

# Plurilateral Agreements: A viable alternative to the WTO?

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# I . Why Plurilateral Agreements? ( First of All )

## Multilateral Agreements and Plurilateral Agreements on Trade-related Issues

Multilateral agreements	Plurilateral agreements			
	Country-based plurilateral agreements	Issue-based plurilateral agreements		
WTO rule: Yes			WTO rule: No	
WTO Annex 1, 2 & 3 to GATT 1994	GATT Article XXIV GATS Article V  RTAs/FTAs	Annex 4 Agreements on: - Government Procurement - Trade in Civil Aircraft	Financial Service Agreement, Basic Telecommunications Agreement, ITA, ACTA, etc.  In the future, plurilateral agreements may be concluded in the areas of services, electronic commerce, standards and conformance (TBT), country of origin, etc.	In the future, plurilateral agreements may be concluded in the areas of competition, investment, etc. ( In the area of investment, TRIM is already in place)

\* Issue-based plurilateral agreements between three or more countries are considered here with a view to their contribution to rulemaking and liberalization in the field of international trade.

# I. Why Plurilateral Agreements?

## - Issues ①

### 1. Stalemate in the WTO • Doha Round

\*No prospect for the conclusion of the Doha Round

-19 years after the conclusion of the Uruguay Round

-11 years after the launch of the Doha Round

\*No solution to the Round saddled with “consensus” and “single undertaking” principles, and “too many issues”?

\*Necessity to deal with “variable geometry” of WTO members

\*Contrast between strong dispute settlement and weak decision-making mechanisms

See “Toward the Reform of the WTO and the Early Conclusion of the Doha Round (Proposal)” by the author

## II . Why Plurilateral Agreements? - Issues ②

### 2. Accelerating FTA proliferation

About 500 FTAs have been notified to the WTO

### 3. Conclusion of ACTA negotiations

Anti-counterfeiting Trade Agreement (Concluded in 2011)

### 4. Polarized global trade regime and global governance

\*Regional competition and emerging mega FTAs

\*Spaghetti bowl effects of trade “rules”

### 5. Plurilateral agreements as important tools for liberalization and rule-making

## II . What are issue-based Plurilateral Agreements?

### 1. Definition and necessity

### 2. Precedents

#### 1)Plurilateral agreements in GATT/WTO

①Tokyo Round Codes

②WTO Annex 4 agreements (See Reference 1)

#### 2)Other plurilateral agreements

①ITA

②Financial Services Agreement

③Basic Telecommunications Services Agreement

④ACTA

### 3. ITA・ACTA and Japan's contribution

See “<http://www.rieti.go.jp/jp/publications/summary/12020002.html>

“ by the author

## LIST OF ANNEXES

Reference 1

### ANNEX 1

#### ANNEX 1A: Multilateral Agreements on Trade in Goods

General Agreement on Tariffs and Trade 1994

Agreement on Agriculture

Agreement on the Application of Sanitary and Phytosanitary Measures

Agreement on Textiles and Clothing

Agreement on Technical Barriers to Trade

Agreement on Trade-Related Investment Measures

Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994

Agreement on Preshipment Inspection

Agreement on Rules of Origin

Agreement on Import Licensing Procedures

Agreement on Subsidies and Countervailing Measures

Agreement on Safeguards

#### ANNEX 1B: General Agreement on Trade in Services and Annexes

#### ANNEX 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights

### ANNEX 2

Understanding on Rules and Procedures Governing the Settlement of Disputes

### ANNEX 3

Trade Policy Review Mechanism

### ANNEX 4

#### Plurilateral Trade Agreements

Agreement on Trade in Civil Aircraft

Agreement on Government Procurement

(International Dairy Agreement)

(International Bovine Meat Agreement)

