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**EU'S ACTIVITIES FOR THE MODERNISATION OF THE WTO –  
TOWARDS THE RECONSTRUCTION OF THE ORGANIZATION'S  
POSITION IN THE WORLD ECONOMY<sup>1</sup>**

**Introduction**

Since its establishment in 1995, the World Trade Organization (WTO) has played a very important role in shaping the multilateral trading system.<sup>2</sup> Replacing the General Agreement on Tariffs and Trade (GATT), it covered a much broader thematic area, which corresponded with the changes occurring in the world market. Its creation did not, therefore, entail merely taking over the previous achievements of the GATT and expanding its activities – it was the beginning of a new stage in the history of the multilateral trading system. However, the multilateral system within the WTO was not changing at the same pace as the global economic reality, which led to a successively increasing crisis within the organisation and revealed some of its weaknesses and inefficiencies. This caused the demands

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<sup>2</sup> Since 2016, the WTO numbers 164 members representing over 98% of world trade; *The WTO*, WTO, [https://www.wto.org/english/thewto\\_e/thewto\\_e.htm](https://www.wto.org/english/thewto_e/thewto_e.htm) [accessed: 14.09.2021].

for reforming the organisation to become more and more pronounced. Nevertheless, the widespread crisis within the organisation can no longer be identified solely with the impasse in negotiations and the difficulties in concluding the Doha Development Agenda (DDA) negotiations. The effective functioning of the organisation also requires reform of other, apart from the negotiating functions, key areas of WTO activity, such as the dispute settlement system, the system of notification of trade policy measures or the way multilateral agreements are negotiated. Therefore, it has become necessary to start discussions on the need to reform this organisation.

For the organisation to regain its position as a leader in world trade liberalisation and as a key forum for trade negotiations is, therefore, no longer just a question of concluding the Doha Round negotiations. The matter is, definitely, more complicated, as it now requires a thorough reform of the organisation in many areas, which will, in turn, require a strong sense of responsibility and cooperation from all its members. History has shown that cooperation between a united Europe and the USA has been crucial to the operation of the GATT/WTO system. Yet, given the US administration's actions towards the WTO in recent years, EU leadership may now be crucial in driving reform. The EU is a strong supporter of the WTO and has played a key role in the development of the international trading system. However, the stalemate in the DDA multilateral negotiations, which started as early as the first decade of the 21<sup>st</sup> century, resulted in regional agreements as an alternative to safeguard EU trade interests, which, to a certain extent, filled the gap in the increasingly ineffective multilateral system and, thus, also aggravated its weakening. Therefore, a renewed shift towards multilateralism will require a significant change in the EU's approach to trade policy. The EU, which together with the US initially shaped the WTO, will have to engage in its reform with other important members of the organisation, such as China, among others. This is a consequence of the changing balance in the world economy, which has also translated into the situation within the organisation

The aim of the paper is to present the EU's efforts to reform the multilateral system under the WTO. The basic thesis of the paper is that the EU is at the forefront of efforts to rebuild the organisation's position in the global economy, but against the backdrop of today's fragmented global balance of power, it will be necessary for the EU to cooperate with other key members of the organisation in this respect.

Considerations presented in the article have been carried out in particular on the basis of the method of analysis of sources – official documents of the World Trade Organization and the European Commission, press releases and scientific articles. The issues addressed in this study, due to their topicality, have not yet been analysed in depth in the literature, which speaks for the validity of the research. However, due to the breadth and complexity of the subject matter, the author has focused on selected aspects of the problem at hand.

## The literature review

A debate on the need to reform the WTO as an organization managing international trade globally has been observed for years in the literature on the subject. The need to pay special attention to this problem and the challenges faced by an organization so important for the development of international trade were called for after each emerging negotiation crisis. Such concerns were voiced even after the first WTO Ministerial Conferences (MC), i.e. only five years after the creation of the World Trade Organization, however, of particular importance in this context was the fiasco of XI MC.

Two high-level committees started an intensive discussion on the future of the WTO — The Sutherland Report<sup>3</sup> of 2004 and the Warwick Commission Report<sup>4</sup> of 2007, which presented proposals for progressive reform. Valuable contributions to the critical debate have also been made by Deere Birkbeck<sup>5</sup>, Deere Birkbeck and Monagle<sup>6</sup> and Steger<sup>7</sup>, among others. These issues have also become the focus of the WTO's Panel on Defining the Future of Trade<sup>8</sup> as well as the analysis of the International Centre for Trade and Sustainable Development and World Economic Forum.<sup>9</sup> As far as the latest package of relevant proposals and analyses is concerned, it is worth highlighting the Report of the High-Level Board of Experts on the Future of Global Trade

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<sup>3</sup> *The Future of the WTO: Addressing Institutional Changes in the New Millennium. Report of the Consultative Board*, WTO, Geneva 2004, [https://www.wto.org/english/thewto\\_e/10anniv\\_e/future\\_wto\\_e.pdf](https://www.wto.org/english/thewto_e/10anniv_e/future_wto_e.pdf) [accessed: 11.12.2021].

<sup>4</sup> Warwick Commission, *The Multilateral Trade Regime: Which Way Forward? Report*, University of Warwick 2007, [https://warwick.ac.uk/research/warwickcommission/worldtrade/report/uw\\_warcomm\\_tradereport\\_07.pdf](https://warwick.ac.uk/research/warwickcommission/worldtrade/report/uw_warcomm_tradereport_07.pdf) [accessed: 11.12.2021].

<sup>5</sup> C. Deere Birkbeck, *Reinvigorating Debate on WTO Reform: The Contours of a Functional and Normative Approach to Analysing the WTO System*, Wilfred Laurier University Press, IDRC 2009, <https://www.econstor.eu/bitstream/10419/196311/1/GEG-WP-050.pdf> [accessed: 11.12.2021].

<sup>6</sup> C. Deere Birkbeck, C. Monagle, *Strengthening Multilateralism: A Mapping of Proposals on WTO Reform and Global Trade Governance*, ICTSD and Global Economic Governance Programme, Geneva 2009, <https://www.files.ethz.ch/isn/139553/StrengtheningMultilateralism.pdf> [accessed: 11.12.2021].

<sup>7</sup> D. Steger, (ed.), *Redesigning the World Trade Organization for the Twenty-First Century*, Wilfrid Laurier University Press, IDRC 2009, <https://idl-bnc-idrc.dspacedirect.org/bitstream/handle/10625/40859/IDL-40859.pdf?sequence=1&isAllowed=y> [accessed: 11.12.2021].

<sup>8</sup> The panel report „The Future of Trade: The Challenges of Convergence” was released in 2013. See more: Panel on Defining the Future of Trade, WTO 2013, [https://www.wto.org/english/thewto\\_e/dg\\_e/dft\\_panel\\_e/dft\\_e.htm](https://www.wto.org/english/thewto_e/dg_e/dft_panel_e/dft_e.htm) [accessed: 11.12.2021].

<sup>9</sup> M. Elsig, *The Functioning of the WTO: Options for Reform and Enhanced Performance*, E15 Expert Group on the Functioning of the WTO – Policy Options Paper, International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, Geneva 2016, [https://www3.weforum.org/docs/E15/WEF\\_Functioning\\_WTO\\_Options\\_Reform\\_Enhanced\\_Performance\\_report\\_2015\\_1401.pdf](https://www3.weforum.org/docs/E15/WEF_Functioning_WTO_Options_Reform_Enhanced_Performance_report_2015_1401.pdf) [accessed: 11.12.2021].

Governance<sup>10</sup>, Hoekman and Mavroidis<sup>11</sup>, Fitzgerald<sup>12</sup> and Wolff.<sup>13</sup> The modernization proposals presented in the EU strategies, discussed in detail below, are also of great importance.

### **The significance of the WTO for the world economy**

Despite the recent decline in the organisation's position, its importance and the contribution it has made to the development of the world economy in the quarter century of its existence cannot be diminished.

