

## Strengthening the multilateral world trade system - Reform of the WTO

### *Position of the Austrian Federal Economic Chamber*

The World Trade Organisation (WTO) faces unprecedented challenges. Anti-globalisation attacks, the lack of multilateral negotiation results, insurmountable conflicts of interest between developed, emerging and developing countries and attacks on the functioning of the WTO from its own members are putting the WTO as guarantor of free world trade, source of legal certainty and fairness in international trade and provider of a trade dispute settlement between the 164 WTO members at risk.

The existence and acceptance of binding rules applicable to cross-border trade, which are negotiated, monitored and enforced through an impartial dispute settlement system helped for decades to diffuse trade tensions and avert trade wars. However, the development of new trade rules by the WTO was unable to keep up with economic, political and technological changes of globalisation. The Austrian Federal Economic Chamber (WKÖ) also saw the launch of the current negotiating round eighteen years ago as an opportunity for ambitious market access negotiations for industrial products and as a supplement to the WTO system in the areas of services, agriculture, investment, competition etc. Some of the key WTO players criticise in particular the continuing market distorting subsidies (often channelled through state-owned enterprises), intellectual property rights infringements, rigid procedures, unfair advantages for industrialised emerging economies and much more. Due to diverging interests, the WTO and its members were unable to modernise their trade rules sufficiently since 2001. The WTO Dispute Settlement procedure, which is responsible for the rules-based resolution of trade conflicts, is being jeopardised by the United States' blockage of Appellate Body appointments. Furthermore, due to the lack of notifications and the consequent lack of transparency, the WTO's monitoring role is put at risk.

Preserving and strengthening the role of the WTO as the international negotiating forum, as an independent monitor and as a guarantor for global trade rules is of utmost importance to the economy.

The WTO ensures that its trade rules are enforced through a dispute settlement system that is applied when international trade disputes between WTO members arise and which is in principal perceived as well-functioning. This key role is currently endangered, since the United States refuse to appoint new members for the Appellate Body of the WTO Dispute Settlement System. If the United States' blockage of Appellate Body appointments continues, it will undermine the WTO Dispute Settlement at the latest by December 2019. At that point in time, there will be less than three Appellate Body members left, which is the minimum number required for the Appellate Body to hear an appeal.

For the efficient functioning of the global and the respective national economies, a generally accepted and binding WTO dispute settlement mechanism is indispensable. Facing growing protectionism, only a WTO that is fully operational, can ensure compliance with conditions of fair competition in international trade. With a view to greater legal certainty and

predictability of national rules, these conditions are of great importance to internationally operating businesses, and especially to small and medium sized enterprises (SMEs).

The WKÖ therefore strongly supports and requests a modernized WTO that continues to work well and creates, monitors and enforces global trade rules. Only a modernized WTO can meet the demands of the 21<sup>st</sup> century.

The following points therefore must be taken into account:

## 1 A functioning WTO dispute settlement

Faced with the United States' blockage of appointing new members for the Appellate Body, a negotiated solution should primarily be found at multilateral level, involving the United States. Whilst the resources and capacities of the WTO Dispute Settlement have to be strengthened, procedures should at the same time be shortened and made more efficient. The concerns about a judicial overreach of the Appellate Body, which is supposedly limiting the WTO-members' competences, should be duly analysed and, if necessary, be taken into account in the reform debate.

Should it not be possible to achieve a consensual solution, the appointment of members by a majority vote could be taken into consideration. The United States - should it end its boycott - could be given a key role in appointing such members.

A third option could be to use the expeditious arbitration procedure pursuant to Article 25 DSU, which provides for the possibility of setting up an ad-hoc Dispute Settlement panel within the WTO-System. By agreement between the parties to the dispute, an expeditious arbitration procedure can be carried out. The agreement to resort to arbitration has to be notified to all members in advance. Parties to the procedure agree to abide by the arbitration result, appeals are not foreseen. In order to give such new ad-hoc-dispute settlement panels the necessary political weight, a critical mass of members must recognise and apply their recommendations.

