



*European Economic and Social Committee*

**REX/509**  
**Reform of the WTO**

## **OPINION**

European Economic and Social Committee

**Reforming the WTO to adapt to developments in world trade**  
(own-initiative opinion)

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## 1. **Conclusions and recommendations**

- 1.1 The European Economic and Social Committee (EESC) would like to reiterate its commitment to the World Trade Organization (WTO) as the guardian of international trade and a crucible for developing rules and disciplines to ensure fair trade, the liberalisation of trade in goods and services, and transparency in trade-related policy-making.
- 1.2 The EESC is convinced not only that urgent reforms should be implemented as soon as possible, particularly for the functioning of the Appellate Body of the Dispute Settlement Body (DSB), but also that WTO members should be committed to more ambitious and systemic changes related to the labour standards, and fight against the climate and global SDGs in order to adapt the rules of international trade to the global challenges.
- 1.3 The European Economic and Social Committee would like to encourage the European Commission (EC) to pursue, with the support of the Member States, an ambitious EU-27 trade policy that will provide EU companies with better market access opportunities and that will disseminate EU values in the field of human rights and the core labour standards, such as the fight against discrimination, equality between men and women, union freedoms and so on through the channels of multilateral, plurilateral (including the WTO), bilateral and unilateral (GSP, EBA) agreements. EU civil society demands free but fair trade.
- 1.4 After the withdrawal of the United Kingdom from the EU (29 March 2019) the UK will become an independent member at the WTO. This means that the EU 27 and the United Kingdom should secure their bilateral trade and investment relationships, and the EU 27 should give due consideration to the important issue of tariff rate quotas with its FTA partners. The EESC wishes that the UK could support the EU proposals aiming at reforming the WTO in order to modernise multilateral trade rules.
- 1.5 The EESC supports the European Commission's proposition for a workable solution in order to get the Appellate Body of the Dispute Settlement Body back on track and the recent communications circulated by WTO members to amend certain provisions of the understanding on rules and procedures governing the settlement of disputes.
- 1.6 The European Economic and Social Committee, as a representative of European organised civil society, is very involved in monitoring free trade agreements, the fulfilment of commitments undertaken by the parties in the sustainable development chapters, and the requirement to take into account the UN's Sustainable Development Goals (SDGs) and the fight against climate change.
- 1.7 The proliferation of barriers to trade and the increasing taxation of imports (aluminium, steel, etc.) by key players in world trade (US, China, etc.) are a real danger to the growth of world trade – already slowing down since 2014 – which could harm global growth, efforts to reduce inequality, the development of the most fragile economies and the creation of value and jobs in global value chains.

- 1.8 Given these risks, the EESC believes that an ambitious reform of the WTO is needed. That reform should be divided into two parts: a first, more technical part on the most urgent issues before the end of 2019 in order to avoid the blockage of the Appellate Body of the Dispute Settlement Body and to clarify some definitions; and a second, more systemic part that could take more time and that will adapt the missions and the functioning of the WTO to the major developments in world trade.
- 1.9 For the first phase, several of the proposals put forward by the European Commission in a concept paper drawn up in September 2018 in response to a mandate given by the Member States at the European Council on 28 and 29 June should be supported
- 1.10 The proposals in question are as follows: strengthen the role of the secretariat, change the rules regarding the term of judges on the Appellate Body of the DSB, update the rules on subsidies, state-owned enterprises and technology transfer, and make increased use of open plurilateral negotiations.
- 1.11 The EESC considers also urgent for the first phase that the WTO should also become more ambitious with regard to the agricultural sector in order to ensure good quality, safe and secure supplies of food. The role of the WTO in reducing uncertainties in international trade is essential for the future of agriculture in each country, as well as its ability to ensure food safety in compliance with high environmental standards for production and animal welfare.
- 1.12 The EESC sees it vital that the precautionary principle, as enshrined in the EU treaties, is adequately protected also at multilateral level and to gain full legal recognition in order to ensure a higher level of protection through preventative decision making in the case of risk to human health or the environment. Given its importance, the EU should make it an offensive interest in all its trade negotiations.
- 1.13 The EESC considers that safeguarding data protection in international trade through multilateral instruments inspired by standards and rules put in place in the EU, and in the OECD, APEC and UN, is another priority. The existing multilateral instrument in the area of data protection should be further developed and more third countries should be encouraged to join. The EU approach on horizontal provisions for cross-border data flows and data protection should be promoted as a multilateral standard.
- 1.14 The adaptation of these existing rules regarding the agricultural sector and data protection is necessary in order to take into account market characteristics and trade practices of a number of WTO members.
- 1.15 However, other avenues of more ambitious and systemic reform not mentioned at that stage by the European Commission also merit consideration.
- 1.16 The EESC suggests initiating a process of reflection on the definition of developing countries for the proceedings of the WTO which could rest on a set of criteria including, for instance, the market share in the global economy, and human development indexes, aligned with already existing definitions in other international organisations.

- 1.17 The proposals supported by the EESC mainly cover three areas: labour standards and decent work, climate change objectives and the achievement of the UN's 2030 SDGs.
- 1.18 How to articulate core labour standards and multilateral trade rules has been a longstanding issue for more than 20 years. The EESC considers that, with the adoption of ambitious and comprehensive SDGs by the UN, the time has come for the WTO as the guardian of international trade to play its role in actively promoting core labour standards. This could be achieved through recognition of the SDGs and the core ILO conventions in a general preamble and full use of Article XX of the GATT both for environmental matters (XX g) and for social matters (XX e).
- 1.19 But beyond the possible avenues for updating the current rules and outlining new rules adapted to 21st-century trade, it is really the WTO's complex unanimity-based governance structure that should be made more flexible and transparent in order to enhance the efficiency of the organisation.
- 1.20 That is why the European Economic and Social Committee is asking the European Commission, in cooperation with its major partners, to open the reflection on possible evolutions in the WTO's decision-making procedures, the transparency of its work, and the involvement of civil society.

