



Council of the  
European Union

Brussels, 18 February 2021  
(OR. en)

6308/21  
ADD 1

WTO 31  
SERVICES 3  
FDI 2  
COMER 16  
DEVGEN 27  
RELEX 115  
COMPET 114  
AGRI 69  
ENV 85  
DIGIT 24

#### COVER NOTE

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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 18 February 2021

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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No. Cion doc.: COM(2021) 66 final

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Subject: ANNEX to the COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Trade Policy Review - **An Open, Sustainable and Assertive Trade Policy**

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Delegations will find attached document COM(2021) 66 final.

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Encl.: COM(2021) 66 final



Brussels, 18.2.2021  
COM(2021) 66 final

ANNEX

ANNEX

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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Trade Policy Review - An Open, Sustainable and Assertive Trade Policy**

## ANNEX

### REFORMING THE WTO: TOWARDS A SUSTAINABLE AND EFFECTIVE MULTILATERAL TRADING SYSTEM

#### 1. Why does the WTO matter and why is it in crisis?

##### 1.1 Why the WTO matters

Since the foundation of the multilateral trading system in 1947<sup>1</sup>, world trade has expanded 300-fold, and today makes up more than 60% of global GDP, supporting jobs, growth and investment around the world. This is partly thanks to successive reductions in tariffs negotiated through the multilateral system: in 1947, applied tariffs ranged between 20% and 30%, today, the world's applied tariffs stand at an average of around 9%. But this is also thanks to the stability the system provides. The WTO's most-favoured nation principle (MFN) limits discrimination between goods and services from different trading partners. It provides a stable floor of economic openness that promotes competition on global markets based on efficiency and innovation. 60% of EU trade is conducted on MFN terms, including our trade with the United States, China, Russia and India. The rules of the WTO protect the interests of all trading nations against discriminatory, behind-the-border action and ensure that contingent trade protection is based on multilaterally agreed disciplines. Furthermore, the binding of tariffs has decreased the likelihood that countries increase tariffs as a response to shocks<sup>2</sup>, and the dispute settlement system has ensured compliance with the rules and avoided the escalation of trade conflicts.

Though more needs to be done, **the WTO has also contributed to global sustainable development**. The economic openness it has guaranteed has helped integrate many developing countries into the world economy, **lifting hundreds of millions of people out of poverty and decreasing inequalities between countries**<sup>3</sup>.

##### 1.2 The reasons for the crisis

Today's crisis affects all three functions of the WTO: **negotiations** have failed to modernise the rules, the **dispute settlement system** has *de facto* reverted to the days of the GATT where

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<sup>1</sup> With the WTO's predecessor agreement, the General Agreement on Tariffs and Trade (GATT).

<sup>2</sup> Jakubik, A. and Piermartini, R. (2019). 'How WTO commitments tame uncertainty!', WTO Staff Working Papers ERSD-2019-06, World Trade Organization (WTO).

<sup>3</sup> World Bank Group and World Trade Organization (2015). *The Role of Trade in Ending Poverty*. World Trade Organization: Geneva. See also Commission on Growth and Development in 2018 *'The Growth Report: Strategies for Sustained Growth and Inclusive Development'*.

panel reports could be blocked, and the **monitoring of trade policies** is ineffective. In addition, **the trade relationship between the US and China, two of the three largest WTO members, is currently largely managed outside WTO disciplines.**

A key driver of the crisis is that **China's** accession to the WTO has not led to its transformation into a market economy. The level at which China has opened its markets does not correspond to its weight in the global economy, and the state continues to exert a decisive influence on China's economic environment with consequent competitive distortions that cannot be sufficiently addressed by current WTO rules. But the WTO **has not been able to negotiate new rules** to tackle this or other pressing issues (e.g. digital trade or sustainability). Reaching consensus among 164 members against the backdrop of today's diffuse global balance of power is a huge challenge. Negotiations are also held back by disagreements about flexibilities for developing countries. It is not sustainable that two thirds of the membership - including some of the world's most significant economies - claim **special and differential treatment**. Further, the WTO's **monitoring and deliberative function** is seriously challenged by insufficient transparency about members' trade legislation and practice, and the fact that topics such as environmental degradation, climate change or decent work are considered taboo. Last but certainly not least, the **dispute settlement system** was effectively paralysed at the end of 2019, due to the blockage of appointments of Appellate Body members by the United States.

