes of this Special Issue, we adopt a narrower understanding to capture what makes plurilateralism and plurilateral agreements conceptually distinctive, rather than defining them only in quantitative terms. Plurilateralism is a strategy in international economic governance that allows states to develop sector-specific partnerships among a subset of the broader members or participants of an international framework. We understand plurilaterals as multiparty, sector-specific agreements nested within the frame of an international organization or broader multilateral agreement by a subset of the overall membership.<sup>7</sup> Plurilaterals

4 Treasury Secretary Janet Yellen’s advocacy for a network of plurilateral trade agreements in April 2022 emphasizes the shift towards more flexible trade practices among allied nations, underscoring the evolving landscape of international economic relations; see Janet Yellen, ‘Remarks by Secretary of the Treasury Janet Yellen on Way Forward for the Global Economy’ (2022) <<https://home.treasury.gov/news/press-releases/jy0714>>. For a commentary, see Gavin Bade, ‘Biden’s Trade Team: RIP Globalization’ (*Politico*, 5 August 2022) <<https://www.politico.com/news/2022/05/08/biden-trade-policy-russia-ukraine-00025321>> both accessed 10 September 2024; see also Hubert Escaith, ‘The New Politics of Trade: Trade in Value Added and the “Made in The World” Initiative’ in Julien Chaisse and Cristián Rodríguez-Chiffelle (eds), *The Elgar Companion to the World Trade Organization* (Edward Elgar 2023) 397.

5 For further analysis of the new realist trade policy of the US, emphasizing strategic partnerships and secure trade channels, see CJ Mahoney, ‘Does America Need a Trade Policy?’ in David A Gantz and Tony Payan (eds), *The Future of Trade: A North American Perspective* (Edward Elgar 2023) 9–17; see also Elli Louka, ‘The United States and the WTO: Muddling Through a Trade War’ in Chaisse and Rodríguez-Chiffelle (n 4) 760.

6 Jason Houston-McMillan, ‘Plurilateral Agreements’ in Krista Nadakavukaren Schefer and Thomas Cottier (eds), *Elgar Encyclopedia of International Economic Law* (expanded edn, Edward Elgar, 2024). On definitional issues see Antoine Bouët and David Laborde, ‘Are Plurilaterals a Promising Trade Liberalization Modality?’ in Valeria Piñeiro, Adriana Campos and Martin Piñeiro (eds), *The Road to the WTO Twelfth Ministerial Conference: A Latin American and Caribbean Perspective* (Instituto Interamericano de Cooperación para la Agricultura & International Food Policy Research Institute, San Jose, Costa Rica 2021) 131, 132–33.

7 This definition is narrower compared to accounts that classify all preferential or regional trade agreements as plurilateral; see Meredith Kolsky Lewis, ‘The Origins of Plurilateralism in International Trade Law’ (2021) 20 *JWIT* 633, 635 (‘In contrast to the WTO Doha Round of trade negotiations, which involves all WTO members and is therefore treated as “multilateral” for purposes of this article, the negotiations here referred to as “plurilateral” are those that have been, or are being, undertaken by various subsets of the WTO membership, both within and outside the WTO’s auspices. Such negotiations have featured ten or more

may have a narrower group of signatories as they may be signed by a smaller group of members from the overall membership.

Even under this narrower definition, plurilateralism is not a new form of international cooperation; plurilaterals were developed as part of the GATT era's multilateral trade negotiations.<sup>8</sup> The Multi-Party Interim Appeal Arbitration Arrangement (MPIA)<sup>9</sup> and the Investment Facilitation for Development (IFD) Agreement<sup>10</sup> – finalized during the 13th WTO Ministerial Conference in Abu Dhabi in February 2024 – are only the most recent and prominent instances of plurilaterals in international trade. At the same time, plurilateralism and plurilaterals have not been sufficiently explored as broad-based instruments for the design of international regimes outside the limited pockets in international trade. This has recently started to change. The value-proposition of plurilateralism as a broad-based governance strategy, and plurilaterals as mainstream instruments of international legal design, is now explored again in academia,<sup>11</sup> as well as among policymakers.<sup>12</sup> The leaders of

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negotiating parties and have included sectoral initiatives, which focus on negotiating new commitments within one particular segment of the economy ...'); see also Meredith Kolsky Lewis, 'Plurilateralism and Regional Trade Agreements', in this Special Issue.

8 Lewis, *Origins of Plurilateralism* (n 7).

9 The MPIA at the WTO addresses the suspension of the Appellate Body by providing a temporary solution for dispute resolution. It ensures continuity in the appellate process, maintaining legal stability and predictability in WTO dispute settlement. The MPIA thus plays a critical role in upholding the effectiveness and credibility of the WTO's dispute resolution system amidst institutional challenges; see Petros C Mavroidis, 'The Future of Dispute Resolution and Arbitration at WTO' in Chaisse and Rodríguez-Chiffelle (n 4) 691.

10 Investment Facilitation for Development Agreement, INF/IFD/W/52 (27 November 2023). Following its finalization and public release in February 2024, the text of the IFD Agreement has been appended, without alteration, to subsequent requests by its Member parties to include the Agreement in Annex 4 of the WTO Agreement. The most recent request is documented in WT/GC/W/927/Rev.1 (14 May 2024).

11 See generally Bernard M Hoekman and Petros Mavroidis, 'WTO "à la carte" or "menu du jour"? Assessing the Case for More Plurilateral Agreements' (2015) 26 EJIL 319; Meredith Kolsky Lewis, 'Mega-FTAs & Plurilateral Trade Agreements: Implications for the Asia-Pacific' in Julien Chaisse, Henry Gao and Chang-fa Lo (eds), *Paradigm Shift in International Economic Law Rule-Making* (Springer 2017) 419; Bernard M Hoekman, 'Urgent and Important: Improving WTO Performance by Revisiting Working Practices' (2019) 53 JWL 373, 373–76; Bernard Hoekman and Charles F Sabel, 'In a World of Value Chains: What Space for Regulatory Coherence and Cooperation in Trade Agreements' in Benedict Kingsbury and others (eds), *Megaregulation Contested: Global Economic Ordering After TPP* (OUP 2019) 217.

12 Axel Berger and others, 'Improving Key Functions of the World Trade Organization: Fostering Open Plurilaterals, Regime Management, & Decision-Making', T20 Policy Brief (20 November 2020) <[https://www.g20-insights.org/policy\\_briefs/improving-key-functions-of-the-world-trade-organization-fostering-open-plurilaterals-regime-manage](https://www.g20-insights.org/policy_briefs/improving-key-functions-of-the-world-trade-organization-fostering-open-plurilaterals-regime-manage)

the Group of 7 (G7) met in June 2021 in Cornwall, UK to put forward ideas for a post-Washington Consensus international order. The ‘Cornwall Consensus’ sees an important role for plurilaterals in the regulation of the international economy.<sup>13</sup>

This article, alongside others in this Special Issue, examines two primary topics: first, it considers plurilaterals as agreements in relation to alternative forms of international cooperation; second, it analyses plurilateralism as a governance strategy within international economic relations, addressing practical implications, strategic benefits, and limitations. Much of the following discussion, as well as that found in the rest of the issue, concentrates on the trade sector, where plurilaterals have been most frequently utilised, supported by institutions designed to promote further development. The investment and tax contexts pose distinct challenges, particularly due to the relative absence of multilateral frameworks in both areas. However, examining these alongside the trade sector still offers potential for cross-fertilisation within the broader field of international economic law.

As defined above, plurilateralism is a governance strategy that allows states to develop sector-specific partnerships among a subset of broader participants of an international framework, while plurilaterals are multi-party, sector-specific agreements adopted within such a framework by a subset of the overall membership. Our definition excludes two main types of international collaboration: Preferential Trade Agreements (PTAs) and informal intergovernmental networks and coalitions that do not produce binding (plurilateral) agreements.

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ment-and-decision-making/> (differentiating between ‘closed’ and ‘open plurilaterals’); Peter Draper and Memory Dube, ‘Plurilaterals and the Multilateral Trading System’ (E15 Initiative, 20 November 2020), <<https://e15initiative.org/publications/plurilaterals-and-the-multilateral-trading-system>>; European Commission, ‘WTO Modernisation: Future EU Proposals’, EC Concept Paper (2018) <[http://trade.ec.europa.eu/doclib/docs/2018/september/tradoc\\_157331.pdf](http://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157331.pdf)> all accessed 10 September 2024.

13 G7, The Cornwall Consensus Build Forward Better (2021) <<https://www.mofa.go.jp/files/100200092.pdf>> (Cornwall Consensus); see also Press Release, White House: Briefing Room, Carbis Bay G7 Summit Communiqué (13 June 2021) <<https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/13/carbis-bay-g7-summit-communication/>> (Carbis Bay Communiqué); G7 Panel on Economic Resilience, Key Policy Recommendations (2021) <<https://www.mofa.go.jp/files/100200091.pdf>> all accessed 10 September 2024 (G7 Panel on Economic Resilience, Key Policy Recommendations); see generally Georgios Dimitropoulos, ‘Law and Digital Globalization’ (2022) 44 U Pa J Intl L 41.