Confirmation of this thesis is, first and foremost, manifested in the significant reduction in import tariff rates, which has contributed to the flourishing of global trade in goods and this is the most visible symbol of the WTO's achievements. Since the creation of the GATT in 1947, the world trade has expanded by almost 300 times, while in the 25 years of the WTO this has been a 4-fold increase.<sup>14</sup> Such a remarkable increase in the level of trade is due to tariff reductions that were negotiated within the multilateral system, first between GATT contracting parties and then WTO members. The average rates were in the range of 20–30% at the dawn of this system in 1947, and those applied today average 9%.<sup>15</sup> The increase in trade is also due to the stability provided by the system, and mainly to the most-favoured-nation principle, which considerably reduces discrimination in trade between different partners. This principle, as a cornerstone of economic openness, promotes competition in global markets. Economic openness has helped integrate many developing countries into the world economy and reduce inequalities between them.<sup>16</sup>

<sup>10</sup> 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, [https://www.bertelsmann-stiftung.de/fileadmin/files/BSSt/Publikationen/GrauePublikationen/MT\\_Report\\_Revitalizing\\_Multilateral\\_Governance\\_at\\_the\\_WTO.pdf](https://www.bertelsmann-stiftung.de/fileadmin/files/BSSt/Publikationen/GrauePublikationen/MT_Report_Revitalizing_Multilateral_Governance_at_the_WTO.pdf) [accessed: 11.12.2021].

<sup>11</sup> B.M., Hoekman, P.C., Mavroidis, *WTO Reform: Back to the Past to Build for the Future*, „Global Policy” 2021, Vol. 12, Supp. 3, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1758-5899.12924> [accessed: 11.12.2021].

<sup>12</sup> O.E. Fitzgerald, *Modernizing the World Trade Organization*, 20.04.2020, Centre for International Governance Innovation, <https://www.cigionline.org/articles/modernizing-world-trade-organization/> [accessed: 11.12.2021].

<sup>13</sup> A. Wm. Wolff, *The Pressing Need for WTO Reform*, 17.11.2021, PIIE, <https://www.piie.com/commentary/speeches-papers/pressing-need-wto-reform> [accessed: 11.12.2021].

<sup>14</sup> *World Trade Statistical Review 2021*, [https://www.wto.org/english/res\\_e/statis\\_e/wts2021\\_e/wts2021\\_e.pdf](https://www.wto.org/english/res_e/statis_e/wts2021_e/wts2021_e.pdf) [accessed: 15.10.2021].

<sup>15</sup> WTO, *World Tariff Profiles 2021*, WTO – UNCTAD – ITC, [https://www.wto.org/english/res\\_e/booksp\\_e/tariff\\_profiles21\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/tariff_profiles21_e.pdf) [accessed: 20.08.2021].

<sup>16</sup> Annex to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Trade Policy Review – An Open, Sustainable and Assertive Trade Policy*, 18.02.2021, Brussels, COM(2021) 66 final, p. 1, [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_21\\_645](https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_645) [accessed: 5.09.2021].

Moreover, the supervision over the national trade policies is an essentially important activity in the work of the WTO. There is yet another aspect of the WTO's activities related to this – the Trade Policy Review Mechanism (TPRM), which aims primarily at increasing transparency and understanding of WTO members' trade policies and practices, encouraging compliance with the rules of the multilateral trading system and, thus, promoting a better functioning system. The purpose of this mechanism is to periodically, regularly and collectively assess the trade policies and practices of a WTO member, thereby increasing the transparency of the actions undertaken by members of the organisation.<sup>17</sup> The effective operation of this mechanism is particularly important in difficult periods for world trade.<sup>18</sup> Especially against the background of the COVID-19 pandemic, transparency is one of the most significant principles of the WTO.<sup>19</sup>

Similarly, the Dispute Settlement System (DSS)<sup>20</sup> is, or rather was, a central element in ensuring security and predictability in the multilateral trading system. The DSS has made trade less vulnerable to unilateral retaliation<sup>21</sup>, which has been particularly important in the context of protectionist tendencies, which increased in the aftermath of the 2008+ world economic crisis and is also of fundamental importance in the current situation, as a consequence of the COVID-19 crisis. The DSS has been relatively short and informal, making it one of the most effective dispute settlement mechanisms within existing international organisations.<sup>22</sup>

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<sup>17</sup> *Trade Policy Review*, WTO, [https://www.wto.org/english/tratop\\_e/tpr\\_e/tpr\\_e.htm](https://www.wto.org/english/tratop_e/tpr_e/tpr_e.htm) [accessed: 18.08.2021].

<sup>18</sup> For instance, the Trade Monitoring System played an important role during and after the 2007/2008+ global economic crisis by increasing transparency in WTO members' trade policy measures.

<sup>19</sup> WTO, *Transparency – why it matters at times of crisis*, 7.04.2020, [https://www.wto.org/english/tratop\\_e/covid19\\_e/transparency\\_report\\_e.pdf](https://www.wto.org/english/tratop_e/covid19_e/transparency_report_e.pdf) [accessed 29.08.2021].

<sup>20</sup> The DSS is a system of pre-established rules that allows WTO Members, irrespective of their political power and economic importance, to bring complaints when alleged violations of WTO rules occur and to seek redress for such violations. It is based on Articles XXII and XXIII of the GATT 1994 and the rules and procedures subsequently set out in the Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 to the Agreement Establishing The World Trade Organization. Cf.: Annex 2 to the Agreement Establishing The World Trade Organization – Understanding on Rules and Procedures Governing the Settlement of Disputes, [https://www.wto.org/english/docs\\_e/legal\\_e/28-dsu.pdf](https://www.wto.org/english/docs_e/legal_e/28-dsu.pdf) [accessed: 15.08.2021].

<sup>21</sup> This mechanism contributed to reducing unilateral defensive actions previously resorted to by states, which often provoked retaliatory reactions from the targeted states, sometimes leading to open trade war.

<sup>22</sup> E. Majchrowska, *20 years of WTO – effects of its activity and perspectives of its functioning in the context of proliferation of regional agreements in the world trade*, „Krakowskie Studia Międzynarodowe” 2016, no. 3, pp. 57–58.

The WTO's DSS was used systematically<sup>23</sup> by both developed and developing countries. Furthermore, it played a major function in ensuring that WTO agreements were respected. This, in turn, led to more compatible trade relations between members and contributed to economic growth.

Thus, the strengthening of the Dispute Settlement Body empowered to resolve trade disputes and enforce its decisions is considered one of the main achievements of the WTO. Nevertheless, by blocking the appointment of new judges, the US<sup>24</sup> has crippled the WTO's central appellate body in its rulings on international disputes. By the end of 2019, the terms of two of the three Appellate Body (AB) judges expired<sup>25</sup>, rendering it ineligible to adjudicate trade disputes and disorganising the operations of a key area of the WTO's functioning. This situation could lead to a backlog of unresolved disputes and make it easier for countries to violate trade rules without suffering the consequences.<sup>26</sup> To remedy this situation, the EU, together with 22 WTO members, has proposed an initiative in the form of an alternative mechanism called the temporary arbitration panel, which consists of 10 arbitrators who hear appeals against WTO panel reports.<sup>27</sup> Resolving the current AB deadlock as part of a wider WTO reform remains among the EU's priorities.<sup>28</sup>

WTO rules protect the economic interests of all members of the organisation, regardless of their size or level of economic development. Moreover, the binding of tariffs reduces the likelihood that they will be raised in response to a shock, and the DSS ensures, or rather ensured, compliance with the rules and has contributed significantly to avoiding the escalation of trade conflicts.<sup>29</sup> This is all the more important because the work of the WTO is crucial in ensuring economic security. This does not only concern the aforementioned body of rules in the form of international standards and procedures regulating the trade sphere,

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<sup>23</sup> The EU is one of the most frequent users of the dispute settlement system. It has been involved in 192 disputes, acting as complainant in 104 cases and as respondent in 88. In 209 other cases, it has applied for third party status, which allows it to monitor disputes between other parties (as of the last quarter of 2020); W. Iglar, *The European Union and the World Trade Organization*, 2021, European Parliament, <https://www.europarl.europa.eu/factsheets/en/sheet/161/the-european-union-and-the-world-trade-organization> [accessed: 14.09.2021].

<sup>24</sup> For the Trump administration, the WTO presented itself as a defunct organisation, responsible for the excessive growth of the economic power of China, which was to enrich itself through its favoured position in world trade. The WTO was blamed for the huge US trade deficit.

<sup>25</sup> For the normal functioning of the seven-member panel, the presence of three members is required.

<sup>26</sup> Ł. Ambroziak, *Skutki amerykańsko-chińskiej wojny handlowej dla międzynarodowych łańcuchów dostaw*, PIE, Warszawa 2020; Appellate Body Members, WTO, [https://www.wto.org/english/tratop\\_e/dispu\\_e/ab\\_members\\_descrp\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/ab_members_descrp_e.htm) [accessed: 10.09.2021].

<sup>27</sup> W. Iglar, *op. cit.*.