### *1.3 The urgent need for reform*

A stable trading environment with the WTO at its centre is more essential than ever to address the challenges before us, starting with the economic recovery from the pandemic. The context is challenging in an organisation that seems to have lost its sense of common purpose. But the EU has a fundamental strategic interest in ensuring the effectiveness of the WTO. Not only is trade vital for our economy; promoting rules-based international cooperation is the very essence of the European project. The EU must therefore play a leading role in creating momentum for meaningful WTO reform.

## **2. Restoring trust and a sense of common purpose: the WTO's contribution to sustainable development**

The collapse of the Doha Development Agenda in 2008 exemplified the lack of common purpose of the WTO membership. Despite the success in concluding the Trade Facilitation Agreement at the 9<sup>th</sup> WTO Ministerial Conference in Bali and the Decision on agricultural export competition at the 10<sup>th</sup> WTO Ministerial Conference in Nairobi, the WTO membership has become increasingly divided as to what it expects from the WTO. While part of the membership has argued that the 'centrality of development' in the WTO means that there should be a focus on exceptions and flexibilities from agreed and future commitments, another part has grown increasingly frustrated at the failure of progress in WTO negotiations and shifted its attention to bilateral trade agreements. Without a sense of common purpose, it has been extremely difficult to find a way forward for any initiative and to ensure that the WTO evolves in line with the changes in global trade.

However, the vast majority of the membership remains committed to the idea of multilateralism, fully cognizant of the benefits of a rules-based system for global trade and development. The instability of the last few years, the climate and environmental crisis, the increased use of unilateral measures and now the COVID-19 pandemic have led to a clear realisation that the WTO is a vital component of healthy global economic governance but that reform is necessary. The G20 Leaders' statement<sup>4</sup> in Riyadh contains the strongest commitment to reform yet, at the highest political level.

As global challenges proliferate, WTO members should be able to coalesce around the objective of addressing the most pressing problems they face: economic recovery and development, free from competitive distortions, as well as environmental and social sustainability as part of the green transition of economies. Addressing these problems would be in line with the objectives of the UN Sustainable Development Goals (the 'SDGs'), to which all WTO members have committed. Such a focus could offer the sense of common purpose that the WTO has lacked in recent decades and rebuild trust among the membership. It could generate the confidence needed to modernise the WTO rulebook in a manner that is

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<sup>4</sup> Leaders' Declaration G20 Riyadh Summit November 21 - 22, 2020

responsive to the challenges of digitalisation and greening, as well as preventing and defusing conflicts caused by trade-distorting state intervention in the economy.

### *2.1 Restoring a sense of common purpose to the WTO: focus on sustainable development*

This effort to restore a sense of common purpose must proceed incrementally, starting with short-term confidence-building measures. Concluding the **fisheries subsidies negotiations** would be an important step towards solidifying the WTO's contribution to sustainability. This agreement is of importance not only as the first multilateral agreement in years, but also as the first agreement with implementation of an SDG as its core (SDG 14.6). This will not be a straightforward task given the gaps between WTO members' positions and the challenges of finding consensus in multilateral negotiations (in good part because of the issue of special and differential treatment mentioned above), but the negotiations are at a more advanced stage than they have been in their long history. With sufficient political will, there is scope for an agreement in advance of the 12<sup>th</sup> WTO Ministerial Conference ('MC12').

The EU has presented together with the Ottawa Group<sup>5</sup> a **trade and health initiative** covering disciplines on export restrictions and a number of trade facilitating measures and steps to facilitate transparency. The EU will continue to work with its partners and the new Director-General to ensure that the trading system is responsive to the challenges raised by the pandemic, including as regards the implementation of flexibilities available under the TRIPS agreement.

Many SDGs relate to **protection of the environment**. The paramount importance of protecting the environment was already recognised at the time of the WTO's creation, by the establishment of a Committee on Trade and Environment to foster deliberation and common action. The current need for trade policy to be responsive to climate and environmental challenges is if anything more critical today, something which is supported by many WTO members. Contrary to fears expressed when the WTO was created, no country has been forced to lower its desired level of health or environmental protection because of a ruling of the WTO dispute settlement system. Going forward, the EU will support in international discussions on trade and environment issues an interpretation of relevant WTO provisions

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<sup>5</sup> The Ottawa Group participants are: Australia, Brazil, Canada, Chile, the European Union, Japan, Kenya, South Korea, Mexico, New Zealand, Norway, Singapore and Switzerland

that recognise the right of Members to provide effective responses to global environmental challenges, notably climate change and the protection of biodiversity.