PTAs and informal groups operate under different dynamics and usually have different objectives.<sup>14</sup> PTAs often aim to reduce trade barriers between member states on a preferential basis, potentially leading to trade diversion and not necessarily addressing global trade challenges comprehensively. On the other hand, informal groups, while influential in policy discussions, lack the formal treaty-based commitments that bind parties to actionable agreements. Focusing on plurilaterals allows for a concentrated analysis of how targeted, legally binding agreements can address specific issues or sectors within an international framework, offering a pathway for more efficient and effective cooperation among a willing subset of nations. This approach enables a deeper understanding of the potential for plurilateral agreements to innovate within the existing global trade and economic governance structures, addressing novel challenges and leveraging the distinctive features of emerging practices for international cooperation. Plurilateral agreements can complement and enhance the multilateral trading system in ways that PTAs and informal coalitions cannot do.

This article, along with the entire Special Issue, further examines plurilateralism as a governance strategy in international relations and global governance. This allows us to focus on how nations employ plurilateralism to address shared objectives and strategic alliances, especially when options or appetites for multilateral cooperation are limited. This involves considerations, such as lowering transaction costs, enhancing institutional support, and strategically crafting agreements among a specifically aligned group of nations. When multilateral pathways prove unworkable, nations turn to plurilateralism to achieve shared objectives or to form strategic alliances. The aim might be to prepare the groundwork for future multilateral agreements or to foster a higher degree of cooperation that can be achieved only within a smaller, more cohesive group of nations. Initiatives such as the Indo-Pacific Economic Framework for Prosperity (IPEF) are intended to facilitate the development of new plurilateral agreements.<sup>15</sup>

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14 For the purposes of clarity, this article uses the term PTAs as a broad, umbrella term referring to any trade agreement between two or more countries that provides preferential access to certain products or services by reducing or eliminating tariffs, quotas, or other trade barriers. PTAs vary in scope and depth and include a range of trade arrangements, such as Free Trade Agreements (FTAs) and Customs Unions. Within the WTO framework, these agreements are referred to as Regional Trade Agreements (RTAs), as outlined in Article XXIV of the General Agreement on Tariffs and Trade (GATT).

15 'FACT SHEET: In Asia, President Biden and a Dozen Indo-Pacific Partners Launch the Indo-Pacific Economic Framework for Prosperity' (The White House, 23 May 2022) <<https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/23/fact-sheet>

This introductory article proceeds as follows. Part 2 examines plurilaterals as a key element of international economic law, positioned alongside unilateralism, regionalism, and multilateralism. Part 3 considers the role of plurilateralism within contemporary international governance. Part 4 concludes with reflections and a summary of the Special Issue.

## 2 Exploring International (Economic) Law's Structure: the Place of Plurilateral Agreements

The origins of international economic law can be traced to the British Empire's unilateral decision to open its borders to global trade. Following World War II, a new era emerged, characterised by multilateral and bilateral agreements that reflected a growing global consensus on the need for more structured and cooperative economic interactions. The introduction of plurilateral agreements during the Tokyo Round of Multilateral Trade Negotiations in the 1970s marked a subtle yet important development. Historically peripheral in trade negotiations, plurilateral agreements are now experiencing renewed prominence. This revival does not merely represent a return to a previously utilised governance mechanism but reflects a strategic response to the increasingly complex challenges of the global economy and international relations. Offering targeted, adaptable, and efficient solutions, plurilateral agreements are gaining recognition as effective tools in international economic governance.

### 2.1 *Historical Shifts: from Unilateral to Multilateral Approaches and Beyond*

In the 18th century, influenced by liberal economic ideas, the British Empire gradually opened its borders to foreign commerce on a unilateral basis.<sup>16</sup> International law played little role in cross-border economic (trade and investment) activities until the mid-20th century.<sup>17</sup>

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-in-asia-president-biden-and-a-dozen-indo-pacific-partners-launch-the-indo-pacific-economic-framework-for-prosperity/> accessed 10 September 2024 (describing the framework partners' aims of seeking future commitments in specified areas).

16 See generally Paul Bairoch and Susan Burke, 'European Trade Policy, 1815–1914' in Peter Mathias and Sidney Pollard (eds), *The Cambridge Economic History of Europe from the Decline of the Roman Empire* (CUP 1989) 1, 8.

17 One exception would be the Treaties of Friendship, Commerce and Navigation (FCN) that were mostly signed in the North. They were concluded bilaterally and included both trade and a small number of investment provisions; see John F Coyle, 'The Treaty of Friendship, Commerce and Navigation in the Modern Era' (2013) 51(2) *Colum J Transnatl L* 302–59.

The post-World War II period witnessed a paradigm shift towards multilateralism in international economic relations, catalyzed by the need for global cooperation and stability. This era saw the emergence of international trade law as the cornerstone of this multilateral framework, although it was limited to Western states and driven by security concerns.<sup>18</sup> Following the end of the Cold War, a clear global consensus emerged, reflecting a broader recognition of the benefits of collective action in managing economic interdependence. The culmination of this trend came with the Marrakesh Agreement and the establishment of the WTO, which institutionalized a rule-based international trading system.

The distinguishing feature of the WTO, compared to other international organisations like the International Monetary Fund (IMF) and the World Bank, lies in its function as a platform for negotiation and consensus-building among its varied membership.<sup>19</sup> Rather than micro-managing day-to-day trade affairs, the WTO facilitates the formulation and adoption of trade agreements through processes established in the WTO Agreement. At the heart of this approach lies the principle of the ‘single-undertaking’,<sup>20</sup> which underscores the interconnectedness of all negotiation items.<sup>21</sup> This means that every aspect of a trade deal is treated as part of an indivisible whole, emphasizing the importance of reaching consensus across the board before any agreement is finalized.

International investment law has followed a distinctly different path from international trade law, remaining largely bilateral despite numerous, often unsuccessful, efforts to establish multilateral frameworks.<sup>22</sup> It is primarily organised through an extensive network of bilateral investment treaties (BITs), many of which were established in the latter half of the 20th century. These

18 G John Ikenberry, ‘The End of Liberal International Order?’ (2018) 94(1) *Intl Aff* 7, 14.

19 However, the WTO multilateral framework has in place a ‘regulator’; the WTO Appellate Body operates (or used to) as the *ex post* regulator enforcing the multilateral rules of the regime as the last decision-maker in the WTO system; see generally Ernst-Ulrich Petersmann, ‘Between “Member-Driven Governance” and “Judicialization”: Constitutional and Judicial Dilemmas in the World Trading System’ in Chang-fa Lo, Junji Nakagawa and Tsai-fang Chen (eds), *The Appellate Body of the WTO and Its Reform* (Springer 2020) 15.

20 Article II.2 WTO Agreement; see generally Robert Wolfe, ‘The WTO Single Undertaking as Negotiating Technique and Constitutive Metaphor’ (2009) 12 *JIEL* 835.

21 WTO, ‘Principles’ in WTO, *How the Negotiations are Organized* (2021) <[https://www.wto.org/english/tratop\\_e/dda\\_e/work\\_organ\\_e.htm#:~:text=Single%20undertaking%3A%20Virtually%20every%20item,agreed%20until%20everything%20is%20agreed%2E2%80%9D](https://www.wto.org/english/tratop_e/dda_e/work_organ_e.htm#:~:text=Single%20undertaking%3A%20Virtually%20every%20item,agreed%20until%20everything%20is%20agreed%2E2%80%9D)> accessed 10 September 2024.

22 See generally Stephan W Schill, *The Multilateralization of International Investment Law* (OUP 2010).

treaties typically involve developed nations from the Northern and Western regions aiming to protect investors operating in developing countries in the Southern and Eastern parts of the world. Unlike the multilateral approach seen in international trade law, the concept of a comprehensive multilateral investment regime has been consistently rejected.<sup>23</sup> Multilateral treaties within international investment law remain rare and tend to focus on specific sectors rather than overarching frameworks. Presently, renewed endeavors aim to complement the substantive rules of myriad BITs and other international investment agreements (IIAs) with the establishment of a multilateral court tasked with adjudicating disputes arising from these agreements. Concurrently, the multilateral Energy Charter Treaty faces an unprecedented wave of withdrawals, signaling challenges to its viability and highlighting shifting dynamics in the realm of international investment governance.<sup>24</sup> International investment law largely adheres to a bilateral approach. This dynamic has created a dichotomy wherein international investment law is characterized by the pursuit of elusive multilateral ideals against the backdrop of bilateral pragmatism.

