



How to fix the WTO:
A holistic
framework
for reform



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Preamble

Building on the International Chamber of Commerce's (ICC) long-standing support for the World Trade Organization (WTO) and the multilateral trading system, this paper is intended to set out a holistic vision for WTO reform from the perspective of the global business community.

It is based on extensive consultations with ICC's business network across all continents and all levels of development, which includes businesses of all sizes and in all sectors, as well as with a wide and representative range of WTO members in Geneva. In addressing reform issues and appraising systemic challenges, this paper focuses on dysfunctions and shortcomings. However, this must not detract from the tremendous value of the WTO institutional and legal infrastructure, the likes of which would be extremely difficult to recreate in today's world of geopolitical tensions. It is precisely because of this value that the WTO system must be preserved and updated to meet the challenges of the 21st century.

This paper does not attempt to set out solutions to technical reform issues, such as those relating to the dispute settlement function, delve into the detail of negotiating agenda items, nor assume that all reform matters will be addressed at the same time. Rather it is intended to encourage WTO members to align behind a common purpose and vision and develop a comprehensive work programme on WTO reform.

1. Introduction

According to the WTO, 75% of world trade relies on the rules of the WTO, bringing certainty and predictability to billions of traders across the world, most of whom are unaware of the system underpinning world trade. The WTO system has fuelled and continues to contribute to global growth and prosperity, but as is widely acknowledged, the quiet engine of international trade is in urgent need of reform. Recognising the tremendous value of the WTO for business, consumers, and as a vehicle for development, its rulebook must be updated to meet the challenges and opportunities of the 21st century, its rules enforced, and its agreements effectively monitored. Reform must be tackled consistent with an eye toward lowering trade barriers and upholding current commitments.

Since the 2007-2008 financial crisis, the WTO has faced many external challenges, including the ensuing economic crisis leading to trade distortive rescue measures and a growing anti-globalisation backlash. It has also faced internal challenges, including the failure of the Doha Round of multilateral trade negotiations launched in November 2001, the breakdown of the dispute settlement function, and rising geoeconomic and geopolitical tensions among WTO members. Moreover, with the COVID-19 pandemic and the war in Ukraine, the WTO has been confronted with additional pressures. All of these challenges are creating an unprecedented threat to international economic relations.

Another key challenge facing the WTO today is ensuring that the rules underpinning trade are fair, inclusive, and create a level-playing field. The system must work for everyone, everywhere.

Development and inclusivity related concerns and interests should permeate all aspects of WTO reform efforts, including a more effective and equitable approach to the application of special and differential treatment. This will boost competition, including in the critical area of sustainability,

thereby ensuring that the greenest solutions are adopted globally. It will also help create a level-playing field for micro, small and medium sized enterprises (MSMEs) in developing and least developed countries by providing access to global markets for exports, imports, and investments.

Also, most of the WTO rulebook was agreed almost 30 years ago and needs to be updated to address the dynamic changes in the way trade currently operates. While the WTO has a built-in negotiating function, the very purpose of which is to update the rules in the face of a changing global trade environment, members have not yet fulfilled that task.

Recognising the urgency of the situation, at the 12th Ministerial Conference of the WTO (MC12) in June 2022, members committed for the first time to work towards necessary reform of the WTO to ensure its proper functioning.

While active discussions are underway and various WTO members have submitted proposals, there is yet to emerge a coherent and structured framework that maps out all the issues to be addressed in a reform agenda and articulates a holistic vision for reform. Such a framework is necessary to ensure a comprehensive approach to reform across the three vital functions of the organisation – negotiation, dispute settlement, and monitoring and deliberation. This framework aims to do just that.

2. The WTO imperative for business

Since its establishment in 1995, the WTO has been the backbone of the multilateral trading system. Through enforceable rules, the system provides the stability, transparency, and predictability in trade relations needed for informed long-term trade and investment decisions.

The critical importance of a rules-based trading system for securing a fair and competitive business environment is beyond question. This is what motivated the global business community, as the ultimate end-user of the trading system, to play an instrumental role in the creation of the WTO with binding rules covering trade in goods and services as well as intellectual property protection. Before and during the Uruguay Round of trade negotiations that established the WTO, the most important strategic objective was to create a rules-based (and not a power-based) trading system that guarantees stable business conditions and ensures that trade barriers are addressed in an effective way.

