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# PLURILATERALISM WITHOUT FRAGMENTATION: CAN PLURILATERAL AGREEMENTS REFORM THE WTO WITHOUT UNDERMINING MULTILATERALISM?


***~ Parthivi Garv***



## ABSTRACT

In March 2026, 129 WTO Members failed for the fourth time to have the Investment Facilitation for Development (IFD) Agreement added to Annex 4 of the Marrakesh Agreement, while the Agreement on Electronic Commerce (ECA) went ahead through interim arrangements instead. This paper asks when a plurilateral agreement should receive formal incorporation into the WTO, and whether that answer should turn on the agreement's effects on Members that stay outside. It argues that the real institutional risk lies not in plurilateralism itself but in Article X:9, which applies the same consensus requirement to every agreement, whether or not it discriminates against non-participants. The paper builds a four-part framework covering institutional anchoring, non-discrimination, meaningful inclusivity and accountability, and applies it to three agreements that reached the WTO by different routes: the IFD Agreement, the Services Domestic Regulation Reference Paper and the ECA. The comparison shows that an agreement's fate depends as much on the pathway open to it as on its own design. The paper then considers three reforms: General Council guidelines for assessing incorporation requests, clearer terms for interim arrangements, and a differentiated threshold under Article X:9, which would require formal amendment.



**Keywords:** plurilateral agreements; WTO reform; Annex 4; Article X:9; consensus; Investment Facilitation for Development; electronic commerce; multilateralism


## I. INTRODUCTION

On 29 March 2026, at the close of the WTO's Fourteenth Ministerial Conference (MC14) in Yaoundé, 129 Members participating in the Investment Facilitation for Development (IFD) Agreement recorded that they had, since their first request in February 2024, repeatedly asked the General Council to add the Agreement to Annex 4 of the Marrakesh Agreement.[1] No such decision was adopted; instead the 129 issued a joint declaration recording their disappointment.[2] Commentary attributes the outcome to India, reported to have maintained its objection after South Africa and Türkiye withdrew theirs.[3] India's Commerce Minister put its position differently: incorporation should rest on consensus and should not affect Members who stay outside.[4]

A different group at the same conference reached for a different tool. The co-sponsors of the Agreement on Electronic Commerce (ECA) had likewise failed, twice, to secure Annex 4 status for it.[5] Rather than wait, a group of them (sixty-seven on the WTO's later count) adopted the Agreement's text with an Interim Arrangements Annex letting it enter into force among themselves once forty-five instruments of acceptance are deposited, the Director-General acting as depositary and the Secretariat as servicer.[6]

The gate itself is Article X:9 of the Marrakesh Agreement, under which the Ministerial Conference, on the request of the parties to a trade agreement, may add it to Annex 4 only "exclusively by consensus."[7] What such an agreement does to Members outside it is a separate question, answered by Article II:3, under which an Annex 4 agreement binds only its parties and creates neither rights nor obligations for the rest of the membership.[8] Participation (who may join), protection of outsiders, and formal incorporation are therefore three distinct legal

[1]WTO, Joint Ministerial Declaration on the Investment Facilitation for Development Agreement (29 March 2026) WT/MIN (26)/32, para 1.
[2]Ibid paras 2, 4.
[3]Karl P Sauvant, 'Impasse at the WTO on Investment Facilitation, the Way Forward' (*International Economic Law and Policy Blog*, 5 June 2026) https://ielp.worldtradelaw.net/2026/06/impasse-at-the-wto-on-investment-facilitation-the-way-forward/ accessed 22 September 2026.
[4]'WTO MC14: Reform Discussions Anchor Agenda as Ministerial Opens in Cameroon' *Down To Earth* (Yaoundé, 27 March 2026) https://www.downtoearth.org.in/economy/wto-mc14-reform-discussions-anchor-agenda-as-ministerial-opens-in-cameroon accessed 22 September 2026 (quoting Commerce and Industry Minister Piyush Goyal).
[5]WTO, Declaration on Interim Arrangements for the Agreement on Electronic Commerce (27 April 2026) WT/MIN (26)/42, para 2 (recording unsuccessful requests of 18 February 2025, WT/GC/W/963, and 16 December 2025, WT/GC/W/963/Rev.1).
[6]Ibid para 5; Agreement on Electronic Commerce, annexed to WT/MIN (26)/42, arts 29.2, 36 to 37.
[7]Marrakesh Agreement Establishing the World Trade Organization (adopted 15 April 1994, entered into force 1 January 1995) 1867 UNTS 154 (WTO Agreement) art X:9.
[8]WTO Agreement art II:3.

questions, and an agreement can satisfy the first two while nevertheless failing to obtain formal incorporation for reasons that extend beyond the agreement's substantive design.