## **2. A key player in international trade**

- 2.1 The WTO is a cornerstone of multilateralism in trade, which has brought about a lot of beneficial developments: a process of liberalisation of world trade, greater transparency on trade policy measures through peer review, the case-law of the Dispute Settlement Body (DSB), which enables any member country of the organisation to assert its rights in relation to another WTO member should its rules be infringed, and the admittedly slow and difficult drafting of rules and disciplines to govern the development of international trade (trade facilitation, combating subsidisation in the fisheries sector, etc.).
- 2.2 The EESC considers as a success the fact that the WTO has welcomed an increasing number of members, brought geopolitical "giants" (China and Russia) on board with the principles of multilateralism, and facilitated the integration of vulnerable economies into world trade (Liberia, Cambodia, etc.).
- 2.3 Since it was established in January 1995, the WTO has thus played the threefold role of guardian of trade rules, driver of the internationalisation of developing countries' economies and facilitator of the establishment of global value chains.

2.4 Its work has mainly been carried out within the framework of the following three pillars:

2.4.1 *Drawing up a set of rules and disciplines for international trade*

2.4.1.1 These rules currently cover three main areas: the General Agreement on Tariffs and Trade, the General Agreement on Trade in Services, and the Agreement on Trade-Related Aspects of Intellectual Property. These three pillars have been supplemented by a dispute settlement system and a principle of transparency based on examining member countries' trade policies. This whole set of rules, which is enforced by the DSB, gives legal certainty and predictability to international traders, which is essential for long-term investments.

2.4.2 *The Dispute Settlement Body*

2.4.2.1 This is one of the major advances achieved by the WTO following on from GATT. The timetables and procedural rules applicable to the settlement of disputes between member countries were placed on a formal footing and strictly governed by deadlines, which has led to over 500 disputes being brought to the DSB since 1995 and over 350 rulings being issued.

2.4.2.2 The DSB has made a number of important rulings, even if there might be some concerns about their implementation: aircraft subsidies (EU/US), foreign sales corporations (EU/US), cotton subsidies (Brazil/US), etc. The rate of referrals has increased recently with the proliferation of trade policy measures establishing additional or protectionist customs duties (US/China), forced technology transfers and non-compliance with intellectual property rights.

2.4.3 *The trade liberalisation rounds*

2.4.3.1 The Uruguay Round (1986-1994) is the last round of multilateral negotiations to have led to an ambitious programme of reducing industrial customs duties, dismantling non-tariff measures, including textiles and clothing quotas, as well as strengthened rules and the establishment of new procedural rules on dispute settlement.

3. **The current shortcomings of the WTO**

3.1 *An ongoing crisis in the DSB's Appellate Body*

3.1.1 The Appellate Body, which is the cornerstone of the WTO's judicial function, is currently in danger of stalling completely: in December 2019, there will be fewer than three permanent judges able to serve on this body if the United States continues to refuse to appoint new judges. This blockage would prevent the Appellate Body from making decisions as a minimum of three judges is required, and this at a time when the number of disputes is increasing given growing pressure from protectionism.

3.1.2 Several criticisms have been made by the Office of the United States Trade Representative (USTR) regarding the current functioning of the DSB: functioning beyond the core role to assist WTO members in resolving trade disputes, disregard for the 90-day deadline, opinions issued

on matters unrelated to the subject of the dispute, and the fact that a new balance needs to be struck between the rights and obligations of the Appellate Body.

3.1.3 This is a paradox given that the US is part of the small circle of members that make most use of the DSB, alongside the EU, Canada, Brazil and India.

### 3.2 *The inability to deliver new multilateral rules or agreements*

3.2.1 The EESC takes note of the fact that the WTO has suffered a certain number of setbacks, such as the stalling of the Doha Round launched in 2001, failure to act in the face of unfair practices implemented in several member countries and failure to adopt a ministerial declaration at the Ministerial Conference in Buenos Aires in December 2017, although some progress has been made, notably the entry into force of the Trade Facilitation Agreement in 2013.) This has prompted several trading partners (EU, US, Japan, Canada, China, etc.) and NGOs to propose substantial reforms to both its remit and its working methods.

3.2.2 In reality, these failures reflect the difficulty faced by the WTO in adapting its operating rules to the new state of play in international trade: the increasing number of protectionist measures, the complexity of the global trade arena, public opinion pressure on trade policy makers because of the social and environmental impacts of trade, the existing resistance against some adverse impacts of globalisation, the excessively slow and geographically restricted opening-up of public procurement, and the emergence of over-capacity in certain industrial sectors due to massive subsidies.

3.2.3 The difficulties of fully including a number of WTO members in the multilateral rules-based trade system: given their economic size, the role of the state and various public bodies in business decisions, it is a fact that many complaints and referrals to the DSB concerning IPR infringements, forced transfer of technologies, limited access to investment for foreign companies in certain sectors, export controls, massive public subsidies in some industrial sectors and so on were made during the last 15 years by several WTO members (the United States, the European Union, Japan, Canada and so on).