<sup>28</sup> *The WTO multi-party interim appeal arrangement gets operational*, 3.08.2020, European Commission, <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2176> [accessed: 14.09.2021].

<sup>29</sup> Annex to the Communication..., *op. cit.*, p. 1.

but also the dispute settlement system, which has contributed, on many occasions, to limiting unilateral retaliatory actions and has effectively counteracted the growing protectionist tendencies in the global economy.<sup>30</sup>

All of the above aspects meant that the WTO has been seen as one of the pillars ensuring economic security in the global economy. Therefore, taking concrete steps to restore the organisation's credibility is absolutely necessary in order not to forfeit the importance and contribution it has made to the development of world trade.

### Causes of the WTO crisis

It is well known that the problem of the crisis at the WTO is complex and involves many aspects. Still, from the point of view of the issues analysed here, the first thing that should be emphasised is the change in the balance of power in the world economy, which has also translated into the negotiations within the organisation.

The emergence of important new members such as China, India and Brazil has weakened the position of the previous trading powers – the European Union and the United States – with the result that the change in the balance of power in the world economy has also been reflected in WTO negotiations. We should also not overlook the marked increase in the involvement of other developing countries in relation to the situation in earlier rounds. As a result of these events, a great difficulty has emerged in reconciling the defensive and offensive interests of individual groups of countries<sup>31</sup>, and, thus, the polarisation of positions between developed and developing countries. These divisions, a consequence of the changed balance of power in world trade and the growing prominence of developing countries, have gradually undermined the image of the WTO as the overarching forum for regulating world trade.

It has also been pointed out that one of the main reasons for the crisis is the fact that China's accession to the WTO has not contributed to its transformation into a market economy and the level of openness of the Chinese market still does not correspond to its importance in the world economy. However, the organisation has not been able to negotiate new rules to address this and other pressing issues (e.g. digital trade or sustainability). Achieving consensus among its

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<sup>30</sup> K.M. Książkowski, *Bezpieczeństwo ekonomiczne*, Elipsa, Warszawa 2011, p. 168.

<sup>31</sup> It is worth noting that within the DDA, numerous negotiation coalitions of countries have been formed with group coordinators or negotiating teams acting on behalf of coalitions. The purpose of this was to simplify the negotiation process. Approximately 25 such groups may be distinguished e.g. African group, G-90, RAMs (recently acceded members), Cairns group, Cotton 11, G-33; *Groups in the WTO*, 18.12.2017, WTO, [http://www.wto.org/english/tratop\\_e/dda\\_e/negotiating\\_groups\\_e.pdf](http://www.wto.org/english/tratop_e/dda_e/negotiating_groups_e.pdf) [accessed: 10.09.2021].

164 members against the backdrop of today's diffuse global balance of power is an enormous challenge.<sup>32</sup>

Negotiations are also hampered by disagreements over the issue of special and differential treatment (SDT), demanded by two thirds of the membership – including some of the world's most significant economies. SDT issues assumed renewed importance during the Doha Round, as less developed countries made their willingness to compromise in the ongoing negotiations contingent on obtaining positive solutions on this issue.<sup>33</sup>

Furthermore, the monitoring and consultative function of the WTO is severely compromised by insufficient transparency of WTO members' trade rules and practices.<sup>34</sup> What is more, the DSS, considered the "jewel in the crown"<sup>35</sup> of the organisation, was paralysed at the end of 2019, due to the blockage of appointments of Appellate Body members by the United States. There is also the not insignificant issue of trade conflict between the US and China, two of the three largest WTO members – their trade relationship is largely managed outside WTO disciplines.<sup>36</sup> The WTO has not played a key role in solving this problem, which threatens the stability of world trade.<sup>37</sup>

After two decades of negotiations, WTO members have not lived up to the need to reach a consensus and conclude the DDA negotiations, and the negotiations, which have been protracted year after year, have ensured its title as the longest negotiating round in the entire GATT/WTO system. Certainly, reaching consensus in the Development Round should be seen as a challenge incomparably more difficult than in previous rounds, both because of the increase in the number of members of this organisation representing different interests and the expansion of the scope of negotiations itself. The slow progress in negotiations

<sup>32</sup> Annex to the Communication ..., *op. cit.*, p. 2.

<sup>33</sup> Despite the application of SDT, many developing countries expressed disappointment with the effects of the Uruguay Round. Concerns included the extensive use of subsidies and domestic support in agriculture by developed countries, the erosion of preferences in access to their markets, the frequent initiation of anti-dumping proceedings against developing countries and the persistence of 'tariff peaks' for certain agricultural commodities. The feeling that some of the Uruguay Round arrangements were not fully compatible with their developmental economic interests contributed to this approach in recent negotiations. See more: A. Hajdukiewicz, *Specjalne i zróżnicowane traktowanie krajów rozwijających się w procesie liberalizacji handlu rolnego na forum WTO*, „Finanse, Rynki Finansowe, Ubezpieczenia” 2016, no. 3(81), pp. 108–109.

<sup>34</sup> ANNEX to the COMMUNICATION..., *op. cit.*, p. 2.

<sup>35</sup> B.M. Hoekman, P.C. Mavroidis, *op. cit.*, p. 9.

<sup>36</sup> Annex to the Communication..., *op. cit.*, p. 2.

<sup>37</sup> The trade war between the US and China has been a major disturbance in the world trade since the world economic crisis 2008+. Due to the economic connections, the impact of the conflict is not limited to these two economies, but it presents a risk to most countries and creates instability in the world economy. This means that the WTO, so far, has not played a meaningful role in solving the US-China trade conflict. The tariffs remaining in place are a violation of the U.S. obligations under the WTO, and thus remain a challenge to the credibility of the organization. See more: B.M. Hoekman, P.C. Mavroidis, *op. cit.*, p. 5.



is also attributed to the adopted negotiating formula, i.e. the concept of a single undertaking, which stated that “nothing is agreed until everything is agreed”<sup>38</sup>, which, as it turned out, did not have a positive impact on the implementation of the agreements. Moreover, some of the objectives to be achieved in the DDA have already been achieved by other means. First of all, there has been a reduction in the average level of tariff protection – numerous countries (China, Brazil or India, already mentioned) have reduced tariffs unilaterally (but mainly on industrial goods) as part of economic reforms and regional integration processes.<sup>39</sup>

The organisation's working practices, mainly the already mentioned recourse to SDT by developing countries and consensus-based decision-making, have also played a crucial role in reducing the effectiveness of the WTO as a forum for cooperation.<sup>40</sup> The latter, in particular, has often led to deadlock, not only because of differences between members, but because of the reluctance of many developing countries to discuss new issues.<sup>41</sup> Due to the principle of consensus, the actions of the US administration have also contributed to weakening the role of the WTO, by, as already mentioned, blocking the election of new AB members in 2019.

The declining relevance of the WTO is, therefore, a consequence of the protracted multilateral negotiations in the Doha Development Round, but also of the significant involvement of many key members of the organisation in the negotiation of Regional Trade Agreements (RTAs), which have become an alternative to multilateral negotiations.<sup>42</sup> As a consequence, RTAs have come to the foreground, and their participants expect further liberalisation of trade. It needs to be pointed out that all WTO members belong to at least one trade agreement. This trend is, unquestionably, characterised by a growing tendency, particularly owing to numerous RTAs that are currently being negotiated.<sup>43</sup>

<sup>38</sup> The success of the 2013 Bali Ministerial Conference was made possible by WTO members addressing each issue individually. This approach proved far more effective than the application of the single package rule, according to which no single issue can be agreed until there is agreement on all items on a broad agenda. See: *Trade for all. Towards a more responsible trade and investment policy*, 2015, European Commission, [http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf), p. 28 [accessed: 15.09.2021].

<sup>39</sup> E. Majchrowska, *Perspektywy działalności Światowej Organizacji Handlu w obliczu nowych tendencji w handlu światowym – efekty XI KM WTO*, „Krakowskie Studia Międzynarodowe” 2018, no. 4, p. 244.

<sup>40</sup> The consensus rule means that agreements are adopted when WTO member states do not formally object to a given matter.

<sup>41</sup> B.M. Hoekman, P.C. Mavroidis, *op. cit.*, p. 6.

<sup>42</sup> The pursuit of trade regionalism – also by the EU – has partly contributed to the current WTO crisis.

<sup>43</sup> According to the WTO figures for June 2021, the organization had received 782 notifications of regional trade agreements counting goods, services as well as member accessions separately. If notifications are taken as a whole, the number of agreements physically in force was 565, with 349 of those being active. See: *Regional trade agreements and the WTO*, WTO, [https://www.wto.org/english/tratop\\_e/region\\_e/scope\\_rta\\_e.htm](https://www.wto.org/english/tratop_e/region_e/scope_rta_e.htm) [accessed: 10.09.2021].

