



## REINFORCING THE DELIBERATIVE FUNCTION OF THE WTO TO RESPOND TO GLOBAL TRADE POLICY CHALLENGES

### COMMUNICATION FROM THE EUROPEAN UNION

The following communication, dated 20 February 2023, is being circulated at the request of the delegation of the European Union.

#### 1 CONTEXT AND EU VISION FOR WTO REFORM

1. The GATT/WTO has been one of the most successful international organisations over its seventy-five years of existence, providing a rules-based international system that has been a key driver of global prosperity and poverty reduction.<sup>1</sup> In recent years, however, the WTO's effectiveness has been eroded, on account of a paralysed dispute settlement system, limited progress in its rule-making function and insufficient capacity to address new pressing global challenges. For the European Union, the 13<sup>th</sup> Ministerial Conference (MC13) will be a critical milestone in the process towards improving these three functions and delivering a balanced and meaningful package of concrete outcomes will be key. To achieve this, work will follow different workstreams.

2. Having a fully-functioning dispute settlement system is the European Union's number one reform priority for MC13 and the European Union is fully engaged in the ongoing process on that issue. With regard to rule-making, the WTO must also build on recent progress in multilateral and plurilateral negotiations and reach ambitious outcomes in ongoing work. The development dimension also remains a central objective that needs to be incorporated in the reform discussions under each of the core functions. Going forward, the European Union will be feeding these different tracks and processes with further ideas and contributions.

3. This paper is focused on the deliberative function as the third vital pillar of WTO reform. The WTO today faces an increasingly diverse set of global challenges and demands. These include rising geopolitical tensions, the increased role of the state in the economy of various WTO Members pursuing active industrial policies, the green and digital transitions, the need for a better integration of many developing countries - notably least-developed countries (LDCs) - into global value chains, the importance of inclusive domestic policies to maintain support for trade openness, and the impact of food and agriculture policies on food security and sustainability.

4. The WTO remains a vital institution; the guarantor of rules-based open trade and a guardrail against the risk of an increasingly fragmented economic order. If the WTO is to maintain this central role in the global trading system, however, Members will need to work together to address the trade-related aspects of these global challenges. Finding itself at their interface, the WTO uniquely has the potential capacity to formulate responses, not only by reinvigorating the functions of dispute resolution and negotiation but also that of monitoring and deliberation.

5. The objective of this paper is to propose three thematic areas where enhanced deliberative engagement would strengthen the relevance of the organisation and better equip its membership to respond to global challenges, while incorporating the development dimension, which is relevant in all areas: i) trade policy and state intervention in support of industrial sectors; ii) trade and global

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<sup>1</sup> According to the World Bank, global poverty fell from 36 to 9 per cent from 1997 to 2017.

environmental challenges; and iii) trade and inclusiveness. Alongside the essential work on dispute settlement and new rule-making, the European Union believes that the WTO must re-establish itself as a forum for more meaningful policy deliberations in areas that impact global trade and policy making.

## 2 A REINVIGORATED DELIBERATIVE FUNCTION

6. The European Union welcomes the various reform efforts that have been initiated, including bottom-up work underway to increase transparency and efficiency in subsidiary bodies and the Council for Trade in Goods (CTG) to improve the practical functioning of committees (e.g. planning of meetings, agenda-setting, digital tools, transparency and notification requirements). The ongoing discussions in the appraisal of the Trade Policy Review Mechanism (TPRM)<sup>2</sup> offer further important elements for improved deliberation and monitoring in the WTO. The EU looks forward to engaging further with other Members on this work.

7. Reinvigorating the deliberative function goes beyond these essential procedural improvements however, and would contribute towards demonstrating the organisation's relevance and restore the WTO as the key international forum for global trade governance. It could also in certain cases act as a bridge towards possible rule-making where Members consider this an appropriate way forward once deliberation has helped them identify the issues and the best ways to deal with them. For a variety of reasons, the deliberative function has been underperforming in recent years and effective engagement by Members has been challenging. As part of the Committee work, deliberation per se has been overshadowed by monitoring Members' compliance with rules and obligations.