### 3.3 *A general imbalance of rights and duties between developed countries and large emerging economies*

3.3.1 Since it was set up, the WTO has continuously welcomed new members, 36 in total, with both key countries that are now members of the "multilateral class", and fragile developing countries wishing to become integrated in international trade

3.3.2 It should be noted that there are no WTO definitions of developed and developing countries, with the exception of LDCs as designated as such by the UN: each country that successfully completes the accession process declares which category it belongs to, and this can be challenged. This situation, based on self-declaration, is problematic because a number of large emerging economies, which have declared themselves "developing countries" receive waivers on this basis although their economic performance and successful integration in international trade would suggest that they should rather be included in the category of "industrialised

countries". Thus, the EESC suggests opening a process of reflection on the definition of developing countries for the proceedings of the WTO that could rest on a set of criteria such as the market share in the global economy, and, as suggested by the European Parliament, human development indexes<sup>1</sup>, aligned with already existing definitions in other international organisations.

3.3.3 As the European Commission pointed out in its 2015 communication<sup>2</sup>: "There has been a major shift in the relative economic power of the major trading partners and it has not yet been fully reflected in the WTO system. As a result, there is a growing imbalance between the contribution large emerging countries make to the multilateral trading system and the benefits they derive from it" (p. 28).

3.3.4 However, from 2005 to 2015, despite benefiting from generalised tariff preferences from industrialised countries, LDCs have failed to make a major leap forward in international trade: their share has risen from 0.8% to 1% (see Appendix 1). The EESC recognises that this stagnation demonstrates that these LDCs should be given the same quota- and duty-free market access not only by industrialised countries but also by the large emerging economies.

#### 4. **The strands of an urgent reform aimed at overcoming the current crisis**

##### 4.1 *Finding a swift solution to get the DSB back on track*

4.1.1 The EESC upholds the proposals drawn up by the European Commission and the European Parliament which would authorise extending the term of the judges currently in office beyond three years, to make provision in future for recruiting full-time, independent professional judges, to raise the number of judges sitting on the Appellate Body from seven to nine.

4.1.2 The EESC supports the two communications circulated by several WTO Members, in the light of the General Council of 12-13 December 2018, proposing amendments to certain provisions related to the understanding on rules and procedures governing the settlement of disputes: possible exception of the 90 day period; exclusion of specific municipal law measures by the party, increase from 7 to 9 Appellate Body members and extension of their term.

##### 4.2 *More frequent use of open plurilateral negotiations*

4.2.1 A large number of bilateral and regional agreements have been concluded (see Appendix 2), the direct result of there being no multilateral dynamic since 2001. The EESC recommends that plurilateral agreements should be concluded in the framework of the WTO and, in any case, should be open and transparent. Plurilateral negotiations compared to multilateral negotiations offer a number of advantages:

- they are based on a critical mass of countries willing to act,

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<sup>1</sup> European Parliament Resolution on *WTO: the way forward*, point 9, 29 November 2018 (2018/2084(INI)).

<sup>2</sup> [Trade for all – Towards a more responsible trade and investment policy.](#)



- they involve shorter negotiations,
- there is no danger of the unanimity principle being misused, since one country or a group of less relevant countries cannot block an agreement,
- their scope is often limited, meaning that they can concentrate the impact of the partners' commitments and promote investment, trade and job creation.

4.2.2 This solution has already been used and has yielded positive results, although it does need to be explored further (ITA I and II, Agreement on Government Procurement).

4.2.3 Open, inclusive and transparent plurilateral agreements could be used more systematically, while making provision for inclusion mechanisms enabling non-signatory countries to enjoy the benefits of the agreement under certain conditions in terms of commitments and implementation.

4.2.4 Negotiations are currently underway on a number of topics such as e-commerce, investment facilitation and micro, small and medium-sized enterprises (MSMEs), liberalisation of environmental goods and services, and trade in services, with a view to concluding open plurilateral agreements.

4.2.5 WTO members have taken important steps to bring MSME's perspective to the centre of the discussions, through, for example, the joint open initiative on supporting MSMEs, which was launched in Buenos Aires in 2017. The focus is on trade finance and the multilateral development banks have responded through their trade finance facilitation programmes. By streamlining, simplifying and standardising customs procedures the Trade Facilitation Agreement will help to cut trade costs and alleviate administrative burdens for MSMEs. The EESC would suggest a comprehensive, inclusive, coherent and effective multilateral approach that takes into account the needs of all the different SME sub-groups and interests.

### 4.3 **Updating some of the existing rules**

#### 4.3.1 *The Agreement on subsidies and countervailing measures*

4.3.1.1 Given the huge programmes of direct and indirect subsidies to industry in certain member countries ("Made in China 2025" for example), the Committee supports the proposals drawn up by the European Commission in its September 2018 concept paper which are being discussed with the US, Japan and Canada: introduce a presumption that all non-notified subsidies distort the market, improve the notification procedure, and add new categories of subsidies, such as those given to an insolvent or ailing company without a credible restructuring plan. More attention should also be paid to the issue of dual-pricing which is used by some member States, e.g. Russia, in order to gain a competitive advantage especially in energy-intensive industries.

4.3.1.2 A more robust system for monitoring notifications, including sanctions, should be introduced in the light of the downward trend in the number of WTO member countries

declaring their subsidies, with the percentage having fallen from 50% in 1995 (128 member countries) to 38% currently (164 member countries)<sup>3</sup>.

#### 4.3.2 *Forced technology transfers*

4.3.2.1 The EESC endorses the proposals put forward by the European Commission which wants to establish new mechanisms to control the variety of forms of forced technology transfers (limitations on joint ventures, limitations on equity-type financing by foreign companies, granting licences on the basis of opaque criteria, granting licences with restrictions) and to safeguard trade secrets more effectively. These new mechanisms should cover only forced technology transfers and not technology transfers in general that produce a positive impact in developing countries.