Overall, a rapid solution regarding a Dispute Settlement System that continues to be functioning is of the utmost importance for the international economy as well as for the credibility of the WTO.

## 2 Modernized, enhanced WTO rules

These include, notably, tangible results in the following negotiating areas:

- completion of the Doha-Agenda with regards to increased market access for industrial products and agricultural trade;
- integration of future topics into the negotiation agenda, such as digital economy/ e-commerce and global value chains;
- improving the regulatory environment, in order to prevent disadvantages and discrimination;
- elimination of unjustified non-tariff barriers in all areas and sectors of international trade;
- need to adapt the rules protecting intellectual property and their effective enforcement.

### 3 Exemptions and export restrictions

In order to prevent political misuse and gradually growing protectionist measures, negotiated solutions have to be found in these two areas that are important for the economy. Not only in light of recent events - this is particularly true for the general exemption of trade-restrictive measures from WTO-rules, arising out of national security considerations. It is a generally recognised legal principle that exemptions are to be narrowly interpreted. It would therefore be a great advantage if this would be much more clearly incorporated into the WTO-treaties.

### 4 Improving transparency and “notification discipline”

A fundamental task of WTO-members is to monitor in competent WTO councils and committees whether the currently existing notification requirements regarding potentially trade restricting or distorting national measures and laws are respected. These include inter alia measures concerning the protection of plants, animals, food, technical safety regulations as well as anti-dumping measures or certain subsidies. However, many important trading partners fail to comply with these notification requirements. As a result, the necessary transparency regarding market and market access conditions of WTO members, originally foreseen in the WTO, is not fulfilled, neither for states, nor for the economy or businesses. The WTO should therefore aim at improving as well as monitoring more closely the “notification discipline” of its members and should strengthen the competent bodies, thereby increasing the overall transparency of the market and market access conditions in the member states.

### 5 Plurilateral and sectoral solutions

We declare our support for multilaterally agreed negotiation results, which are based on the widest possible consensus among all WTO-members. Given the unanimity requirement, it is, however, often difficult to come to an agreement. Therefore, a more flexible negotiation approach should be pursued and greater consideration should be given to plurilateral as well as sectoral solutions. With this approach, individual countries could preserve their policy space. At the same time, this would not prevent other states from further developing important trade topics. Any risk which may arise from plurilateral initiatives within the WTO framework could be minimized through specific requirements. These include the possibility for all WTO-members to accede to plurilateral agreements at a later stage (Multilateralisation) or - from an economic perspective - to attain the objective of critical mass as well as the directly related expansion of the MFN treatment to non-members of a plurilateral agreement.

The point here is not to abolish multilateralism, but - in the absence of multilateral solutions - rather to strengthen it. Therefore, it should be further analysed how the dialogue with WTO-members who are critical of plurilateral agreements can be continued and if their participation in plurilateral initiatives could be facilitated by interesting offers in other regulatory areas of the WTO.

## 6 Stronger consideration of SME interests

Due to their specific and differentiated interests, WTO rules should take greater account of the needs and demands of small and medium-sized enterprises (SMEs). Especially SMEs are dependent on fair conditions in international trade.

## 7 Dialogue with allies

The WKÖ supports the EU proposals regarding the modernisation of the WTO, which have been published in September 2018, as well as the subsequent initiatives regarding enhanced transparency and notification and the dispute settlement reform. In order to implement the reform, the EU needs strong allies within the WTO (like-minded partners) and beyond.

Through concrete modernisation proposals and the launch of debates with potential allies within the WTO and in international fora (G20, EU-US-JP cooperation, EU-China Working Group etc.), the Commission has proven to be engaged, ambitious and determined to actively conduct a comprehensive, wide-ranging, serious and much needed discussion on the WTO reform. We encourage the Commission to continue the dialogue with potential allies and to intensify it. In order to successfully push and conclude the reform plans, further and continued efforts will be necessary in the future.

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