

# REFORMING THE MULTILATERAL RULES-BASED TRADING SYSTEM

The outcomes we want for people and planet

The multilateral trading system—underpinned by the World Trade Organization (WTO)—is facing a “make or break” moment. All three of the WTO’s functions are under pressure and require unambiguous reform: serving as a forum for trade negotiations, administering global trade rules, and providing mechanisms to settle trade disputes.

Despite current tensions in the global trading system, it is important to remember that the multilateral trading system has delivered impressive gains—particularly over the last 25 years. The WTO, which has 164 members, governs uniform rules that enable around 95% of global trade. It has more than doubled merchandise trade by opening new markets, resolved over 400 trade disputes, reduced the cost of many household essentials by around 30%, and raised the living standards of millions of people the world over.

Yet the key pillars of the multilateral trading seem to have reached their limits in a world where economic power has shifted, the challenge of climate change needs to be addressed by all, technological advances have disrupted commerce, and citizens are increasingly calling for a more inclusive form of globalisation that works for all.

In this context, the International Chamber of Commerce calls for a comprehensive reform process to enhance the functioning of the WTO system and to ensure its relevance in the 21st century. We recommend a reform process with an outcomes-focused approach—driven by the clear objective to make trade work for people and the planet.

A central aim must be to ensure that the WTO connects directly with the challenges people face through a comprehensive reform process that: opens goods and services trade to new players in developing and developed countries while offering adequate and enforceable disciplines against unfair trade; enables small—and medium-sized companies to trade internationally—particularly by leveraging the power of new technologies; and enhances the contribution of commerce to social and environmental objectives.

We recommend an approach centred on five priority areas for reform, as follows:

1. Strengthen WTO governance and accountability
2. Update the existing WTO rulebook
3. Accelerate new rule making
4. Establish robust dispute settlement mechanisms
5. Promote coherence between trade policy and other international regimes

Our detailed recommendations follow below. We look forward to engaging constructively on this agenda with WTO members in the coming months.

## RECOMMENDATIONS

### 1. Strengthen WTO governance and accountability

#### ENHANCE STAKEHOLDER ENGAGEMENT

Establish a regular consultative mechanism with business—potentially modelled on good practices adopted by other international organisations and processes. Such mechanisms would enable the WTO’s monitoring and negotiating functions to avail themselves of the expertise and experience of civil society and business groups—ensuring that policymaking is fully connected to their real-world experience of trade.

More specifically, regarding the engagement of the private sector, we recommend: exploring the possibility

of granting “observer” rights to international business organisations of appropriate standing in relevant working bodies of the WTO.

#### **ENHANCE THE TRANSPARENCY OF PROCESSES AND NEGOTIATIONS**

There is significant scope to increase the transparency of WTO processes to build trust in, and understanding of, the development and maintenance of multilateral trade policy frameworks. While we recognise the tension between transparency and confidentiality in the context of trade negotiations, there is great potential to increase the openness of WTO processes—building, for example, on the trade policymaking approach of a number of major economies.

## **2. Review and update the existing WTO rulebook**

A thorough and comprehensive review of the existing WTO rulebook is required, with a view to aligning it with the realities of 21st century trade. As a general principle, we propose that this process is conducted through the lens of “making trade work for people and the planet” to directly address the growing public discontent with the impacts (real and perceived) of globalisation.

More specifically, consultations with our global network have highlighted several areas where existing WTO rules could be usefully clarified or upgraded. These include the need to:

#### **CLARIFY THE TREATMENT OF CROSS-BORDER DATA FLOWS UNDER WTO RULES**

The growing importance of cross-border data flows is one of the most striking features of the evolution of trade over the last decade. Given the economic and social importance of data in the 21st century, we recommend that WTO members seek to clarify relevant WTO rules and develop new rules that extend data flows commitments to all economic activity—while ensuring a robust level of personal data protection and privacy that will help to build trust among citizens. In parallel, greater international regulatory cooperation is needed to address the domestic drivers of restrictions on data flows, which could include new WTO rules that support the development of international standards in areas of regulation affecting data flows such as privacy and cybersecurity, as well as the development of interoperability mechanisms that can bridge differences between domestic regulation and facilitate cross-border data flows.

#### **ESTABLISH EVIDENCE-BASED PROCESSES FOR “SPECIAL BUT DIFFERENTIAL TREATMENT” (SDT)**

WTO members should develop an evidence-based approach to granting (or renewing) the provisions of SDT, with assessments of the situation of each country. This would ensure that flexibilities are made available to those WTO members who need them most while not generating trade distortions. Improved implementation and monitoring of SDT provisions require the provision of more targeted technical assistance to encourage members to adopt obligations commensurate with their level of development and economic capability.

#### **SAFEGUARD A LEVEL-PLAYING FIELD**

Action should be taken to align WTO rules with the core trade-related objective of the G20 Osaka Leaders Declaration to “[...] ensure a level playing field to foster an enabling business environment”.