#### 4.3.3 *State-owned enterprises (SOE)*

4.3.3.1 The definition and the rules related to SOE needs to be brought up to date and clarified in order to cover the entire range of enterprises linked directly or indirectly to the state or to public bodies.

#### 4.3.4 *Discussing new rules in the area of Special and Differential Treatment (SDT)*

4.3.4.1 The European Commission put forward a number of interesting options in its September 2018 concept paper (graduation and opt out, objective criteria for granting SDT to developing countries, case-by-case consideration of requests for new flexibilities under SDT), that the EESC supports.

#### 4.3.5 *Investments*

4.3.5.1 During the Ministerial Conference in Buenos Aires, 45 WTO members signed a joint declaration on investment facilitation for trade, calling for discussions to be opened up on establishing a multilateral framework providing transparency and predictability. The EESC notes that foreign investment, while useful, may also carry risks and would like to refer to its opinion recommending some measures to be taken to address potential adverse impacts<sup>4</sup>.

4.3.5.2 Greater transparency is needed in foreign direct investment (FDI) as some huge flows towards developing countries seem opaque. In the context of establishing a Multilateral Investment Court (MIC), the EESC would like to refer to its opinion highlighting a number of fundamental questions to be taken into consideration<sup>5</sup>.

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<sup>3</sup> [Improving disciplines on subsidies notification](#), TN/RL/GEN/188, WTO, 2017.

<sup>4</sup> Ref. EESC opinion on the Proposal for a Regulation of the European Parliament and of the Council establishing a framework for screening of foreign direct investments into the European Union [COM(2017) 487 final — 2017/0224 (COD)], rapporteur: Christian BÄUMLER (DE-II), co-rapporteur: Gintaras MORKIS (LT-I), ([OJ C 262, 25.7.2018, p. 94-100](#)).

<sup>5</sup> EESC Opinion on the *Convention establishing a multilateral court for the settlement of investment disputes*, rapporteur: Philippe de BUCK (BE-I), co-rapporteur: Tanja BUZEK (DE-II) (*not yet published in the OJ*).

#### 4.3.6 *Public procurement*

##### 4.3.6.1 Progress is needed in three areas:

- transparency: with penalties applied if mandatory reporting requirements are not met,
- coverage: increasing the number of countries which have signed the Government Procurement Agreement (CPA) and the public procurement procedures, which come under this agreement. Urging countries such as China, Russia, India to sign is a priority and their commitments must cover national and provincial levels as well as enterprises with ties to the state,
- maintaining the ability for the procuring entities to use environmental, social and labour-related criteria such as the obligation to comply with and adhere to collective agreements, in procurement tenders<sup>6</sup>.

#### 4.3.7 *E-commerce*

4.3.7.1 During the December 2017 WTO Ministerial Conference in Buenos Aires, 71 member countries, representing 77% of e-commerce, supported the notion of a plurilateral initiative to stabilise the regulatory framework and mobilise skills and expertise in the most vulnerable economies. The high-level group on e-commerce in 2030 subsequently delivered its report to the WTO Public Forum on 4 October 2018.

4.3.7.2 The European Economic and Social Committee feels that the GATS telecommunications Annex and the Reference paper should be used as a starting point in order to provide a set of uniform and ambitious rules on e-commerce which are geared to the many challenges ahead. These include enforcing the principle of non-discrimination between domestic and foreign operators by pulling down barriers to the development of cross-border flows, such as the requirement that servers be located locally however, with the important need to introduce an exception of the general interest (security, public order...) as well as guaranteeing the access to the digital trade platform at the same conditions for national and foreign companies; guaranteeing the integrity of data; guaranteeing legal certainty for operators with regard to their investments; and promoting investments in telecommunications infrastructure in order to combat the digital divide.

4.3.7.3 However, the European Economic and Social Committee points out that any initiative on e-commerce must be fully in line with the recommendation set out below on data protection in international trade and the horizontal provisions for cross-border data flows (in EU trade and investment agreements).

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<sup>6</sup>

Joint Interpretative Instrument on the Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU and its Member States (<http://data.consilium.europa.eu/doc/document/ST-13541-2016-INIT/en/pdf>).

#### 4.4 Data protection in international trade

- 4.4.1 The EESC believes that given the rapid technological advances and continuous expansion of ITC infrastructure, there is a need for close governmental oversight and monitoring. Even though adequacy decisions are evaluated every four years (see Article 45(3) of the General Data Protection Regulation (GDPR)), the EESC recommends permanent contact between the Commission, data protection authorities (DPAs) and third-country governmental authorities in order to identify new challenges in what is a very dynamic technological and economic environment<sup>7</sup>.
- 4.4.2 The EESC considers that promoting data protection standards through multilateral instruments should be a priority for the European Commission and that this commitment should be backed by resources, so as to deliver real protection of human rights a priori and, a posteriori, an effective legal remedy for prejudices<sup>8</sup>. The Council of Europe Convention No 108 of 1981, with its additional Protocol of 1999, is the only binding multilateral instrument in the area of data protection. The instrument should be further developed and more third countries should be encouraged to join.
- 4.4.3 Multilateral efforts within the OECD (Organisation for Economic Cooperation and Development), the G20 and APEC (Asia-Pacific Economic Cooperation) should be further developed with a view to building a truly global multilateral system of data protection. Cooperation with the UN Special Rapporteur on the right to privacy should be solid and functional.
- 4.4.4 The EESC hopes that the Commission, the Council, the national governments and parliaments of the Member States and the US Government and Congress will welcome the proposals put forward in the European Parliament Resolution of 6 April 2017 on the adequacy of the protection afforded by the EU-US Privacy Shield. The European Parliament raises serious concerns in its Resolution, many of them indicating that the agreement and the current US legislative framework do not in practice protect the rights of EU citizens<sup>9</sup>.
- 4.4.5 The EESC demands that any future multilateral initiative on data flows fully comply with EU horizontal provisions for cross-border data flows and data protection in EU trade and investment agreements, and in particular with Article B paragraph 2<sup>10</sup>.