**III. GATT/WTO and Plurilateral Agreements**  
**GATT/WTO and Changes in the Treatment of Plurilateral Agreements**

Reference 2

	1947 -	1979 - Introduction of Tokyo Round Codes	1995 - Establishment of WTO	Incorporation of Future Plurilateral Agreements
GATT	GATT 1947 Participation of all members	GATT 1947 Participation of all members	GATT 1994 Participation of all members	
Codes		Agreement on Subsidies and Countervailing Measures, Anti-dumping Agreement, TBT Agreement, Agreement on Import Licensing Procedures, Customs Valuation Agreement, Agreement on Trade in Civil Aircraft, Agreement on Government Procurement, International Dairy Agreement, International Bovine Meat Agreement >> Non-MFN based agreements Participation of some members	Agreement on Subsidies and Countervailing Measures, Anti-dumping Agreement, TBT Agreement, Agreement on Import Licensing Procedures, and Customs Valuation Agreement were turned into Annex 1a agreements under the WTO (participated by all members). >> Participation of all members	
WTO Annex 1A agreements on trade in goods			Participation of all members	?? Introduction of schedules of concessions approach? Amendments by critical mass plus MFN-based distribution of benefits?
WTO Annex 4 agreements			Agreement on Trade in Civil Aircraft, Agreement on Government Procurement, International Dairy Agreement International Bovine Meat Agreement (Only first two agreements are effective today). >> Non-MFN-based agreements Participation of some members	?? Easing procedural requirements for establishing new agreements? (e.g., Critical mass + MFN-based distribution of benefits)
WTO Annex 1B agreements on trade in services			Participation of all members Introduction of schedules of commitments approach	Additional sectoral agreements by same approach as those used for Financial Services Agreement and Basic Telecommunication Agreement? (Amendments to schedules of commitments)
WTO Annex 1C agreements on trade-related aspects of intellectual property rights			Participation of all members	?? Introduction of schedule of concessions/commitments approach? Amendments by critical mass plus MFN-based distribution of benefits?

## IV. Characteristics of Plurilateral Agreements

1. Paving the way for addressing specific issues and areas
2. Allowing flexibility in the choice of participants
3. Getting around the decision making ordeal of the WTO
  - >There are certain limits (See Reference 3 for details)
4. Responding to the changing needs of industries with agility
5. Preparing for multilateral rulemaking in the future



# V. Constraints on Plurilateral Agreements

## 1. Legal Constraints (See Reference 3)

### 1) Agreements within the WTO

Amendments to Annex 1 agreements / Creation of Annex 4 agreements

-> Consensus is required

### 2) Precedents

① Critical Mass + MFN extension of benefits to non-members

ITA, Financial Services Agreement, Basic Telecommunication Services Agreement

② Codes (Annex 4 agreements)

### 3) Proposals for improvement

① Improving decision-making mechanism for plurilateral agreements

② Extending "Schedules of Concessions" approach

### 4) Agreements outside the WTO

ACTA

## 2. Substantive Constraints

1) Choice of participating members

2) Critical Mass

3) Level of ambition/Scope of participating members/Timing of realization (See Reference 4)