The need of the business community for a stable and predictable trading environment has not changed throughout the years, and the private sector continues to attach great importance to the WTO's effective functioning and its reform efforts. Securing the stability and predictability of trade and investment conditions remains a top priority, specially in light of the increasing complexity of new and evolving business models and regulatory responses by governments.

The erosion of the WTO system and the consequent increase in risk and uncertainty threatens to cause great damage to the global business community, particularly MSMEs who risk being further excluded from the system. As shown during the COVID-19 pandemic, the multilateral trading system is a key contributing factor to the resilience of supply chains and countries alike. The ability for a company to diversify and even exit markets depends on access to other markets under the same conditions. For global business, there is no alternative to the multilateral trading system.

3. Diagnostic of WTO challenges

Multilateral organisations in different fields of international cooperation have been under unprecedented strain due to geopolitical tensions and rivalries. The WTO, like other organisations, has been adversely affected by such global trends but also by six key factors discussed below that are specific to the organisation and the area of trade.

3.1 Leadership deficit

The 2007-2008 financial crisis and its aftermath exacerbated the pre-existing backlash against globalisation and open trade and investment relations. This has resulted in a chilling effect on the political will in capitals that traditionally provided the thought leadership indispensable for the well-functioning of the multilateral trading system and the WTO. While appetite for liberalisation is diminishing, leadership has also been lacking to preserve and strengthen the WTO's role in guaranteeing stability and predictability of trade and investment conditions, thereby eroding the credibility which fosters compliance with a rules-based system.

3.2 Increasing complexity of trade policy issues

Since the establishment of the WTO, companies have adopted technology-driven innovative business models that raise complex questions for trade policymakers and negotiators, provoking various types of regulatory responses, such as in the area of data protection and privacy. At the same time, policymakers are grappling with the need to address new global challenges in areas such as digital trade, climate change, labour rights, health, and national security. As a result, the focus of trade negotiations has shifted from the traditional emphasis on market access (e.g., tariffs) towards more complex regulatory issues, such as how to develop trade disciplines to ensure that regulatory and “behind the border” measures taken by governments are not more trade restrictive than what is necessary to achieve legitimate policy objectives. Global challenges have also raised complex questions about defining the precise role of the WTO (as well as trade policy and negotiations) in contributing to the global response agenda in accordance with the defined role and mission of the WTO as a rule-based treaty system. In the absence of government leadership and effective deliberative and negotiating functions, the result has been an outdated rulebook and erosion of relevance of the WTO.

3.3 Increasing diversity of membership

Since the WTO was created in 1995, the size of its membership has grown in size from 112 to 164. This has resulted in more diversity in development levels which, among other things, has sharpened differences regarding the practical application of special and differential treatment. This challenge has been further compounded by shifts in the global trade landscape and in trade policy ideological orientation, including the rise of protectionism and the growing role of governments in national economies. The failure to update WTO rules to ensure the well-functioning of the multilateral trading system for the benefit of all, particularly developing and least developed countries, has reinforced divisions between members of the WTO along development lines.

3.4 The “common purpose” is no longer common

The common purpose of the WTO is enshrined in the Marrakesh Agreement, the WTO's foundational document. Its preamble states several global objectives:

“...raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.”

The preamble to the Marrakesh Agreement further specifies that these objectives should be achieved by:

“...entering into **reciprocal and mutually advantageous arrangements** directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations.” (emphasis added)

The Marrakesh Agreement then specifically resolves “to develop an integrated, more viable and durable multilateral trading system”. The ultimate purpose of the WTO has always been to provide certainty by securing the stability and predictability of trading conditions through a legally binding rules-based system.

While the purpose behind the establishment of the WTO is explicit in the Marrakesh Agreement, in practice, members have been increasingly diverging from it. A segment of the membership increasingly seems unwilling to adhere to that common purpose, believing that the WTO is not the most appropriate tool to serve their interests. Consequently, they are reluctant to engage positively in decision-making or in the day-to-day work of the organisation, thereby hindering progress across the three vital functions of the organisation. While the WTO functions by consensus, nowhere in the WTO rulebook does this mean or require unanimity. While the practice of decision-making by consensus is considered the most appropriate for the WTO, it should not turn into an instrument of veto. In some instances, it leads to blockages due to intransigence. In other cases, it becomes a hurdle because some members demand a consensus decision on matters where such a procedure is not required by the rulebook.