This paper asks when a plurilateral agreement should receive that formal incorporation. It argues that plurilateralism is not inherently in tension with a multilateral system: an agreement open to accession, non-discriminatory in its benefits, and transparently administered is less likely to create direct adverse effects for non-participants, regardless of the number of its participants. Institutional risk instead arises at the gateway, where Article X:9 applies the same consensus threshold to agreements whose effects on non-participants may differ substantially. Because the gate does not distinguish, a broadly supported, non-discriminatory agreement can be held outside the WTO's framework indefinitely, leaving its proponents to pursue schedule-based techniques or interim arrangements if they wish to remain connected to WTO institutions.

To test this, the paper builds a four-part framework (anchoring, non-discrimination, meaningful inclusivity, and accountability), developed here rather than drawn from WTO law, and applies it to three agreements that reached the WTO by three different routes: the IFD Agreement, refused Annex 4 status; the Reference Paper on Services Domestic Regulation (SDR), entered through Members' GATS schedules; and the ECA, now proceeding through interim arrangements. The comparison shows that an agreement's institutional fate depends not only on its own qualities but also on which institutional pathway is available to it, and that the door of last resort gives WTO institutions the least control over the result.

The analysis is doctrinal, drawing on the Marrakesh Agreement, the two 2026 ministerial declarations, WTO Secretariat materials, and the reform debate, including India's 16 September 2026 submission of principles for accommodating plurilateral initiatives.[9] It reflects developments to 22 September 2026; because General Council records publish with a lag, the most recent discussions are reconstructed from specialist reporting and flagged as such.[10]

[9]India, 'Guiding Principles for Plurilateral Initiatives and Agreements at the WTO' (Communication to the General Council, 16 September 2026) WT/GC/REFORM/W/14, reproduced in Peter Ungphakorn, 'India Proposes Plurilateral Guardrails: Is New Delhi's Resistance Softening?' (*Trade β Blog*, 17 September 2026) https://tradebetablog.wordpress.com/2026/09/17/india-guardrails-plurilaterals-softening/ accessed 22 September 2026 ('Guardrails').

[10]See, for example, Chris Horseman, 'India Sets Out Guardrails for Plurilateral Deals at WTO' (*Borderlex*, 17 September 2026) https://borderlex.net/2026/09/17/india-sets-out-guardrails-for-plurilateral-deals-at-wto/ accessed 22 September 2026.

## II. THE LEGAL ARCHITECTURE: ANNEX 4, SCHEDULES, AND INTERIM PATHWAYS

### *A. The Baseline: Multilateral Obligation and Its Annex 4 Exception*

Article II:2 makes the agreements in Annexes 1 to 3 integral parts of the WTO Agreement, binding on all Members.[11] Annex 4 differs in kind: under Article II:3, an Annex 4 agreement binds only Members that have accepted it, creating neither rights nor obligations for the rest.[12] The distinction reaches the WTO's institutions, not just its substantive law. Article III:1 charges the Organization with providing the framework for implementing and administering Plurilateral Trade Agreements alongside the multilateral ones,[13] and Article IV:8 requires bodies established under those agreements to operate within the WTO's institutional framework and keep the General Council informed.[14] The WTO's own commentary treats the Committees on Government Procurement and on Trade in Civil Aircraft as WTO bodies in every respect but membership.[15] Plurilateralism is thus not foreign to the Marrakesh Agreement, which gives it an institutional address, though only two tenants currently occupy it: the dairy and bovine meat agreements were terminated at the end of 1997, and none has moved in since 1995.[16]

### *B. The Gate: Article X:9*

Moving in requires a demanding key. Article X:9 provides that the Ministerial Conference, on request of the Members party to a trade agreement, "may decide exclusively by consensus" to add it to Annex 4, or to delete one on request of its parties.[17] "Exclusively" matters. Article X:1 provides a procedural fallback: if consensus is not reached within the prescribed period, the Ministerial Conference may by a two-thirds majority decide whether to submit the proposed amendment for acceptance.[18] Article X:2 protects a narrower set of foundational provisions by requiring acceptance by every Member before an amendment to them takes effect for any Member at all.[19] Article X:9 excludes any such fallback; its only close parallel is Article X:8, under which Dispute Settlement Understanding amendments are likewise approved by

[11]WTO Agreement art II:2.
[12]WTO Agreement art II:3.
[13]WTO Agreement art III:1.
[14]WTO Agreement art IV:8.
[15]WTO, *The WTO Agreements Series: Agreement Establishing the WTO* (WTO 2017), commentary on Article IV, available at https://www.wto.org/english/res_e/booksp_e/agrmntseries1_wto_e.pdf accessed 22 September 2026.
[16]WTO, 'Plurilaterals: Of Minority Interest' https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm10_e.htm accessed 22 September 2026.
[17]WTO Agreement art X:9.
[18]WTO Agreement art X:1.
[19]WTO Agreement art X:2.

consensus alone.[20] Article X:9 thus shows that incorporation does not follow automatically from successful negotiation but requires consensus among the whole membership, including Members that did not negotiate the agreement.