**Comparison of Trade-related Multilateral and Plurilateral Agreements**

Reference 3

	WTO (Multilateral)	Plurilateral agreements						
		RTAs/FTAs (Country-based plurilateral agreements)	Issue-based plurilateral agreements*					WTO Rule: No
			WTO Rule: Yes					
			Annex 4 agreements	Service-sector agreements (Financial Services Agreement / Basic Telecommunications Agreement)	Tariff reduction / elimination agreement (ITA)	ACTA	Others	
Participants (countries/regions)	157	Two or more	Two or more	Critical mass Current membership: Financial Services Agreement (70) / Basic Telecommunications Agreement (69)	Critical mass (ITA): Approx. 90% of world trade (Currently, ITA covers 97% of world trade or 73 countries.)	37 (10 + EU 27)	Two or more	Two or more
Basic rules	Annex 1 to Agreement Establishing WTO (WTO Agreement)	GATT Article XXIV (Substantially all trade) GATS Article V (Substantial sectoral coverage)	Annex 4 to WTO Agreement	Protocols to GATS concerning financial services / basic telecommunications services	GATT	TRIPS	?	
Establishment of a new agreement		Participants	Consensus of all WTO members No voting provision	Protocols to GATS concerning financial services / basic telecommunications services (by consensus of all WTO members) >> Participants' schedules of commitments and lists of exemptions from GATS Article II (MFN treatment) amended and attached	Ministerial declaration by participating countries >> Participants' schedules of concessions amended	Participants	? (Separate consideration for each negotiation area)	Participants
Amendments to existing agreements	Consensus of all WTO members No voting provision	Participants	Participants	Modification of schedules under GATS Article XXI	Participants (in terms of each participant amending its schedule of concessions)	Participants	Participants	Participants
Obligations under WTO rules	YES	NO	YES	YES (subsequent to amendments to schedules of commitments)	YES (subsequent to amendments to schedules of concessions)	NO	? (Depends on content of agreement)	NO
Application of benefits on MFN basis	YES (in principle)	NO	NO (for Agreement on Trade in Civil Aircraft and Agreement on Government Procurement) * YES is possible for future agreements.	YES	YES	YES TRIPs has no provision for MFN exceptions.	YES in principle? (L/4905) Depends on relevant WTO provisions and content of agreement	NO
Others	Doha Round launched in 2001 and ongoing on basis of consensus of all WTO members	In principle, no selectivity for negotiation areas * Service-sector agreements possible under GATS Article V (505 agreements reported to date)	Only two agreements are in force now. (Agreement on Trade in Civil Aircraft and Agreement on Government Procurement)	Regarded as a precedent-setting plurilateral agreement on trade in services	Regarded as precedent-setting plurilateral agreements for tariff reduction and elimination	Standalone agreement supplementary to TRIPs Agreement	Negotiation areas may be selected * Must be WTO-consistent, in principle (Separate consideration for each negotiation area)	Plurilateral agreements on trade and competition, etc. fall into this category
Establishment	1995	?	1995	1997	1997	2011	?	?

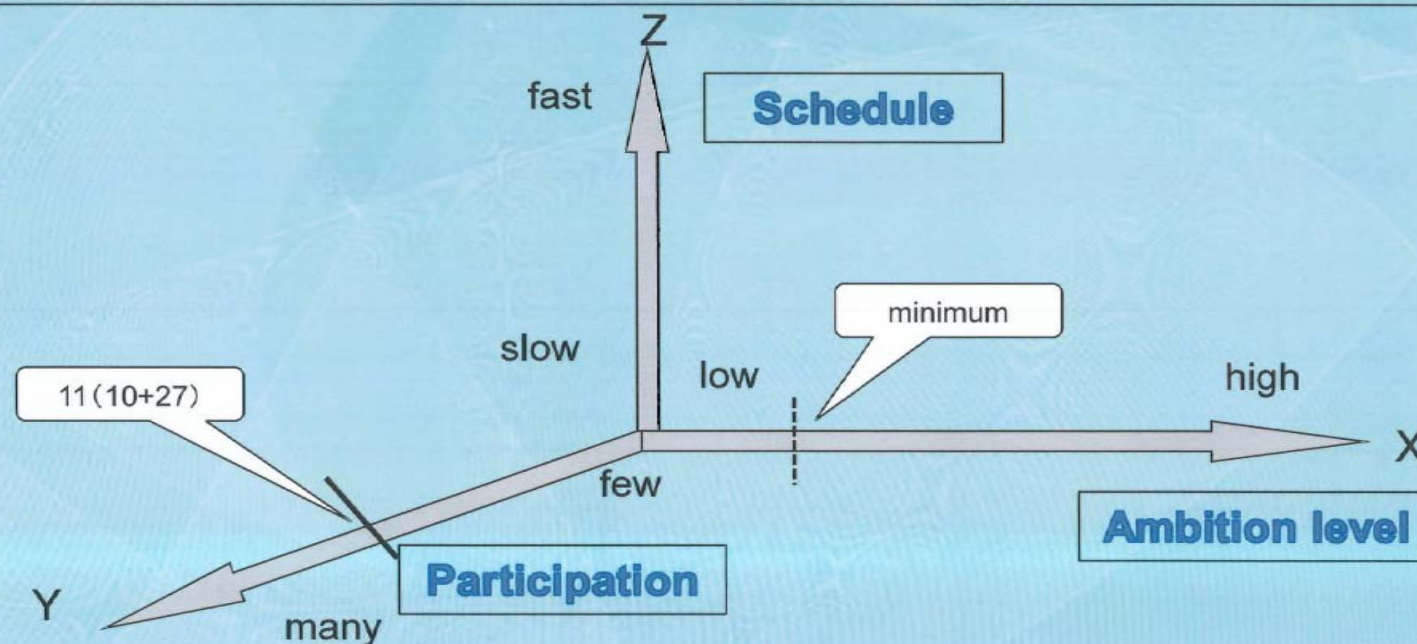
\* For the purpose of the paper, issue-based plurilateral agreements signed by three or more countries are considered from the aspect of contribution to rulemaking and liberalization in the field of international trade.

