



spiritsEUROPE PERSPECTIVE ON WTO MODERNISATION REFORMS

The multilateral trading body, the WTO, has been on the crossroad since the breakdown of the Doha Round negotiations in 2008. Major trading countries have moved to pursuing a more ambitious bilateral and plurilateral trade liberalisation agenda. The business community has largely followed this trade policy shift, as there were no signs that the multilateral negotiations would deliver trade benefits quicker than bilateral and plurilateral talks.

However, the WTO is not only the institution responsible for liberalising trade globally, but it is also a guarantor for the proper implementation of global trade rules and an arbitrator of disputes between its members. Both functions are invaluable from a business perspective, because having a global trading system, which is **fair, predictable** and based on **common rules** allows us to think of our business in a long-term perspective, putting in place the strategies that would support growth, development and job creation today and tomorrow.

The recent wave of unilateral measures, countermeasures and threats of further restrictions gave us a clear idea of what the potential consequences and the costs of unregulated global trade might be and reminded of the merits of preserving a predictable, rules-based trading environment.

While we do not agree with the means how the international trading rules have been challenged by some WTO members, we would agree that the WTO, as a guardian of global trading rules, is not serving business and its members up to its potential and, indeed, should be modernised. Therefore, as a firm supporter of the multilateral trading system, we would like to contribute into turning the current crisis in the WTO into an opportunity to improve the institution.

Proposals below do not intend to be an exhaustive review of the WTO. These ideas are mainly based on our longstanding experience with this organisation and on business needs that we struggle to fit into the current WTO setting. Herewith, we would also like to complement the European Commission for triggering the discussion about the modernisation of the WTO by putting forward the background note on future EU's proposals on this topic. The Commission's Concept Paper, published on 18 September 2018, already covers a good portion of our concerns¹ and therefore, the note below focuses only on additional suggestions.

Like the Commission's note, our proposals will be structured across functions of the WTO: **rulemaking, monitoring** and **dispute settlement**. While the WTO is a member driven organization, we would hope that the following submission of the business, whose success relies on the global trade would be considered as a useful contribution into this discussion amongst WTO members.

¹ Our sector would fully support the Commission's proposals related to the need to capture SOEs, establishing new rules to address barriers to services and investment, need to address barriers to digital trade, the need to address the sustainability objectives of the global community, proposals to strengthen the procedural aspects of the WTO's rulemaking activities, proposals to strengthen the transparency and regular work of the committees and so on.



Business proposals for rulemaking activities in the WTO

I. Market access & tariff reduction: tariffs remain a key market access issue for our sector in many markets. As a result, spiritsEUROPE sees tariff liberalisation as a key objective for any EU trade negotiation, whether bilateral or multilateral. In this context, the market access negotiations in agriculture within the Doha negotiations, particularly, the elimination of “tariff peaks”, remains relevant for our sector. As a premium product, EU distilled spirits are disadvantaged by ad valorem tariffs. We oppose any future attempt to convert existing specific tariffs into their ad valorem equivalents for any purpose in any EU trade negotiation. We understand that the current revision does not intend to cover this area. However, if there is an agricultural negotiation in the WTO in the future, we would support the following priorities:

- To review the reduction formulas proposed in December 2008 together with permitted flexibilities for developing countries to ensure that they deliver meaningful reductions in applied as well as bound tariffs for spirits, and to avoid any tariff increases.
- To maintain specific rather than ad valorem tariffs and taxes.

II. WTO should establish new rules to explicitly address illicit trade. Illicit trade is a global issue and a concern for many sectors. Illicit trade in alcohol is widespread, representing significant percentages of alcohol consumption worldwide. It has been identified as one of the key challenges that our business faces in many parts of the world. Illicit trade in alcohol encompasses a wide variety of illegal activities, but their common denominator is that fraudulent actors operating in this area abuse the international trade law regime.

The subject of illicit trade has not been fully incorporated into the WTO agenda. While it is true that the key objective of the WTO is to promote trade liberalization, it also has an equally important role to promote a fair and hence licit trade where products do not compromise human health nor economic development. The discussions relating to illegal, unreported and unregulated (IUU) fishing taking place in the negotiations on fisheries subsidies constitute an interesting precedent of Member States addressing illicit trade concerns in a WTO context.

In light of the above, we would suggest WTO members to continue and **deepen the discussion** on the illicit trade in the WTO. Ideally, it would lead to the recognition of the necessity to deal with this global phenomenon at the WTO (e.g. in the next Ministerial Declaration); to the creation of a definition of “illicit trade” that would facilitate implementing concrete measures against illicit products or bringing the attention of certain members to the lack of actions against these products. We are not seeking the creation of a new agreement on illicit trade, but rather bringing this topic under the scope of existing WTO agreements.

