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## STRENGTHENING THE DELIBERATIVE FUNCTION OF THE WTO

### DISCUSSION PAPER

#### COMMUNICATION FROM CANADA

The following communication, dated 14 December 2018, is being circulated at the request of the delegation of Canada.

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One of the functions of the WTO, as identified in Article III:1 of the Marrakesh Agreement, is to "facilitate the implementation, administration and operation, and further the objectives" of the WTO Agreements. In practice, this deliberative function consists of three separate, but related activities: 1) information sharing; 2) policy deliberation and dialogue; and 3) discussing and resolving specific trade concerns. With the support of the WTO Secretariat, these activities sustain intergovernmental cooperation and mitigate both the temptation and opportunity to pursue trade distorting policies.

This discussion paper has been prepared in follow-up to the recent call by a group of WTO members to engage on concrete ideas to "strengthen the monitoring and transparency of Members' trade policies..."<sup>1</sup>. It is intended to support further dialogue and action in the near term to strengthen the deliberative function of the WTO.

#### **1. *Improve information sharing about domestic measures and their impacts***

Effective deliberation and dialogue depend on the availability of reliable and objective information on domestic measures that might affect trade. Proposals to strengthen adherence to notification requirements have already emerged from members.<sup>2</sup> Notification of trade policies is, however, only one element of transparency and information sharing, and compliance with notification obligations is only one mechanism to ensure the availability of pertinent information. In addition to existing proposals to strengthen adherence to notification requirements, other actions to improve the availability and quality of the information that is shared and discussed among members might include:

- **Information needs:** each WTO Council could, in a systemic manner and taking account of any of its current or past efforts, conduct a review of its information needs, evaluate whether these needs are sufficient to allow it to achieve its objectives, and identify additional steps that might improve access to, and availability of, pertinent information;
- **Notification requirements:** each WTO Committee could, in a systemic manner and taking account of any of its current or past efforts, conduct a review the notification requirements, if any, under its mandate. As appropriate, each WTO committee could then update, clarify or streamline those notification requirements to ensure they are not unnecessarily complex

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<sup>1</sup> See "Joint Communiqué of the Ottawa Ministerial on WTO Reform", 25 October 2018, online: <<https://www.canada.ca/en/global-affairs/news/2018/10/joint-communication-of-the-ottawa-ministerial-on-wto-reform.html>>.

<sup>2</sup> See "Procedures to Enhance Transparency and Strengthen Notification requirements under WTO Agreements: Draft General Council Decision", JOB/GC/204-JOB/CTG/14, 1 November 2018.

and burdensome and that they require only information that is fit for the purpose for which it is sought<sup>3</sup>;

- Role of the Secretariat: Members could request the Secretariat to conduct factual information gathering and sharing from public sources to complement the information gathering from existing sources and country notifications for each respective council or committee. Any such work would remain consistent with the Secretariat's mandate as set out in the Marrakesh Agreement.

## **2. *Improve the capacity and opportunity for deliberation***

Informed deliberation and policy dialogue in the WTO's regular bodies is the foundation of successful trade cooperation. It helps members understand how the measures of other members operate, provides opportunities to learn how to achieve policy objectives with the least trade restrictive effect, offers an avenue to diffuse potential trade irritants, and may identify the need and opportunity for negotiations on new commitments.

In this regard, the organization of the work of the regular bodies might be streamlined, strengthened and reoriented to allow for more effective information sharing, deliberation and dialogue. Actions might include:

- Scheduling: review and adjust, if necessary, the frequency and timing of meetings to ensure that deliberations are timely, relevant and responsive to the needs and circumstances of given policy areas. This may include, if possible, clustering related meetings, including coordination with Secretariat training efforts, to better attract capital-based participants;
- Coordination: coordinate among different WTO bodies to facilitate information sharing on substantive issues as well as mutual learning about practices that foster effective deliberation and cooperation. Joint working groups, or at least joint sessions, might be established to engage in discussions of thematic, cross-cutting issues, e.g. major domestic policy developments affecting trade;
- Format: utilize different meeting formats and configurations, including both formal and informal modes, more thematic or information-sharing sessions, based on ideas and material submitted by members. The experiences in the Working Group on Implementation of the Committee on Ant-Dumping Practices and the Triennial Review of the TBT Committee might provide lessons that can be applied in other areas;
- Role of the Secretariat: request help of the Secretariat for the preparation of background material for thematic discussions, including factual analysis of the effects on trade of certain kinds of measures. Any such work would remain consistent with the Secretariat's mandate as set out in the Marrakesh Agreement.