# Basic Parameters for ACTA

- 'Ambition Level', 'Number of participants' and 'Schedule for Conclusion' should be considered as essential parameters to achieve ACTA.

Members should maximize:

$$F = \alpha X \times \beta Y \times \gamma Z$$



## VI. FTAs and Issue-based Plurilateral Agreements

### 1. Capability of dealing with sector/issue-specific needs

FTAs: Substantially all trade (GATT Article XXIV)

Substantial sectoral coverage (GATS Article V)

### 2. Flexibility in selecting participating members

FTAs: Choice of members comes first

### 3. Relationships with non-members in terms of rights and obligations

FTAs: non MFN treatment

## VII. Potential Areas for Plurilateral Agreements in the Future-①

### 1. Possible Areas

#### 1) Tariffs

Expansion of product coverage of ITA

#### 2) Services

Sectoral initiatives based on the approach used for  
Financial / Basic Telecommunications Services  
Agreements

#### 3) Government procurement

Addition of participating members

#### 4) Electronic commerce

Suspension/elimination of custom duties, NT/MFN/MA

## VII. Possible areas for Plurilateral Agreements in the Future-②

### 5) Trade and investment

“Singapore issue”

Important topic for both developed and developing economies

### 6) Trade and competition

“Singapore issue”

Oligopoly/monopoly of natural resources markets, etc.

### 7) Standards and conformance, and TBT

Focal area of behind-the-border measures

International standards, mutual recognition,  
good regulatory practices, etc.

### 8) Rules of origin

Preferential Rules of origin

## VII. Possible areas for Plurilateral Agreements in the Future-③ (ISCA)

It is also possible to negotiate multiple areas/issues together

### International Supply Chain Agreement (ISCA)

See Concept Paper for ISCA by the author (See Attachment)

Cited in World Economic Forum (WEF): 'Enabling Trade Report 2013' (P27), January 2013 and

Bernard Hoekman and Selina Jackson:

'Shifting Focus in Trade Agreements-From Market Access to Value-Chain Barriers', Trade Post, January 2013 ( <http://blogs.worldbank.org/trade> )

#### 1 Necessity

- Need to accommodate **the globalization of business activities**
- Lack of progress in the World Trade Organization (WTO) Doha Round (slowness)
- Narrow scope of the Doha Round (narrowness)
- Proliferation of regional trade agreements (RTAs) and resulting **"spaghetti bowls" of rules of origin as well as of trade rules and disciplines**
  - Fragmentation of rules across different RTAs involving big players poses by far the most serious problem.
  - **Big RTAs are a must for international trade liberalization and rule-making but do not provide a global solution.**

## VII. Possible areas for Plurilateral Agreements in the Future-③ (ISCA)

### 2 A possible tool for reform

- 1) Accelerating WTO negotiations where applicable
- 2) Big RTAs

Big (cross-regional) RTAs can facilitate global supply chains **if and only if there is good coordination among the members concerned toward the development of uniform global rules.**

ISCA can be a possible mechanism for coordination among the members concerned, enabling them to untangle the spaghetti bowl effect of multiple sets of rules of origin and trade rules.