8. The **objectives** and **means** under a reinvigorated deliberative function could be to:

- improve the **understanding** of new trade policy challenges through the **sharing of information**, including **background analysis** and research by the WTO Secretariat;
- identify **best practices** and the **sharing of experiences** through the increased use of **informal** meetings, **thematic** sessions, enhanced **cross-committee** coordination and **joint** sessions to leverage in-house expertise;
- develop **non-binding instruments**, such as non-binding principles, guidelines and recommendations, to facilitate the implementation of existing trade agreements, to assist developing countries in such implementation or to respond to new global trade policy challenges; and
- assess the scope for **convergence** on issues not yet sufficiently addressed by the WTO and to consider elements for a response, including the possibility, where appropriate, of **rule making**.

### 2.1 Trade policy and state intervention in support of industrial sectors

9. State intervention in the economy, including in the form of subsidies, is considered by many Members a necessary component of the policy response for achieving legitimate priority objectives. Under certain conditions, well-designed subsidies make an important contribution to achieve the climate transition and other environmental goals. Certain subsidies can, however, have a detrimental impact on both trade and on the protection of the environment. The rules of the WTO are not sufficiently effective in tackling the negative external spill-overs of state intervention in the economy. Lack of transparency of some interventions aggravates the problem. As a result of these negative spill-overs, there are growing tensions in international trade. If these tensions are left unaddressed, we risk a further weakening of the rules-based order. In particular, there is a risk that lack of transparency of state intervention and subsidy races increase trade conflicts, undermine the cooperation that is necessary to achieve the climate transition, and harm the interests of developing countries.

10. The recent joint subsidies report by the four International Organisations<sup>3</sup> recommended increased international cooperation as a way to resolve or pre-empt such trade tensions. It is worth

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<sup>2</sup> The European Union contributed with a Communication in RD/TPR/1503\*.

<sup>3</sup> "Subsidies, Trade, and International Cooperation" prepared by staff of IMF, OECD, World Bank, and WTO, April 2022.

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following up on this useful report and exploring the feasibility of launching enhanced deliberations on the interaction between trade and state intervention in the economy.

11. The WTO, through its deliberative function and broad membership, can be the place for such discussions, in view of establishing an international consensus on what are the acceptable parameters for countries' interventions in support of industrial sectors and their impact on trade.

12. While the improvement of WTO rules may be a possible outcome in the longer term, the more immediate focus of deliberations should be on achieving a better understanding of the interface between trade and state intervention in support of industrial sectors and on identifying possible gaps in the current rules.

13. The aim of the deliberations should be to provide more **transparency** on support schemes and other forms of state intervention, looking beyond the legal characterisation of whether a particular measure may qualify as a subsidy under WTO law or not. It should include the activities of State-owned enterprises. The deliberations would consider the **design** of measures in a way that minimises negative spill-overs to other WTO Members and would give particular attention to the green dimension, notably the positive and negative impacts of industrial subsidies on both trade and the environment. They could also consider the role of support to industrial sectors in promoting **development**, notably the positive and negative spill-overs on developing countries.

14. The deliberations should focus on support measures aimed at industrial sectors, complementing the mandated work on further reductions of trade distortive agriculture support (Committee on Agriculture Special Session) and the phase 2 of the fisheries subsidies negotiations.

15. MC13 in February 2024 could, based on consensus by the membership, establish a Member-driven dedicated space to conduct these discussions, in a form to be decided within the WTO, with a report and recommendations to be presented to MC14. MC14 would decide on the most appropriate way to follow up on the deliberations. Deliberations would be based on submissions from Members, with inputs from international organisations, academics, businesses, NGOs and think-tanks.