Finally, it is also worth noting the situation regarding the COVID-19 pandemic crisis. Particularly in its early stages, the WTO was not active enough and, as a result, numerous members resorted to unilaterally imposing export restrictions on medical supplies and personal protective equipment.<sup>44</sup>

The ongoing crisis at the WTO is, therefore, affecting three main functions of the organisation: the negotiations have not led to the modernisation of the rules; as under GATT, there is the possibility of blocking the dispute settlement system, as was evident at the end of 2019 when the US blocked the nomination of Appellate Body members; there is a lack of effectiveness in monitoring trade policy.<sup>45</sup>

For the EU, the current crisis and the ongoing marginalisation of the WTO are rooted in the inefficiency of the current system. Modernisation of the system is, thus, inevitable and urgent reform is now necessary. Indeed, a stable trade environment with a central position for the WTO is essential, especially in view of the upcoming challenges with the COVID-19 pandemic crisis.<sup>46</sup>

To conclude this section, it is worth highlighting that the new Director-General of the organisation will play a key role in terms of the smooth implementation of the organisation's reform and the rebuilding of the WTO's standing. Ngozi Okonjo-Iweala is the first woman in the history of the WTO and the first African to be elected as DG of the WTO, and her term, after a protracted selection process, began on 1 March 2021. Just as in 2013, when Roberto Carvalho de Azevêdo took the helm of the organisation at a crisis point, so now, in the change of DG, there are high hopes for extensive cooperation with members to reform and restore the organisation's credibility in the global economy.

## **Multilateralism in EU trade policy – the EU's position in the WTO**

When the WTO was created, the European Community became a member of that organisation. Since the entry into force of the Lisbon Treaty (1 December 2009), the European Union is a member of the WTO. EU Member States are also members of the organisation, currently 27. The European Commission negotiates on behalf of the EU.<sup>47</sup>

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<sup>44</sup> B.M. Hoekman, P.C. Mavroidis, *op. cit.*, p. 5.

<sup>45</sup> Topics such as environmental degradation, climate change or decent work pose serious challenges to the WTO's monitoring and debate functions. Annex to the Communication..., *op. cit.*, p. 2.

<sup>46</sup> Joint communication to the European parliament and the Council on strengthening the EU's contribution to rules-based multilateralism, 17.2.2021, Brussels, JOIN(2021) 3 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021JC0003&from=EN> [accessed: 20.08.2021].

<sup>47</sup> The European Union and the WTO, WTO, [https://www.wto.org/english/thewto\\_e/countries\\_e/european\\_communities\\_e.htm](https://www.wto.org/english/thewto_e/countries_e/european_communities_e.htm) [accessed: 25.08.2021].

The EU's common trade policy is one of the areas in which the Union has full and exclusive competence.<sup>48</sup> This means that the EU acts as a single entity in the WTO, represented by the Commission, which negotiates trade agreements on behalf of all Member States and appears before the WTO Dispute Settlement Body.<sup>49</sup>

The EU's trade policy is based on three pillars: an active role in the World Trade Organization and support for its activities, deepening bilateral or multilateral trade relations and the so-called unilateral preferences.<sup>50</sup> When analysing the aspects of multilateralism in EU trade policy, but also referring to the situation on the global market and the position of the EU in the world economy<sup>51</sup>, one should first recall the provisions of the trade and investment strategy "Trade for All", adopted in 2015, which clearly stressed the importance of the multilateral system as the foundation of EU trade policy and called for its revival. However, the impasse in the multilateral negotiations under the DDA, already initiated in the first decade of the 21<sup>st</sup> century, resulted in RTAs becoming an alternative for securing EU trade interests guaranteeing better access to third country markets, representing a new generation of comprehensive trade agreements<sup>52</sup>, which, to some extent, filled the gap in the increasingly ineffective multilateral system and thus accelerated its decline. It should be noted, however, that this strategy also emphasises the complementary nature

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<sup>48</sup> Article 3 of the Treaty on the Functioning of the European Union, consolidated version (Official Journal of the EU C 202, 7.06.2016).

<sup>49</sup> The Commission reports to and consults the Council and the European Parliament on multilateral discussion issues. Under the Lisbon Treaty, the Council and Parliament have the power to decide on matters relating to international trade. During the negotiations, the Commission works closely with the EU Member States by consulting the Trade Policy Committee; *How the EU works with the WTO*, European Commission, [https://trade.ec.europa.eu/doclib/docs/2013/april/tradoc\\_150988.pdf](https://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_150988.pdf) [accessed: 28.08.2021].

<sup>50</sup> These are unilateral preferences under the Generalised System of Preferences (GSP), which includes the GSP+ scheme and the EBA initiative.

<sup>51</sup> Maintaining its status as a global economic power will be accompanied by a change in Europe's relative position in the world economy. Already by 2024, 85% of world GDP growth is projected to come from outside the EU, with China's economic growth having the biggest impact on the global economy (projected to grow by 4.7% per year on average). The EU will operate in a new, multi-polar world order characterised by growing tensions between the major players; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Trade Policy Review – An Open, Sustainable and Assertive Trade Policy*, 18.02.2021, Brussels, COM(2021) 66 final, p. 3, [https://eur-lex.europa.eu/resource.html?uri=cellar:5bf4e9d0-71d2-11eb-9ac9-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:5bf4e9d0-71d2-11eb-9ac9-01aa75ed71a1.0001.02/DOC_1&format=PDF) [accessed: 5.09.2021].

<sup>52</sup> The broader scope of these agreements involves going beyond the rigid framework of trade in goods and tariff reductions that were characteristic of classic free trade agreements. They regulate trade cooperation according to the WTO+ or even WTO-x formula by referring to issues that are not negotiable in the multilateral forum.

of bilateral agreements to WTO engagement, indicating that the multilateral system must remain the cornerstone of EU trade policy.<sup>53</sup>

At the multilateral level, the EU, thus, supports the WTO development agenda launched in Doha in 2001. In October 2015, the EU ratified the trade facilitation agreement reached at the IX Ministerial Conference in Bali, which is of particular importance for developing countries. During the 10th MC, the EU, together with several other WTO members, was very active in promoting many issues of interest to these countries.<sup>54</sup> However, in the absence of results at the 11th MC, a broad discussion was launched on the need to reform the multilateral system, demonstrating the depth of the crisis and dispelling any hope of a positive conclusion to the Development Round negotiations in the short term.<sup>55</sup>

At the beginning of 2021 Commission presented its Trade Policy Review entitled “Trade Policy Review – An Open, Sustainable and Assertive Trade Policy”, which aims to set the direction of trade policy until 2030. This review follows the 2015 strategy mentioned above and reflects the geopolitical changes that have taken place in the global economy since then, and aims to adapt trade policy to current challenges with a particular focus on reforming the multilateral system at the WTO.<sup>56</sup>

Therefore, there is a certain duality in the EU’s trade policy – as a supporter of the WTO, the EU is at the same time the most active participant in RTAs<sup>57</sup> in the global economy, and the range of trade agreements concluded by the EU is expanding year by year.<sup>58</sup> This trend is, definitely, on the rise, especially because of the numerous RTAs that are currently under negotiation. In 2019, the EU had 44 active trade agreements with 76 partners. The value of trade with these partners exceeded €1 300 billion, representing 33%

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<sup>53</sup> In addition, it is pointed out that bilateral and regional agreements should support the re-establishment of the WTO as the principal forum for world trade negotiations, and that the agreements concluded could serve as a testing ground for the liberalisation of world trade. See: *Trade for all...*, *op. cit.*, p. 3 and 26.

<sup>54</sup> M. Damen, W. Iglar, *Trade regimes applicable to developing countries*, 2021, European Parliament, <https://www.europarl.europa.eu/factsheets/en/sheet/162/trade-regimes-applicable-to-developing-countries> [accessed: 10.09.2021].

<sup>55</sup> A. Wróbel, K. Jędrzejowska, M. Rewizorski, *Globalne zarządzanie gospodarcze*, Scholar, Warszawa 2020, p. 44.

<sup>56</sup> M. Damen, *The European Union and its trade partners*, 2021, European Parliament, <https://www.europarl.europa.eu/factsheets/en/sheet/160/the-european-union-and-its-trade-partners> [accessed: 10.09.2021].