### 3) ISCA

**As a way to improve global supply chains in certain priority areas, the possibility of launching plurilateral negotiations should be studied,** following such successful precedents as the ITA, the Basic Telecommunication Services Agreement, and the Financial Services Agreement concluded in 1997 and the Anti-counterfeiting Trade Agreement (ACTA) in 2011.



## VII. Possible areas for Plurilateral Agreements in the Future-③ (ISCA)

### 3 Basic Principles to underlie the ISCA

- 1) A plurilateral agreement covering multiple areas
- 2) **Complementary to and consistent with WTO agreements, thereby creating the basis for future multilateral rules**
- 3) ISCA negotiations should **neither delay nor undermine the Doha Round**
- 4) Promotion and participation by like-minded members (critical mass)
- 5) An agreement outside the WTO
- 6) Most favored nation (**MFN**) extension to provide the basis for future rules
- 7) **Avoiding the fragmentation of trade rules and the spaghetti bowl phenomenon**
- 8) **Timeframe and targets for negotiations**
- 9) Dispute settlement
- 10) Sufficient consultation with the **business community**
- 11) Transparency

## VII. Possible areas for Plurilateral Agreements in the Future-③ (ISCA)

### 4 Possible Areas to be Covered by the ISCA

- 1) Defining the agenda **in close collaboration with the business community**
- 2) Setting a **focused agenda** to enable the negotiations to be concluded within a designated, short time period
- 3) Potential areas for consideration
  - 3.1) Areas already covered by WTO agreements
    - a) Technical barriers to trade (**TBT**) and sanitary and phytosanitary (**SPS**) measures
    - b) **Trade facilitation**  
**if and only if trade facilitation negotiations in DDA fail to move forward.**
    - c) **Export restrictions**
  - 3.2) Areas not covered by WTO agreements
    - a) **Investment**
    - b) **Competition**
    - c) **E-commerce**
    - d) **Preferential rules of origin**

## VIII. Governance of the Global Trade System and Plurilateral Agreements

1 Are plurilateral agreements replacing the WTO?

The answer is clearly “no”.

They should and do complement the WTO, which is facing serious challenges posed by FTAs.

2 Can Plurilateral agreements address the needs of developing countries?

5 factors that are likely to facilitate the participation of developing countries

1) the proliferation of FTAs—especially the emergence of mega FTAs—has put developing countries in a difficult situation.

2) developing countries, which are increasingly diverse in their economic interests, would find clear merits in participating in plurilateral agreements designed to promote liberalization and rulemaking in specific areas of interest.

3) plurilateral agreements should be designed to encourage the participation of like-minded developing countries.

4) dispute settlement provisions should not be too stringent so as not to discourage developing countries from joining.

5) technical assistance and capacity building should be an integral part of plurilateral agreements

The answer is “yes,” provided that they are designed to attract like-minded developing countries with due consideration given to the factors above.

## VIII. Governance of the Global Trade System and Plurilateral Agreements

### 3 Global governance and plurilateral agreements

Era of inter-institutional competition among the WTO, FTAs, and issue-based plurilateral agreements

Necessity to make the most use of issue-based plurilateral agreements

-> Avoiding excessive FTA competition and the polarization of the global trade system, while supporting the multilateral trade system embodied by the WTO