PTAs constitute a significant aspect of international economic law, particularly within the multilateralism framework. These agreements often arise in response to perceived limitations in the effectiveness of multilateral approaches, reflecting a response to the complexities inherent in multilateral frameworks. Some scholars and stakeholders view PTAs as a potential threat to multilateralism, expressing concerns about fragmentation and potential conflicts among different trade regimes.<sup>25</sup> From this perspective, PTAs are perceived as diverting attention and resources from the pursuit of comprehensive multilateral agreements, which could potentially undermine the coherence and effectiveness of global trade governance.<sup>26</sup> Conversely,

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23 Pierre Sauv e, 'Multilateral Rules on Investment: Is Forward Movement Possible?' (2006) 9(2) JIEL 325–55; Marc Bungenberg and August Reinisch (eds), *From Bilateral Arbitral Tribunals and Investment Courts to a Multilateral Investment Court: Options Regarding the Institutionalization of Investor-State Dispute Settlement*, European Yearbook of International Economic Law Series (2nd edn, Springer 2020).

24 See Tibusay Morgandi and Lorand Bartels, 'Exiting the Energy Charter Treaty under the Law of Treaties' (2023) 34 King's Law Journal 145–69.

25 This is referred to as the 'spaghetti bowl effect'; see Jagdish Bhagwati, 'US Trade Policy: The Infatuation with Free Trade Agreements' in Jagdish Bhagwati and Anne Krueger, *The Dangerous Drift to Preferential Trade Agreements* (AEI Press 1995); Jagdish Bhagwati, *Termites in the Trading System* (OUP 2008).

26 Chaisse and Matsushita have supported the view that PTAs may undermine the basis of the multilateral trading order and pose challenges to the WTO's role in coordinating international cooperation. They suggest that the WTO's Trade Policy Review Mechanism (TPRM) could play a role in addressing these challenges by allowing for harmonization

an alternative perspective regards PTAs and regionalism as complementing a multilateral trading system. Advocates of this viewpoint see PTAs as pragmatic steps towards achieving broader multilateral agreements.<sup>27</sup> By promoting deeper integration and cooperation within regional blocs, PTAs can establish a foundation to build trust, align interests, and address specific issues of trade liberalization, and hence, eventually facilitate progress in multilateral negotiations. This perspective recognizes the potential of regional initiatives to serve as building blocks for broader multilateral frameworks, acknowledging the incremental nature of global trade governance evolution. Overall, both perspectives, while opposed to each other, understand the role of PTAs in the broader context of multilateralism.

Multilateralism has come under criticism, which is partly a critique of global governance.<sup>28</sup> Withdrawals from international agreements have become more common.<sup>29</sup> At the same time, domestic regimes regulating cross-border trade and investment, such as special economic zones,<sup>30</sup> international commercial courts,<sup>31</sup> and domestic investment laws<sup>32</sup> are adding a domestic layer to the overall structure of the international economic order. This type of ‘economic unilateralism’ does not (always) suggest a wish to isolate economically.<sup>33</sup> Domestic rules sometimes replace international rules, whereas others complement them.

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and convergence of trade rules among its members; see Julien Chaisse and Mitsuo Matsushita, ‘Maintaining the WTO’s Supremacy in the International Trade Order: A Proposal to Refine and Revise the Role of the Trade Policy Review Mechanism’ (2013) 16(1) JIEL 9–36.

27 This is referred to as the ‘domino effect’; see Richard Baldwin, ‘A Domino Theory of Regionalism’ in Richard Baldwin, Pertti Haaparanta and Jaakko Kiander (eds), *Expanding Membership of the European Union* (CUP 1995) 25.

28 Thomas Sommerer and others, *Global Legitimacy Crises: Decline and Revival in Multilateral Governance* (OUP 2022).

29 See Georgios Dimitropoulos, ‘National Sovereignty and International Investment Law: Sovereignty Reassertion and Prospects of Reform’ (2020) 21 JWIT 71; see generally Antonio Morelli, *Withdrawal from Multilateral Treaties* (Brill 2021).

30 Julien Chaisse and Georgios Dimitropoulos, ‘SEZs in International Economic Law: Towards Unilateral Economic Law’ (2021) 24(2) JIEL 229–57.

31 Georgios Dimitropoulos, ‘International Commercial Courts in the “Modern Law of Nature”: Adjudicatory Unilateralism in Special Economic Zones’ (2021) 24 JIEL 361; Stavros Brekoulakis and Georgios Dimitropoulos (eds), *International Commercial Courts: The Future of Transnational Adjudication* (CUP 2022); Man Yip and Giesela Rühl, *New International Commercial Courts: A Comparative Perspective* (Inersentia 2024).

32 Julien Chaisse and Georgios Dimitropoulos, ‘Domestic Investment Laws and International Economic Law in the Liberal International Order’ (2023) 22 WTR 1.

33 Chaisse and Dimitropoulos, ‘SEZs in International Economic Law’ (n 30).

The earlier transition from unilateralism to multilateralism in international economic relations marked a significant shift in global governance paradigms, driven by the need for collective action and stability after World War II. However, recent trends indicate criticism of multilateralism, as well as a resurgence of unilateral tendencies.

Amidst the changing dynamics of global economic regulation, plurilateral agreements are experiencing a resurgence as regulatory tools. The article now turns to plurilateralism and plurilaterals in the development of the international economic system.

## 2.2 *Plurilateral Agreements in the Institutional Context of International Economic Law*

Plurilateral agreements have evolved into targeted instruments, allowing subsets of countries to negotiate specific issues. In the broader context of multilateralism, plurilaterals offer a flexible mechanism to address niche areas of governance. They provide an avenue for harmonizing regulations in specialized domains while bypassing the complexities of multilateral consensus building. However, the reception of plurilaterals varies by state and context. While some seem to embrace them as valuable tools for addressing specific issues, others express skepticism, fearing exclusion or unequal bargaining power. Plurilaterals are favored by states seeking targeted solutions and flexible arrangements, yet they may encounter resistance from those prioritizing inclusivity and broad-based cooperation within multilateral frameworks.

### 2.2.1 The Genesis and Growth of Plurilateral Agreements

The origin of plurilaterals can be traced back to the Tokyo Round of multilateral trade negotiations (1973–1979).<sup>34</sup> During the Tokyo Round, negotiations on sectoral initiatives increased. A negotiating group called ‘Sector Approach’ was established; its goal was to explore the possibility of reducing or even eliminating all barriers to trade in certain selected sectors.<sup>35</sup> Thus, sectoralism was expected to complement multilateralism. The Tokyo Round negotiations also led to initiatives to address non-tariff barriers (NTBs), agreements

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34 See generally Stephen D Krasner, ‘The Tokyo Round: Particularistic Interests and Prospects for Stability in the Global Trading System’ (1979) 23 *International Studies Quarterly* 491; Ria Kemper, ‘The Tokyo Round of Multilateral Trade Negotiations: Results and Implications’, World Bank Staff Working Paper No. 372 (World Bank, October 1979).

35 GATT Trade Negotiations Committee, Group ‘Sector Approach’, ‘Chairman’s Summing up – Meeting of 7–9 April 1975’, MTN/SEC/1 (14 April 1975) <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/TR/MTNSEC/1.PDF&Open=True>> accessed 24 October 2024.

on anti-dumping measures, government procurement, and technical barriers to trade for the first time in the history of multilateral trade negotiations. These agreements – not multilateral – became known as ‘codes’, or ‘arrangements’. Some of these codes gave rise to agreements that became part of the single-undertaking package under the WTO; the Standards Code, for example, developed into two separate multilateral agreements, the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT Agreement).<sup>36</sup> Both entered into force with the establishment of the WTO on 1 January 1995; they now form part of the Annex 1A agreements of the Multilateral Agreements on Trade in Goods.

Four agreements originally negotiated in the pre-WTO era retained their plurilateral status after the Uruguay Round. The Agreement on Trade in Civil Aircraft was negotiated in Tokyo and came into force on 1 January 1980. Currently, there are only 33 signatories. The agreement eliminates import duties on all aircraft other than the military, as well as on all other products related to civil aircraft, such as engines and their own parts and components, all components and sub-assemblies of civil aircraft, and flight simulators and their parts and components.<sup>37</sup> The Agreement on Government Procurement was negotiated during the Tokyo Round and entered into force one year after the Agreement on Civil Aircrafts. The Agreement has 21 parties, comprising 48 WTO members. Its purpose is to ensure that products or suppliers of other signatories are not discriminated against during the public procurement process.<sup>38</sup> The International Dairy Agreement and International Bovine Meat Agreement were also adopted as plurilateral agreements during the Uruguay Round but were terminated in 1997.<sup>39</sup> The signatories considered that the sectors would be better regulated under the Agreement on Agriculture and the SPS Agreement.