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<sup>7</sup> EESC Opinion on *Exchanging and Protecting Personal Data in a Globalised World*, rapporteur: Christian PÎRVULESCU (RO-III) ([OJ C 81, 2.3.2018, pp. 209–214](#)).

<sup>8</sup> Ibidem.

<sup>9</sup> Ibidem.

<sup>10</sup> "Each party may adopt and maintain the safeguards it deems appropriate to ensure the protection of personal data and privacy, including through the adoption and application of the rules for cross-border transfer of personal data. Nothing in this agreement shall affect the protection of personal data and privacy afforded by the Parties' respective safeguards." [http://trade.ec.europa.eu/doclib/docs/2018/may/tradoc\\_156884.pdf](http://trade.ec.europa.eu/doclib/docs/2018/may/tradoc_156884.pdf).

## 4.5 Agriculture in trade negotiations

- 4.5.1 With combined imports and exports of EUR 242 billion in 2015, the EU is the world's foremost trader in agri-food products, benefiting producers and consumers within and outside the EU<sup>11</sup>. The EESC believes that the EU must consider the effects on agriculture across the EU from recent EU trade agreements as well as developments in trade globally<sup>12</sup>. The WTO's role in reducing uncertainties in international trade will be crucial for the future of agriculture.
- 4.5.2 A strong and viable agricultural sector in each WTO member country is essential to maintain or increase stable, safe and secure supplies of food. Trade of course helps to even out imbalances in demand and supply, promoting resource use efficiency and increasing market opportunities and economic growth, thus generating jobs, income and prosperity in rural areas<sup>13</sup>.
- 4.5.3 The 1995 WTO SPS Agreement covers the application of food safety, animal and plant health regulations. Article 5.7 covers the Precautionary Principle, now enshrined in the Lisbon Treaty. Any attempt to alter this other than at multilateral level would have profound implications for the world trade order and for the future credibility of the Agreement itself<sup>14</sup>. However, the EESC sees the importance of the precautionary principle as enshrined in the EU treaties as vital and calls for its adequate protection and full legal recognition at multilateral level, for high-level food safety standards as well as high animal welfare and environmental standards in agricultural production. The EESC takes note with concern that the EU failed to successfully defend its precautionary measures in two WTO disputes under the current rules. Given its importance, the EU should make its precautionary principle an offensive interest in all its trade negotiations.
- 4.5.4 As shown by Nairobi, where against expectations a significant Ministerial Declaration was agreed, the EU is in a strong position to play a leading role in future trade in agriculture negotiations. This is based on the EU's perceived leading role in promoting both sustainability and development (the role it played in Nairobi) and as a result of earlier CAP reforms, the EU is no longer seen to be primarily defensive<sup>15</sup>. In any case, LDCs and their particular vulnerability in the agricultural sectors should be protected through all available instruments, such as for instance the Special and Differential Treatment mechanisms and the Special Safeguard Mechanism.
- 4.5.5 To this extent, the EESC believes that there must be a much more coherent strategy between the CAP and the international trade policy being pursued by the EU.

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<sup>11</sup> <https://ec.europa.eu/agriculture/sites/agriculture/files/trade-analysis/statistics/graphs/eu-agrifood-trade.pdf>.

<sup>12</sup> EESC Opinion on *The role of agriculture in multilateral, bilateral and regional trade negotiations in the light of the Nairobi WTO Ministerial meeting*, rapporteur: Jonathan PEEL (UK-I) ([OJ C 173, 31.5.2017, pp. 20–28](#)).

<sup>13</sup> Ibidem.

<sup>14</sup> Ibidem.

<sup>15</sup> Ibidem.

## 4.6 Services

4.6.1 During the Ministerial Conference in Buenos Aires, 34 WTO members called for work on domestic regulations (licences, professional qualifications, procedures, etc.) to be stepped up, with a view to establishing a clear, transparent multilateral framework since negotiations on a multilateral services agreement (TiSA) were at a standstill. Civil society and trade unions raised several concerns regarding the effective implementation of safeguards on public services.

4.6.2 This effort to establish such a multilateral framework is critical given that with combined imports and exports of EUR 1809 billion in 2017, the EU is by far the world's biggest trader in services, benefiting producers and consumers within and outside the EU<sup>16</sup>. The service sectors are contributing to more than 75% of the GDP of developed countries, and 50% of the developing countries, and they are the backbone of global value chains.

## 4.7 The impact of Brexit

4.7.1 The UK will act as a single country member of the WTO from the end of March 2019. The EESC hopes that, in this capacity, the UK will back ambitious and forward-looking reforms called for by the EU. The recent commitment to join the Agreement on Government Procurement (GPA) is positive.

4.7.2 The EU-27 will have the task to reshape market access offers to EU trade partners, particularly in the agricultural sector with a fair and balanced redistribution of quotas between the Member States.