'Consensus' here has the meaning given in the footnote to Article IX:1: the body concerned is deemed to have decided by consensus if no Member present at the meeting formally objects to the proposed decision.[21] The test is the absence of a formal objection, not unanimous support, which is why a single maintained objection is enough to stop a request however many Members back it.

### *C. Two Other Routes: Schedules and Interim Application*

Two further pathways have developed alongside Annex 4, neither requiring Article X:9 consensus because neither touches Annex 4. The first works through Members' own schedules: where an outcome can be expressed as commitments under an existing multilateral agreement, participants simply write it in. The Information Technology Agreement did this with tariff bindings under GATT 1994; at the time of the WTO's April 2024 review, the ITA had 56 participants representing 84 Members, extending duty-free treatment on an MFN basis regardless of Annex 4 status.[22] The SDR Reference Paper applies the same technique to regulatory disciplines rather than tariffs, entering schedules as additional commitments under GATS Article XVIII.[23] The WTO reports these disciplines legally binding for 57 Members, with six more having completed certification.[24] The route asks nothing of Article X:9, but is correspondingly narrow: it works only where the substance reduces to bindings a schedule can carry, excluding most rules-based cooperation of the kind the IFD Agreement or ECA represent.

The second route, just adopted by the ECA participants, is interim application among themselves, secured by treaty text rather than WTO annexation, and it is not a retreat from the WTO. The Agreement's Article 3.1 mirrors Article II:3 by disclaiming any effect on non-accepting Members,[25] its Article 36 commits the Secretariat to service it, and Article 37 makes

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[20]WTO Agreement art X:8.
[21]WTO Agreement art IX:1, fn 1.
[22]World Trade Organization, 'Information Technology Agreement, An Explanation' (April 2024) https://www.wto.org/english/tratop_e/inftec_e/itaintro_e.htm accessed 22 September 2026; WTO, 'WTO Members Take Stock of Information Technology Agreement Implementation' (News, 24 April 2024) https://www.wto.org/english/news_e/news24_e/ita_24apr24_e.htm accessed 22 September 2026.
[23]General Agreement on Trade in Services (adopted 15 April 1994, entered into force 1 January 1995) 1869 UNTS 183 (GATS) art XVIII.
[24]World Trade Organization, 'Services Domestic Regulation' https://www.wto.org/english/tratop_e/serv_e/dom_reg_e.htm accessed 22 September 2026.
[25]Agreement on Electronic Commerce (n 5) art 3.1.

the Director-General depositary.[26] The Interim Arrangements Annex is expressly temporary, applying "up to the date on which this Agreement is added to the WTO Agreement."[27] The ECA is thus better described as waiting outside the WTO's treaty architecture than as operating apart from it: its connection is real but conditional, and, as Part IV.C shows, it is the source of the Agreement's hardest accountability questions.

The interim route also raises a question of general treaty law. Where some parties to a multilateral treaty conclude an arrangement among themselves, Article 41 of the Vienna Convention on the Law of Treaties allows that inter se modification only if the treaty provides for it or does not prohibit it, and only if the modification neither affects the other parties' rights and obligations nor relates to a provision from which derogation is incompatible with the treaty's object and purpose.[28] Whether the ECA modifies the WTO Agreement at all, or is a separate treaty that draws on WTO institutional support, is open to argument. Article 3.1 of the ECA answers the question about non-parties' rights, but not the institutional question taken up in Part V.B. This paper treats the ECA as raising the institutional question and does not rest its argument on Article 41.

### *D. Three Doors, Not Two*

WTO plurilateralism is thus not a binary choice between full incorporation and life outside the system, but three institutional pathways of markedly different legal status and depth: Annex 4, schedules-based commitments, and interim application. An agreement's route is determined largely by its subject and whether it secures the required consensus, not by structured assessment of how well it treats the rest of the membership. That mismatch is the subject of the framework developed next.