<sup>57</sup> In its new trade strategy, the EU continues to emphasise the importance of a wide network of trade agreements that shape its relations with partners and provide a platform for cooperation, particularly in regions such as Asia Pacific and Latin America.

<sup>58</sup> In the last two years, the EU has made significant progress in its trade policy, particularly in terms of bilateral trade, as reflected in the ratification of trade agreements with Singapore and Vietnam, among others.

of the EU's external trade.<sup>59</sup> Given the EU's success in negotiating trade agreements with key trading partners, it is still crucial to bear in mind that two-thirds of the EU's trade with the rest of the world, including trade with the United States, China, Russia and India, takes place on the basis of WTO-guaranteed rules (under most-favoured-nation, MFN), highlighting the need for a well-functioning organisation to globally manage international trade.

The COVID-19 pandemic can also be expected to have a serious adverse impact on trade between the EU and its partners, including preferential partners. According to EC estimates, EU exports to third countries could decline by 9–15% and imports by 11–14% (taking goods and services together). That is why the role of the WTO is so important in this context.<sup>60</sup>

The WTO crisis shows that the international trading system has changed dramatically over the past two decades. The old system, largely dominated by the EU and the US, has transformed into a more open and multidimensional system in which new participants, mainly developing countries, play a central role. It is also worth noting that the undermining of the WTO by the US may lead to the weakening of its strong position in the organisation and, thus, create opportunities for other members, including the EU, to increase their influence in it.<sup>61</sup>

## **EU actions aimed at reforming the organization**

Among the EU's efforts to modernise the WTO, particular attention should be drawn to the proposals contained in the concept paper setting out the EU's position on reform and in the new EU trade strategy.

On 18 September 2018, the EC presented a concept paper to overhaul the organisation and help adapt international trade rules to the challenges of the global economy. The concept paper precisely defines the course of action leading to modernisation. It identifies three key areas concerning:

- updating the rulebook on international trade taking into account the current situation in the global economy,
- strengthening the monitoring role of the WTO, and

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<sup>59</sup> WTO, *Regional Trade Agreements Information System (RTA-IS)*, WTO OMC, <http://rtais.wto.org/UI/PublicSearchByMemberResult.aspx?MemberCode=392&lang=1&redirect=1> [accessed: 9.09.2021].

<sup>60</sup> Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Implementation of EU Trade Agreements, 1.01–31.12.2019, p. 6, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0705&from=en> [accessed: 15.09.2021].

<sup>61</sup> D. Wnukowski, *Światowa Organizacja Handlu: kryzys negocjacyjny i szanse jego przezwyciężenia*, „Biuletyn PISM” 2018, no. 27(1600), [https://pism.pl/publikacje/\\_wiatowa\\_Organizacja\\_Handlu\\_kryzys\\_negocjacyjny\\_i\\_szanse\\_jego\\_przezwyyci\\_enia\\_](https://pism.pl/publikacje/_wiatowa_Organizacja_Handlu_kryzys_negocjacyjny_i_szanse_jego_przezwyyci_enia_) [accessed: 15.09.2021].

- overcoming the crisis in the dispute settlement system.<sup>62</sup>

Due to the long-drawn-out Doha Round negotiations, both the negotiating function and the directly related regulatory function have been weakened considerably. In the concept paper, the EU proposes, e.g. to tighten the discipline of the Agreement on Subsidies and Countervailing Measures (SCM), particularly with regard to the use of subsidies in industry and the activities of state-owned enterprises. First of all, the need to improve the transparency and efficiency of the subsidy notification system is indicated. Although the SCM provides for the notification of trade policy instruments used, not all members comply with it, and the lack of the detailed information is one of the biggest shortcomings in the current system. The level of compliance of measures with the notifications made is low and has significantly deteriorated in recent years.<sup>63</sup> Regulation-making in this area should, thus, focus on creating incentives for WTO members to fully comply with their notification obligations. The EU had already proposed changes in this area the year before<sup>64</sup>, including the adoption of a general rebuttable presumption that, if a subsidy is not notified, it will be considered an actionable subsidy or even a subsidy causing serious injury to the interests of other members.<sup>65</sup>

Furthermore, the need to reduce harmful practices resulting from the activities of state-owned enterprises (SOEs) has also been stressed. A major problem is the situation in which SOEs grant subsidies to themselves. The purpose of the amendments is, therefore, to adopt rules on the manner in which support is granted, its scope, as well as the level and degree of state control in state-owned enterprises.<sup>66</sup>

The EU proposal also indicates the need to clarify the regulation of the most trade distorting subsidies. In this regard, it is proposed, among other things, to extend the list of prohibited subsidies and to identify the types of subsidies that may be subject to stricter rules, e.g. unlimited guarantees or subsidies granted to an insolvent or distressed company without presenting a credible restructuring plan.<sup>67</sup>

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<sup>62</sup> *European Commission presents comprehensive approach for the modernisation of the World Trade Organisation*, 18.09.2018, Brussels, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1908> [accessed: 15.08.2021].

<sup>63</sup> By the end of March 2018, more than half of the members (90 members) had not submitted any notification; *WTO modernisation. Introduction to future EU proposals. Concept paper*, 2018, [https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc\\_157331.pdf](https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157331.pdf) [accessed: 30.08.2021].

<sup>64</sup> WTO, *Improving disciplines on subsidies notification. Communication from the European Union*, TN/RL/GEN/188, [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=238753,236581&CurrentCatalogueIdIndex=1&Full-TextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=238753,236581&CurrentCatalogueIdIndex=1&Full-TextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True) [accessed: 13.09.2021].

<sup>65</sup> *WTO modernisation. Introduction...*, *op. cit.*

<sup>66</sup> *Ibidem.*

<sup>67</sup> *Ibidem.*

In the context of updating the rules at the WTO, the demand presented in the EU concept paper also concerns barriers to trade in services and investment flows, with a special focus on forced technology transfer. In this regard, the EU draws particular attention to the need to develop specific rules related to forced technology transfer.<sup>68</sup> There are a number of provisions in the current set of WTO rules (in GATT, GATS, TRIMS and TRIPS) that should help to address this problem, but their scope is limited and thus insufficient to address some of the major sources of problems. The new rules should introduce disciplines that would make it possible to improve the overall market access conditions for foreign direct investment, as well as to address distortive and discriminatory practices, including, e.g. restrictions on legal form, in a more comprehensive manner.<sup>69</sup>

With regard to digital trade, which has recently become of particular interest to the organisation<sup>70</sup>, not least as a result of the pandemic, the concept paper points to the need to remove unjustified barriers, to ensure better regulation for businesses and a safe online environment for consumers.<sup>71</sup>

The issue of reforming the system of Special and Differential Treatment (SDT) for developing countries is also vital. This mechanism was created in the 1960s by highly developed countries for developing countries integrating into the world economy, in order to allow the latter to participate in the international trading system on preferential terms. These provisions were intended to help less developed countries adapt their legislation and practices to the rules of first the GATT and then the WTO. Special treatment at the WTO is mainly manifested in the form of preferential market access, longer transition periods for the adoption of WTO agreements, and technical assistance. The use of SDT by the LDCs does not raise any objections, but the dynamic development of emerging markets has led to many comments on the use of this system by countries such as China, India and Brazil.<sup>72</sup> The EU, while remaining committed to the need to assist developing countries, has, therefore, pointed to the need to adjust the way in which SDT is granted to developing countries to take account of the economies that really need it.<sup>73</sup>

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<sup>68</sup> The issue of forced technology transfers has been at the centre of the US–China trade war.

<sup>69</sup> *WTO modernisation. Introduction...*, *op. cit.*

<sup>70</sup> *World Trade Report 2018: The future of world trade. How digital technologies are transforming global commerce*, WTO, [https://www.wto.org/english/res\\_e/reser\\_e/wtr\\_e.htm](https://www.wto.org/english/res_e/reser_e/wtr_e.htm) [accessed: 16.09.2021].

<sup>71</sup> *WTO modernisation. Introduction...*, *op. cit.*

<sup>72</sup> The developing country group now includes some of the world's top trading nations. More than two-thirds of WTO developing country members are eligible for SDT rules. See: M. Grącik-Zajączkowski, *WTO czeka na zmiany*, 21.11.2018, [https://ec.europa.eu/poland/news/181121\\_WTO\\_zajaczkowski\\_pl](https://ec.europa.eu/poland/news/181121_WTO_zajaczkowski_pl) [accessed: 15.08.2021].