The European Union views sustainability as part of the necessary green transition of economies, which will need to be reflected in the WTO's work across the board. We will soon present an initiative on **trade and climate** in the WTO. Initial reflections, presented in a non-paper<sup>6</sup> shared with WTO members and stakeholders, centre on a range of building blocks, including the liberalisation of selected goods and services; transparency (including on carbon border adjustment measures), information exchange and analysis as a first step to develop disciplines on fossil fuel subsidies; greening aid for trade; and strengthening the WTO's institutional framework dealing with trade and environment issues. In addition, the EU is also working with other WTO members in pursuing parallel environmental initiatives relating to the circular economy (including plastics).

The WTO also has a role to play in helping to implement the SDGs on decent work and gender equality, which are of utmost importance both outside the EU but also within the EU. As regards decent work, the WTO should foster analysis and exchange of experiences as to how trade policies can contribute to social development, how stronger protection of workers' rights benefits growth and development, and how to ensure that – both within and outside the EU - the benefits of trade liberalisation reach all workers and vulnerable communities. This action could be supported through further and more active cooperation between the WTO and the International Labour Organization. The EU should work with partners to further integrate this social dimension of globalisation into the work of the WTO. As regards gender equality, the EU should pursue a leading role in raising awareness of the importance of ensuring that a gender perspective is a mainstream part of trade policy, through initiatives such as the Buenos Aires Declaration on Trade and Women's Economic Empowerment.

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<sup>6</sup> [https://trade.ec.europa.eu/doclib/docs/2020/november/tradoc\\_159117.pdf](https://trade.ec.europa.eu/doclib/docs/2020/november/tradoc_159117.pdf)

## 2.2 *How trade can contribute to development: the need for a forward-looking approach to special and differential treatment.*

One of the founding objectives of the WTO is to ensure that developing countries, and especially the least developed among them, secure a share of the benefits of international trade commensurate with the needs of their economic development. ‘Special and differential treatment’ (SDT) is meant to enable developing countries to make the best use of the opportunities for development that WTO membership offers.

The EU is a strong supporter of SDT but believes its use must be guided by the underlying economic reality that trade is a driver of development, rather than a threat. Those developing economies that have seen the most consistent growth are those that have focused their efforts on integrating into the global economy and progressively opening their markets to greater competition. The great development challenge for the WTO is how the Organization can effectively assist the efforts of those developing countries that are not yet sufficiently integrated into the global economy.

Restoring the credibility of the WTO as a negotiating forum also requires a new approach to SDT. Such an approach should combine a more targeted focus on how to support integration into the trading system, along with greater differentiation between developing countries, based on identified needs. These needs include the capacity constraints of small public administrations. It is only by focusing on how to facilitate the capacity of countries to assume commitments that foster integration in the global economy that the WTO can effectively contribute to development.

In terms of process, an ‘agreement-by-agreement’ approach appears to be the most likely to deliver real progress on SDT. While it would be desirable that all WTO members agreed on crosscutting criteria for SDT, it is more realistic to try to find convergence in specific negotiations. Still, the EU’s approach will be guided by some overall considerations. The EU would strongly support SDT provisions that effectively respond to the capacity constraints of the vast majority of developing countries. At the same time, the EU expects full commitments in ongoing negotiations and future agreements from a) OECD members (including OECD accession candidates); b) countries classified as ‘high income’ by the World Bank; and c) countries that represent a sufficiently high share of global exports in general or in the sectors concerned by a particular negotiation. Due to its weight in the system, China should lead by example and not claim SDT in any ongoing negotiation.



### **3. Restoring a fully functioning WTO dispute settlement system with a reformed Appellate Body**

Binding dispute settlement is not only critical to protect the interests of WTO members against measures that limit market access rights. It also provides the stability for companies to be able to invest and export in the knowledge that rules will be respected and that there are remedies in case of breach. It protects big and small WTO members alike against unilateral actions and prevents trade disputes escalating into political conflicts. While certain aspects of the Appellate Body's operation and jurisprudence have been criticised, it is also important to recognise that the Appellate Body has greatly enhanced legitimacy and predictability of the dispute settlement system, including through its careful attention to the protection of the right of WTO members to regulate for health, environmental or other legitimate policy objectives.