36 Agreement on Technical Barriers to Trade, LT/TR/A/5 (12 April 1979) <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/JCR/TOKYO/TBT.pdf&Open=True>> accessed 24 October 2024.

37 See Agreement on Trade in Civil Aircraft <[https://www.wto.org/english/tratop\\_e/civair\\_e/civair\\_e.htm](https://www.wto.org/english/tratop_e/civair_e/civair_e.htm)> accessed 10 September 2024.

38 See Agreement on Government Procurement <[https://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm)> accessed 10 September 2024.

39 Deletion of the International Dairy Agreement from Annex 4 of the WTO Agreement, WT/L/251 (17 December 1997) <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/L/251.pdf&Open=True>>; Deletion of the International Bovine Meat Agreement from Annex 4 of the WTO Agreement, WT/L/252 (16 December 1977) <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/L/252.pdf&Open=True>> both accessed 24 October 2024.

Overall, plurilateral agreements have played a role in international trade negotiations to complement the multilateral trading system by facilitating targeted cooperation among willing countries, offering a complementary pathway to multilateralism, and addressing specific sectoral challenges while also contributing to the broader goals of trade liberalization and economic integration.

### 2.2.2 Plurilateral Agreements in the Context of the World Trade Organization

The Information Technology Agreement (ITA) and Agreement on Basic Telecommunications (ABT) were the first success stories of plurilateralism in the WTO era.

The ITA was signed by 29 WTO members and states, or separate customs territories, during the process of acceding to the WTO at the WTO Ministerial Conference in Singapore in December 1996.<sup>40</sup> ITA entered into force on 1 April 1997, with participants accounting for more than 90 percent of the world trade in IT products.<sup>41</sup> ITA eliminates import duties for IT products. The ITA addressed issues pertaining to freeing up technological innovation in the 1990s, covering product categories such as computers, semiconductors, and software.<sup>42</sup> It is the first agreement to liberalize trade in a specific sector after the establishment of the WTO; it is also the first sectoral agreement negotiated between developed and developing countries.<sup>43</sup> Nonetheless, no Least-Developed Country (LDC) has joined this agreement.<sup>44</sup> The legal adoption mechanics of the ITA followed GATT tradition. Commitments to tariff elimination were incorporated into the tariff schedules of individual members. Concessions made pursuant to the ITA became part of the general WTO obligations and thus applied on an MFN basis to all members of the WTO. In 2015,

40 See generally Barbara Fliess and Pierre Sauvé, 'Of Chips, Floppy Disks and Great Timing: Assessing the Information Technology Agreement', Institut Français des Relations Internationales and the Tokyo Club Foundation of Global Studies (1997); Iana Dreyer and Brian Hindley, 'Trade in Information Technology Goods: Adapting the ITA to 21st Century Technological Change', ECIPE Working Paper No 6 (2008).

41 WTO, '15 Years of the Information Technology Agreement: Trade, Innovation and Global Production Networks' (WTO, Geneva 2012) at 20 <[https://www.wto.org/english/res\\_e/publications\\_e/ita15years\\_2012\\_e.htm](https://www.wto.org/english/res_e/publications_e/ita15years_2012_e.htm)> accessed 10 September 2024 (WTO, 15 Years of ITA).

42 Fliess and Sauvé (n 40) 13.

43 Pascal Lamy, 'Foreword', in WTO, 15 Years of ITA (n 41).

44 WTO, 15 Years of ITA (n 41) 49.

the Expansion of Trade in Information Technology Products was agreed upon as a plurilateral agreement.<sup>45</sup>

The second plurilateral agreement in the WTO era was the ABT.<sup>46</sup> On 15 February 1997, in the aftermath of both the Marrakesh Agreement and the ITA, WTO members concluded negotiations on basic telecommunications services. All industrialized countries signed the agreement. ABT covers public and private telecommunications services that involve end-to-end transmission of customer-supplied information, such as the relay of voice or data from the sender to the receiver. Voice telephony, data transmission, telex, telegraph, fax, cellular telephony, and mobile data are covered.<sup>47</sup> Market access commitments cover both the cross-border supply of telecommunications and services provided through the establishment of foreign firms or commercial presence. The Protocol and the documents annexed to the ABT entered into force on 1 January 1998. The same adoption process as ITA was followed in the case of ABT. The schedules on basic telecommunication services have become part of the General Agreement on Trade in Services (GATS) schedules of service commitments already in force since the Uruguay Round. Thus, the results of the telecommunications negotiations were extended to all WTO members through the MFN treatment, except for MFN exemptions submitted in the MFN exemption lists.<sup>48</sup>

45 Gary Winslett, 'Critical Mass Agreements: The Proven Template for Trade Liberalization in the WTO' (2017) 17(3) WTR 405; see generally on ITA expansion UNCTAD, 'Trade in ICT Goods and the 2015 Expansion of the WTO Information Technology Agreement', UNCTAD Technical Notes on ICT for Development N° 5, TN/UNCTAD/ICT4D/05 (December 2015) <[https://unctad.org/en/PublicationsLibrary/tn\\_unctad\\_ict4d05\\_en.pdf](https://unctad.org/en/PublicationsLibrary/tn_unctad_ict4d05_en.pdf)> accessed 10 September 2024.

46 See generally Chantal Blouin, 'The WTO Agreement on Basic Telecommunications: A Reevaluation' (2000) 24(2) Telecommunications Policy 135–42; Peter Cowhey and Mikhail M Klimenko, 'The WTO Agreement and Telecommunications Policy Reform', Policy Research Working Paper No 2601 (World Bank, Washington, DC. World Bank, 2001) <<https://openknowledge.worldbank.org/handle/10986/19661>> accessed 10 September 2024.

47 'Value-added' telecommunication services, that is telecommunications for which suppliers add value to the customer's information – such as when suppliers enhance their form or content or provide for storage and retrieval – were not part of the negotiations. These are more often liberalized than basic telecommunication services and had been included in many schedules in force since the Uruguay Round and the accession of new WTO members since the conclusion of the Round; see WTO, 'Coverage of Basic Telecommunications and Value-added Services' <[https://www.wto.org/english/tratop\\_e/serv\\_e/telecom\\_e/telecom\\_coverage\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_coverage_e.htm)> accessed 10 September 2024.

48 The annexes of the GATS deal with national treatment and market access in particular service sectors. Another annex permits members to be exempted from MFN obligations.

The evolution of plurilateral agreements within the WTO framework showcases the potential to move towards more flexible and targeted approaches to address specific trade issues within a broader institutional framework; it also highlights the potential of plurilateralism as a complementary form of international economic governance alongside traditional multilateral negotiations. By allowing subsets of WTO members to move forward on agreements where there is mutual interest, plurilateralism can overcome the challenges of achieving consensus among all members. This approach expedites the negotiation process on certain issues but may also set a precedent for a more dynamic and adaptive international economic governance structure, where various forms of cooperation coexist and reinforce the overall objectives of the WTO.

On the other hand, there are reasons to question whether the processes that produce ITA and ABT can be successfully replicated in other contexts and under current conditions. While the ITA is often cited as a successful example of a WTO plurilateral, it is important to recognize its limitations. The ITA allowed non-signatories to benefit from tariff eliminations without reciprocating, a practice often criticized as providing ‘free rides’. In the current geopolitical climate, both the United States and the European Union are increasingly reluctant to support agreements that allow such free riding, suggesting that future plurilaterals may face significant obstacles in garnering support. The adoption of ABT depended to a large extent on the pressure that industrialized nations exerted on their developing counterparts and may not necessarily have represented a consensus among participants.<sup>49</sup> Moreover, as open rather than closed plurilaterals (a distinction further explained below), the ITA and ABT faced an easier road to adoption but at the cost of accepting free riders under the MFN provision. Going forward, the willingness to tolerate free riding may be declining, although it should be emphasized that the concern applies more to agreements providing market access than to those focused on regulatory cooperation.<sup>50</sup>

### 2.2.3 Current Trends and Future Directions

The Doha Development Round provided hope for a new wave of multilateral agreements within the WTO. As this round’s momentum started waning, a

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49 Cowhey and Klimenko (n 46) 3–4.

50 Bernard M Hoekman and Petros C Mavroidis, ‘Embracing Diversity: Plurilateral Agreements and the Trading System’ (2015) 14(1) WTR 101, 102 note 1; see also Kinda Mohamadieh, ‘Plurilateral Initiatives and Their Interaction with WTO Rules’ (Third World Network, Penang, Malaysia 2020) 27.

second wave of plurilaterals emerged: some of the envisaged plurilaterals materialized, while others did not.