# Attachment International Supply Chain Agreement (ISCA) Concept Paper

- 2012/10/29
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- **Concept Paper for an International Supply Chain Agreement (ISCA)**
- **Improving global supply chains by an issues-based plurilateral approach**
- NAKATOMI Michitaka
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- **1. Necessity and Background**
- Need to accommodate the globalization of business activities
- Lack of progress in the World Trade Organization (WTO) Doha Round (slowness)
- Narrow scope of the Doha Round (narrowness)
- Proliferation of regional trade agreements (RTAs) and resulting “spaghetti bowls” of rules of origin as well as of trade rules and disciplines
- - Fragmentation of rules across different RTAs involving big players poses by far the most serious problem.
- - Big RTAs are a must for international trade liberalization and rule-making but do not provide a global solution.
- 
- **2. A Possible Tool for Reform**
- 1) Accelerating WTO negotiations where applicable
- Potential areas include non-agricultural market access (NAMA), services, trade facilitation, the expansion of the International Technology Agreement (ITA), etc.
- Progress, however, is not necessarily forthcoming.
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- 2) Big RTAs
- Big (cross-regional) RTAs—e.g., the Trans-Pacific Partnership Agreement (TPP), a free trade agreement (FTA) between the United States and the European Union (EU), and one between Japan and the EU—can facilitate the development and efficient operation of global supply chains if and only if there is good coordination among the members concerned and others toward the development of uniform global rules.
- An International Supply Chain Agreement (ISCA) can be a possible mechanism for coordination among the members concerned, thereby enabling them to untangle the spaghetti bowl effect of multiple sets of rules of origin and trade rules.
- 
- 3) ISCA
- As a way to improve global supply chains in certain priority areas, the possibility of launching plurilateral negotiations should be studied, following such successful precedents as the ITA, the Basic Telecommunication Services Agreement, and the Financial Services Agreement concluded in 1997 and the Anti-counterfeiting Trade Agreement (ACTA) in 2011.

# Attachment International Supply Chain Agreement (ISCA) Concept Paper

- **3. Basic Principles to Underlie the ISCA**
- 1) A plurilateral agreement covering multiple areas
- 
- 2) Complementary to and consistent with WTO agreements, thereby creating the basis for future multilateral rules
- a) Complementary where relevant WTO agreements exist
- (cf. ACTA approach as a trade-related aspects of intellectual property rights (TRIPs)-plus agreement)
- e.g. Agreement on Technical Barriers to Trade (TBT Agreement),
- b) Creating new disciplines/rules where relevant WTO agreements do not exist
- e.g. Competition, investment, e-commerce, preferential rules of origin
- 
- 3) ISCA negotiations should neither delay nor undermine the Doha Round
- Areas to be covered by the ISCA should not overlap with the Doha Development Agenda (DDA).
- e.g. Trade facilitation should be pursued in the DDA negotiations unless it becomes clear that progress is not expected there.
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- 4) Promotion and participation by like-minded members (critical mass)
- The United States, the EU, Japan, and other leading developed members ++
- Like-minded developing members
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- 5) An agreement outside the WTO
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- 6) Most favored nation (MFN) extension to provide the basis for future rules
- Benefits resulting from the agreement should be extended to non-participants in general to create de facto international standards in the targeted areas to provide the basis for future WTO rules.
- The free riding issue has been exaggerated in many circumstances.
- Exceptions to MFN can be discussed further.
- In areas where relevant WTO rules exist, MFN extension is generally required by the WTO agreement concerned.
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# Attachment International Supply Chain Agreement (ISCA) Concept Paper

- 7) Avoiding the fragmentation of trade rules and the spaghetti bowl phenomenon
- In the course of negotiations, participating members should seek to address the fragmentation of trade rules that has been or may be created by big regional RTAs.
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- 8) Timeframe and targets for negotiations
- Conclusion within a maximum of three years
- Business requires speed.
- Speed is also crucial to prevent the creation of an unswallowable spaghetti bowl of big RTAs.
- The level of ambition should be carefully controlled by participating members.
- The harmonization of existing business practices and rules should be the primary goal of the negotiations.
- Big members must not engage in a fight for hegemony.
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- 9) Dispute settlement
- In order to avoid protracting the negotiations and enable wider participation in the future, dispute settlement provisions should not be too stringent.
- cf. ACTA
- 
- 10) Sufficient consultation with the business community
- As in the case of the ITA, the full involvement of the business community is essential to picking up its needs and bringing the negotiations to a successful end.
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- 11) Transparency
- In order to enable the ISCA to serve as the basis for future multilateral rules, the transparency of the negotiations should be open and visible to the governments of non-participating members as well as to the business community.
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# Attachment International Supply Chain Agreement (ISCA) Concept Paper