WTO members should work to establish strengthened and transparent mechanisms to address unilateral trade distorting practices. Most fundamentally, this should encompass enhanced notification requirements—coupled with the introduction of suitable sanctions against those who fail to comply with their duty to submit notifications to the relevant WTO bodies. Such reform is particularly urgent in light of the continued downward trend in the number of WTO members declaring subsidies covered by the provisions of the WTO Agreement on Subsidies and Countervailing Measures.

Moreover, we consider there is scope to further clarify and improve the relevant WTO rules on subsidies and countervailing measures, with the objective of establishing—to the extent possible—a clear line between “public bodies” and “private bodies”. This should include, inter alia: (i) clarifying the definitions of state-owned enterprises, public bodies, and other state-controlled enterprises; and (ii) clarifying current categories of subsidies, such as those given to an insolvent or ailing company without a credible restructuring plan.

We also recommend the establishment of mechanisms to monitor non-market-based access to finance for business entities in member countries—with the possibility of introducing appropriate sanctions in the case of repeated non-compliance by member states.

Improving the enforcement of the current Government Procurement Agreement to ensure that mandatory reporting requirements are met remains a key objective.

### 3. Accelerate new rule making

While we consider a comprehensive review of current WTO disciplines a fundamental basis for any reform process, we believe it necessary to accelerate the development of new multilateral rules in areas currently absent from the WTO rulebook. To do this, we suggest:

#### PUT PRAGMATISM OVER IDEALISM

New negotiations should be advanced using flexible, open, transparent, plurilateral approaches focused on the delivery of tangible outcomes. Such approaches should aim to generate practical economic, social and environmental benefits—while ensuring that the centrality of the WTO is never compromised and honouring the principle of inclusivity.

This would require:

- > The establishment of a framework for plurilateral negotiations to ensure that plurilateral negotiations are transparent and open at all stages to new members.
- > Providing assistance to developing countries who may wish to join plurilateral negotiations but lack the capacity to do so.

#### DEMONSTRATE THAT THE WTO CAN ACT

We believe that there is an urgent imperative for members to demonstrate that the WTO can operate as an effective negotiating forum on issues that matter to citizens and businesses across the world.

In this regard, we recommend the expeditious completion of ongoing “Joint Statement Initiatives” on e-commerce, investment facilitation, gender and small business—ideally at the WTO’s 12th Ministerial Conference in June 2020.

We also consider it imperative that WTO members complete their on-going negotiations on harmful fisheries subsidies by end-2019. Failure to meet this deadline—agreed by consensus at the WTO’s 11th Ministerial Conference—would represent a further blow to the credibility of multilateral trade policy making. The conclusion of this deal is a first-order priority for the International Chamber of Commerce and its members.

### 4. Establish robust and trusted dispute settlement mechanisms

While the dispute settlement system has been one of the major successes of the WTO’s establishment, we recommend that WTO members pursue a staged reform of the WTO Appellate Body—building towards a full reform package that restores confidence in the WTO’s dispute settlement processes and aligns with the requirements of an upgraded WTO rulebook.

#### SHORT-TERM FIXES

We encourage members to consider recommencing the appointment of Appellate Body judges without delay—coupled with the adoption of a temporary clarification on the scope and mandate of panels to prevent any potential mission creep.

Absent such a step, we welcome the commitment made by the European Union and Canada to submit WTO trade disputes to an interim Appeal Arbitration pursuant to Article 25 of the Dispute Settlement Understanding (DSU), instead of appealing under articles 16.4 and 17 of the DSU. We encourage other members to follow this lead.

## BUILD A COMPREHENSIVE REFORM PACKAGE

The fundamental components of any comprehensive reform should include:

- > Increasing the number of Appellate Body members (an increase of up to seven to nine members would be reasonable) and enable permanent appointments for a defined period (tenure increased from four to five years would seem appropriate). Staggered terms for each of the judges to begin and end their respective tenures should be arranged, with appropriate time intervals to ensure that at least 75% of the judges remain in place for duty at any time.
- > Introducing “mandate” reforms to address the perceived overreach of the Appellate Body.
- > Enable faster decisions by allowing the Appellate Body to exercise judicial economy—e.g. to focus on the decisive and dispositive aspects of each case.
- > Alongside reform of the Appellate Body, we also recommend that consideration be given to enhancing the capacity of Dispute Settlement Body panels
- > Expanding the pool of potential panellists to include categories other than trade diplomats and civil servants. It is particularly important to improve the representation of trade lawyers to enable independent analysis of disputes without having to rely on lawyers from the WTO Secretariat.
- > Placing the responsibility of setting panellist remuneration with the WTO Secretariat, rather than with governments or other institutions.

## 5. Promote regime coherence

There is an urgent need to promote greater coherence between the multilateral trading system and other relevant international systems.

In this context, we note that one of the underlying tension points in the current debate on globalisation is the perceived dissonance between trade, labour and environmental standards. We are, moreover, conscious of the demand for trade to play a larger role in supporting enhanced climate action and sustainable development more broadly in order to achieve the United Nations Sustainable Development Goals.

On this basis, we would encourage all governments to consider the development of new mechanisms to enable regime coherence in multilateral policy-making—and greater shared accountability in the attainment of agreed global public policy goals.

### 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.