## III. A FOUR-PART FRAMEWORK FOR INSTITUTIONAL COMPATIBILITY

### *A. Defining the Problem: Fragmentation Is Not the Same as Differentiation*

"Fragmentation" is invoked freely in this debate and defined rarely. For the purposes of this paper, institutional fragmentation means the growth of legal or governance arrangements alongside the WTO that are insufficiently connected to its rules, procedures, or oversight, such that the coherence, accessibility, or accountability of the wider system is weakened. That

[26]Ibid arts 36 to 37.
[27]Ibid Interim Arrangements Annex, s I.
[28]Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 41(1).

definition is narrower than mere differentiated participation. Article II:3 already contemplates Members being bound unequally; if unequal participation were fragmentation by definition, Annex 4 itself would indict the WTO's own architecture. Something more specific is needed: an arrangement fragments the system not because some Members are outside it, but because its connection to WTO rules and institutions is too thin to hold it accountable to them.

### *B. The Positions in the Debate*

Two camps disagree about how much thinness is tolerable. India and South Africa argued in 2021 that joint-statement plurilateral initiatives are inconsistent with the WTO's rules of procedure and single-undertaking heritage.[29] Kelsey extends the objection to the initiatives' effects, arguing that joint statement initiatives sideline the ordinary WTO negotiating bodies and produce outcomes that structurally favour the Members best resourced to shape them.[30] Hoekman and Mavroidis take the opposing view: they argue that the WTO's own rules make plurilateral agreements needlessly harder to conclude than preferential trade agreements negotiated entirely outside the WTO, a poor incentive structure if the goal is to keep cooperation inside the multilateral system.[31] Hoekman and Sabel go further, proposing "open plurilateral agreements" whose MFN-based benefits flow to every Member as a matter of design, making the size of the negotiating group largely beside the point.[32]

Neither camp alone supplies a workable test. Treating every joint-statement initiative as illegitimate would disqualify the SDR Reference Paper, anchored squarely in the GATS and creating no discrimination, an odd result for a critique aimed at protecting multilateralism. Treating open design as sufficient says nothing about the accountability of the body administering an agreement once it exists. What is missing is a framework asking about anchoring, discrimination, inclusivity and accountability separately, since an agreement can satisfy some criteria more convincingly than others, as the case studies below confirm.

### *C. The Framework*

[29]India and South Africa, ‘The Legal Status of "Joint Statement Initiatives" and Their Negotiated Outcomes’ (Communication to the General Council, 19 February 2021) WT/GC/W/819.
[30]Jane Kelsey, ‘The Illegitimacy of Joint Statement Initiatives and Their Systemic Implications for the WTO’ (2022) 25 Journal of International Economic Law 291.
[31]Bernard M Hoekman and Petros C Mavroidis, ‘WTO "à la carte" or "menu du jour"? Assessing the Case for More Plurilateral Agreements’ (2015) 26 European Journal of International Law 319, 322 to 324.
[32]Bernard Hoekman and Charles Sabel, ‘Open Plurilateral Agreements, International Regulatory Cooperation and the WTO’ (2019) 10 Global Policy 297, 298 to 300.

This paper proposes four criteria as an analytical tool rather than as additional obligations found in the Marrakesh Agreement.

| CRITERION | WHAT IT ASKS |
|---|---|
| 1. Institutional anchoring | Does the arrangement have a defined, secure connection to WTO rules and bodies, whether Annex 4, a multilateral schedule, or a treaty-based interim link, rather than an improvised or contested one? |
| 2. Non-discrimination | Are the agreement's benefits extended without conditioning them on participation, and does its text, not merely its stated intent, avoid burdening non-parties? |
| 3. Meaningful inclusivity | Beyond formal openness, can developing and least-developed Members realistically accede and implement, given capacity, technical assistance and transition periods? |
| 4. Accountability | Are governance, reporting, dispute settlement and resourcing arrangements clear, and do they run through bodies answerable to the wider WTO membership? |

The four criteria track the debate in Part III.B without adopting either side wholesale. Anchoring answers the concern that plurilateral rule-making might occur beyond WTO oversight altogether. Non-discrimination asks whether an agreement's design, not just its legal effect, respects Article II:3's own premise. Inclusivity answers Kelsey's concern about resourcing asymmetries without assuming every initiative reproduces them. Accountability captures what neither camp addresses directly: whether the body running an agreement stays answerable to the General Council. None is pass-or-fail, and satisfying three does not excuse failing the fourth; together they locate where an arrangement's institutional risk actually sits, so any response can be targeted rather than categorical.