The most urgent of WTO reforms is finding an agreed basis to restore a functioning dispute settlement system and to proceed to the appointment of the members of the Appellate Body. This task should be addressed as a priority and not be linked to the others aspects of WTO reform. In the absence of a functioning dispute settlement system, it is difficult to see what could be the motivation for countries to modernise and fill gaps in the rules.

The United States has raised a number of valid concerns about certain adjudicative approaches of the Appellate Body as well as about specific rulings in certain cases. The European Union agrees that adjudicators should exercise judicial economy and are not bound by "precedent" but should take into account previous rulings to the extent they find them relevant in the dispute they have before them. In the WTO dispute settlement system, the panels are the triers of fact, and the role of the Appellate Body should be strictly limited to addressing legal issues raised on appeal to the extent this is necessary to resolve a dispute. The independence of panels and of the Appellate Body is essential so that cases are decided exclusively on their merits. This is compatible with a strengthening of accountability to Members as regards the fulfilment of its duties. Mandatory timelines should be strictly respected both at the Panel and Appellate Body stage of disputes – justice delayed is justice denied – and appropriate measures should be adopted in order to make this possible. The European Union therefore agrees that a meaningful reform is needed. Such reform should maintain the negative consensus rule, the independence of the Appellate Body and the central

role of dispute settlement in providing security and predictability to the multilateral trading system.

In particular, while many of the issues above are reflected in principles developed in the Informal Process on matters related to the functioning of the Appellate Body led by the Chairman of the Dispute Settlement Body, the EU is open to consider how to give them a stronger legal formulation, as well as to consider additional improvements. An early signal by the United States of their readiness to enter into good faith negotiations to find a multilateral agreement on dispute settlement reforms would greatly enhance confidence and should enable reaching an agreement to restore binding dispute settlement and a functioning Appellate Body.

#### **4. Towards a more effective negotiating function**

At the heart of the crisis in the WTO lies the failure of its negotiating function. WTO reform should aim at restoring the effectiveness and credibility of the WTO as a forum for the negotiation of trade rules and further liberalisation. WTO rules need to be brought into line with the economic and trade realities of the 21<sup>st</sup> century. On substance, the priority should be to modernise the rules of the WTO on e-commerce, investment facilitation, services domestic regulation and on the role of the state in the economy, including on subsidies. Once rules are modernised, consideration could also be given to advancing liberalisation on goods and services in a manner that ensures a better balance of commitments. As regards the method for negotiations, a single undertaking approach has failed to deliver and progress can be best achieved through different processes, in particular open, plurilateral agreements. In parallel to substantive negotiations, WTO members should reflect on ways of better integrating plurilateral agreements into the WTO framework.

##### *4.1 Modernising WTO rules*

###### *A. Establishing new rules on digital trade, services and investment*

Negotiations with broad participation are ongoing on services domestic regulation, e-commerce and investment facilitation. All three negotiations are essential to make the rules of international trade responsive to the digital transformation of the economy, the growing importance of services and the need to facilitate investment as a key for development.

The EU is fully committed to these negotiations. MC12 provides an opportunity to record substantial progress on the e-commerce and investment facilitation initiatives and to conclude an agreement on services domestic regulation. Concluding negotiations on ambitious and inclusive agreements in these three areas is critical to demonstrate the relevance of the WTO to the main drivers for the expansion of trade and investment in the 21<sup>st</sup> century and to facilitate the integration of developing countries in global value chains. It would also avoid fragmentation of the global trading system if such issues can only be tackled in bilateral agreements or in plurilateral agreements outside the WTO framework.

*B. Establishing new rules to avoid competitive distortions due to state intervention in the economy - competitive neutrality*

The rules of the WTO are not sufficiently effective in tackling the negative spillovers of state intervention in the economy. This is particularly true when state intervention distorts competition in the home market or even in global markets. The frequent lack of transparency in such interventions further aggravates the problem. The issue is not the role of the state as such. Public intervention may be needed to achieve legitimate goals, and the WTO should accommodate different degrees of public ownership in the economy. Rather, the issue is to effectively counter those interventions that have negative spillover effects, distorting competition by favouring domestic firms, goods or services vis-à-vis foreign ones, limiting access to markets or having an impact in global markets.