<sup>73</sup> *WTO modernisation. Introduction...*, *op. cit.*

The EU proposal also points to the need for greater flexibility to enhance the effectiveness of the trade negotiation process. This reflects the concept of flexible multilateralism, according to which members interested in pursuing an issue that is not yet ready for full multilateral consensus should be able to reach a multilateral agreement if its benefits are made available to all other members under the MFN. At the same time, there is a call for reinforcing the WTO's multilateral negotiating function, enhancing the role of the WTO Secretariat in trade negotiations, as well as increasing the frequency of Ministerial Conferences.<sup>74</sup>

The document also devotes considerable attention to improving the monitoring role of the WTO. The main suggestions for change include increasing transparency and enhancing the notification of Member States' trade policy actions. As in the case of SCM notifications, it is proposed, among other things, to develop existing incentives and make use of technical assistance, especially for less developed countries, as well as sanctions for wilful and repeated non-compliance with notification regulations. It is also important to strengthen the TPRM as a tool to regularly review WTO Members' policies and practices and their impact on the functioning of the multilateral trading system.<sup>75</sup>

Another very important proposal for the modernisation of the organisation is the issue of the functionality of the dispute settlement mechanism. The immediate reason why the EU proposed including this area in the reform of the organisation and increasing the effectiveness of this body was the action taken by the US to block the nomination of new AB members. The blocking of nominations prompted the EU to propose its own version of the reform of the mechanism, and the suggestions put forward by the EU side are, indeed, in line with the objections raised by the US<sup>76</sup> against the appeals process, which concerned, above all, the lack of independence and ineffectiveness of the AB.<sup>77</sup> Among the changes proposed by the EU, the following should be highlighted:

- the adoption of a specific timeframe for the appeal procedure, which is to include a provision that it is not possible to go beyond 90 days unless by agreement of the parties to the dispute;
- the determination of the powers and liability of the person whose term of office has expired;

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<sup>74</sup> *Ibidem.*

<sup>75</sup> See more: *ibidem.*

<sup>76</sup> *The World Trade Organization's (WTO's) Appellate Body: Key Disputes and Controversies*, 22.06.2021, Congressional Research Service, <https://crsreports.congress.gov/product/pdf/R/R46852> [accessed: 16.09.2021]. The "US concerns with WTO dispute settlement" have been summarized in the President's 2018 Trade Policy Agenda: The President's trade policy agenda, 2018, <https://ustr.gov/sites/default/files/files/Press/Reports/2018/AR/2018%20Annual%20Report%20I.pdf> [accessed: 16.09.2021].

<sup>77</sup> M. Wąsiński, *USA wobec reformy WTO – zatrzymać Chiny*, „Biuletyn PISM” 2019, no. 59(1807), [https://pism.pl/publikacje/USA\\_wobec\\_reformy\\_WTO\\_zatrzymaj\\_Chiny](https://pism.pl/publikacje/USA_wobec_reformy_WTO_zatrzymaj_Chiny) [accessed: 10.09.2021].



- the justification that the advisory opinions ordered by the AB are needed and necessary for the resolution of the dispute (amending Article 17.12 of the DSU, according to which the Appellate Body “shall resolve each of the issues raised” and adding: “to the extent necessary for the resolution of the dispute”);
- addressing the problem of the treatment of AB rulings as precedents in the WTO system – in addition to the right of Members to express their views on Appellate Body reports after their adoption, provide for a regular exchange of views between the Appellate Body and WTO Members (e.g. in the form of annual meetings). This would provide an additional “channel of communication” in which to express concerns about certain Appellate Body approaches (for example, treatment of previous rulings as precedents, lack of evolution of case law). WTO membership would provide an opportunity to comment on more systemic issues or trends in case law at meetings unrelated to the adoption of individual Appellate Body reports;
- independence of AB members – providing for a single but longer term (6–8 years) for AB members. This would address the concerns of the EU (and the vast majority of WTO members) about the independence of the AB. It would also enhance the efficiency of the body (there would be certainty about the length of the term, and a longer term would allow for the benefit of gaining work experience);
- increase the number of full-time members from 7 to 9.<sup>78</sup>

Nevertheless, the EU cannot act effectively on reform alone, so cooperation with other countries in the WTO is necessary. The EU has started such cooperation in the trilateral format with Japan and the US<sup>79</sup>, with China in a special working group<sup>80</sup> and with other G20 partners.

The COVID-19 pandemic made it very difficult to take concrete steps towards reform. An additional blow to the multilateral system under the WTO was the resignation of Director-General (DG) Roberto Carvalho de Azevêdo, who stepped down at the end of August 2020, one year before his mandate expired, at a very difficult moment for the WTO – in the midst of a global recession triggered by the COVID-19 pandemic and a trade war between the world's two largest economies.

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<sup>78</sup> Communication from the European Union, China, India and Montenegro to the General Council. Revision, 12–13 December 2018, General Council, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W753R1.pdf&Open=True> [accessed: 10.09.2021].

<sup>79</sup> Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union, [http://trade.ec.europa.eu/doclib/docs/2018/may/tradoc\\_156906.pdf](http://trade.ec.europa.eu/doclib/docs/2018/may/tradoc_156906.pdf) [accessed: 12.09.2021].

<sup>80</sup> Joint statement of the 20th EU–China Summit, <https://www.consilium.europa.eu/media/36165/final-eu-cn-joint-statement-consolidated-text-with-climate-change-clean-energy-annex.pdf> [accessed: 12.09.2021].

Thus, taking into consideration the dynamically changing economic environment and the challenges that the global economy has faced – in particular, rising international tensions, the return to unilateral action and its consequences for multilateral institutions<sup>81</sup> – and which require an updated approach to trade policy issues, the EU announced a new strategy in this regard in February 2021. It takes into account global trends and challenges, which will also require greater global cooperation to address. The EU strategy is based on a new approach called “Open Strategic Autonomy”. “Open” because it abides by global rules, “strategic” because it connects better with the goals of climate and digital transformation, and “autonomous” – it makes its own decisions and is guided by its own interests and rights.<sup>82</sup>

From the perspective of the issues addressed in this paper, it is particularly important that this strategy includes a renewed focus on strengthening multilateralism and reforming global trade rules. Its main objectives include: reforming the WTO, supporting recovery from the COVID-19 pandemic, but also stronger enforcement of trade agreements. Importantly, the document confirms the EU’s commitment to the reform of the WTO.

The new EU strategy sets out the WTO reform agenda by: adopting a first package of reforms that will focus on sustainable development and efforts to mainstream sustainability in the work of the organisation; strengthening WTO rules against the negative externalities of state intervention in WTO members’ economies; facilitating the negotiation of new agreements on issues that are important to large subgroups of WTO members; finding a lasting solution to the current impasse on the WTO binding dispute settlement mechanism; making WTO monitoring of members’ trade policies more effective by: increasing the transparency of members’ trade practices and streamlining the work of WTO committees.<sup>83</sup>

The EU will, therefore, seek to reform the WTO in all its functions. This implies updating WTO rules and practices to reflect the current state of world trade. It is stressed that strengthening transatlantic cooperation<sup>84</sup> is of particular importance in the reform of the WTO. The new US Administration provides an opportunity to work together on WTO reform. Hence, it is noteworthy, in this context, that at the June 2021 summit, the EU and US made a clear commitment

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<sup>81</sup> These trends have been triggered by several developments, which include the rapid rise of China, which is showing global ambitions (it is now the largest trading partner of the EU). This situation is increasingly challenging the established global economic governance system; Communication from the Commission..., *op. cit.*, p. 2.

<sup>82</sup> J. Keane, M. Mendez-Parra, D.W. te Welde, *The EU’s Trade Policy Review – and the five debates it triggers*, 19.02.2021, ODI, <https://odi.org/en/insights/the-eus-trade-policy-review-and-the-five-debates-it-triggers/> [accessed: 13.09.2021].

<sup>83</sup> *An open, sustainable and assertive trade policy*, [https://ec.europa.eu/commission/press-corner/detail/en/qanda\\_21\\_645](https://ec.europa.eu/commission/press-corner/detail/en/qanda_21_645) [accessed: 13.09.2021].

<sup>84</sup> Communication from the Commission..., *op. cit.*, pp. 9–10.

to reform the WTO. The parties pledged to work together<sup>85</sup> to achieve meaningful reforms by advancing the proper functioning of the WTO's negotiating function and dispute settlement system, seeking to update the WTO rulebook with more effective disciplines on industrial subsidies, unfair conduct by state-owned enterprises and other trade and market-distorting practices. The parties also confirmed their cooperation on the conclusion of a substantial agreement on fisheries subsidies.<sup>86</sup>

The EU views on priorities for WTO reform are set out in an annex to the strategy.<sup>87</sup> They also refer to the proposals contained in the concept paper. These are summarised below.