Discussions for a Trade in Services Agreement (TiSA) commenced in early 2012 among a group of WTO members called the 'Really Good Friends of Services'.<sup>51</sup> The EU and US were the main supporters of the proposed agreement. All the group meetings were conducted in Geneva. For all the ambition on both sides of the Atlantic as well as among trade officials in Geneva,<sup>52</sup> the negotiations soon failed to produce results. There are many reasons for the failure of the TiSA, especially the non-inclusive nature of negotiations.

The Anti-Counterfeiting Trade Agreement (ACTA) is also often discussed as an example of a failed attempt to conclude a plurilateral agreement around the same time as negotiations for the TiSA.<sup>53</sup> The purpose of the agreement was to establish an international legal framework to target counterfeit goods, generic medicines, and copyright infringement on the internet. If it had come into force, it would have created a new governing body outside existing forums, such as the WTO, the World Intellectual Property Organization (WIPO), or the United Nations. Thus, it does not qualify as plurilateral under our definition.

The ITA negotiations laid the foundation for ongoing plurilateral e-commerce initiatives.<sup>54</sup> In 1998, WTO members established a work programme on e-commerce, which included a moratorium on customs duties for electronic transmissions. This moratorium has been periodically extended, remaining distinct from other agreements.<sup>55</sup> Further efforts in this area were reflected in the launch of four Joint Statement Initiatives (JSIs) during the Buenos Aires Ministerial Conference in 2017. This showed that groups of members were again interested in using plurilaterals in the institutional context of

51 Trade in Services Agreement (TiSA), Foreign Affairs, Trade and Development Canada (18 July 2013) <<https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/services/tisa-acs.aspx?lang=eng>> accessed 10 September 2024.

52 The negotiations were endorsed by then WTO Director-General Pascal Lamy; see Daniela Vincenti, 'EU and "Good Friends" Weigh International Services Pact' (*Euractiv*, 9 October 2012) <<https://www.euractiv.com/section/trade-society/news/eu-and-good-friends-weigh-international-services-pact/>>.

53 See generally Kimberlee Weatherall, 'Politics, Compromise, Text and the Failures of the Anti-Counterfeiting Trade Agreement' (2011) 33 *Sydney Law Review* 229–263.

54 WTO, 15 Years of ITA (n 41) 32; see also Georgios Dimitropoulos, 'Digital Plurilateralism in International Economic Law: Towards Unilateral Multilateralism?' (2025) 26 *JWIT* 116–55, in this Special Issue.

55 Most recently, the 13th Ministerial Conference (MC13) extended the moratorium for another two years; see WTO, 13th Ministerial Conference: Briefing Note, 'E-commerce' <[https://www.wto.org/english/thewto\\_e/minist\\_e/mc13\\_e/briefing\\_notes\\_e/ecommerce\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/mc13_e/briefing_notes_e/ecommerce_e.htm)> accessed 10 September 2024.

the WTO.<sup>56</sup> Four groups, representing different compositions of members, initiated talks in the e-commerce sector; investment facilitation for development; domestic services regulation; and micro-, small-, and medium-sized enterprises (MSMEs). The recent 13th Ministerial Conference (MC13) gave rise to the plurilateral Investment Facilitation for Development Agreement.<sup>57</sup> Moreover, after five years of negotiations, the text of the electronic commerce plurilateral agreement was concluded by the relevant JSI at the end of July 2024.<sup>58</sup>

Another crisis in the multilateral trading system led to a new interest in resorting to plurilaterals beyond traditional areas and beyond the traditional mechanisms. In the last few years, the US has obstructed new appointments to the WTO Appellate Body. This has halted the appeal process and has almost paralyzed the dispute settlement system.<sup>59</sup> A series of states have tried to address paralysis using the MPIA, an alternative system for resolving WTO disputes. In the absence of a functioning WTO Appellate Body, the MPIA allows for the appeal of panel reports by a group of states that have signed up for the arrangement. Although the MPIA is often counted as a plurilateral agreement because it encompasses a subset of the WTO membership,<sup>60</sup> there are also aspects of its structure and legal status that differentiate it from the prototypical arrangement.<sup>61</sup>

In the investment realm, plurilateral efforts are less salient, because there is no dominant multilateral institution that serves as an overarching framework. However, upon closer examination, similar trends emerged, albeit with notable variation. Recent examples include the recently concluded WTO IFD

56 See WTO, Joint Initiatives <[https://www.wto.org/english/tratop\\_e/jsi\\_e/jsi\\_e.htm](https://www.wto.org/english/tratop_e/jsi_e/jsi_e.htm)> accessed 10 September 2024.

57 See *supra* Introduction, 3–6.

58 Joint Statement Initiative on Electronic Commerce, INF/ECOM/87 (26 July 2024) <[https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/ECOM/87.pdf](https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/ECOM/87.pdf&Open=True)> accessed 24 October 2024.

59 See, for example, Bernard Hoekman and Petros C Mavroidis, 'Burning Down the House? The Appellate Body in the Centre of the WTO Crisis', European University Institute, Robert Schuman Centre for Advanced Studies, Global Governance Programme Working Paper No RSCAS 2019/56 (2019).

60 See, for example, Geneva Trade Platform's 'WTO Plurilaterals' <<https://wtoplurilaterals.info/>> accessed 10 September 2024.

61 See Joost Pauwelyn, 'The WTO's Multi-Party Interim Appeal Arbitration Arrangement: What's New?' (2023) 22 WTR 693, 694; Weihuan Zhou and Victor Crochet, 'Fragmenting International Trade Dispute Settlement: A Quest for a Plurilateral Appellate Mechanism Under the WTO' (2025) 26 JWIT 275–300, in this Special Issue.

Agreement,<sup>62</sup> as well as the ongoing negotiations conducted in UNCITRAL Working Group III.<sup>63</sup> The apparent pattern of using non-investment institutional backdrops to enhance investment cooperation creates a distinctive set of opportunities and dynamics for plurilateral initiatives.<sup>64</sup>

As mentioned in the introduction, our definition of plurilaterals excludes two main types of international collaboration: first, PTAs, which constitute exceptions to some of the disciplines of the agreements of the WTO (above all, MFN),<sup>65</sup> and second, informal coalitions such as the G7 and the G20. We are interested in collaborations that occur in the broader frame of international agreements, such as the WTO. Informal groupings of states, such as the Quad, the New Quad, and others, exist in post-war international trade and broader international economic governance practice. Our focus is on the potential of plurilateralism to work as a broader method to design international legal agreements that are binding, such as most recently with IPEF. For this reason, forms of cooperation such as the Open Method of Coordination (OMC) in the EU are also generally excluded. OMC is a form of intergovernmental collaboration that does not result in binding legislative measures at the EU level, and does not require EU countries to introduce or amend their laws.<sup>66</sup> Under OMC, participating countries are evaluated by one another through peer review, and the European Commission's role is limited to surveillance. The European Parliament and the Court of Justice of the EU are not involved in any way.

Unlike regimes such as the OMC, the OECD is an international organization that has legal instruments in place that can produce binding rules on parties. However, the nature of the organization's structure means that there is

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62 Speaking on 16 December 2022 at a high-level stocktaking session organized by participating members, WTO Director-General Ngozi Okonjo-Iweala said that 'the circulation of the latest negotiating text is a major breakthrough towards concluding an agreement that will attract and retain more and higher quality investment, taking into account the respective development priorities of members'; see WTO, 'Circulation of Draft Agreement Marks Major Milestone in Investment Facilitation Talks' (16 December 2022) <[https://www.wto.org/english/news\\_e/news22\\_e/infac\\_16dec22\\_e.htm](https://www.wto.org/english/news_e/news22_e/infac_16dec22_e.htm)> accessed 10 September 2024.

63 See Working Group III: Investor-State Dispute Settlement Reform, <[https://uncitral.un.org/en/working\\_groups/3/investor-state](https://uncitral.un.org/en/working_groups/3/investor-state)> accessed 10 September 2024.

64 See Timothy Meyer, 'Plurilateralism and the Future of International Investment Law' (2025) 26 JWIT 219–46, in this Special Issue; cf also Mélida Hodgson, Kabir Duggal, Katelyn Horne and Ana Pirnia, 'The Dawn of a New Era: Advancing ESG Obligations in Arbitration through Plurilateralism' (2025) 26 JWIT 301–31, in this Special Issue.