New rules on industrial subsidies are essential to counter the negative effects of heavy subsidisation on international trade, which can generate distortions of competition in both traditional sectors and new technologies. Subsidies may also result in excess capacities. An important objective of stricter rules would be to arrive at significantly greater transparency and identify additional categories of prohibited subsidies, as well as categories of subsidies presumed to be injurious. Together with discussions on such ‘red’ and ‘amber’ boxes, there should also be consideration of a ‘green box’ that includes those subsidies that support legitimate public goals while having minimal distortive impact on trade. This would particularly be the case of certain types of environmental and R&D subsidies, provided they are subject to full transparency and agreed disciplines.

State-owned enterprises (SOEs) are, in a number of countries, an instrument through which the state decisively influences the economy, sometimes with market-distortive effects. However, the importance of SOEs is not yet matched with sufficient disciplines to capture any market-distorting behaviour. New international SOE rules should focus on the behaviour

of SOEs in their commercial activities, in line with the disciplines already agreed in several free trade and investment agreements.

Apart from industrial subsidies and SOE disciplines, there is a need to reflect on what other elements could be part of new WTO rules aiming at ensuring the principle of “competitive neutrality” and promoting a level playing field. This should include, for instance, strong rules against practices forcing companies to transfer innovation and technology to the state or to their competitors (forced technology transfers) and rules to ensure that domestic regulation is transparent and pro-competition. The overall aim should be that any state intervention in the economy is done in full transparency and does not distort competition to favour certain firms. The EU intends to further discuss these issues first through its trilateral cooperation with the US and Japan but also with any interested WTO member, with a view to start work on developing WTO rules to effectively respond to competitive distortions.

### *C. Addressing imbalances between members’ market access commitments*

Market access commitments have not been updated since the conclusion of the Uruguay Round and are increasingly disconnected from the economic realities of the 21<sup>st</sup> century. The current structure of WTO market access commitments in goods and services does not correspond to the actual level of openness of many countries and fails to reflect the significant changes in weight of certain major trading nations in the world economy (e.g. China).

While ensuring a better structure of overall tariff commitments is important, the primary focus of any WTO reform effort should be to modernise rules on competitive neutrality: subsidies, SOEs, forced technology transfers and domestic regulation. When subsidies are artificially lowering the prices of goods, SOEs are abusing their dominant position in a market or firms are being forced to share their technology with their competitors, lowering tariffs will not correct the imbalances among members. Nevertheless, in the short to medium term, and in order to further build confidence within the system, the EU supports sectoral initiatives where liberalisation has broader benefits, as is the case for the liberalisation of tariffs on health and selected climate-mitigation goods or the liberalisation of environmental services.

As for trade in services, the priority should be to conclude negotiations on rules for the digital economy. Once those negotiations are concluded, consideration could be given to launching negotiations on services. Such negotiations should be open to the participation of interested

WTO members and be anchored in the WTO, while building upon the progress made in the Trade in Services Agreement negotiations.

#### *D. The contribution of agriculture*

Restoring the credibility of the WTO as a negotiating forum would also require the membership to tackle **agricultural negotiations**, which remain largely blocked despite the positive outcome at the Ministerial Conference in Nairobi. Agriculture remains an important – even core – interest for much of the WTO membership and the lack of progress risks to negatively affect the wider WTO reform agenda.

Commitments on domestic support in the agriculture sector should be the priority of negotiations, considering the proliferation of trade distorting policies and measures. In order to be successful, however, such negotiations would require contributions from all, or at least all major, members. Looking forward, the EU is in favour of a substantial reduction in trade-distorting domestic support. The EU has reformed its agricultural policy over the last 30 years, moving away from trade-distorting to non-trade-distorting support. Other WTO members have yet to undertake similar reforms.

Reviving negotiations on agricultural market access, whether in relation to tariff reductions or other elements, does not seem likely for the time being. These form part of a wider set of market access negotiations including industrial goods, where the conditions for balance do not seem to be present.

Negotiations in the short term should thus focus on the issues which have gained importance in the pandemic and where there is some scope for convergence. The EU will focus on export restrictions and transparency improvements for the 12<sup>th</sup> Ministerial Conference.

Finally, there is a need to mainstream environmental sustainability aspects in the agricultural negotiations in line with the necessity of the green transition of economies.