- **4. Possible Areas to be Covered by the ISCA**
- 1) Defining the agenda in close collaboration with the business community
- The views and opinions of the business community should be respected and taken into account in selecting areas subject to negotiation.
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- 2) Setting a focused agenda to enable the negotiations to be concluded within a designated, short time period
- Almost all of the WTO agreements are in some way relevant to global supply chains.
- The level of ambition, scope of participating members, and negotiation speed are correlated (see the chart used in the ACTA negotiations).
- Overburdening the agenda is tantamount to stifling and killing the negotiations from the outset.
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- 3) Potential areas for consideration
- The following are some of the potential areas and issues that should or may be considered for inclusion in the agenda for the ISCA negotiations to stimulate discussion. Other areas and issues can also be considered.
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- 3.1) Areas already covered by WTO agreements
- a) Technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures
- TBT measures are definitely the area of interest to the business community.
- Many behind-the-border measures and non-tariff barriers are related to TBT measures.
- By introducing further clarity, transparency, good practices, and so forth, the ISCA can complement the TBT Agreement and hence facilitate cross-border business activities.
- Likewise, the ISCA may complement certain elements of the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement).
- 
- b) Trade facilitation
- This should be added to the ISCA agenda if and only if trade facilitation negotiations in DDA fail to move forward.
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- c) Export restrictions
- Although the WTO rules impose disciplines on export restrictions, they are much weaker than those on import restrictions.
- In order to facilitate the development and efficient operation of global supply chains, discussions should take place to set out rules to discipline export restrictions as explicitly as those governing import restrictions.



# Attachment International Supply Chain Agreement (ISCA) Concept Paper

- 3.2) Areas not covered by WTO agreements
- a) Investment
- The issue of trade and investment was dropped from the DDA at the Cancun Ministerial.
- It is becoming clear that not only investment protection but also investment liberalization is necessary.
- No single country can persuade the governments of other countries to fix the problems in their investment regimes.
- Establishing a common position on investment rules is essential.
- Investment rules benefit not only developed members but also developing countries in need of inward foreign direct investment (FDI) and investment opportunities abroad (North-South, South-South, South-North investment).
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- b) Competition
- Trade and competition was also dropped from the DDA at the Cancun Ministerial.
- Competition rules are useful, for example, in disciplining the anti-competitive practices of state-owned enterprises (SOEs) and oligopolistic suppliers in certain areas as well as dealing with discriminatory export controls.
- Regarding SOEs, serious discussion should take place first on the definition of SOEs and the disciplines governing them.
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- c) E-commerce
- Issues related to MFN, national treatment (NT), market access (MA), and intellectual property right (IPR) protection in e-commerce are definitely the area where collaboration among the like-minded countries can produce meaningful results for business around the world.
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- d) Preferential rules of origin
- The harmonization of non-preferential rules of origin is covered by the DDA but is not making progressing well because of their multi-faceted nature (e.g., statistics, trade remedies, quota management etc.).
- Preferential rules of origin are not covered by the DDA.
- As the first step toward eliminating the spaghetti bowl effect of preferential rules of origin, collaboration should take place within the ISCA framework to lessen the burden on business.
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- 3.3) Others
- a) Capacity building and technical assistance
- In order to enable wider participation, collaboration for capacity building and technical assistance is essential.
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- b) Collaboration in analyzing global supply chains
- As in the case of the JETRO-IDE/WTO study on global value chains, participating members must collaborate to deepen their common understanding of changes in value chains and trade in tasks.