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The EU on WTO Reform: Striving to Make the Organisation Survive

Marta Makowska, Marek Wąsiński

The World Trade Organisation (WTO) is pivotal for the European Union in resolving trade disputes and expanding export markets. Facing the threats to the WTO posed by the U.S. reform demands, the EU has put forward proposals concerning the dispute settlement system (DSS) and is winning support from, among others, China and India. However, the U.S. considers these proposals insufficient, which reduces their chances of success. The EU will focus primarily on “flexible multilateralism”—deepening economic relations within a select group of WTO members—in e-commerce and other areas.

The EU accounts for almost 17% of the global trade in goods and services, making it the largest player on the world stage, ahead of the U.S. (the largest importer of goods) and China (the largest exporter). Moreover, the EU is the leader in exports and imports of services (see Table). Trade is responsible for 35% of the EU GDP, [making it vulnerable to the negative effects of trade restrictions](#).

The Importance of the WTO for the EU. The WTO liberalises trade multilaterally and sets out global rules that it later defends when settling disputes. In the negotiations at the WTO forum, the EU aims to facilitate the trade in high-tech products and services, enhancing compliance with intellectual property rights, and protecting its own agricultural sector. This contrasts with the developing countries' stance, which is to liberalise trade in raw materials and agri-food products, as well as in supporting the development of their own high-tech companies. The failure to date of the multilateral negotiations under the Doha Round has prompted the EU to focus on bilateral and regional agreements. The Union is very active in this field, sealing 40 free-trade agreements with more undergoing ratification processes or negotiations.

The WTO's DSS protects European producers from competitors using subsidies and combating unjustifiable anti-dumping duties. After the U.S., the EU is the next WTO member to most often use the DSS, a complainant 100 times and a respondent 85 times. As a complainant, the EU has won cases more often than the WTO average (90% when no settlement was made) but it has lost all cases as the respondent. The EU depends heavily on a functioning DSS as a form of protection against U.S. unilateral actions, which concerned up to 34% of the EU complaints.

The U.S., though, has been blocking the appointment of judges to the Appellate Body (AB) and its use of defensive measures (including tariffs) undermine the multilateral trade system within the WTO. Trade uncertainty and growing barriers to trade threaten the European economy. That is why the EU is committed to reform in order to avoid limiting the functioning of the WTO and, while changing the regulations, will try to develop it in a favourable way.

Rescuing Arbitration, Turning to Flexible Multilateralism. In September 2018, the European Commission published a concept paper on WTO reform, proposing action in three major areas: updating provisions so

they fit the challenges of the 21st century, improving the DSS (with special attention to the AB), and strengthening the monitoring role of the WTO.

With the current limits on the functioning of the AB, one of the three elements of the trade dispute settlement procedure, the EU presented a proposal to reform this body, gaining support from [China](#), [India](#), Canada, Australia, Mexico, and others. It proposes an increase in the number of judges from seven to nine in order to improve efficiency and maintain geographical balance. It further calls for the judges to be employed full-time and their term of office extended for the sake of independence. The precise timeframe of the appeal procedure is to be clarified. The EU also wants to introduce AB annual meetings with the WTO members as a communication channel for clarifying and raising objections by the organisation members. Although the proposed reform was an attempt to answer the U.S. reservations about the AB, they too have been criticized by the Americans.

On the matter of updating the provisions, the EC proposes clarifying the agreement on subsidies and countervailing measures. Due to the low level of compliance with the agreement and abuse in granting subsidies to state entities, the EU wants to tighten enforcement of it. During the recent [EU-China summit](#), both partners pledged to cooperate on industrial subsidies, which may offer the chance to break the deadlock on this issue. In addition, the Union would like to revise the special and differential treatment (SDT) for developing countries, which protects them as they adapt their economies and legal framework to WTO provisions but which is currently being misused, among others, by China and India.

At present, fewer than half of the WTO members fulfil the obligation to notify the organisation or its members about changes in their trade policy. The EU wants to strengthen the enforcement of this to increase the transparency of activities in the area of trade. To this end, the EU proposed, together with the U.S. in March 2019, a number of measures that would introduce, among others, financial penalties for non-compliance with this obligation or strengthening the role of the WTO secretariat in supporting developing countries.

In parallel with the work on WTO reform, the EU is actively involved in negotiations among the 76 countries (EU members and 48 WTO members) of the working group on e-commerce, which launched in January. Among the negotiating countries are the world's other biggest economies. The EU, along with the U.S. and Japan, have made similar [proposals to lift restrictions on e-commerce](#), although the Union will continue to emphasize the need to protect consumer information. At the moment, with the negotiations at a preliminary stage, it is not known whether the agreement will be concluded under the auspices of the WTO or the particular arrangements will apply only to the parties to the negotiations. The EU also participates in working groups on investment and small and medium-sized enterprises.

Conclusions and Perspectives. Regarding DSS reform, the EU can count on China and India's support. However, without the U.S., it will be impossible to unlock the AB—a priority for the EU. In the case of full AB paralysis, the DSS will be ineffective because it will depend solely on the willingness of the parties to submit to arbitration without the possibility of appeal. This scenario threatens to escalate global trade conflicts, primarily with the U.S. The effects would be negative for the EU economy, dependent as it is on international exchange more than the U.S. It would also be a serious problem for Poland, whose trade in goods with the EU and third countries accounts for 88% of its GDP. The spectrum of instability in transatlantic relations in this field could be limited by a bilateral agreement with the U.S. on the exchange of industrial goods announced after a meeting between EC President Jean-Claude Juncker and U.S. President Donald Trump in July 2018. Negotiations have not yet begun—the EU adopted its negotiating mandate only in April.

Although the EU does not support the U.S. administration's methods concerning WTO arbitration, the Union is taking an increasingly assertive position towards China, for example, concerning the SDT. This is marked by a joint initiative with the U.S. on support for notification requirements for commercial policy. The EU is more concerned about reaching a compromise on WTO reform, so its position on the SDT remains more balanced than that of the U.S. The pledge of EU-China discussions on industrial subsidies hints at such an approach.

Given the difficulties at the WTO forum, the EU will focus on its current activities, namely bilateral, regional, and multilateral negotiations. This is a solution that complicates global trade, in part because the limited number of participating members is inherently discriminatory, but it provides the EU with more negotiating power in each deal.

Table: Summary of EU Trade in 2017

	Export	Import
Merchandise trade	€1,879.2 billion	€1,858.6 billion
Trade in services	€881.8 billion	€698.6 billion
Total trade		€5,318.2 billion
Trade balance		€203.8 billion
Share in world merchandise trade		15.2%
Share in world trade in services		22.2%
Share in world trade		16.7%
Share of trade in the GDP		34.7%
Number of Regional Trade Agreements		40
Number of complaints in DSS (complainant)		100
Number of complaints in DSS (respondent)		85
Number of complaints in DSS (third-party)		197
Average tariff		5%
Average tariff (MFN)		5.1%
Average tariff (weighted in trade volume)		3.2%

Source: DG Trade Statistical guide, WTO.