#### *4.2 Integrating open plurilateral agreements in the WTO*

Although the WTO cannot regain its credibility and effectiveness without modernising its rules, it is abundantly clear after 25 years that such modernisation cannot be achieved through multilateral agreements based on a single undertaking. In parallel, a great number of bilateral or regional trade agreements are being negotiated, including on issues for which the WTO has so far failed to produce multilateral outcomes, for example on digital trade or on state-owned enterprises. The most positive development in recent years has been the interest of a

growing number of countries to develop such rules in the WTO framework through open, plurilateral negotiations. If no effective formula is found to integrate plurilateral agreements in the WTO, there would be no other option than developing such rules outside the WTO framework.

The WTO Agreement provides for plurilateral agreements to be incorporated into the legal architecture of the WTO in Article X:9, whereby the Ministerial Conference may decide by consensus to add trade agreements concluded by a group of WTO members to the list of WTO plurilateral agreements in Annex 4. However, Article X:9 has not been used since the WTO's establishment. Reaching consensus on adding a plurilateral initiative to Annex 4 has been perceived to be an insurmountable difficulty, even if the rights of non-participants were not diminished by the plurilateral commitments taken by a group of WTO members. The methodology used to integrate plurilateral agreements in the WTO architecture so far has been for every participant to incorporate the additional commitments unilaterally into their schedule of commitments, as was done for the Understanding in Financial Services Commitments and the Reference Paper on Telecommunications. However, this has its drawbacks. Not every additional commitment fits neatly into a schedule of commitments. In addition, non-participants could bring dispute settlement proceedings against a participant for breach of these additional commitments, even if they, as non-participants, are not bound by such commitments.

Meaningful WTO reform will have to recognise this reality and the Commission will call for a reflection on how to create an easier path for plurilateral agreements to be integrated in the multilateral architecture. The EU would favour an inclusive approach to open, plurilateral agreements that facilitates participation by developing countries and allows them to decide whether they wish to join the agreement, leaving the door open for them to join in the future. That is not to say that the WTO should accommodate all plurilaterals. Discussions could identify certain principles that plurilaterals should comply with in order to be incorporated into the WTO framework. These principles could relate to openness to participation and future accession by any WTO member, facilitation of the participation of developing countries, transparency of the negotiating process, as well as means of protecting the existing rights of non-participants while avoiding free-riding.

## **5. Improving the functioning of the WTO system**

### *5.1 Reinforcing the monitoring and deliberative functions of the WTO*

Work in the regular WTO councils and committees plays an essential role in safeguarding the rules-based multilateral trading system by, inter alia, conducting day-to-day technical business, monitoring members' trade policies, addressing trade concerns and giving members a place to deliberate on trade developments. With virtually no outcomes in rule-making in recent years and a paralysed dispute settlement system, effective monitoring and policy deliberations are ever more important to maintain the WTO as a credible basis for trade relationships. Unfortunately, a number of ineffective procedures, gaps in compliance with transparency obligations and widespread lack of trust often make effective engagement difficult.

Over the past years, the EU has been working towards improvements, in particular in the areas of transparency and trade concerns. Together with the US, Japan and other members, the EU made a proposal on improving transparency and compliance with notification obligations in the area of trade in goods. The proposal suggests incentives as well as administrative measures as a response to significant delays in submitting notifications, a long-standing problem affecting transparency. We hope this horizontal contribution will also trigger the necessary discussions on improving transparency in specific areas, such as agriculture. With a different set of members, the EU presented suggestions to improve work in regular WTO bodies in a proposal on guidelines for WTO bodies addressing trade concerns. This proposal aims to facilitate the resolution of trade concerns among members before they escalate to dispute settlement stage or clog up agendas for years. The objective remains to have these proposals adopted at MC12.

Beyond these proposals, further work is needed to improve the WTO monitoring and deliberation functions. While timely compliance with notification obligations is one aspect of transparency, so is the quality of the information provided. Overall, there is a case for more effective monitoring of members' trade policies at the committee-level. This could include having WTO committees explore how to make notification reviews more effective. There could also be scope for considering issues on which the Secretariat should be able to produce monitoring reports that rely on different publicly available sources of information.