## IV. APPLYING THE FRAMEWORK: THREE MODELS OF WTO PLURILATERALISM

### *A. The Investment Facilitation for Development Agreement: Broad Support, No Anchor*

The IFD Agreement began as a 2017 joint statement,[33] concluded its text on 6 July 2023 among over 110 Members,[34] and was declared at MC13 in February 2024, with 123 Members marking finalisation and 126 requesting Annex 4 incorporation.[35] By MC14 the co-sponsors numbered 129,[36] and current WTO figures put participation at 131 Members, three-quarters of the membership, including 94 developing economies and 29 least-developed countries.[37] Substantively the Agreement is deliberately narrow: it excludes market access, investment protection and investor to State dispute settlement, confining itself to transparency, streamlined procedures, and cooperation between governments and investors.[38]

Against the framework, the IFD Agreement satisfies three of four criteria more convincingly than the fourth. Non-discrimination is supported by its MFN-based, open-access design: it is open to all WTO Members and its disciplines are not conditioned on preferential market access or investment-protection rights.[39] Inclusivity is substantiated by numbers: 94 of 131 parties are developing economies and 29 are least-developed countries, negotiated alongside a needs-assessment process identifying implementation gaps before commitments bite.[40] Accountability arrangements, as drafted, provide for a committee open to all parties, though untested in practice. What it cannot show is anchoring: four successive requests for Annex 4 incorporation, in 2024, twice in 2025, and at MC14, have each failed to secure the consensus Article X:9 demands.[41]

The IFD Agreement is thus the clearest illustration of the distinction Part I draws between participation and incorporation: an agreement can assemble three-quarters of the WTO's membership, embed the very safeguards its critics say are missing, and still remain, in Article X:9 terms, outside the WTO Agreement's formal institutional architecture.

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[33]World Trade Organization, 'Investment Facilitation for Development Agreement' https://www.wto.org/english/tratop_e/invfac_public_e/invfac_intro_e.htm accessed 22 September 2026.
[34]Karl P Sauvant, 'The New WTO Investment Facilitation for Development Agreement' (2023) Columbia FDI Perspectives No 363, 1.
[35]WTO, 'Investment Facilitation for Development Agreement' (n 33).
[36]WT/MIN (26)/32 (n 1) para 1.
[37]WTO, 'Investment Facilitation for Development Agreement' (n 33).
[38]Sauvant, 'Impasse' (n 3); Dayene Peixoto, 'The WTO Investment Facilitation for Development Agreement' (*ABCI Brazil*, Fall 2023) https://abcibrazil.substack.com/p/the-wto-investment-facilitation-for accessed 22 September 2026 ('Peixoto').
[39]Peixoto (n 38).
[40]WTO, 'Investment Facilitation for Development Agreement' (n 33).
[41]WTO, 'Investment Facilitation for Development, Key Documents' https://www.wto.org/english/tratop_e/invfac_public_e/invfac_documentation_e.htm accessed 22 September 2026 (listing WT/MIN (24)/W/25, WT/GC/W/927/Rev.4, WT/MIN (26)/W/5/Rev.1 and WT/MIN (26)/32).

### *B. The Services Domestic Regulation Reference Paper: Anchored, at a Price*

The SDR Reference Paper shows the schedules route working, and what it costs. Rather than seeking Annex 4 status, participants inscribed the disciplines directly into GATS schedules as additional commitments under Article XVIII.[42] Because the commitments are incorporated into GATS schedules under an existing multilateral agreement, their institutional anchoring is materially stronger than the IFD Agreement's: the WTO reports 57 Members with disciplines legally in force and six more having completed certification.[43] The commitments are non-discriminatory by construction, since GATS scheduling is MFN-based absent a specific exemption, and inclusivity is preserved because each participant chooses which sectors to cover.

Accountability is where the model strains. Certifying dozens of amended schedules is slow and service-by-service: the SDR took over two years from its December 2021 announcement to its first 2024 certifications, and the disciplines, once certified, sit scattered across individual schedules rather than one instrument, harder to locate and monitor than a single Annex 4 text. The lesson is not that schedules are a free alternative to Annex 4; it is that they trade a difficult political gate for a slow, diffuse administrative one, available only where the substance reduces to scheduled commitments at all, a condition the IFD Agreement's architecture cannot satisfy.

### *C. The Agreement on Electronic Commerce: Anchored to the Institution, Not Yet in Its Treaty*

The ECA supplies the most detailed test of the framework, because its own text addresses institutional questions the other two agreements leave largely implicit. Two requests for Annex 4 incorporation, in February and December 2025, failed for want of consensus.[44] The interim arrangements were adopted on 28 March 2026; the joint press release issued that day put participation at 66 Members,[45] but the WTO's own later reporting records 67.[46] This paper follows the WTO's own count of 67.

