



Introduction

The global business community places great importance on the World Trade Organization (WTO) and the broader multilateral trading system.

Twenty-five years after its creation, the WTO remains the most important forum for creating modern trade rules, providing transparency for government actions that promote and hinder trade, and resolving disputes between Member States.

However, the WTO is in need of reform and new rules must be written to ensure it continues to serve the needs of businesses—the ultimate end-users of the global trading system.

This paper outlines five key priority areas that the global business community would like Member States to address at the upcoming Ministerial Conference (MC12) and build into a work programme over the next few years.

Updating the WTO’s “operating system”, meaningfully dealing with the COVID-19 pandemic and broader public health issues, creating trade rules to promote environmental sustainability, updating the “rulebook” to take account of the modern digital economy, as well as making trade as inclusive as possible would not only serve business interests but also broader expectations from citizens and civil society.

The following 27 concrete recommendations—drawn from extensive consultations from the International Chamber of Commerce’s business network across all continents and all levels of development—provide a roadmap for an ambitious, yet realistic, revitalisation of the WTO that would make the multilateral trading system better work for people and for the planet.

WTO Reform

- 1. Agree on a coherent holistic vision for WTO reform.** Above all, WTO Members must give leader-level political support to make the necessary reforms and improve the functioning of the WTO. Leaders should agree to a collective vision on the common objectives and foundational principles of the WTO, including market access and trade liberalisation, and the key areas of reform to prioritise. Leaders should mandate trade ministers agree on a package of reforms covering all three pillars of the organisation—negotiations, dispute settlement and monitoring national trade policies.
- 2. Put market access back on the agenda.** Increasing market access remains a core business priority across the whole swathe of WTO rules. The General Agreement on Trade in Services is not up to date regarding the development of the services economy and the Domestic Services Regulation Initiative, while welcome, lacks provisions on market access for services. WTO Members should, as part of any broader holistic vision for WTO reform, prioritise ensuring the WTO goes “back to basics” and promotes market access, especially in services and the digital economy.
- 3. Agree on a path forward to improving the negotiation function.** This should include recognising the legitimacy, legality and need for advancing rulemaking through open, transparent and inclusive plurilateral negotiations that extend negotiated outcomes to non-participants on an MFN basis exemplified by the “Joint Statement Initiatives”. Global business, including in developing countries, has very high regard for the steps taken since MC11 on the various JSIs under negotiation. WTO Members should recognise the power of plurilateral negotiations in writing trade rules fit for the twenty-first century and as a means through

which governments can achieve critical development outcomes, combat poverty and reduce inequality between nations. WTO members should explore new approaches and rulemaking structures, including formalised cross-institutional dialogue, as appropriate.

- 4. Adopt a new evidence-based approach to Special and Differential Treatment.** SDT serves an important purpose in the trading system by providing flexibilities to developing countries. To retain its integrity, however, there is a need for a new evidence-based approach to SDT based on objective economic criteria and a move away from self-designated development country status. This would provide business with greater certainty as to the application of WTO rules, help ensure a genuinely level playing field and enable the full participation of developing countries in the multilateral trading system. Greater objectivity in the approach to SDT would also give significant legitimacy to capacity building measures and targeted technical assistance but must be designed in a way that allows for further integration of developing countries into the multilateral trading system.
- 5. Agree on a path forward for reforming the dispute settlement system.** A functioning WTO dispute resolution system is central to upholding the multilateral trade system and ensuring compliance with the rules agreed by WTO members. We appreciate the efforts of governments to provide temporary solutions to the “Appellate Body impasse” through the creation of the Multi-Party Interim Appeal Arrangement. However, this alone is insufficient: the global business community needs a permanent solution that allows disputes to be resolved with finality, predictability and certainty in a commercially relevant timeframe, including through restoring the full operation of the Appellate Body. Member States should consider reforms such as separating the treatment for trade remedies, increasing the number of Appellate Body members, making appointments permanent for a defined period of time with a competitive pay grade, and expanding the recruitment pool.
- 6. Promote full compliance with and improvements to the WTO Agreement on Subsidies and Countervailing Measures (SCM).** Strict adherence to the commitments under the SCM is essential, especially with respect to provisions on transparency and countervailing measures. Consideration should be given to updating the SCM to promote measures and disciplines that ensure a neutral competitive environment, to improve and make more precise definitions of actionable subsidies as well as terms like public body, to prohibit discriminatory industrial policies, and to eliminate over-capacity and market distortions in manufacturing sectors, in particular in the field of SOEs and transfer of technology. Given the massive distortions to the global economy caused by the proliferation of subsidies since the Global Financial Crisis, Member States should also consider innovative ways to monitor and enforce adherence to existing and any new subsidies rules including, for example, the creation of a system of a reverse burden of proof in which subsidies would by default be considered illegitimate and duly sanctioned should countries fail to meet their notification obligations.
- 7. Improve the Secretariat’s capacity to monitor trade policy developments.** Members have not adhered sufficiently to their notification obligations and it is clear the notification system is not working. This undermines faith in the multilateral trading system and limits the utility of Secretariat monitoring for business. Members should develop a framework that creates greater incentives for compliance with notification obligations. Further, in the modern digital era, Members should be compelled to notify changes in trade policy within much shorter timeframes. The Secretariat should be empowered to monitor independently changes, without relying exclusively on notifications, and be given far more resources to do this in a timely and comprehensive manner. Developing countries should be provided financial and technical assistance, where required, to boost their capacity to comply with notification obligations.
- 8. Create a crisis management protocol for future crises.** The pandemic presented acute challenges to the processes and procedures of multilateral rule-making institutions. We call on Members to task the Secretariat with a thorough review of pandemic-response protocols,