It would also be useful to take stock of activities in WTO bodies with a view to identifying which ones need more resources/attention and which ones should be downsized or deactivated. This would allow the WTO to focus resources on those committees that are more actively and efficiently used by members, while other committees could be suspended unless convened upon explicit request by a member (this is already the case for most subsidiary bodies of the Council for Trade in Services). Certain committees could be revitalised by enhancing their contribution to policy deliberations, such as the Committee on Trade and the Environment, for example. Moreover, the role of the General Council to review developments affecting the trading system or to debate studies prepared by the Director-General in cooperation with other international organisations could be enhanced.

### *5.2 The role of the Director-General and the WTO Secretariat*

The appointment of the new Director-General represents an opportunity for a fresh start. For WTO reform to work, the Director-General needs to be involved proactively and visibly. Members can trust and should encourage the Director-General to support them in addressing the key challenges of the WTO. They should actively support her in taking initiatives in the interest of advancing the objectives of the WTO and proposing solutions for deliberation by members. While it is often stressed that members are responsible for setting the agenda of WTO work, such a facilitating role of the Director-General is compatible with the member-driven nature of the organisation.

The Director-General and the Secretariat in particular can reinforce the monitoring and deliberation functions of the WTO. First, in order to contribute to members' deliberations effectively, the Secretariat should be able to rely on the trust of members for preparing analytical reports on relevant topics and deepening cooperation with other International Organisations, without the need for advance clearing with the membership. Second, transparency on Members' trade policies would benefit from a reinforcement of the monitoring activities of the Secretariat.

While cooperation between the WTO and International Organisations, including UN bodies, works generally well, the Director-General should pursue more targeted cooperation with the objective of jointly contributing towards fulfilling the objectives of the SDGs.

### *5.3 More effective stakeholder engagement: Business and civil society*

Back in 1996, WTO members already recognised “the role NGOs can play to increase the awareness of the public in respect of WTO activities” and agreed “to improve transparency



and develop communication with NGOs” by tasking the WTO Secretariat to manage direct contacts with civil society. The main channels of engagements are the annual Public Forum, attendance of civil society at Ministerial Conferences, briefings by the Secretariat, as well as the possibility to submit position papers and topical discussions. Business representatives are also involved in topical discussions, as well as the Trade Dialogues series since 2016; a dedicated page within the WTO website gathers information tailored to businesses’ interests.

There may be scope to modernise and further develop the modalities for consulting business and civil society with a view to revitalising the involvement of these stakeholders in the trade debate. First, while NGO briefings by the Secretariat are currently reserved for registered NGOs based in and around Geneva, electronic means and virtual platforms would make it possible to broaden attendance to accredited NGOs around the globe, enabling NGOs from developing countries with limited means, in particular, to get involved. Second, a consultative or advisory committee with a balanced selection of business and civil society representatives could be created to gather input from stakeholders on important developments affecting the multilateral trading system and relay them into ongoing negotiations and deliberations. Third, engagement around concrete topics could be reinforced by organising discussions around crosscutting issues related to aspects of sustainable development or regional trade agreements, for example. Fourth, members should examine how to increase transparency by opening meetings or parts thereof to the public, by virtual means.

## **6. Achieving WTO reform**

### *6.1 Building alliances to deliver WTO reform*

Delivering on the elements of WTO reform outlined in this Annex will require engagement and buy-in by a significant number of members. Achieving reform necessitates alliance-building, avoiding polarisation and the willingness of members to engage in an incremental process that will eventually lead to a compromise. As a major economic power that believes firmly in multilateral rules-based trade, the EU needs to continue to show leadership.

As an example of the EU’s working cooperatively with other like-minded partners, the initiative on trade and health was developed through the **Ottawa Group**. Similarly, the EU

has been working with the ‘**FAST**’ (Friends of Advancing Sustainable Trade) Group on how to revitalise WTO work on trade and the environment<sup>7</sup>.

While groups of like-minded countries such as the Ottawa and FAST Groups are important to attract initial support in view of seeking broader engagement by the WTO membership, an essential building block for WTO reform is a high degree of convergence in the reform agenda between the **United States** and the EU. Throughout history, EU-US cooperation has been the main driving force for progress achieved in GATT/WTO negotiations. The EU has cooperated with the US within the framework of the trilateral initiative with **Japan**. The election of a new US President committed to multilateral institutions is an opportunity for close transatlantic cooperation on all aspects of WTO reform, including the reform of WTO dispute settlement. This would be greatly facilitated by an early signal by the new US administration of its intention to fully engage in negotiations to find an agreement on reforms to the Dispute Settlement Understanding and to lift the block on appointments of members of the Appellate Body. In the run-up to MC12, the EU and the US could intensify their engagement on all aspects of WTO reform to seek a maximum of convergence on their respective positions, including possible joint proposals. Work in the trilateral group with Japan should also be intensified with a view to present a joint proposal on how WTO rules could be developed to better address competitive distortions arising from state intervention.