## **3. *Improve opportunities and mechanisms to address specific trade concerns***

Some WTO bodies have developed mechanisms to discuss "specific trade concerns" (STCs), which can lead to clarification and even resolution of trade irritants before recourse to the procedures of the Dispute Settlement Body (DSB) need be considered. Not all bodies provide for such opportunities, and the procedures that do exist are not always robust enough to facilitate an adequate exchange of views and potential for resolution. An organization-wide effort could be taken to improve the mechanisms and opportunities for addressing STCs at the level of Committees, with the dual benefit of improving trade cooperation and reducing the demand for the formal dispute settlement system. Actions might include:

- Strengthen procedures: provide more detailed and robust mechanisms for raising STCs, containing more prescriptive procedures for how they will be discussed and addressed (e.g.,

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<sup>3</sup> For example, the Working Party on State Trading Enterprises examined and modified the frequency of notifications to new and full notifications on a biannual basis only. After a trial period of four years (G/STR/5), the trial was extended twice for two years each time (G/STR/6 and G/STR/7) and finally indefinitely (G/STR/8). Previously, new and full notifications had been due every third year and updating notifications were required in the intervening years.

deadlines, information requirements, etc.). To promote triage and early resolution of STCs, a meeting between the parties, perhaps involving the chairperson, could be encouraged prior to an item being placed on the formal meeting agenda of the relevant WTO body;

- Third-party intervention: provide clear procedures for the involvement, when appropriate, of third parties, including using the "good offices" of chairpersons or referral to confidential third-party mediation or conciliation;
- Make mechanisms widely available: share information between different WTO bodies about experiences with different STC and mediation mechanisms. A single approach need not be used, but all WTO bodies should be expected to make available robust procedures for raising, discussing and resolving STCs. The experiences of the TBT Committee with STCs and the SPS Committee with mediation<sup>4</sup> could be examined more closely for lessons that can be applied in other Committees;
- Coordination on STCs: share information on individual STCs between relevant bodies, possibly through a central repository that lists and categorizes STCs and tracks their status. This might also include special joint sessions of relevant bodies in cases where there are cross-cutting STCs that raise concerns in different areas of trade policy.

## **NEXT STEPS**

The priority in strengthening the deliberative function of the WTO should be on immediate and concrete actions. However, improving this function should not be a top down exercise, but instead should be based on improving the dissemination of existing good practices throughout the organization.

With more information on, and experience with, good practices among the regular bodies, the General Council may eventually decide to recommend or require broader adoption of specific approaches found to be effective in engaging members and preserving cooperation on trade. While incremental improvements to the deliberative capacity of WTO bodies will not, on their own, resolve current trade tensions, they can contribute to restoring trust in the multilateral trading system, the WTO as an institution for cooperation, and in each other as trading partners.

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<sup>4</sup> See Decision of the SPS Committee, G/SPS/61, 9 July 2014; See also Draft Ministerial Decision prepared by the Negotiating Group on Market Access on procedures for the facilitation of solutions to non-tariff barriers. TN/MA/W/106/Rev.1, 3 February 2010.

**ANNEX – REFERENCES TO PREVIOUS WORK ON THE WTO'S DELIBERATIVE FUNCTION**

1. Bertelsmann Stiftung (ed.) - Revitalizing Multilateral Governance at the World Trade Organization: Report of the High-Level Board of Experts on the Future of Global Trade Governance – 2018
  2. Manfred Elsig - The Functioning of the WTO: Options for Reform and Enhanced Performance - 2016
  3. Manfred Elsig - Functioning of the WTO: Mapping the Challenges and Asking the Hard Questions – 2013
  4. Pascal Lamy – Speech to General Council "Strengthening the WTO as the global trade body" – Section on Improving Implementation – 2009
  5. Warwick Commission – The Multilateral Trade Regime: Which Way Forward? – 2007
  6. Peter Sutherland et al – The Future of the WTO: Addressing institutional challenges in the new millennium - 2004
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