with a view to developing a crisis management protocol for future crises that clarifies, among other things, the modalities of negotiating in virtual environments.

- 9. Create a business advisory council and a civil society council.** While initiatives such as the WTO Public Forum are welcome opportunities to engage, all stakeholders in the multilateral rules-based trading system would benefit from greater opportunities for dialogue—governments, civil society, and the private sector alike. Creation of advisory councils to crowd-in the views of stakeholders would enhance policymaking through sustained engagement. We strongly support the continuation of the Trade Dialogues process as well as increasing their frequency.

Trade and health

- 10. Ensure trade policies facilitate vaccine manufacturing and distribution.** The WTO Secretariat should work to identify and encourage the elimination of trade practices that inhibit the scaling of vaccine production capacity. WTO Members should not take any measures that limit trade in inputs necessary for vaccines and therapeutics production or supply, especially to COVAX. Members with any such measures in force should unilaterally remove them as a matter of urgency. Furthermore, vaccine and therapeutics producing countries should commit to avoid disruptions in global supply chains, including a cast-iron commitment to avoid export restrictions.
- 11. Creation of a Health Market Information System.** There is a clear need to improve the multilateral response to global health crises, including via trade policies, and improve future preparedness through better and facilitated access to essential medical goods, including vaccines. The COVID-19 pandemic has shown that policymakers and industry need a greater understanding on evolving challenges in medical supply chains, such as bottlenecks, based on global reliable data, to take relevant and informed decisions. At present, no international organisation monitors global supply chains and there is no forum where international organisations, medical goods manufacturers and key governments can meet to discuss pressing challenges and identify pragmatic solutions to global supply chain issues in a timely manner. Establishing a “Health Market Information System”—or a “supply chain watchtower”—would provide greater visibility over essential medical supply chains, enhance cooperation between the private and public sectors, improve management of possible scarcity and bottlenecks, increase trade facilitation measures, improve resilience of relevant supply chains, and support the production, distribution and access to relevant medical supplies.
- 12. Adopt cooperative ways to speed up vaccine production.** Members should focus squarely on actions that can ramp up production of vaccines and treatments at the requisite scale as quickly as possible. This includes, for example, the continued use of voluntary licensing and preserving incentives for innovation. Members should recognise that any proposal to “waive” intellectual property rights related to COVID-19 tools would not ramp up production, would interrupt fragile supply chains, and would disrupt market-based incentives for further research and innovation, all of which will continue to be critical in the fight against COVID-19 and future pandemics.
- 13. Adopt and go beyond the Trade and Health Initiative.** International trade remains a powerful tool to help contain the pandemic and contribute to economic recovery. The Trade and Health Initiative, proposed by the Ottawa Group, outlines specific actions relating to export restrictions, trade facilitation, technical regulations, tariffs, and transparency and review exercises that reflect emerging best practice. These actions should be adopted by the broader membership and inform a consensus statement to undertake WTO commitments on trade and health. Member States should complement this initiative by committing to zero tariffs on pharmaceutical goods and substances through an update to, and broadening the scope of, the Agreement on Trade in Pharmaceutical Products.