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[42]GATS (n 23) art XVIII.
[43]WTO, 'Services Domestic Regulation' (n 24).
[44]WT/MIN (26)/42 (n 5) para 2.
[45]Department of Foreign Affairs and Trade (Australia), Ministry of Foreign Affairs (Japan), Ministry of Economy, Trade and Industry (Japan), and Ministry of Trade and Industry (Singapore), 'Joint Press Release: Adoption of the WTO Agreement on E-Commerce with Interim Arrangements' (28 March 2026) https://www.mofa.go.jp/press/release/pressite_000001_02219.html accessed 22 September 2026.
[46]World Trade Organization, 'Members Discuss Preparations to Bring E-Commerce Agreement into Force by Mid-2027' (News, 9 June 2026) https://www.wto.org/english/news_e/news26_e/jsec_09jun26_414_e.htm

On anchoring the ECA sits deliberately between the other two models: Article 36 commits the Secretariat to service it and Article 37 makes the Director-General its depositary,[47] while the Interim Arrangements Annex is textually temporary, lapsing once Annex 4 incorporation succeeds, a bridge rather than a destination.[48] On non-discrimination, closer reading is needed than the Agreement's MFN branding suggests: Article 11.3 prohibits customs duties on electronic transmissions between a person of one Party and a person of another, a party-to-party formulation rather than an erga omnes one, so the benefit runs between participants rather than to the membership at large.[49] Non-parties are not harmed, since Article 3.1 disclaims any effect on them just as Article II:3 does,[50] but nor do they automatically receive the customs-duty commitment; the treaty right is confined to Parties. On inclusivity, the Agreement builds in the IFD Agreement's tools: implementation periods of up to seven years for least-developed Parties and technical-assistance duties on developed ones.[51]

Accountability is where the ECA is most instructive: the Interim Arrangements Annex had to solve alone a problem WTO dispute settlement cannot currently solve for anyone, the Appellate Body's inability to hear appeals. Rather than leave panel reports in limbo, the Annex replaces Article 27 with appeal arbitration under DSU Article 25, drawing arbitrators from a standing pool and letting the Committee on Trade-Related Aspects of Electronic Commerce act, in substance, as this Agreement's own Dispute Settlement Body.[52] That Committee is open to observers from any Member and reports annually to the General Council.[53] The design is detailed and reasonably transparent on paper, but improvised: it exists only because ordinary WTO machinery was unavailable, and must be unwound under Section IV once the ECA is incorporated.[54]authorisation, a concern reported raised by the United States, Brazil, India and Pakistan in mid-2026. Appeal arbitration under DSU Article 25 is not new in itself: a group of Members already uses it among themselves through the Multi-Party Interim Appeal Arbitration Arrangement (MPIA).[55] The ECA Annex applies the same device to disputes under a single

accessed 22 September 2026; Peter Ungphakorn, 'WTO Head "Certifies" 67-Member E-Commerce Pact. What Does That Mean?' (*Trade β Blog*, 11 June 2026) https://tradebetablog.wordpress.com/2026/06/11/wto-certifies-e-commerce-pact/ accessed 22 September 2026.

[47]Agreement on Electronic Commerce (n 5) arts 36 to 37.

[48]Ibid Interim Arrangements Annex, s I.

[49]Ibid art 11.3.

[50]Ibid art 3.1.

[51]Ibid arts 20.6 to 20.13.

[52]Ibid Interim Arrangements Annex, ss II to III and Appendix.

[53]Ibid arts 28.4, 28.6.

[54]Ibid Interim Arrangements Annex, s IV.

[55]Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU (30 April 2020) JOB/DSB/1/Add.12.

substantive agreement. Members outside the arrangement have questioned the propriety of using the Director-General and Secretariat this way without the General Council's collective [56]

### *D. Comparative Assessment*

| CRITERION | IFD AGREEMENT | SDR REFERENCE PAPER | ECA |
|---|---|---|---|
| 1. Anchoring | No: four failed requests | Yes, via GATS schedules | Conditional: treaty-based, pending Annex 4 |
| 2. Non-discrimination | Strong: MFN-based, open to all Members | Strong: MFN scheduling | Qualified: Art 11.3 is party-to-party |
| 3. Inclusivity | Strong: 94 developing, 29 LDC parties | Moderate: sector-by-sector opt-in | Built in: S&DT periods, TA duties |
| 4. Accountability | Committee provided for, untested | Diffuse: scattered across schedules | Detailed but improvised; contested by non-parties |

The pattern, however, is not random. The IFD Agreement, which most fully satisfies non-discrimination and inclusivity, is precisely the one denied anchoring. The ECA, forced into the same position, responded by building its own accountability architecture rather than waiting, and that architecture, however carefully drafted, remains contested precisely because it was never approved by the wider membership through the ordinary consensus process. The SDR shows the one route that avoids Article X:9 altogether, but only by accepting a slower and more fragmented form of accountability. None of this shows that plurilateralism as such threatens the multilateral system. It shows that the system's only demanding gate is being asked to do duty for every kind of plurilateral agreement, discriminatory or not, at once.