3.5 Lack of trust

All the challenges above – leadership deficit, the complexity of trade policy issues in the absence of an effective deliberative function to provide clarification, the diversity of trade policy directions, and the continuing obstructionist practices – have significantly eroded trust at the WTO. A lack of transparency has also contributed to the trust deficit both within and outside the organisation.

3.6 Rising protectionism, trade barriers and fragmentation

The erosion of the WTO system has been both fuelled and been fuelled by an increase in protectionist and trade-restricting measures that have been introduced on such grounds as national security and sustainability. Trade-restricting measures, including subsidies, export controls, and investment restrictions, are contributing to trade fragmentation; and raising tariffs and import/export restrictions as a first line of defence are increasingly being used to hinder trade. The number of trade restrictions imposed by countries rose from almost 2,300 in 2019 to 2,600 in 2022, peaking at 4,500 in 2020. While goods and services restrictions progressively declined, investment restrictions jumped from 62 to 236 following the war in Ukraine. Metals (iron and steel),

cereals (wheat, corn, rice), and pharmaceuticals products account for the bulk of trade restrictions. As a result of fragmentation, trade is becoming more complex, elongated, and costly for businesses. Economic losses from fragmentation could be considerable. According to several studies, the global cost could range from 1.2% to 7% of global output and up to 12% of GDP in some countries (ICC 2023 Trade Report).

4. Implications for the WTO's three vital functions

4.1 Negotiating function

Since shortly after the launch of the Doha Round in 2001, the WTO negotiating function has largely been at an impasse. In spite of WTO Ministers calling for exploring new negotiating approaches at the 8th Ministerial Conference (Geneva, 2011), no progress has been made, with only four exceptions: the Information Technology Agreement (ITA) II at the 10th Ministerial Conference (Nairobi 2015), the Trade Facilitation Agreement at the 9th Ministerial Conference (Bali 2013), the prohibition of agriculture export subsidies at the 10th Ministerial Conference (Nairobi 2015), and the Agreement on Fisheries Subsidies at the 12th Ministerial Conference (Geneva 2022). Otherwise, multilateral negotiations have not made any progress. Even the so-called “built-in agenda” for negotiations on agriculture and services, agreed at the end of the Uruguay Round in December 1993, is yet to be concluded.

4.2 Dispute settlement function

The breakdown in the negotiating function and the inability to update the WTO rulebook resulted in ever-increasing pressure on the dispute settlement system. Since the Appellate Body ceased functioning in 2019, the two-tier dispute settlement function is effectively broken. While 47 WTO members set up a separate appeal system for trade disputes in March 2020 (the Multi-Party Interim Appeal Arbitration Arrangement or MPIA), the WTO two-tier system is still not fully functional. Whilst unresolved disputes keep piling up, the once most used international dispute settlement system in the world is being neglected by the WTO membership, as evidenced by the decreasing number of disputes brought by members. Only nine disputes were filed in 2021, eight in 2022, and six as of September 2023. Recognising the urgency of the matter, members are working to have a fully and well-functioning dispute settlement system accessible to all members by 2024, in accordance with the MC12 ministerial instruction on this issue.

4.3 Monitoring and deliberative function

The WTO monitoring and deliberative function is key to the oversight of the application of different WTO agreements and the furtherance of their objectives. While this function has been performing well in some areas (e.g., Committees on Sanitary and Phytosanitary and Technical Barriers to Trade), others are suffering from neglect, obstruction, and a lack of effectiveness in terms of addressing new and complex trade policy issues and global challenges. Several WTO councils and committees are not able to fulfil their basic duties of transparency and oversight. This has prompted WTO members to put forward various proposals to revive the deliberative function as part of ongoing discussions on WTO reform.

5 A holistic framework for WTO reform

5.1 Recalling the common purpose of the system

The starting point is for WTO members to recall and reaffirm their commitment to the common purpose of the system as articulated in the Marrakesh Agreement. The rules-based system is essential to the business community's fundamental need for predictability and certainty alongside the need to negotiate the reduction of trade barriers.

5.2 Reaffirming the foundational principles

The reaffirmation of the foundational principles of the WTO should not involve a lengthy or complicated discussion because these principles are well established in the Marrakesh Agreement and supported by the business community. These include most favoured nation treatment (MFN), national treatment, transparency, sustainability, progressive market opening, fair competition, and special and differential treatment for developing countries and LDCs.