## 2.2 Trade and global environmental challenges

16. There is a growing interest of Members for environment and climate to figure more prominently on the WTO agenda. Members are increasingly stepping up national policies and measures to respond to climate and other global environmental challenges, such as climate change, loss of biodiversity and pollution. There is a need to increase awareness about the way in which such measures are designed and of their impact on international trade. Increased transparency, dialogue and enhanced cooperation should be encouraged, as the WTO cannot ignore this crucial debate given its scale and urgency. Inclusive cooperation on trade-related environmental measures can also help to prevent trade conflicts.

17. The European Union proposes to reinforce deliberation on trade and global environmental challenges in the Committee on Trade and Environment (CTE), so that it becomes the key global forum for transparency, coordination and policy dialogue on trade-related environmental measures. This could cover engagement on trade-related environmental measures, the relationship between trade and the implementation of multilateral environmental agreements, and the promotion of sustainable development through trade.

18. One objective of deliberation in this area would be early and voluntary **information exchange** by Members on their environmental measures that have an impact on trade. The discussions could focus on policy objectives and options in the design of measures that maximise climate and environmental benefits while minimising trade-restrictive impacts. These exchanges could also cover the implementation phase of measures. While recognising the complex nature of some of these debates, the European Union intends to continue to feed into this crucial work through its current practice of offering transparency and discussion on its own climate-related Green Deal measures (e.g. the Carbon Border Adjustment Mechanism (CBAM), Regulation on deforestation-free supply chains, Eco-Design for Sustainable Products Regulation, etc.).

19. A further objective would be an expanded role for **thematic deliberations** in the CTE. One area of work could be deliberation on technical methodologies. This could include discussion on ways

to measure the embedded emissions of internationally traded products and on identifying ways to facilitate compliance of developing members. Another topic could be circular economy, including cross-border trade in reusable or repairable products with the aim of identifying best practices. Discussions could also be centred on a particular topic such as deforestation, and focus on the range of measures taken by various Members with the aim of identifying best practices. As regards **subsidies**, the CTE could provide input to the work to be carried out in the Member-driven dedicated space on trade policy and state intervention in support of industrial sectors and for the protection of the environment (see section 2.1. above).

20. To strengthen the inclusive nature of the deliberative work and given the **interlinkages between development and environmental challenges**, there is a need to reinforce the **capacity** of all Members, including developing and least developed countries, to take part in the debates. Developing countries often face challenges in participating in such discussions due to lack of resources and technical expertise. The CTE should identify ways of providing technical assistance and capacity building to strengthen their participation and ensure their perspectives and needs are taken into account. The CTE could also work on identifying means to support developing countries in the challenges they may face in complying with trade-related climate and environmental measures. Developing-country Members and donors could present relevant technical assistance and capacity-building activities under Aid for Trade in joint sessions of the CTE and CTD, particularly as concerns assistance to LDCs to comply with product-related standards. For example, the European Union is funding a project with the International Trade Centre (ITC) that aims to support developing countries' engagement in environment work in the WTO through capacity- and knowledge-building, and facilitating the preparation of their submissions.

21. Finally, the CTE could further strengthen coordination with other relevant committees such as the Technical Barriers to Trade (TBT) Committee, the Sanitary and Phytosanitary (SPS) Committee, the Subsidies and Countervailing Measures Committee and the Committee on Agriculture.

### 2.3 Trade and inclusiveness

22. The WTO is facing increased calls for a more inclusive multilateral trading system. A first part of the response must be to ensure the centrality of the development dimension in WTO reform, across the three functions of the organisation. The EU also believes that an important objective should be to reinforce the role of the Committee on Trade and Development (CTD) as a forum to deliberate on current development challenges as well as to more effectively mainstream development related issues in the work of different WTO committees.

23. But the question of inclusiveness is broader. In the view of the European Union, there are two further key dimensions to the debate on inclusiveness: first, improving the understanding of how to achieve inclusive outcomes of trade liberalisation to spread the gains from trade more widely within societies; and second, strengthening the inclusiveness of the trade-policy making process itself in order to incorporate all necessary perspectives.