## V. THE GATEWAY PROBLEM

### *A. What Article II:3 Already Does, and What Article X:9 Adds*

Article II:3 and Article X:9 are easily run together, as though they served the same purpose. They do not: Article II:3 fixes the legal scope of an Annex 4 agreement, so whoever stays

[56]Peter Ungphakorn, 'US, Brazil Join India, Pakistan in Querying WTO Status of E-Commerce Deal' (*Trade β Blog*, 15 July 2026) https://tradebetablog.wordpress.com/2026/07/15/us-brazil-india-pakistan-querying-e-commerce-deal/ accessed 22 September 2026.

outside it stays untouched;[57] Article X:9 fixes the threshold for entry, whether the agreement gets a home in Annex 4 at all.[58] An agreement perfectly compliant with Article II:3, imposing nothing on non-parties, can still be refused entry under Article X:9, because the second provision protects an institutional interest distinct from anything Article II:3 already guarantees: the membership as a whole is entitled to decide what belongs inside its own treaty architecture, and consensus is a defensible way of registering that collective ownership.

The difficulty is not that consensus exists, but that it is undifferentiated. Article X:9 applies the identical threshold to an agreement that could disadvantage non-participants and to an agreement, such as the IFD Agreement, designed to minimise such effects; a single formal objection blocks both alike, because the provision draws no distinction between them. That 94 developing economies and 29 least-developed countries are parties to the Agreement illustrates that the interests represented by its proponents are not confined to developed Members.

### *B. What Exit Costs*

The ECA shows what happens when the gate holds and proponents decide not to wait. The interim pathway preserves a connection to WTO institutions that a genuine departure would not, but it asks the Director-General and Secretariat to perform functions, including depositary, servicing, and now an ad hoc appellate mechanism, without the collective authorisation that would ordinarily accompany formal incorporation. The concerns raised by the United States, Brazil, India and Pakistan therefore point to a structural question: the interim route allows participating Members to use specified WTO institutional resources without obtaining the collective consensus required for Annex 4 incorporation. An unyielding gate has not prevented plurilateral rule-making; it has displaced the accountability that gate was meant to secure into an arrangement improvised precisely because the gate would not open.

### *C. India's September 2026 Principles, Read Against the Framework*

India's guiding principles, circulated on 16 September 2026, represent a more detailed articulation of the conditions it proposes for accommodating plurilateral initiatives at the WTO.[59] The eight principles cover, among other things, the multilateral character of the WTO, the treatment of non-participants, transparency, and, most pointedly, the use of WTO resources: the paper warns that unchecked proliferation of plurilateral initiatives risks straining Secretariat

[57]WTO Agreement art II:3.
[58]WTO Agreement art X:9.
[59]WT/GC/REFORM/W/14 (n 9).

capacity and diverting resources from mandated technical assistance and capacity building.[60] Measured against the framework in Part III, several of India's principles map directly onto its criteria: the paper's concern for non-participants tracks non-discrimination; its concern for meaningful engagement tracks inclusivity; and its concern for WTO resources and institutional competence tracks accountability.

What the principles do not resolve is anchoring. India's position continues to insist that incorporation should be based on consensus,[61] which restates Article X:9 rather than qualifying it, and reporting on the paper notes that it would apply safeguards from the initiation of plurilateral work onward, a scope that, taken literally, would have subjected the IFD Agreement, the SDR, and the ECA alike to conditions before any of them existed.[62] The principles are best read as an agenda: they identify, more precisely than before, what a plurilateral agreement should demonstrate, without saying what should happen once it has demonstrated it. That gap is where this paper's remaining contribution lies.

## VI. REFORM WITHIN AND BEYOND EXISTING LAW

### *A. What General Council Practice Can Do Now*

Nothing in current WTO law prevents the General Council from adopting guidelines that structure how an Article X:9 request is considered, even though it cannot use guidelines to alter the consensus requirement itself. Such guidelines could require that a request for incorporation be accompanied by a structured self-assessment against something like the four criteria in Part III: a demonstration of non-discriminatory design, a description of accession and implementation support for developing and least-developed Members, and a statement of the proposed governance and reporting arrangements. This would not entitle any agreement to incorporation. It would make the basis for withholding consensus explicit rather than unstated, and give both proponents and objectors a shared factual record to argue from, which is closer to what India's own principles already gesture toward than to anything currently required by Article X:9.

### *B. What the Interim Route Needs If It Is Used Again*

The ECA experience shows that ad hoc interim arrangements will recur wherever Annex 4 is unavailable, and that they generate exactly the accountability disputes documented in Part IV.C.