An important step towards cementing the WTO's contribution to sustainable development would be to conclude negotiations on fisheries subsidies. Reaching this agreement is important for two reasons – it would be the first multilateral agreement between members in years and the first agreement with the Sustainable Development Goal (goal 14.6)<sup>88</sup> at its core. Given the significant divergences between members on this issue, this will not be an easy task, but there is a possibility of convergence of positions even before the 12<sup>th</sup> MC, especially since the WTO is taking steps in this direction. One of these was the Ministerial Meeting on fisheries subsidies held in mid-July 2021. Ministers reaffirmed the common objective of reaching an agreement.<sup>89</sup> Although some divergences remain, the version proposed by the negotiating chair provides a solid basis for the final stage of negotiations. The EU also reaffirmed its commitment to this objective.<sup>90</sup>

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<sup>85</sup> There are also voices of scepticism about US cooperation – the increase in US tariffs on Chinese products, and the national security justification for imposing them, have not been withdrawn. Key appointments in the AB continue to be blocked and no US candidate for WTO envoy has yet been announced. President Biden is expected to nominate María Luisa Pagán, a long-time government trade negotiator, as deputy US trade representative and envoy to the WTO, which is crucial to accelerating the administration's commitment to reforming the organisation. The issue of the WTO representative's absence in Geneva is particularly pertinent given Biden's commitment to working closely with partners and multilateral organisations after the Trump administration's trade policies led to numerous tensions in trade relations; Y. Hayashi, *Biden to Nominate María Pagán as U.S. Envoy to World Trade Organization*, 10.08.2021, „The Wall Street Journal”, <https://www.wsj.com/articles/biden-to-nominate-maria-pagan-as-u-s-envoy-to-world-trade-organization-11628622000> [accessed:10.09.2021].

<sup>86</sup> EU–US cooperation on reforming the World Trade Organization, European Commission, [https://trade.ec.europa.eu/doclib/docs/2021/june/tradoc\\_159643.pdf](https://trade.ec.europa.eu/doclib/docs/2021/june/tradoc_159643.pdf) [accessed: 15.09.2021].

<sup>87</sup> Annex to the Communication..., *op. cit.*

<sup>88</sup> Sustainable Development Goals (SDG), <https://sdgs.un.org/goals/goal14> [accessed: 12.09.2021].

<sup>89</sup> Also, APEC trade ministers agreed to reform the WTO in both its negotiating and dispute settlement functions, to conclude negotiations on fisheries subsidies and a “meaningful outcome” in agriculture at the MC12; J. Hewitt, *New push for WTO trade reform*, 17.06.2021, The Interpreter, <https://www.lowyinstitute.org/the-interpreter/new-push-wto-trade-reform> [accessed: 12.09.2021].

<sup>90</sup> *WTO takes important steps towards global trade rules for sustainable fishing*, 15.07.2021, European Commission, <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2289> [accessed: 15.09.2021].

Taking into account the primary objective of the Development Round, which is, first and foremost, to integrate developing countries more intensively into world trade structures and to support them in the fight against poverty, there is an urgent need for a forward-looking approach to SDT, which raises the question of restoring the credibility of the WTO as a negotiating forum. As mentioned earlier, the EU is in favour of SDTs, but the use of this mechanism must be guided by the economic situation so that trade remains a driving force for development and does not become a threat.

The most urgent of the reforms is considered to be the restoration of a fully functioning dispute settlement system with a reformed Appellate Body. The reform must maintain the principle of “negative” or “reverse” consensus (“decision is adopted unless all members are against it”)<sup>91</sup>, the independence of the AB and the central role of dispute settlement in providing security and predictability to the multilateral trading system. The EU can count on the support of China and India, among others, for DSS reform. However, without US support, unblocking the AB will not be possible. There is, however, a chance that this problem will be resolved, as President Joe Biden has declared his commitment to multilateralism as a foreign policy instrument that is more effective than unilateral action.<sup>92</sup>

Since the failure of the negotiating function is also at the root of the WTO crisis, the reform should also aim to restore the organisation’s effectiveness and credibility as a forum for negotiating trade rules and further liberalisation. Among the priorities, therefore, the overhaul of WTO rules on e-commerce, investment facilitation, domestic regulation of services and the role of the state in the economy are in particular demand. On the other hand, when considering the method of negotiation, the already mentioned, unsuccessful single package approach should be considered. The EU favours an inclusive approach to open, plurilateral initiatives that facilitates the participation of developing countries and allows them to decide whether to join the agreement, while leaving the door open for possible future accession.<sup>93</sup>

Streamlining the functioning of the WTO also involves improving transparency, monitoring and debate, as well as strengthening the role of the WTO Secretariat and DG. In the context of the EU’s efforts to modernise the WTO, the issue related to the aforementioned election for the head of the organisation was particularly important. Contrary to the initial US position, the EU

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<sup>91</sup> WTO, *WTO Bodies involved in the dispute settlement proces*, [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_settlement\\_cbt\\_e/c3s1p1\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_settlement_cbt_e/c3s1p1_e.htm) [accessed: 25.09.2021].

<sup>92</sup> M. Wąsiński, D. Wnukowski, *Zaostrzenie polityki USA wobec Chin w czasie pandemii COVID-19*, „Biuletyn PISM” 2020, no. 148(2080), [https://www.pism.pl/publikacje/Zaostrzenie\\_polityki\\_USA\\_wobec\\_Chin\\_w\\_czasie\\_pandemii\\_COVID19\\_](https://www.pism.pl/publikacje/Zaostrzenie_polityki_USA_wobec_Chin_w_czasie_pandemii_COVID19_) [accessed: 15.09.2021].

<sup>93</sup> Annex to the Communication..., *op. cit.*, pp. 14–16.

supported the candidacy of the Nigerian<sup>94</sup>, as it was necessary to fill the post of DG in order to increase the organisation's efficiency in this particularly difficult period for world trade. The EU's support for Ngozi Okonjo-Iweala was also seen as a positive signal sent to developing countries, as the election may contribute to a greater focus on the interests of the least developed countries and mean that talks will be reinvigorated on issues such as reducing support for farmers.<sup>95</sup>

Yet, it should be borne in mind that reform will require the commitment and acceptance of a significant number of members. This, therefore, implies the need for alliances, the avoidance of polarisation and the readiness of members to engage in a gradual process that will result in consensus. It is, thus, important for the EU to cooperate with other like-minded partners. The so-called Ottawa Group<sup>96</sup> or Friends of Advancing Sustainable Trade (FAST) should be mentioned here. However, an essential element of WTO reform is the high degree of convergence of the reform agenda between the US and the EU<sup>97</sup>, since historically, this cooperation has been the main driving force behind the progress achieved in the GATT/WTO negotiations.<sup>98</sup> As already mentioned, the election of a new US President, a supporter of multilateral institutions, provides an opportunity for close cooperation in this regard.

Dialogue with African countries is also important in this context. In turn, due to the special position of China and India in the global economy, it will also remain critical for the EU to engage in discussions with these countries. In particular, the Union's trade and investment relations with China are relevant and challenging. The finalisation of a comprehensive agreement on investment is, in principle, an important step forward in EU-China trade relations.<sup>99</sup>

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<sup>94</sup> Trump administration backed South Korean candidate. One of Biden's early decisions after taking office was to reverse Trump's veto and join the consensus behind Ngozi Okonjo-Iweala appointment.

<sup>95</sup> D. Wnukowski, *Nigeryjka Ngozi Okonjo-Iweala nową dyrektorką generalną Światowej Organizacji Handlu*, „Komentarz PISM” 2021, no. 14, [https://www.pism.pl/publikacje/Nigeryjka\\_Ngozi\\_OkonjoIweala\\_nowa\\_dyrektorka\\_generalna\\_Swiatowej\\_Organizacji\\_Handlu](https://www.pism.pl/publikacje/Nigeryjka_Ngozi_OkonjoIweala_nowa_dyrektorka_generalna_Swiatowej_Organizacji_Handlu) [accessed: 15.09.2021].

<sup>96</sup> In addition to the EU, other countries are taking action to modernise the WTO. The particular commitment of Canada should be noted here, as it not only presented its own reform proposal, but also initiated a process of multilateral cooperation in this area (Ottawa Group on WTO Reform). Agreement between WTO members on at least some of the EU and Canadian proposals could in the future help enhance the operations of, e.g. the DSS. A condition for this, however, will be the above-mentioned change in the US approach, but also the support of other key members of the organisation. See more: A. Wróbel, K. Jędrzejowska, M. Rewizorski, *op. cit.*, pp. 63–73.