65 See, for example, Article XXIV GATT.

66 See generally Sabrina Regent, 'The Open Method of Coordination: A New Supranational Form of Governance?' (2003) 9 ELJ 190.

potential for consensus to break down from within; members have the right to abstain from hard law agreements.<sup>67</sup> Attempts to impose multilateral norms on countries that are not members or parties to negotiations might result in failure, as occurred with the 1995 Multilateral Agreement on Investment (MAI). The OECD's failure to negotiate a multilateral investment agreement has been offered as an example of both the limitations of international norm-making processes and justification for the pursuit of plurilateral approaches.<sup>68</sup> Recent international tax law harmonization efforts in the OECD framework have also been described as a Multilateral Instrument incorporating 'elements of a plurilateral agreement'.<sup>69</sup>

Plurilateral agreements, by allowing subsets of WTO members to advance on specific issues, offer a pathway to overcome the stagnation observed in broader multilateral negotiations, such as the Doha Round. Nonetheless, the varied results of efforts like the TiSA underscore the importance of combining effective measures with inclusivity. The trend towards plurilateralism represents a marked development in the formulation of international agreements. It aims to reconcile the gap between expansive multilateral frameworks and the demand for swift, focused cooperation. This trend is altering the structure of international economic governance, amidst an era defined by rapid transformations and diverse obstacles. Plurilateralism now emerges as a broader form of governance beyond traditional institutions of international economic law.

### 3 Plurilateralism beyond Plurilaterals: Plurilateralism as a Mode of International Ordering

Plurilateralism goes beyond mere plurilateral agreements and represents a novel mode of international cooperation and ordering. This approach to

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67 See Robert Wolfe, 'The OECD Contribution to the Evolution of Twenty-First Century Trade Law' (2011) 43 *Geo Wash Intl L Rev* 277–94; see also Armin Schäfer, 'A New Form of Governance? Comparing the Open Method of Co-Ordination to Multilateral Surveillance by the IMF and the OECD' (2006) 13 *Journal of European Public Policy* 70–88.

68 Robert Basedow, 'The WTO and the Rise of Plurilateralism: What Lessons Can We Learn from the European Union's Experience with Differentiated Integration?' (2018) 21 *JIEL* 411.

69 Wolfgang Alschner, 'Shifting Design Paradigms: Why Tomorrow's International Economic Law May Look More like the Tax Regime than the WTO' (2020) 114 *AJIL Unbound* 270; see also Peter Hongler and Simon A Habich, 'Plurilateralism in International Tax Law' (2025) 26 *JWIT* 247, 251–52, in this Special Issue.

international economic cooperation facilitates more flexible and targeted cooperation among subsets of nations that may share similar political, geopolitical, or geoeconomic perspectives in addressing specific global challenges. Plurilateralism is transforming the landscape of economic governance and international relations, offering a path that sometimes complements traditional multilateral negotiations, while at other times it serves as an alternative to the established frameworks and institutions of international economic law.

### 3.1 *Adopting Plurilateralism as a Means to Address Global Challenges*

The challenges to economic globalization have led states to increasingly turn to alternatives to the ‘rules-based-system’ for international cooperation of the Liberal International Order, such as the political fora of G7 and G20, and beyond.<sup>70</sup> The G7 formed a Panel on Economic Resilience that has devised some key policy recommendations for future world ordering.<sup>71</sup> Building on the work of the Panel, the G7 leaders issued the Carbis Bay G7 Summit Communiqué on ‘Our Shared Agenda for Global Action to Build Back Better’. The shift towards the Cornwall Consensus can be conceptualized as an evolution from the Washington Consensus towards a framework that emphasizes inclusivity, fairness, and a new order that accommodates diverse interests and new challenges, including health, trade, climate, and digital governance.<sup>72</sup>

Cornwall shows an increasing openness to plurilateral mechanisms within global institutions such as the WTO, suggesting a departure from traditional approaches in the international trade regime. This is reflected in newly envisaged forms of international cooperation. A more flexible, targeted collaboration that can more effectively address specific global challenges and inequalities is encouraged.<sup>73</sup> Cornwall generally affirms the value of multilateralism but recognizes that it is not the only way to design international economic cooperation. Cornwall also confirms the (re-)emergence of a unilateral layer in international law;<sup>74</sup> it places a great focus on the state and

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70 Another example of a more informal and more political international collaboration is the EU-US Trade and Technology Council (TTC) that the United States and the EU announced in September 2021; see European Commission, EU-US Trade and Technology Council <[https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/stronger-europe-world/eu-us-trade-and-technology-council\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/stronger-europe-world/eu-us-trade-and-technology-council_en)> accessed 10 September 2024.

71 G7 Panel on Economic Resilience, Key Policy Recommendations (n 13).

72 Cornwall Consensus (n 13) 1.

73 Carbis Bay Communiqué (n 13) para 27; G7 Panel on Economic Resilience, Key Policy Recommendations (n 13) at 6.

74 See *supra* Section 2.1.

domestic law aiming to ‘build back the State’.<sup>75</sup> Simultaneously, Cornwall suggests a departure from the single-undertaking approach in international trade law. The same approach is envisaged for international investment law. While international investment law is still exploring the avenues of multilateralism and regionalism, Cornwall shows a different path.

Plurilateralism is emerging as an alternative to traditional forms of international economic governance. This consensus brings plurilaterals to the center stage in the contemporary international order.<sup>76</sup>

### 3.2 *Implementing the New Vision: the Indo-Pacific Economic Framework for Prosperity*

The turn to plurilateralism as a broad-based form of international economic ordering began to materialize in May 2022. The Biden administration returned to the site of previously abandoned trade deals with the IPEF.<sup>77</sup> The plurilateral approach signaled by Secretary Yellen, as mentioned in the introduction, allowed the US government to use the IPEF as a platform for incorporating regional variants of new model language from recent agreements while targeting issue-specific progress in shaping future global economic frameworks.<sup>78</sup> The novelty of the IPEF as a governance framework lies in its explicit facilitation of plurilateral agreements.

75 See Terence Corcoran, ‘The G7 Plan: Build Back the State’ (*Financial Post*, 29 October 2021), <<https://financialpost.com/opinion/terence-corcoran-the-g7-plan-build-back-the-state>> accessed 10 September 2024.

76 Carbis Bay Communiqué (n 13) para 28.

77 ‘FACT SHEET: In Asia, President Biden and a Dozen Indo-Pacific Partners Launch the Indo-Pacific Economic Framework for Prosperity’ (The White House, 23 May 2022) <<https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/23/fact-sheet-in-asia-president-biden-and-a-dozen-indo-pacific-partners-launch-the-indo-pacific-economic-framework-for-prosperity/>> accessed 10 September 2024; see also Julien Chaisse and Pasha L Hsieh, ‘Rethinking Asia-Pacific Regionalism and New Economic Agreements’ (2023) 31 *Asia Pacific Law Review* 451–68 (explaining that the IPEF places a strong emphasis on promoting inclusive economic growth, fostering digital innovation, and encouraging sustainable development. These priorities are, according to the authors, integral to the broader goals of strengthening economic bonds and exerting influence in a manner that carefully navigates around the economic strategies pursued by China); Georgios Dimitropoulos, ‘Industrial Policy and the New Internationalism: After the Liberal International Order’ (forthcoming 2024) *Cornell International Law Journal* (explaining the IPEF and similar initiatives as a spin-off of domestic industrial strategies in the US and elsewhere).

78 Rozlyn Engel and Tobin Hansen, ‘The United States: A Cautious Return to Internationalism’ (Carnegie Endowment for International Peace, 2022) <<https://carnegieendowment.org/2022/02/17/united-states-cautious-return-to-internationalism-pub-86314>> accessed 10 September 2024.

The IPEF was launched on 23 May 2022. The framework was initiated by 14 member nations, representing 40% of the global GDP; it also includes an open invitation for other countries to join. The IPEF is not a traditional agreement. It does not include binding commitments.<sup>79</sup> Instead, it is a structured legal framework for future negotiations. The IPEF is based on four key pillars of a Connected Economy, Resilient Economy, Clean Economy, and Fair Economy.<sup>80</sup> While its details remain to be defined, the slow pace of progress provides reason to temper expectations about what negotiations will produce. However, the promise of IPEF's structure is that it lends itself to the formation of open plurilateral agreements by allowing flexibility in the adoption of the four pillars highlighted by the program,<sup>81</sup> as well as Cornwall's vision to build back the State. The Supply Chain Resilience Agreement is the first plurilateral agreement arising from the IPEF framework – more specifically, the second pillar.<sup>82</sup> The IPEF Clean Economy Agreement and the IPEF Fair Economy Agreement were also signed in July 2024.

### 3.3 *Evaluating Plurilateral Strategies: Prospects and Obstacles*

One argument supporting the move towards plurilateralism is that it represents a pragmatic alternative to multilateralism. From this perspective, broad participation remains the ideal; however, given the current impediments, plurilateralism offers a mechanism for reaching more limited agreements on specific issues among a smaller set of participants.<sup>83</sup> Furthermore, compared to PTAs that the WTO tolerates but has no role in administering, plurilateral agreements are more likely to reinforce rather than undermine the WTO's role as the institutional focal point for trade cooperation.<sup>84</sup> In this regard, plurilateral agreements may be seen as a 'complement to multilateral negotiations',

79 'Joe Biden Waters down Indo-Pacific Economic Framework to Win More Support' (*Financial Times*, 20 May 2022).