[60]Horseman (n 10).
[61]Down To Earth (n 4).
[62]Ungphakorn, ‘Guardrails’ (n 9).

If that pathway is used again, the General Council, rather than the participants alone, should settle in advance the terms on which the Director-General and Secretariat may service an agreement pending its incorporation: the scope of servicing, its funding, the status of any dispute-settlement substitute the participants devise, and the information such an arrangement owes to non-participating Members. Settling these questions collectively would not make the interim route equivalent to Annex 4 status. It would stop the route from being contested every time it is used, which is the position the ECA is in now.

### *C. Formal Reform: What Would Actually Require Amendment*

A more ambitious reform would differentiate Article X:9's threshold according to an agreement's effects, so that non-discriminatory, MFN-based agreements satisfying inclusivity and accountability conditions could proceed to Annex 4 on a less demanding threshold than agreements that discriminate among Parties. By way of illustration only, consensus could be kept for agreements that confine their benefits to their Parties, while an agreement meeting all four criteria could proceed on a qualified majority, with the Ministerial Conference recording that Article II:3 leaves non-parties untouched. This cannot be achieved by General Council guidance; Article X:9 itself would need amendment, and Article X's own hierarchy of amendment procedures would determine how. An amendment characterised as not altering Members' rights and obligations would, under Article X:4, take effect for all Members upon acceptance by two-thirds; one characterised as altering those rights and obligations would, under Article X:3, bind only accepting Members, and the Ministerial Conference could then, by a three-fourths majority, require a non-accepting Member to withdraw or seek its consent to remain.[63] Which category a change to Article X:9 would fall into is itself contestable, since the provision defines a procedure rather than a substantive right, and this paper does not resolve that here. The point is narrower: any such reform is a treaty amendment properly subject to Article X, not a matter the General Council can settle informally, and proposals that speak of "streamlining" Annex 4 access without confronting this should be read with that caveat attached.

### *D. Limits of the Argument*

Three limits should be acknowledged. The four-part framework is a diagnostic tool, not a formula; reasonable observers could weigh its criteria differently, and this paper's qualitative

[63]WTO Agreement art X:1, X:3, X:4.

assessment of the case studies involves evaluative judgments rather than mechanical conclusions. Formal amendment of Article X:9 is not merely legally demanding but may reproduce the political difficulty it seeks to address, since changing a consensus rule by consensus is not obviously easier than living with the rule as it stands. Finally, the reform debate is moving quickly: India's principles were less than a week old at this paper's cut-off date and may themselves shift again before this paper is assessed.

## VII. CONCLUSION

This paper set out to ask when a plurilateral agreement should receive formal WTO anchoring, and whether the answer should depend on its effects on Members that remain outside it. The three case studies suggest an answer with two parts. Where an agreement is substantially non-discriminatory and administered with reasonable transparency, as the IFD Agreement and the SDR Reference Paper demonstrate, its direct legal effects on non-participants are limited: Article II:3 ensures they acquire neither rights nor obligations, though it does not resolve wider institutional or systemic concerns. In such cases, Article X:9's undifferentiated consensus requirement continues to protect an institutional interest that is distinct from, but not reducible to, the protection Article II:3 already gives non-participants. Yet the continued exclusion of an agreement such as the IFD Agreement, which has now been refused four times despite support from roughly three-quarters of the membership, illustrates the cost of applying the same gateway to agreements with materially different effects on non-participants.

Where an agreement contains benefits expressly confined to its Parties, as Article 11.3 of the ECA arguably does, the non-discrimination inquiry becomes more demanding. The present difficulty is that Article X:9 draws no such distinction: the same consensus threshold applies both where an agreement materially differentiates among non-participants and where its design is substantially MFN-based and open to all WTO Members. The ECA's improvised interim pathway is the visible cost of that non-distinction, an accountability structure built without the General Council's collective sign-off, precisely because the collective sign-off that ordinarily disciplines such structures could not be obtained.

India's September 2026 principles show that the debate has moved from whether plurilateral cooperation should exist to what conditions should govern its incorporation, a formulation this paper's framework addresses directly. But identifying the right conditions is not the same as building a mechanism to apply them, and on the evidence reviewed here that mechanism does not yet exist. The more modest, immediately achievable reform is procedural: structured,

criteria-based assessment of incorporation requests, and clearer terms for any interim arrangement the WTO's institutions are asked to support. A differentiated legal threshold within Article X:9 itself would address the problem more completely, but it is a matter for treaty amendment, not General Council practice. Plurilateralism is not, in itself, the WTO's fragmentation risk. An undifferentiated gateway, applied without regard to what a particular agreement actually does to those outside it, is.