#### **Promoting inclusive outcomes**

24. Inclusiveness is critical to maintain support for open trade. While ensuring the equitable distribution of the gains of market opening is essentially a domestic responsibility, the WTO should not ignore the policy relevance of these debates. For trade to be seen as part of the solution to current economic and social challenges, the European Union sees the need for the WTO to increase deliberation on inclusiveness and the social dimension of trade liberalisation<sup>4</sup>. This would deepen **understanding** and lead to more informed and inclusive policy outcomes to expand the opportunities from trade in the different Member countries.

25. The European Union proposes that the WTO provides a forum to underpin this debate with background work by reinvigorating its cooperation with the **World Bank** and the **ILO**. This could include undertaking **joint analysis**<sup>5</sup> on the **distributional impacts**<sup>6</sup> of trade (e.g. effects on wages

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<sup>4</sup> The Marrakesh Agreement establishing the WTO recognises in its preamble that trade cooperation be conducted with the ultimate objective of "raising standards of living" and "ensuring full employment".

<sup>5</sup> See WTO and ILO joint study "*Investing in Skills for Inclusive Trade*", 2017.

<sup>6</sup> See World Bank report "*The Distributional Impacts of Trade. Empirical Innovations, Analytical Tools, and Policy Responses*", 2021.

and employment, labour market outcomes, impacts on different sectors, regions and types of workers etc.). Work should also aim to provide analysis and insights on how to expand the opportunities from trade, focusing on how to better integrate **developing countries into global and sustainable supply chains** and achieve increased diversification, paying particular attention to those countries most in need. This work should also include the gender dimension of inclusiveness.

26. The General Council could provide a forum for thematic discussions on different aspects of the inclusiveness agenda based on reports prepared by the WTO in cooperation with other international organisations. The TPRM also provides an opportunity for Members to share experiences on domestic efforts and the promotion of corporate social responsibility to spread the benefits of trade and promote inclusiveness.

### ***Inclusiveness of trade policy-making processes***

27. As part of the discussion on inclusiveness, Members should also address the **capacity constraints** faced by some developing countries in participating in WTO deliberations and allow them to shape the agenda in areas of relevance and interest to them. To this end, a review of existing technical assistance and capacity-building needs for effective participation in the WTO's activities could take place.

28. As an organisation, there have also been demands for the WTO to strengthen the inclusiveness of the **trade policy-making process** itself by bringing in broader perspectives and concerns to address today's agenda. While the WTO's Marrakesh Agreement explicitly recognises the role that non-governmental organisations (NGOs) can play in its activities, there is scope for enhancing **engagement with external stakeholders**.<sup>7</sup> Practices and the level of engagement with external stakeholders currently vary across different WTO committees, bodies and negotiations. Building on the useful experience with stakeholder involvement in thematic meetings of the TBT Committee or the early phases of Structured Discussions and Joint Statement Initiatives (JSIs) to help inform the policy debate and support evidence-based discussions, it is proposed to broaden engagement with external stakeholders and **experts in informal seminars and workshops**. To bring in business expertise and workers' perspectives that would be relevant across the work of the organization, a **standing WTO consultative committee** with balanced representation of business, labour and civil society could be considered.

## **3 CONCLUSION**

29. A reinforced deliberating function is critical to enhance the WTO's ability to respond to the global challenges that have an impact on the trading system. The three areas for reinforced deliberation suggested in this paper are by no means exhaustive and should be seen together with other initiatives. These include for instance a reinforced e-commerce work programme that helps countries to address the challenges of regulating the digital economy and contributes through capacity building to bridging the digital divide. The European Union looks forward to further discussing in the General Council and its subsidiary bodies how to make progress on these initiatives by MC13.

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<sup>7</sup> The main channels of engagement so far are the annual Public Forum, attendance of civil society at Ministerial Conferences, the Trade Dialogue series and briefings by the WTO Secretariat to specific, registered NGOs.