To give an example, the Trade Facilitation Agreement (TFA) does not deal with illicit trade directly, however, if this topic was brought under the scope of the WTO, TFA could be a powerful tool to tackle illicit trade activities related to corruption at customs. Various aspects of the TFA, such as transparency, automated entry and payment of duties, can serve as **effective measures** to address corruption at customs and ports.

The TFA sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance. It further contains provisions on technical assistance and capacity-building. The Trade Facilitation committee could be a platform for raising



concerns about illicit trade at the WTO and discussing cooperation with each other to counter illicit trade.

Similarly, illicit trade has relevance for customs valuation, TBT and TRIPS agreements. It could also be explicitly addressed in Secretariat reports prepared in connection with Members' Trade Policy Reviews.

If a full multilateral consensus to bring this topic on the agenda is not possible, interested members should be still allowed to pursue this issue amongst themselves at a plurilateral level within the WTO system.

The creation of this work stream could also contribute in delivering certain **Sustainable Development Goals**, where the WTO has a central role to play, such as SDG 3, SDG 8 and SDG 9.

III. New rules to address barriers to services and investments. The spirits sector has traditionally engaged mainly in trade policy discussions related to trade in goods. However, as the geography of our business operations expands, we support the idea of having clear international rules to avoid the introduction of unjustified restrictions on foreign-invested trading companies undertaking import and/or distribution of spirit drinks. That includes barriers, such as excessive domestic participation in capital, minimum number of domestic employees or discriminatory minimum capital requirement. Addressing these barriers in our sector and many others would facilitate investment supporting trade. From an EU perspective, these issues might also be addressed through the EU's approach to investment protection, including the proposal for a multilateral agreement with dispute settlement.

Business proposals on regular work and transparency

There is a variety of issues that spirits sector tries to address through the WTO's regular committees, including **discriminatory domestic taxation, customs valuation, import quotas and bans, discriminatory licensing** requirements; anticompetitive practices of state trading enterprises; and unnecessarily restrictive product standards, labelling and certification requirements.

In general, the business would support proposals (incentives or sanctions) that aim at improving the quality of notifications, their timely submission and the quality of responses to concerns raised by other WTO members on these notifications. While the experience with the TBT committee has been rather positive, the discussions in the framework of the state trading enterprises (STE), market access or customs valuation committees have been seriously disappointing. Since meetings of these committees are taking place only 1 or 2 times a year, the discussions might be nonconclusive for years.

I. Operation of TBT and SPS Agreements

We welcome the provisions of the TBT and SPS Agreements that require Members to notify the WTO of proposed regulations that may have an impact on trade at an early stage when amendments can still be introduced, and comments considered. However, because **there is no requirement to notify the final regulation**, it is often difficult to determine the status of a proposal, which can impede the ability of exporters to comply with new requirements in a timely manner. Accordingly, we would strongly support efforts to encourage members to notify final regulations when they are adopted to ensure that all impacted stakeholders are **promptly informed of the final measure, its requirements and implementation period**.

Spirits sector related TBT notifications are very common and often repetitive. For example, the fact that business needs to use bonded warehouses as a place to affix labels for the import markets has been discussed in several cases over the last 10 years. Despite all efforts to show its business necessity, certain WTO members continue notifying draft proposals, that would require operators to affix country-specific labels in the country of origin (which is more trade-restrictive and more costly). We would encourage WTO members to empower the WTO secretariat to develop **an analytical guide for WTO members** that would compile reactions, arguments and alternative proposals of WTO members to certain topics (e.g. allowed activities in the bonded warehouses) that should guide WTO members in choosing the **least-trade restrictive policy options** at the drafting stage of the regulation. Acknowledging that the WTO is a member driven organisation, we do not suggest that the secretariat will determine which options are the least trade-restrictive, but simply analyses available options.

II. Regional Trade Committee While the meetings of the Committee occur 4 times a year, it appears that the agenda has been focusing on the least controversial issues (i.e. TFA aspects, where countries have been sharing best-practices and a feedback on what works and what does not work on TFA clauses in their bilateral agreements). This does not respect the rationale for the **GATT Art XXIV** exemption for Regional Trade Agreements, namely as stepping stones towards broader trade liberalisation. Considering the increased importance of regional agreements on the world trade, in our view, these exchanges could be expanded to other relevant topics in order to give all Members the opportunity to scrutinise more robustly in order to ensure that they liberalise ‘substantially all trade’ in fact.