The EU also intends to give a particular priority to engage in a dialogue with **African countries** on the WTO reform agenda. This could include consideration of how to better integrate the SDGs into the work of the WTO, as well as how to ensure that any open, plurilateral initiatives are inclusive and take into account the capacity constraints of developing countries with small administrations. Discussions could also cover the issue of special and differential treatment and how the WTO can support integration through the African Continental Free Trade Area. In this context, the EU remains supportive of the African Union obtaining observer status in the relevant WTO bodies.

The EU will continue to engage in discussions with **China** and **India** on the different aspects of the WTO reform agenda. China’s per capita GDP has increased by a factor of 10 since its WTO accession, and China has become the WTO’s largest exporter in the course of just two

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<sup>7</sup> The initiative has 23-cosponsors – Australia, Canada, Chad, Chile, Costa Rica, the European Union, the Gambia, Fiji, Iceland, Japan, Korea, Liechtenstein, Maldives, Mexico, Moldova, Montenegro, New Zealand, North Macedonia, Norway, Senegal, Switzerland, Taiwan, Penghu, Kinmen and Matsu and the United Kingdom.

decades. Many WTO members are of the view that China's market access and other commitments do not sufficiently reflect its growth, and that further liberalisation by China would confer greater legitimacy on its role in the organisation. India has a highly dynamic economy and is a leading player in the G20, although its overall level of development and competitiveness cannot be compared to that of China. Both countries are indispensable partners for WTO reform discussions. Discussions with China and India should help to better understand our respective perspectives, including on the issues for which progress should be achieved at MC12 and beyond.

### *6.2 What can be achieved by MC12 – the next steps*

The agenda for WTO reform must be ambitious, but it must also be realistic. The different work strands of WTO reform need to be properly sequenced. Not all elements can or should be deployed simultaneously, but rather different components will follow different processes and be brought forward in different configurations – be it multilateral or plurilateral – and with different groups of members. The next WTO Ministerial Conference will be key for the WTO reform process, both in terms of delivering a potential package of outcomes and in launching new processes and areas of work that can serve as a springboard for the reform agenda.

Three areas where work should intensify prior to MC12 are trade and health, fisheries subsidies and the reform of the dispute settlement system.

In addition, the following outcomes could be achieved by MC12:

1. An agreement should be reached to reinvigorate WTO work on **trade and environment in view of mainstreaming sustainability issues in the WTO's work**. Ideally, this should be done multilaterally, although certain elements may only be pursued by subgroups of interested WTO members, such as the liberalisation of selected climate-mitigating goods and environmental services.
2. Work should be launched amongst interested countries on the development of rules on **competitive neutrality, including modernised rules on industrial subsidies**.
3. Substantial progress should be recorded on the plurilateral initiatives on **e-commerce and investment facilitation**. The Joint Statement Initiative on **services domestic regulation** could be concluded at MC12.
4. The renewal of the multilateral **e-commerce** and **TRIPS moratoria** should be ensured at MC12.

5. Improvements to the WTO's **regular work function**, through agreements on the horizontal transparency in notifications and trade concerns proposals.
6. On **agriculture**, a package of transparency improvements across the board and on export restrictions could be agreed at MC12. The initiative on the exemption of the World Food Programme humanitarian purchases from export restrictions could also be part of such an outcome. The EU is open to discuss how to progress after MC12 on the main aspects of the negotiations, in particular on trade distorting domestic support.

Beyond these outcomes, a **Ministerial Declaration** articulating a political commitment to reform would be a significant additional element to support future work. This Declaration could focus on issues such as improvements of the negotiating, monitoring and deliberating functions of the WTO; and look into institutional improvements in the functioning of the Organization. The Ministerial Declaration could establish a **Working Group on WTO Reform** to consider these issues and guide the membership towards delivering outcomes. MC12 should thus set the agenda for further work on the medium to long-term areas of reform, some of which should be completed before the subsequent Ministerial Conference (MC13).