It is, however, recognised that there may be a need for clarification regarding the application of some foundational principles. For example, there is a need to clarify the application of special and differential treatment as a tool for providing flexibility to individual WTO members, as needed, and not as a sweeping one-size-fits-all principle. While this is a strategic priority for developing and least developed countries, it is also a key element in ensuring the inclusive, fair, and equitable nature of the system. A productive and non-politicised discussion is needed, particularly considering the increasing diversity of members in the WTO.

5.3 Mapping out a reform agenda across the WTO's three functions

While mapping out a reform agenda entails identifying specific issues related to each of the three functions – negotiation, dispute settlement, and monitoring and deliberation – an effective approach to the problems and challenges facing the system must take careful account of the interconnectedness of the WTO's three core functions. This institutional architecture was designed to ensure that the three functions bolster one another. The system stands on three pillars that carry equal weight. Any chronic imbalance cannot be sustained – failings in one function inevitably weaken the others. Thus, any effort to reform the WTO must address all policy, legal, and architectural issues comprehensively.

5.3.1 The negotiating function

In mapping out the issues relating to the reform of the negotiating function of the WTO, a distinction needs to be made between, on the one hand, the cross-cutting systemic challenges that hinder progress in all areas of negotiation and, on the other hand, the specific negotiating agenda items needed to update the system.

5.3.1.1 Cross-cutting systemic issues

Cross-cutting systemic issues affecting the negotiation function include:

- clarifying the rules that govern plurilateral negotiations that extend negotiated outcomes to non-participants on an MFN basis, which are a key mechanism to advance negotiations and ensure that trade liberalisation and updating of the rules occur within the WTO system

- clarifying the approach to the application of special and differential treatment to implement customised flexibilities for specific members or sub-groups of members rather than a one-size-fits-all approach
- addressing the challenge of the negotiating capacity deficit facing many developing and least developed countries. By and large, capacity building efforts and resources are usually directed towards implementation of negotiated outcomes with very little aimed at enhancing the negotiating capacity of members who need it. The lack of negotiating capacity often results in blockages, increased distrust, and positions which can run counter to the interests of their own business communities.

5.3.1.2 Specific negotiating agenda items

Updating the rulebook of the WTO will entail a rulemaking negotiating agenda covering a wide array of areas. The business community does not expect negotiations on all items to happen at the same time but would welcome sustained progress, keeping in mind that market access continues to be a key business objective.

An illustrative list of areas for negotiation of priority to business is set out in the box below. ICC will be issuing detailed guidance on specific negotiating items separately to encourage and support discussions and negotiations at relevant times.

Priority areas of negotiation (in no particular order)

- Updating and clarifying rules and disciplines on services and digital trade, and concluding negotiations of the E-Commerce Joint Statement Initiative (JSI)
- Making permanent the Moratorium on Customs Duties on Electronic Transmissions
- Developing new or adapting the current rules and disciplines on trade and environmental sustainability, including reconciling carbon border adjustment measures with WTO rules
- Integrating the Agreement on Investment Facilitation for Development into WTO architecture
- Updating WTO rules on agricultural and industrial subsidies
- Reviving the market access negotiating agenda of progressive liberalisation under the General Agreement on Trade in Services (GATS)
- Broadening the participation in and scope of the Information Technology Agreement I & II
- Reviving negotiations on environmental goods and services, including addressing trade barriers to a circular economy, and health goods and services
- Concluding the remaining aspects of the Agreement on Fisheries Subsidies
- Developing new disciplines that ensure a neutral competitive environment and a level playing field and prohibit discriminatory industrial policies, including those that favour state-owned enterprises (SOEs)

5.3.2 Dispute settlement

Swiftly restoring the functioning of the dispute settlement mechanism is a critical priority for upholding the credibility and effectiveness of the WTO, and so that disputes are resolved through rules-based processes rather than retaliatory measures. For business, it is imperative that disputes be adjudicated as quickly as possible and final decisions are enforceable -- investment decisions rest on clear and certain regulatory environments.

Efforts by WTO members to provide a temporary alternative to the Appellate Body are welcome but fall short of resolving the crisis. Members must accelerate and deepen their examination of the substantive as well as the procedural issues relating to the system with a view to restoring its full functionality. The bottom line from the private sector perspective is to have an impartial, rule-based, and independent dispute settlement mechanism assisted by a neutral secretariat.