## 5. Opening up discussion on important but systemic reform of the WTO

### 5.1 *Designing a new system of governance for a new world*

5.1.1 The internal organisation of the WTO set up in 1994 should be overhauled so that it can adapt to major developments:

- a rapid increase in the number of members, which, if the principle of consensus is not altered, will block decision-making,
- major changes in the structure of international trade,
- the adoption of ambitious goals in the field of sustainable development (the UN SDGs) and the fight against climate change (the Paris Agreement)
- the EU's experience in including Trade and Sustainable Development chapters in all its recent Free Trade Agreements.

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<sup>16</sup> [https://www.wto.org/english/res\\_e/statis\\_e/wts2018\\_e/wts2018\\_e.pdf](https://www.wto.org/english/res_e/statis_e/wts2018_e/wts2018_e.pdf).

### 5.1.2 *Devising a creative solution to put an end to the systematic need for unanimity*

5.1.2.1 The WTO decision-making process, inherited from GATT, is de facto consensus, in other words unanimity among the 164 members. "Positive" unanimity is required to adopt General Council decisions and ministerial declarations. When it comes to settling disputes, "negative" unanimity is required to reject a final report issued by a panel. This rule obviously enables a country acting alone or, in most cases, coalitions of member countries formed around common objectives (G3, G20), to veto the conclusion of negotiations.

5.1.2.2 Most international organisations have adopted decision-making mechanisms which allow for debate and avoid matters being brought to a standstill, such as weighting votes on the basis of objective criteria (IMF) or introducing qualified majority voting (European Union). The EESC suggests opening a reflection on possible new rules for decision-making on qualified majority, based on the double criteria considering the market share in the global economy and the composite indicator of development.

5.1.2.3 The EESC suggests that the number of issues that require unanimity should be reduced, avoiding it to also apply to the normal operations of the WTO. Such normal operations include agreement on the agenda of Committee meetings, proposals to have a discussion on a trade policy-related matter, or suggestions to invite independent experts to provide inputs on a subject that is directly relevant to the implementation of a WTO Agreement<sup>17</sup>.

### 5.1.3 *Streamlining the organisation in order to gain efficiency*

5.1.3.1 The WTO has a complex organisational structure (see Appendix 3). Its overarching structure comprises the General Council, made up of representatives of the member countries tasked with approving the positions of the three specialised bodies: the Council for Trade in Goods, the Council for Trade in Services, and the Council for Trade-Related Aspects of Intellectual Property Rights. These thematic councils are complemented by other bodies tasked with managing existing plurilateral agreements and developing new plurilateral initiatives. The political-level Ministerial Conference, which meets at least once every two years and comprises member countries' trade ministers, operates on the basis of unanimous agreement on resolutions drawn up by the other bodies.

5.1.3.2 A number of committees set up for a specific occasion which is no longer relevant, such as the working group on the Singapore issues, are designed to be temporary. The number of committees should be reduced on the basis of the number of meetings held and the results achieved, so as to allocate resources to topics considered to be priorities by the members. An evaluation culture must be established.

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Policy Brief *Revitalizing Multilateral Governance at the World Trade Organization - Report of the High-Level Board of Experts on the Future of Global Trade Governance*, Bertelsmann Stiftung, 2018.

#### 5.1.4 *Strengthening the role of the secretariat by allocating additional resources*

5.1.4.1 In order to ensure that the WTO prepares ministerial resolutions and launches new plurilateral initiatives more effectively, the secretariat's role should be bolstered by giving it a right of initiative to propose new topics for negotiation, changes to the set of rules and disciplines, and proposals for compromises on subjects under discussion.

#### 5.1.5 *Setting aside the single undertaking rule*

5.1.5.1 At the Ministerial Conference in Bali, the WTO abandoned the single undertaking approach whereby "nothing is concluded until everything has been concluded". This new, more flexible approach allowed for the adoption of the multilateral Trade Facilitation Agreement which entered into force on 22 February 2017 when more than two thirds of WTO members (i.e. 110) presented their instrument of ratification. This agreement aims to facilitate and speed up international trade in goods thanks to more effective and swifter procedures in areas such as release and clearance of goods<sup>18</sup>.

#### 5.1.6 *Building stronger bridges with civil society*

5.1.6.1 The European Union has considerable experience in consulting and involving civil society in trade policy. Labour and environmental commitments contributing to the sustainable development of the parties are set down in the Trade and Sustainable Development (TSD) chapters of all recently negotiated EU free trade agreements, usually those providing for civil society monitoring mechanisms, known as Domestic Advisory Groups (DAGs), in the EU and in the partner country or countries. The EESC would suggest that such experience of active participation of civil society should be promoted with other WTO Members in order to make proposals on the most suitable mechanisms that could be put in place at multilateral level.

5.1.6.2 The EESC would suggest that the WTO Public Forum, in the form of a balanced and representative assembly of social and economic stakeholders from all different sectors and interests, acts as a possible platform for civil society participation and be allowed to issue recommendations within the WTO proceedings. The way the OECD has been able to structure the consultation of a wide range of stakeholders could be also taken into consideration.

5.1.6.3 As proposed bilaterally by the EESC<sup>19</sup>, a specific monitored clause could be included in each multilateral and plurilateral agreement, "requiring both parties of each civil society monitoring mechanism to work together to promote the SDGs and monitor the effects of that".

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<sup>18</sup> *Les trois réformes de l'OMC*, Zaki Laïdi, Libération, 2003.

<sup>19</sup> EESC Opinion on *The core role of trade and investment in meeting and implementing the Sustainable Development Goals (SDGs)*, rapporteur: Jonathan PEEL (UK-I), co-rapporteur: Christophe QUAREZ (FR-II) ([OJ C 129, 11.4.2018, pp. 27–35](#), point 1.8 (ibid.)).