<sup>97</sup> EU–US cooperation in a trilateral framework with Japan.

<sup>98</sup> Annex to the Communication..., *op. cit.*, p. 18.

<sup>99</sup> After concluding seven years of negotiations, due to inadequate political circumstances, the EC suspended its efforts towards ratification by EU countries and the European Parliament of an investment agreement with China; *EU–China Comprehensive Agreement on Investment*, European Commission, <https://ec.europa.eu/trade/policy/in-focus/eu-china-agreement> [accessed: 20.08.2021].

Close cooperation between the EU and its partners will, then, be key to promoting multilateralism and a rules-based international order. The EU will, therefore, step up its efforts to build alliances in support of multilateral institutions. In this respect, dialogue will be strengthened with the US, the Ottawa Group, African countries, India and China.<sup>100</sup>

The strategy stresses that the reform agenda must be ambitious, but, above all, realistic, which will entail sorting out the various aspects of WTO modernisation. The forthcoming MC will, thus, be paramount in this process, as it is the outcome of this MC that could prove to be the starting point for implementing the reform agenda. The 12<sup>th</sup> WTO Ministerial Conference<sup>101</sup>, to be held in Geneva in November/December 2021, will, therefore, come at a crucial moment. It will be a test of WTO Members' ability to find common ground in a difficult period for world trade.

## Conclusion

Fundamental changes are taking place in the global economy and the multilateral trading system is experiencing a serious and prolonged crisis. The decline in the effectiveness of multilateral cooperation at the WTO and the organisation's inability to perform its basic functions are the main reasons for the impasse which has lasted for years. The existing WTO rules, which are the basis of the world trade order, despite some modifications, have remained largely unchanged over the past two decades, mainly due to the difficulties in concluding the Doha Round negotiations. Consequently, members have focused their attention on concluding bilateral or multiparty agreements. The last two decades in particular have shown considerable activity in this regard – broad international cooperation has increasingly been replaced by regionalism, with the consequent disruption of the smooth functioning of multilateral institutions.

The COVID-19 pandemic has accelerated changes in the global economy while creating new challenges. It has exposed the interconnectedness of countries, which are highly dependent on stable and predictable international rules. This crisis situation exemplifies the need for multilateral solutions, but it also demonstrates the need to adapt multilateralism to new challenges and the need for a well-functioning, multilateral, rules-based global trading system.

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<sup>100</sup> Communication from the Commission..., *op. cit.*, p. 10.

<sup>101</sup> MC12 will be held from 30 November to 3 December 2021 in Geneva. It was originally scheduled to be held from June 2020 in Kazakhstan's capital Nur-Sultan, but was postponed due to the COVID-19 pandemic. The conference will be chaired by Kazakhstan's Minister of Trade and Integration Bakhyt Sultanov, which was approved by WTO members in December 2019; *Twelfth WTO Ministerial Conference*, WTO, [https://www.wto.org/english/thewto\\_e/minist\\_e/mc12\\_e/mc12\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/mc12_e/mc12_e.htm) [accessed: 14.09.2021].

A well-functioning global organisation should, therefore, be paramount for any participant in world trade. It should be remembered, however, that the multilateral trading system remains the main defence against protectionism and contributes to fuelling economic growth. And it is these two aspects that will be crucial in the near future, as the consequence of the COVID-19 pandemic could also be a pandemic of increased trade restrictions. Broad international cooperation, including in organisations such as the WTO, will, thus, be crucial to limiting the crisis in the global economy. Hence, implementation of reform seems essential to maintaining the relevance of this international organisation in the world economy.

The analysis carried out in the article indicates that the EU, by taking concrete action, is leading the efforts to reform the WTO with regard to all its functions. However, the EU is not in a position to carry out this modernisation alone, as the basis for the functioning of the organisation is cooperation between its members. Consequently, without agreement between the most important players in world trade, i.e. the US (the Biden administration's has changed its approach to multilateralism, which opens up more optimistic prospects for cooperation), China, as well as other emerging economic powers (especially India), it will not be possible to reform the WTO and rebuild the relevance of the organization. This, therefore, implies the need for alliance building and the willingness of members to engage in a gradual process that will result in agreement. Close cooperation with partners will, then, be key to promoting multilateralism and a rules-based international order. The EU will, thus, redouble its efforts to build alliances in support of multilateral institutions.

Modernisation of the system is, therefore, inevitable and urgent reform is now necessary.<sup>102</sup> Indeed, a stable trade environment, with the WTO at its core, is essential, particularly in view of the forthcoming challenges posed by the COVID-19 crisis. Reform, led by the EU, will, then, be essential to facilitate economic recovery from the COVID-19 pandemic and to develop trade rules that better reflect developments in the global economy.

Finally, it is worth quoting here the words of Josep Borrell, Commission Vice-President in charge of coordinating the external action of the European Union: "Multilateralism matters because it works. But we cannot be 'multilateralists' alone. At a time of growing scepticism, we must demonstrate the benefit and relevance of the multilateral system".<sup>103</sup>

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<sup>102</sup> The EU has a fundamental strategic interest in ensuring the effectiveness of the organisation, since promoting rules-based international cooperation is at the heart of the European project. The EU must, therefore, play a leading role in increasing the momentum for meaningful reform of the WTO; Annex to the Communication..., *op. cit.*, p. 3.

<sup>103</sup> *A stronger multilateralism approach to face new challenges together*, 17.02.2021, European External Action Service, [https://eeas.europa.eu/headquarters/headquarters-homepage/93287/stronger-multilateralism-approach-face-new-challenges-together\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/93287/stronger-multilateralism-approach-face-new-challenges-together_en) [accessed: 29.08.2021].

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## **EU's Activities for the Modernisation of the WTO – Towards the Reconstruction of the Organization's Position in the World Economy**

The gradually mounting negotiating crisis in recent years, combined with the inability of the World Trade Organization (WTO) to perform its basic functions, has demonstrated some weaknesses and inefficiencies of the multilateral trading system. This provokes a discussion about the role of the organisation as the main regulator of world trade and, consequently, about the need to reform the multilateral system. Regaining the WTO's position as a leader in global trade liberalisation and as a key forum for trade negotiations now requires a thorough reform of the organisation in many areas.

This paper aims to analyse the issues related to the actions taken by the EU to modernise the multilateral system under the WTO. The article presents the results of an analysis aimed at confirming the thesis that the EU, leading the efforts to rebuild the position of the WTO in the global economy, against the background of today's diffuse global balance of power, will have to engage in its reform with other important members of the organisation, such as China, among others. This is a consequence of the shift in the balance of power in the world economy, which has also been reflected in WTO negotiations.

**Key words:** EU, multilateral trade system, the world economy, WTO, WTO reform

## **Działania UE na rzecz modernizacji WTO – w kierunku odbudowy pozycji organizacji w gospodarce światowej**

Sukcesywnie narastający w ostatnich latach kryzys negocjacyjny w połączeniu z brakiem możliwości realizacji podstawowych funkcji przez World Trade Organization (WTO) ukazał pewną słabość i niewydolność wielostronnego systemu handlu. Prowokuje to do dyskusji o roli organizacji jako głównego regulatora handlu światowego, a w konsekwencji o konieczności zreformowania systemu wielostronnego. Odzyskanie przez WTO pozycji lidera liberalizacji światowego handlu i roli kluczowego forum negocjacji handlowych wymaga obecnie gruntownej reformy organizacji w wielu obszarach.

Opracowanie ma na celu analizę zagadnień związanych z działaniami podejmowanymi przez UE, które mają na celu modernizację systemu wielostronnego w ramach WTO. Niniejszy artykuł stanowi prezentację wyników analizy zmierzającej do potwierdzenia tezy, że UE, przewodząc staraniom prowadzącym w kierunku odbudowy pozycji WTO w gospodarce światowej na tle dzisiejszej rozproszonej globalnej równowagi sił, będzie musiała zaangażować się w jej reformę z innymi ważnymi członkami organizacji, m.in. Chinami. Jest to konsekwencją zmiany układu sił w gospodarce światowej, która znalazła swoje odzwierciedlenie również w negocjacjach na forum WTO.

**Słowa kluczowe:** gospodarka światowa, reforma WTO, UE, wielostronny system handlowy, WTO