For example, the Committee could look in more depth into the consequences of bilateral FTAs on other WTO Members. **Article XXIV** recognizes the right of WTO Members to conclude FTAs to facilitate trade between them, however, these types of arrangements should not raise barriers to the trade of other contracting parties with such territories.

For example, the conclusion of EU-Vietnam FTA talks was announced on 1 February 2016. Once ratified, the tariff on EU wine and spirits (respectively at 50% and 45%) will be fully liberalised after seven years. However, the benefits our industry anticipated from the tariff liberalisation have been entirely negated by successive reforms of the Special Consumption Tax (“SCT”) that took place at the back of the EVFTA negotiations:

- Starting in 2016, the SCT rates have been progressively increased from 20% to 35% for wine and 50% to 65% for spirits.
- On top of that, the taxable price on which the SCT is calculated has been substantially increased in 2016 from the import price (CIF) to the importers’ selling price.

The financial impact of these tax increases has been very significant as the tax burden has in some instances more than doubled not only on European operators, but also operators from all other WTO countries. Therefore, WTO Members who find that their situation has worsen due to preferential arrangement between certain WTO members could use the Regional Trade Committee to make representations or proposals to restore the previous more favourable situation.



III. Other committees work. The ways of working of the TBT and SPS committees, particularly the fact that these committees are dealing with concrete trade concerns, should inspire a **step up** in the functioning of other WTO committees, such as market access², State Trading Enterprises³ and customs valuation⁴: rationalisation of committee work and clarification of their scope, increased frequency of these committee meetings, raising of their importance at capital level and better cross committee coordination. While the coordination with the business for the TBT and the SPS committees is satisfactory, better coordination is required with regard to other committees. The practice of Member States raising Specific Trade Concerns (STCs) in the TBT and SPS Committees could also be more systematically extended to other committees of the WTO.

Notifications. Members are requested to notify regular domestic rules and relevant changes to the WTO in the context of the various committees. In order **to increase transparency**, it would be useful to reinforce the mandatory nature of these notifications by Member States, as well as to encourage the Secretariat to develop a database system with all yearly notifications by countries.

IV. Trade Facilitation Agreement and e-commerce. The spirits sector welcomed the TFA and the subsequent constitution of a WTO committee. So far, it has been challenging for business to understand the links between reforms in customs and the implementation of the TFA agreement. To accelerate and prioritise enforcing initiatives that will yield concrete benefits, we recommend the following measures:

- a. Clarify processes and ways of working on **TFA's enforcement**. There is a myriad of players, including various international organisations, involved in the enforcement process of the Agreement. This situation makes it challenging for economic operators to engage and provide feedback on concrete experiences at borders. The WTO, through its TFA committee, could constitute a single platform convening all involved stakeholders, inventorying initiatives and reporting on progress to Member States and civil society.
- b. Develop a mechanism to allow economic operators to report on concrete trade facilitation challenges, as well as tangible changes and progresses encountered on the ground.
- c. Articulate more clearly the links between TFA enforcement and e-commerce facilitation, the former being a necessary starting point for more substantial progress on the latter in the future.

² Over the years, the Committee has discussed only few specific trade concerns. For our sector, over the last ten years, only Angola – Consumption tax and Colombia – excise taxes on alcoholic beverages were raised with very limited feedback from representatives of countries concerned.

³ Since October 2015, the European Commission is regularly requesting India to clarify the status of Tamil Nadu State Marketing Corporation Limited responsible for the distribution of spirits in the state of Tamil Nadu and to notify it as an STE under Article XVII. So far, without success or satisfactory justification for not doing it.

⁴ The WTO Customs Valuation Agreement (CVA) greatly improved the predictability of international trade, yet implementation and enforcement of its provisions vary greatly across WTO Members. We encourage greater convergence regarding the interpretation of the CVA, including the adoption of stricter disciplines against using arbitrary or unjustifiably inflated customs values. Despite our requests, no specific trade concerns have been discussed in the Customs Valuation Committee so far.



V. Improvements to the Trade Policy Review Mechanism: We encourage WTO Members to build on the Trade Policy Review Mechanism (TPRM) process to improve domestic rules' conformity with WTO framework.

To increase transparency, WTO Secretariat might want to consider putting a formal call for business contributions during the preparation of a given country's report and before it is finalised and adopted.

After TPR takes place in Geneva, we would encourage Members under review to organize informative sessions back in capitals with business representatives (e.g. through chambers of commerce) to brief them on the outcomes of the TPR discussions. The WTO Secretariat could be called to assist to organize these sessions as part of the TPR follow-up workshops.