## 5.2 Introducing coherence between a multilateral trade system and social and labour international standards

5.2.1 The OECD and the EU took up the issue of global value chains in 2010, seeking to understand how they work and to propose solutions to correct dysfunctions noted with regard to the environment and fundamental human rights. Detailed monographs have been drawn up for several sectors, practical guides prepared and specific CSR issues identified (child labour, freedom of association and collective bargaining, decent living standards, loss of biodiversity and unfair pricing practices).

5.2.2 A 2016 ILO declaration on decent work in global supply chains identified several lines of action: promoting international labour standards, closing governance deficits, promoting inclusive and effective social dialogue, strengthening labour administration systems, improving knowledge and expanding statistics.

5.2.3 The EESC regrets that the scope of the existing Article XX(e) is limited to forced labour and proposes envisaging an extension to core labour standards (child labour, forced labour and so on). The EESC suggests also that the EU's experience in the integration of the protection of labour and environmental standards into its trade policy could inspire the WTO to make reference, for instance in a preamble, to the eight ILO Conventions, the Paris Agreement and the SDGs. Each WTO member not fully in compliance should ratify the missing ILO convention, or at least demonstrate an equivalent level of protection, and benefit from capacity-building resources to do so.

5.2.4 The ILO and the WTO currently cooperate at technical level, preparing joint studies. In 2007, the study on *Trade and employment, challenges for policy research* showed that technologies rather than trade were more responsible for rising inequality. In 2017, another joint study on "Investing in skills for inclusive trade" showed that bolstering basic skills and technical and management skills helped countries to reap the benefits of trade.

5.2.5 The WTO has developed a database on global value chains and produced scientific studies (such as *Trade patterns and global value chains in South-East Asia*) which provides data on their structure and working methods that should be used to devise new multilateral guidelines, inspired by those of the OECD, in order to ensure sustainable management of global value chains (GVCs).

5.2.6 The EESC supports the creation of a new working group on *Trade and decent work* in the WTO, whose objectives will be two-fold, in coherence with the works within the UN on an international legally binding instrument to regulate the activities of transnational corporations and other business enterprises and building on multi-stakeholder initiatives<sup>20</sup>. On the one hand, it aims to promote good practices on how the responsibility to respect and protect human rights can be delivered on, given the complexity of responsible business conduct in global value

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<sup>20</sup> i.e. the recent French Duty of Vigilance Act.

chains (linear or complex, long or short)<sup>21</sup>. On the other hand, it aims to raise awareness in developing countries regarding responsible business conduct, by focusing on concrete actions to meet current and future social, environmental and governance challenges and by exploring the way to remedy potential adverse impact. The WTO system of Trade Policy Reviews should systematically include a review of countries' implementation of the ILO Core Labour Standards.

### 5.3 Making international trade contribute to the fight against climate change

5.3.1 Adapting WTO rules to the need to combat climate change is one of the major priorities of the WTO reform, and aims to ensure that the international trade in industrial and agricultural goods enters a more virtuous circle. The EESC encourages enterprises which invest in more sustainable production and believes that unfair competition should be prevented. These efforts are more than needed with regards to investments that are crucial to achieving SDGs: UNCTAD estimates that an annual budget of USD 2 500 billion is necessary, and the WTO also has a role to play in encouraging these responsible investments in transport, water and energy infrastructure.

5.3.2 A number of measures could be considered:

- extending GATT Article XX waivers, which grant WTO members autonomy (with certain limitations) to set their own environmental goals (combating smoking, protecting dolphins, asbestos, etc.), to cover national measures taken to support the fight against greenhouse gas emissions. This would, for instance, enable a member country to set up a carbon inclusion mechanism at its borders with a view to safeguarding clean air (Article XX(g)),
- developing an international method for measuring and modelling new greenhouse gas emissions connected to the development of trade flows, for instance between two countries or two regions which have signed an FTA,
- joint reflection groups set up by the WTO and the UNFCCC (United Nations Framework Convention on Climate Change) Secretariat, which registers all the contributions of each individual country, could draw up proposals to offset these additional emissions (afforestation, reforestation, CO<sub>2</sub> capture, investing in clean technologies). The planned 5 year reviews in 2023 could also contribute to "*making finance flows consistent with a pathway towards low greenhouse gas emission and climate-resilient development*"<sup>22</sup>,
- relaunching the plurilateral agreement on the liberalisation of environmental goods and services which would promote the movement of goods and services with a positive impact on the environment (energy, water, waste, etc.).

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<sup>21</sup> EESC Opinion on *Decent work in global supply chains*, rapporteur\_ Emmanuelle BUTAUD\_STUBBS (FR-I) ([OJ C 303, 19.8.2016](#)).

<sup>22</sup> Article 2 of the Paris Agreement (UNFCCC).

#### 5.4 **Building the Sustainable Development Goals (SDGs) into the multilateral agenda**

- 5.4.1 The WTO rules and disciplines inherently contribute to achieving some of the SDGs, specifically *Promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the World Trade Organization* (Target 17.10) and *End hunger, achieve food security and improved nutrition and promote sustainable agriculture* (Goal 2).
- 5.4.2 Work has begun on this with the Ministerial Declaration of Nairobi, which pledged to abolish export subsidies for agricultural products, and the Ministerial Declaration of Buenos Aires which addressed the most harmful fisheries subsidies. However, it could certainly be argued that other SDGs, such as Goals 8 (*Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all*), 14 (*Conserve and sustainably use the oceans, seas and marine resources*) and 17 (*Strengthen the means of implementation and revitalise the global partnership for sustainable development*) deserve to be taken into account by the WTO in its activities.
- 5.4.3 This would mean that all the plurilateral and multilateral agreements concluded under the auspices of the WTO should contribute to achieving these goals, and that non-compliance could possibly trigger the dispute settlement mechanism.
- 5.4.4 The conclusions of the 6th WTO Global Review of Aid for Trade, held in Geneva in July 2017, should be converted into action in order to help developing countries benefit from e-commerce and digital opportunities, and to encourage investment in physical and digital infrastructure.