Trade and environmental sustainability

- 14. Finalise the fisheries subsidies negotiations.** Completion of these negotiations is essential to the credibility of the WTO as a multilateral trade policy forum and to achieving the Sustainable Development Goals (14.6). The repeated failure to meet self-imposed deadlines—including the end-2019 deadline agreed by consensus at the WTO’s 11th Ministerial Conference—has caused reputational harm to the institution and failed to arrest the unsustainable depletion of the world’s oceans. Concluding this deal is a first-order priority for the International Chamber of Commerce and its members.
- 15. Agree to a formal roadmap to address specific issues on trade and environmental sustainability.** Members should be ambitious in their commitments to the environment. They should remove fossil fuel subsidies, liberalise trade in environmental services, remove tariffs on environmental goods, and revise the Environmental Goods Agreement to make its scope less arbitrary and more based on clear concepts and data. More broadly, Members should launch discussions as quickly as possible, starting with climate mitigation, to ensure the multilateral trading system meaningfully assists governments meet the goals of the Paris Agreement and reach net-zero greenhouse gas emissions by 2050. The International Chamber of Commerce strongly supports the Structured Discussions on Trade and Environmental Sustainability and the Informal Working Group on Plastics, and we encourage greater engagement by Members. Furthermore, agreed concepts for CO₂-allocation to products for product carbon footprints, as well as verification of CO₂-contents, are needed—the WTO should investigate how to support this process.
- 16. Develop a package of recommendations on trade and the circular economy.** Government and private sector interest in circular economy approaches is rapidly growing. A transition to circularity is essential to achieving the Sustainable Development Goals. Members should move beyond mere policy dialogue within the Committee on Trade and Environment and agree to a roadmap that focuses on (i) improving their collective understanding of how trade interacts with the circular economy; (ii) building trust and confidence to engage in mutually beneficial trade related to circular economy activities; (iii) taking concrete steps to open and facilitate trade in key areas of the circular economy; and (iv) supporting efforts in developing countries to seize the potential environmental, economic and trade benefits of a circular economy. ICC has commissioned an independent expert report on how trade rules can be used to facilitate the development of a more circular economy and would be glad to share upon publication and work with Member States to develop concrete proposals.
- 17. Deal with carbon leakage in a multilateral way.** Carbon border adjustment mechanisms are increasingly viewed as important instruments in ramping up sustainability ambitions while avoiding so-called “carbon leakage”. While based on legitimate policy objectives, such mechanisms can raise questions of compliance with WTO non-discrimination rules. The creation of multiple schemes in different jurisdictions could lead to administrative complexity, regulatory fragmentation and political tensions. WTO Members should discuss the trade related aspects of carbon border adjustment mechanisms and consider methods to develop a multilateral approach that meets climate goals without violating trade rules, including perhaps via an OECD “inclusive framework” process.

Trade and the digital economy

- 18. Accelerate the e-commerce negotiations.** As communities socially distanced to flatten the curve, contactless payments enabled safe, COVID-free transactions; brick-and-mortar retailers rapidly moved to sell their wares online, powered by a vibrant ecosystem of software-as-a-service providers; citizens used social media to maintain connection with friends and loved ones across the globe; and e-commerce marketplaces provided consumers with safety, choice and convenience. Over this period, the E-commerce JSI made some

progress, achieving consensus on several disciplines. The task now is to accelerate progress and ensure a high standard outcome, including on data protection and particularly with respect to cross-border data flows. We call on the trade ministers of participating WTO Members to consider a one-year deadline at MC12.