80 'Statement on Indo-Pacific Economic Framework for Prosperity' (The White House, 23 May 2022, archived from the original on 28 May 2022).

81 Rahul Mishra and Peter Wang, 'IPEF Introduces Institutional Reality to Indo-Pacific Region' (*Asia Times*, 30 May 2022) <<https://asiatimes.com/2022/05/ipef-introduces-institutional-reality-to-indo-pacific-region/>> accessed 10 September 2024.

82 US Department of Commerce, 'Indo-Pacific Economic Framework for Prosperity Agreement Relating to Supply Chain Resilience' (31 January 2024) <<https://www.commerce.gov/news/press-releases/2024/01/us-department-commerce-announces-upcoming-entry-force-ipef-supply-chain>> accessed 10 September 2024.

83 Tu Xinquan and Shi Xiaojing, 'An Analysis of Plurilateral Agreement Model to Revitalize the WTO Negotiation Function' (2021) 11 *Journal of WTO and China* 3, 16–18.

84 *ibid* 14–15.

with ‘the potential to break new ground, either in the depth or breadth of new obligations.’<sup>85</sup>

Others have suggested that plurilateralism could represent an optimal strategy rather than merely a second-best strategy. In particular, when trade agreements aim not only to eliminate traditional barriers but also to align regulatory policies, a smaller group of participants may be more effective than the full WTO membership. The benefits of harmonization must be weighed against the costs of moving away from national preferences, and it may not be possible to achieve a positive balance by coordinating with more states that hold heterogeneous preferences.<sup>86</sup> Under such circumstances, a plurilateral strategy may produce greater global efficiency than a multilateral strategy.

As for downsides, there are concerns that plurilateralism brings increasing fragmentation and complexity that will impede trade, and that it will distract from or undermine any efforts to continue at the multilateral level.<sup>87</sup> Commentators also warn that increasing reliance on plurilateralism may have a negative impact on developing countries, both because they will tend to be excluded from participating in rule design and because they would lack the capacity to comply, should they seek to join after the fact.<sup>88</sup> It is worth noting that all these concerns likely apply equally or more to regionalism since PTAs take place outside the auspices of the WTO. However, this response does not necessarily indicate whether the turn towards plurilateralism is net positive. The answer to this question likely depends on the details of particular efforts and how effectively states manage to tailor their approaches.

In the context of the WTO, there are both ‘open’ and ‘closed’ plurilateral agreement models.<sup>89</sup> The latter refers to those agreements that have been implemented in accordance with the specific processes outlined in Article II.3 of the Marrakesh Agreement, which defines Plurilateral Trade Agreements as part of the WTO under Annex 4. Plurilateral agreements under Article II.3 are binding only to those members that have signed them; nonetheless, the adoption and integration of new agreements into Annex 4 requires consensus from all WTO members. Two Article II.3 plurilaterals are currently in force: the Agreement on Civil Aircraft and the Government Procurement Agreement. More recent plurilateral efforts of this category, such as the recently concluded

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85 Lewis, ‘Origins of Plurilateralism’ (n 7) 637–38.

86 Basedow (n 68) 415–16.

87 *ibid* 418–19.

88 *ibid* 419; see also James Scott and Rorden Wilkinson, ‘The Politics and Perils of Plurilaterals’ (27 October 2012) 47 *Economic and Political Weekly* 16, 17.

89 See generally Berger and others (n 12).

IFD Agreement with more than 120 WTO members and the even more recently finalized Agreement on Electronic Commerce with more than 90 members, have encountered opposition from countries such as India and South Africa.<sup>90</sup> Given their opposition to the idea of departing from multilateralism, the path to concluding future closed plurilateral agreements under the WTO is doubtful.

By contrast, 'open' plurilateral agreements are the result of negotiations that do not require unanimous adoption. Open plurilaterals generally enter into force when a 'critical mass' of members with a share of trade usually more than 90 percent have signed the agreement.<sup>91</sup> While operating outside the scope of Article II.3 of the WTO Agreement, open plurilaterals are invariably blessed by WTO's highest decision-making body through Ministerial Conference Declarations.<sup>92</sup> ITA and ABT are examples of the successful application of this model. Although other WTO members cannot block open plurilaterals, the distinctive challenge facing any prospective agreements is whether they can attract enough members to meet a viable threshold and whether those members will accept the possibility of free riding by non-signatories.

We have put forward the idea of a broader conceptualization of plurilateralism beyond plurilaterals to help shed light on several issues. First, we can better understand the interaction between new plurilateral frameworks and established legal frameworks as well as evaluate the former's legitimacy, enforceability, and compatibility with existing international law. This involves scrutinizing their legal basis, substantive provisions, and dispute-resolution mechanisms to determine their adherence to fundamental principles, such as sovereign equality and non-discrimination. Second, plurilaterals raise important questions regarding the formation, interpretation, and enforcement of international legal norms. This examination helps us to understand the legal status, authority, and impact of plurilaterals on international governance structures. Furthermore, the voluntary nature of participation in plurilateral framework agreements and individual plurilaterals raises concerns regarding the consent of non-participating states and the legitimacy of decisions that affect their interests.<sup>93</sup> Investigating the legal implications of state consent, withdrawal, and accession to plurilateral agreements is crucial to ensure

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90 Peter Ungphakorn, 'Six Talking Points from the Year's Final General Council Meeting' (*Trade Beta Blog*, 21 December 2023) <<https://tradebetablog.wordpress.com/2023/12/21/six-points-years-final-general-council/>> accessed 10 September 2024.

91 Winslett (n 45).

92 Xinquan and Xiaojing (n 83) 11–13.

93 See also Bernard M Hoekman and Petros C Mavroidis, 'Plurilateral Agreements, Multilateralism and Economic Development' (2025) 26 *JWIT* 31–53, in this Special Issue.

legitimacy and effectiveness in promoting collective action. Finally, plurilateralism requires clear mechanisms for implementation, monitoring, and compliance to uphold a sense of the rule of law and safeguard the rights and obligations of the states and other stakeholders involved.<sup>94</sup> Upholding principles such as transparency, accountability, and potentially judicial review are essential in this regard.

In sum, the dissolution of prior orthodoxies and growing inability of multilateral regimes to address the current challenges of international economic relations have prompted a turn to plurilateralism. In the new emerging consensus, plurilateral agreements may play a greater, if still supplemental, role, with growing awareness of the opportunities they present to facilitate effective cooperation and incremental progress towards the inclusive order envisioned by states.

#### 4 Conclusion

The evolution of international economic relations has prompted a gradual transformation from post-World War II multilateral frameworks towards a greater reliance on plurilateralism. The increasing significance of plurilateralism in international economic law stems from several factors. It represents a strategic adjustment to the complex challenges facing the global economy by offering tailored, flexible, and efficient solutions. By allowing sector-specific negotiations within an institutional or broader multilateral context, plurilateralism may enable more agile and precise responses to the challenges in global trade and economic governance.

The renewed focus on plurilateralism and plurilateral agreements reflects their growing acceptance as an essential instrument for international economic governance. They offer the flexibility and specificity required for contemporary international cooperation, which presents new challenges as well as unique opportunities seen in emerging collaborative practices. The strategic use of plurilateral agreements to form alliances and pursue shared objectives, particularly when multilateral options are constrained or ineffective, highlights their importance.

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94 See also David Collins, 'Plurilateralism and the New Geoeconomics of International Law' (2025) 26 *JWIT* 54–81, in this Special Issue.

The articles in this Special Issue cover a broad range of issues, providing both an in-depth theoretical examination of plurilateralism as a new form of international economic ordering and an exploration of the implementation of plurilateral agreements within international economic law.

Petros Mavroidis and Bernard Hoekman argue in their article titled 'Plurilateral Agreements, Multilateralism and Economic Development' that plurilateral agreements present a viable avenue to rejuvenate the WTO's legislative function, as they facilitate dialogue and allow for the exploration of the benefits of new regulations in specific policy areas. The authors suggest that plurilateral agreements may be the first-best strategy, given differences in state preferences and capacity to implement regulations, but in any event, they are likely the only viable path forward at present. The authors further emphasize that the compatibility of plurilateral agreements with the WTO should be judged by adjudicators rather than contingent on consensus for their adoption. Highlighting the importance of developing countries and LDCs engaging in plurilateral agreements, they refute the notion that such initiatives solely benefit advanced economies. Instead, with a change in mindset, such nations can take a proactive role in using plurilaterals as a means for them to address their specific interests and contribute to achieving the Sustainable Development Goals, despite the challenges posed by global political dynamics and capacity constraints.