Brussels, 23 January 2019

Luca JAHIER

The president of the European Economic and Social Committee

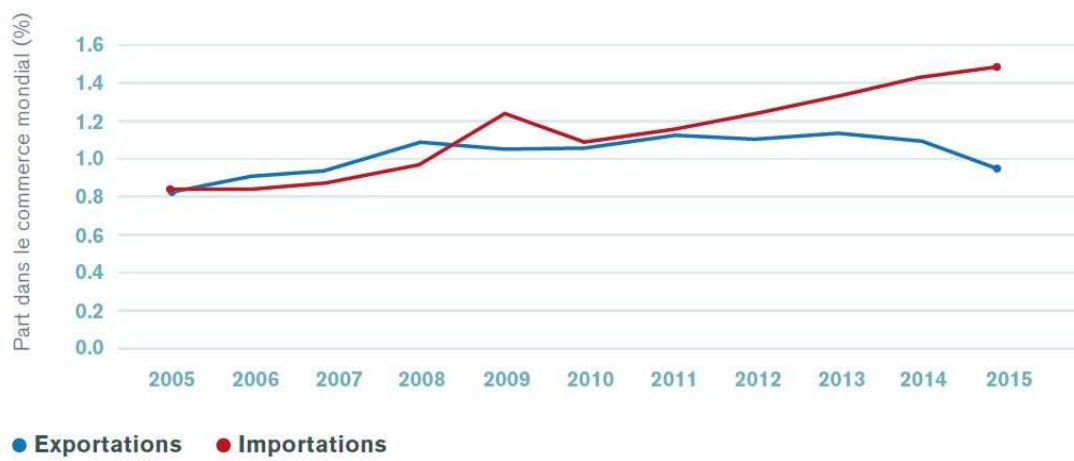
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**N.B.** Appendices overleaf.

## Appendix 1

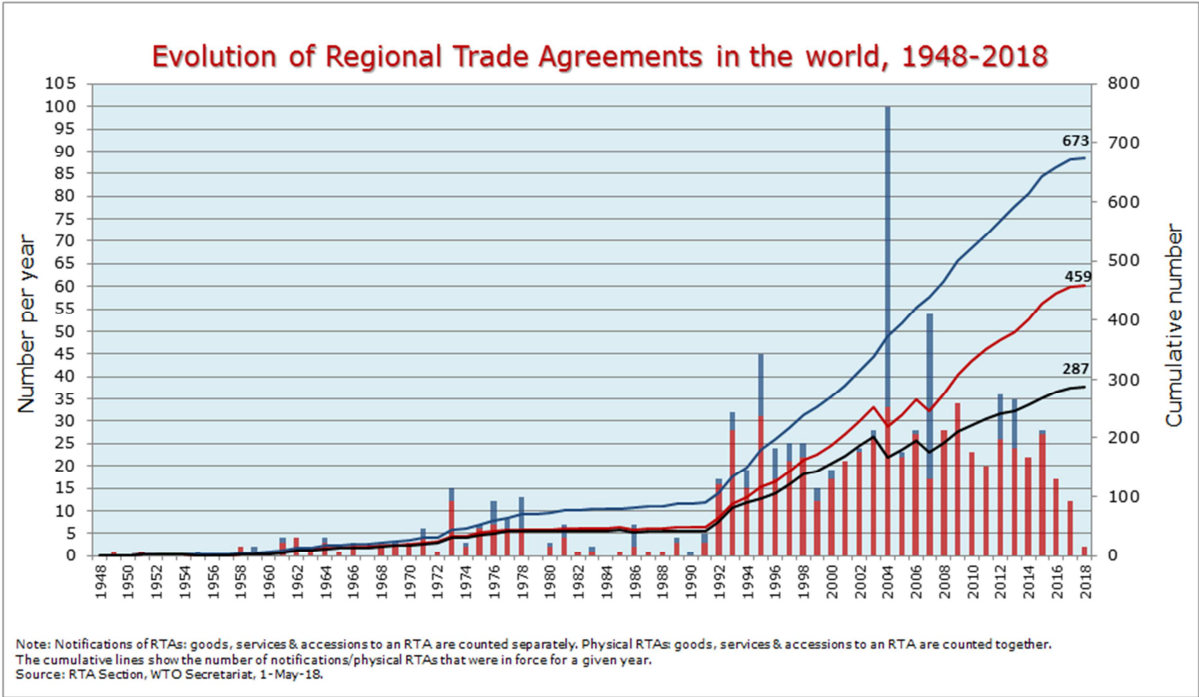
Share of LDCs in world trade (source: World Trade Statistical Review 2016, WTO, p 59)



Source: Secrétariat de l'OMC.

**Appendix 2**

Regional agreements notified to the WTO (source: [www.wto.org](http://www.wto.org))



### Appendix 3

Structure of the WTO (source: Revitalizing Multilateral Governance at the World Trade Organization, Bertelsmann Stiftung, p. 54)

#### 12.2 Annex 2: WTO bodies