- 19. Develop market access provisions for the digital economy.** Common rules to ensure open, non-discriminatory access to digital and digitally enabled markets is key to a successful future e-commerce agreement, as is increased market access in terms of increasing the participation in Information Technology Agreement I & II to help promote connectivity and bridge the digital divide.
- 20. Make permanent the moratorium on customs duties on electronic transmissions.** The moratorium has enabled digital trade to flourish since 1998, preventing the imposition of burdensome tariffs. This enabling environment no doubt contributed to business continuity for the millions of MSMEs that successfully transformed their operations during the pandemic. It is time for a permanent prohibition on customs duties on electronic transmissions.
- 21. Create an enabling legal environment for paperless trade.** International merchandise trade remains stubbornly wedded to paper-based transactions, despite the cost, delay, inefficiency, fraud, error, and environmental impacts of this antiquated business practice. A key bottleneck to the transition to paperless trade is the requirement in most jurisdictions that negotiable instruments be in paper form. We call on WTO Members to adopt a ministerial statement championing the UNCITRAL Model Law on Electronic Transferable Records. Equally, the e-commerce JSI should include a provision making the implementation of the UNCITRAL Model Law mandatory. Finally, a provision mandating the adoption and implementation of the model law is essential for a high standard e-commerce agreement.
- 22. Finalise negotiations for the JSI on Services Domestic Regulation.** These new disciplines to ensure transparency, legal certainty and predictability as well as regulatory quality and facilitation offer significant benefits for global business and will remove unnecessary barriers to trade in services. An outcome at MC12 would demonstrate the WTO can deliver tangible results for the real world economy. More WTO Members should commit to this initiative to maximise global economic benefits.

Trade and inclusivity

- 23. Identify new areas for rulemaking based on best practice from bilateral and regional trade agreements.** Global business has appreciated government efforts to write new “WTO+” and “WTOx” rules. Hundreds of preferential trade agreements deal with topics such as investment, movement of businesspersons, intellectual property rights, environment and the digital economy—to name a few—in a much more significant way than is presently dealt with by current WTO rules. WTO Members should consider launching JSI-style negotiations on these topics where substantial common ground already exists. Business is now looking to the WTO to harmonise bilateral, plurilateral and multilateral trade agreements to avoid the “spaghetti bowl” effect that creates regulatory burdens for businesses looking to trade.
- 24. Adopt the full package of recommendations of the MSME group.** Micro-, Small- and Medium-sized Enterprises (MSMEs) continue to face substantial obstacles to participation in international trade and were disproportionately affected by the economic impacts of the pandemic. We encourage all WTO Members to adopt and implement the full package of recommendations of the Informal Working Group on MSMEs. Post-MC12, we encourage the MSME Informal Working Group to consider how the WTO and its Members can more meaningfully address regulatory transparency and the trade finance gap given that many small businesses, especially in developing markets, remain severely cash constrained and at risk of insolvency owing to the COVID-19 pandemic.

- 25. Commit not to impose export restrictions on humanitarian aid.** The use of trade restrictions on agricultural products purchased for non-commercial humanitarian purposes is unconscionable and undermines cooperation in the multilateral trading system. We call on WTO Members to adopt a consensus ministerial statement that commits not to impose export prohibitions or restrictions on foodstuffs purchased for non-commercial humanitarian purposes by the World Food Programme.
- 26. Adopt a declaration with concrete and measurable proposals to advance trade and women's economic empowerment.** Women continue to face obstacles to their full participation in international trade. Further, the WTO reports that women are more likely to be negatively affected by COVID-19-related trade disruptions than men. WTO Members should adopt a declaration that includes meaningful and measurable actions and provides political guidance for future work, which could include the application of a gender lens in Trade Policy Reviews. WTO Members should adopt a gender lens across agreements and identify opportunities in current negotiations, such as the Services Domestic Regulation talks, to include provisions that promote gender equality in trade.
- 27. Launch discussions on the negative impact of illicit trade** on socio-economic development and the fulfilment of WTO objectives to create a fair, equitable and rules-based multilateral system. Illicit trade is a global concern and has been identified as a key challenge by many industry sectors. Until now, the subject of illicit trade has not been fully incorporated into the WTO agenda. Yet, the pandemic has exposed a pressing need to increase political awareness and tangible actions in tackling illegal activities that hinder the recovery and the growth of legitimate businesses in many countries when needed the most. WTO Members should analyse how existing WTO agreements contribute to addressing concerns related to illicit trade and identify areas where the WTO Members could enhance their common actions. We strongly support the inclusion of this topic into future Trade Dialogues with the business community and civil society and would encourage Member States to work towards launching a Joint Statement Initiative on illicit trade.

ABOUT THE INTERNATIONAL CHAMBER OF COMMERCE (ICC)

The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 100 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.



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