David Collins in 'Plurilateralism and the New Geoeconomics of International Law' suggests that the traditional systems of international economic governance and their institutions, like those established under the Bretton Woods and Washington Consensus, are outdated in the face of today's multipolar state capitalism and shifting geopolitical alliances. After exploring the theoretical underpinnings of plurilateralism, the author posits that the emerging geoeconomic landscape necessitates more regulated, state-driven, and alliance-based economic interactions. Collins argues that plurilateral agreements, recognized at the G7 Cornwall meeting, will become increasingly significant in this context, offering tailored responses to the challenges of fragmented multilateralism. He contends that plurilateralism, representing strategic adaptation rather than compromise, can effectively address the diverse needs of participating countries. Despite the complexities of international negotiations amid political strife, Collins believes that the rule of law will continue to underpin economic relations, whether through a reformed WTO, overlapping regional agreements, or flexible treaties.

Meredith Kolsky Lewis examines in 'Plurilateralism and Regional Trade Agreements' plurilateralism and FTAs in international trade, suggesting that the era of comprehensive multilateral trade liberalization is no longer viable,

making a comparison between plurilateralism and multilateralism less relevant. She argues that plurilateral agreements and FTAs have evolved to address specific trade liberalization challenges, with each offering unique advantages and facing distinct challenges. After providing a typology of approaches taken within each category, Lewis highlights that while FTAs and plurilateral agreements have different dynamics and capacities, they do not necessarily compete, but can coexist and complement each other, potentially leading to broader plurilateral initiatives. She advocates for a preference for plurilateral negotiations within the WTO because they tend to be more inclusive by inviting developing countries to participate and by focusing on topics with broad appeal as a matter of necessity. Lewis also sees upside in promoting active participation in the WTO rather than outside the institution.

Georgios Dimitropoulos' article on 'Digital Plurilateralism in International Economic Law: Towards Unilateral Multilateralism?' addresses the place of plurilateralism and plurilaterals in the regulation of the digital economy. It showcases instances of plurilateralism in the regulation of new technologies in international trade during the GATT era, as well as after the establishment of the WTO. The article then focuses on the challenges that the rise of the digital economy poses to established institutions of international economic governance and compares digital plurilateralism with other modalities of international governance such as multilateralism and regionalism. In response to digitalization, states have sometimes used domestic measures, such as data localization, while increasingly resorting to plurilateral frameworks and individual plurilateral agreements both inside and outside institutions. These efforts aimed to address the economic and geoeconomic challenges of the digital economy. This article concludes by exploring the advantages of plurilateralism as a form of 'unilateral multilateralism' in the digital economy.

In 'Good Will Hunting at the WTO: Is Plurilateralism Supporting or Undermining Multilateral Trade Governance', Maria Panezi catalogs the various forms that recent plurilateral initiatives have taken to illustrate their flexibility in design and usage. Panezi draws a distinction between plurilateralism in *stricto sensu* (narrow sense) and *lato sensu* (broad sense). *Stricto sensu* plurilateralism is defined through specific agreements such as the Government Procurement Agreement, which involves a subset of WTO members and focuses on particular sectors or issues. *Lato sensu* plurilateralism encompasses broader geopolitical dynamics within the WTO, including coalition building and a drift from the traditional rule-based system towards more informal, diplomatic solutions and governance models that incorporate non-trade considerations and alternative dispute resolution mechanisms. Panezi's study aims to answer whether plurilateralism is generally good or bad for public

international law, the WTO, and international trade governance, providing responses using a normative neo-institutionalist approach.

In his article titled 'Can Plurilaterals Save the WTO from the National Security Challenge?', Stratos Pahis identifies national security as a fundamental challenge to the WTO, engaging with the question of the efficacy of plurilateral agreements in addressing this issue. The author observes that plurilateral agreements, typically aimed at enhancing integration and trade discipline among countries with similar interests, are not naturally suited to tackling national security concerns that often involve divergent interests, particularly between adversaries. Pahis suggests that plurilateral agreements could play a limited role by defining cognizable security threats, setting best practices for security-related trade measures, managing trade spillovers, and facilitating dialogue. However, he highlights legal hurdles within the WTO framework, especially the requirement for consensus approval, which could impede the use of formal plurilateral agreements in this context. Pahis concludes that while plurilateral agreements may offer some solutions, they cannot fully resolve the national security challenge, which stems from deeper value conflicts and the strategic priorities of key WTO members.

Timothy Meyer's article 'Plurilateralism and the Future of International Investment Law' discusses the potential of plurilateral agreements to circumvent the longstanding challenges of establishing a comprehensive multilateral investment framework. Despite the historical dominance of bilateral investment treaties and the fragmented nature of international investment law, Meyer argues that plurilateral agreements offer a viable forward path. Prior and ongoing negotiations have taken place within broader institutional contexts such as the WTO, UNCITRAL, and regional frameworks, which do not focus on investment law. This institutional separation makes it easier to sidestep divisive substantive issues that have historically impeded multilateral agreements, thereby facilitating progress in procedural and ancillary issues. At the same time, embedding agreements within an institutional framework comes with the usual benefits of reduced transaction costs and support for compliance and implementation. Meyer thus sees a promising role for plurilaterals in facilitating incremental advances within a limited sphere.

Peter Hongler and Simon Habich discuss in their article 'Plurilateralism in International Tax Law: An Option for the New UN Framework Convention in Tax Matters' how plurilateral agreements may offer a promising solution to the stalemates in the international tax regimes. Drawing analogies to trade law and noting the difficulty of achieving multilateral consensus in both areas, they suggest that plurilateralism presents a viable path forward in allowing for cooperation among a willing coalition of countries, without necessitating

broad consensus. This approach is especially beneficial for addressing multi-party issues and could lead to the greater ‘formalization’ of the international tax regime, which currently lacks a comprehensive governance structure and relies heavily on bilateral agreements. The authors advocate the creation of an interstate judicial body to lend stability and reduce arbitrariness in the international tax system, noting that plurilateralism can better accommodate the interests of developing countries and adapt more swiftly to societal changes. The article also covers recent UN initiatives to develop a new framework convention on tax matters, proposing concrete design features that could facilitate an optimal plurilateralist strategy and make the international tax system more responsive to global needs.

Weihuan Zhou and Victor Crochet, in their article titled ‘Fragmenting International Trade Dispute Settlement: A Quest for a Plurilateral Appellate Mechanism Under the WTO’, examine the increasing fragmentation in international trade dispute resolution. They attribute this to the current deadlock in the WTO’s dispute settlement system, not to the proliferation of FTAs. The authors argue that the MPIA, while resembling a plurilateral in some ways, differs in key respects and fails to address the resultant fragmentation. They propose a truly plurilateral appellate mechanism under the WTO that would include a critical mass of WTO members, particularly major users, and thus help tackle fragmentation and restore consistency and predictability in international trade law. Although restoring multilateralism remains the goal, they believe that an open plurilateral agreement could be valuable both in providing a functioning temporary appeal system and in building new momentum in multilateral negotiations. The authors conclude by questioning one of their starting premises, asking how important predictability is in this context, and positing that a redesigned appellate mechanism might need to strike a different balance between predictability and flexibility.

In ‘The Dawn of a New Era: Advancing ESG Obligations in Arbitration Through Plurilateralism’, Mélida Hodgson, Kabir Duggal, Katelyn Horne and Ana Pirmia argue that plurilateralism has the potential to serve as a pivotal strategy for incorporating Environmental, Social and Governance (ESG) standards into international investment law, thereby enhancing ESG’s role in international arbitration. They highlight specific opportunities that plurilateral agreements present, including the ability to tailor binding ESG commitments and incorporate industry standards through sector-specific initiatives. The authors also see the potential for enhanced stakeholder participation and inclusion of diverse interests, all aimed at the goal of sustainability and fairness in the global investment arena. The effort to incorporate ESG obligations into plurilaterals also faces challenges, but the authors offer ideas for managing or

resolving them. Ultimately, the authors conclude that the key advantages that plurilaterals offer – including focus, speed, and flexibility – are reasons to be optimistic about their potential contribution to advancing ESG norms.

In conclusion, the comprehensive analysis offered by this Special Issue of the *Journal of World Investment & Trade* on ‘Plurilateralism: A New Form of International Economic Ordering?’ underscores key developments in the international economic governance architecture. The contributors propose a forward-looking approach that moves beyond the deadlocks typical of multilateral negotiations. Plurilateralism is seen not simply as an alternative, but as a standard method for advancing international economic relations in an era defined by global complexity and evolving power dynamics. By examining the application of plurilateral agreements in areas such as trade, investment, taxation, and dispute resolution, this Special Issue suggests that these mechanisms can provide solutions that multilateral frameworks often fail to deliver. Moreover, it underscores the importance of inclusivity, emphasising the need to prevent the marginalisation of developing countries and LDCs within plurilateral structures. This requires a careful design process, ensuring that such agreements remain open, transparent, and inclusive, while still addressing the specific needs and goals of all parties involved.

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