TPRM is a useful mechanism to identify WTO compliance gaps in members' domestic trade regulations and practices⁵. To improve domestic trade rules in identified areas, the WTO members could be encouraged to allocate aid and development funds to support capacity building with least developed and developing countries⁶. WTO secretariat could consequently be empowered to boost further its **capacity building function** in areas where **compliance gaps** are identified thanks to TPRM.

VI. International inter-agency work. Trade policy is no longer dealt with in isolation. It is more and more part of broader discussions including public health, environment, labour rules, etc. The whole of government, whole of society approach is now embedded in the spirit of the Sustainable Development Goals. The WTO is already involved in several inter-agency task forces. Given the growing importance of this approach to international policy making and dialogue it is now of utmost importance that the WTO dedicates appropriate human resources (e.g. by having a dedicated team to inter-agency work in the Secretariat) to follow closely the inter-agency work, to promote and to be the guardian of existing international trade rules in broader policy discussions.

Business proposals on dispute settlement

Due to the United States' blockage of Appellate Body appointment, the whole dispute settlement function of the WTO is now under threat. While we encourage WTO members to resolve the deadlock as a priority, we would also like to put forward further proposals for consideration to improve the functioning of the dispute settlement mechanism.

Business is very interested **in a reliable and foreseeable system of interpretation of WTO rules.**

Regarding our industry, the rulings in Japan, Korea, Chile and Philippines cases have been providing the necessary guidance on how to adopt tax and other product regulations in a non-discriminatory way. The interpretation of "like" and of "directly competitive or substitutable products" showed how the DSB interpreted the non-discrimination principle contained in GATT Article III and helped our sector, inter alia, to increase its export performance. The decisions made in Geneva are also very helpful in building arguments to tackle discriminatory practices in other countries (most recently successfully in Angola).

⁵ For example, Mozambique TPR (2017) "Questions and answers" part, the EU asked Mozambique to clarify when it will terminate the fiscal discrimination in the new regime for "control stamps" for alcoholic beverages (the price for stamps for domestic operators is lower than for importers). Mozambique replied that it is aware of the fiscal discrimination on the implementation of stamps, there is a legislative initiative to correct it and it is expected that the new legislation will enter into force in 2018. Until now, there has been no change.

⁶ The "China program" (500K USD for support to Least Developed countries on both accession and TPR follow-up) and the 1m USD to the WTO's Trade Facilitation Agreement Facility Trust Fund are best practices in that regards: see https://www.wto.org/english/news_e/news17_e/acc_09dec17_e.htm



Notwithstanding the strong GATT case law on non-discrimination, we still have many discriminatory practices around the world, including preferential tax treatment for local domestic spirits like pisco in Peru, cachaça in Brazil or Lao Khao in Thailand. However, even in strong cases, countries are quite reticent to initiate the legal proceedings in the WTO dispute settlement. We witness that there are much more political reasons for not bringing the case (FTA negotiations with country in question, FTA enforcement and the need to use a DS under bilateral agreement first, political situation in a given country, elections) than for bringing one, even when the case is solid. To make the system more business-friendly, the rule of law and the economic case behind the request as a basis for the litigation should prevail over political considerations.

As the functioning of the Appellate Body is under threat, alternative options to resolve disputes between the parties should be explored in more details. Article 5 of the DSU stipulates that the Director-General may, acting in an ex officio capacity, offer good services, conciliation or mediation with the view to assisting Members to settle a dispute. While, we acknowledge the fact that procedures under Article 5 can be triggered only on the voluntarily basis, business would support discussions on the ways to reinforce this alternative mechanism to resolve disputes. The industry also continues to support the proposal made by the EU, with the support of other Members, in the NAMA negotiations in 2010 for a 'Horizontal Mechanism', originally in relation to TBT issues then broadened to cover all non-tariff barriers. In the TBT context, for example, spiritsEUROPE sees considerable value in an intermediate level of dialogue between raising a Specific Trade Concern in the TBT Committee and full-blown dispute settlement. Such a mechanism should be extended to include agricultural products and, ideally, to cover all WTO Agreements.

Private sector WTO modernisation advisory committee

To ensure that the WTO modernisation process reflects on business needs, we would encourage WTO members to establish advisory committees to gather the views of private sectors' international trade experts with an expertise in the WTO matter. ICC could play a similar role to the Business representation in the context of OECD⁷.

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⁷ [Business at OECD](#) is the officially recognised business voice to the OECD communicating business perspectives to OECD committees.