Proposals have been made to address many of those issues, some dating back more than a decade. However, the breakdown in the dispute settlement function is also related to dysfunctionalities in the other two functions of the WTO, in particular rule-making negotiations. The failure to update WTO rules has led member states to litigate in the alternative, such as resorting to regional trade agreements. This coupled with the failure of the deliberative function to clarify and resolve issues where differences have arisen has led to unsustainable pressure on the dispute resolution function. Again, this is why it is imperative that WTO reform must be pursued with a holistic vision across all functions.

5.3.3 Monitoring and deliberation

The monitoring and deliberative function carried out by regular WTO councils and committees is the institutional means of overseeing the functioning of WTO agreements and furthering their objectives. This covers transparency, notifications, cross-notifications, monitoring, cooperation with other international organisations, deliberating on specific trade concerns raised by members, as well as discussing new issues or any matters raised by any member that affect the functioning of WTO agreements or the attainment of their objectives. It is critical for the integrity of the system that members be held accountable for the accuracy and fulfilment of their notification obligations.

The monitoring and deliberative function is intended to support the other two functions by informing negotiating initiatives through updating the analytical and knowledge base of the organisation while at the same time providing a means of resolving differences between members that otherwise can grow into legal disputes. Political tensions have frequently caused agenda items to be blocked from being discussed and prevented the WTO Secretariat from providing relevant analysis, undermining its intended role as one of the three pillars of the system.

Traders across the world rely on WTO transparency notifications to conduct their business in compliance with local regulations. The WTO is, in many cases, the only place where this information can be found. It is an essential transparency and consultation mechanism for business. Without it, businesses are flying blind, driving up uncertainty, costs, and penalties. Thus, further efforts need to be undertaken to enhance transparency rules and ensure full compliance by members.

WTO members also need to address political and procedural obstacles that frustrate the fulfilment of the deliberative function's critical role in the system. They need to ensure that emerging topics are being effectively discussed. From the perspective of business, such topics would include trade and environmental sustainability, carbon leakage, circular economy

opportunities, digital trade issues, and the relationship between such issues and WTO obligations. While being open to new issues, discussions should also be energised on other existing topics such as the Work Program on E-Commerce.

5.3.4 Other key institutional reforms

The reform of the WTO would also benefit from two other key institutional reforms:

5.3.4.1 Creation of standing consultative mechanisms with stakeholders in the business community and civil society

The WTO Public Forum provides a once a year opportunity for stakeholders to meet. However, the multilateral trading system would benefit from greater and more frequent dialogue on issues of common interest. It is crucial that the Secretariat engages with the business community regarding the substantive details of issues under negotiation to understand the business realities on the ground. It is after all business that engages in cross-border trade, not countries. This provides the Secretariat with the chance to gather practical information, knowledge, and insights to ensure that the Secretariat effectively supports members in reaching negotiated outcomes that are responsive to the needs of the business community and to how business is conducted. For these purposes, the Secretariat should be allowed to augment and formalise its collaboration with interlocutors from the global business community as well as representatives from civil society. A collaborative, structured relationship between the working levels in the Secretariat and stakeholder organisations would be of great benefit to all sides.

The establishment of an Advisory Business Council by the Director General in July 2023 is a welcome step in the right direction. Similarly, the openness of the WTO Trade and Environmental Sustainability Structured Discussions (TESSD) and Joint Statement Initiatives to engage with stakeholders not only allows the private sector to contribute its technical knowledge and expertise, thereby enriching the discussions, but also boosts support for the work of the WTO within the private sector. These good practices must be adopted and built on by all WTO committees and standing mechanisms. While governments in capitals have their consultative mechanisms with their respective business communities, the issues taken up and discussions that take place in the WTO are of such a different nature that the risk of duplication would hardly arise.

Private sector engagement at the WTO

The business community provides a reality check on the extent to which the WTO system remains relevant to trading realities and is fulfilling its purpose to set and enforce trade rules. Structured engagement would support day to day work of the organisation.

- ✓ Practical information
- ✓ Insights
- ✓ Data

5.3.4.2 Bolster the Secretariat's support-function capacity

The Secretariat plays a key role in ensuring the well-functioning of the monitoring and negotiating functions of the organisation. Monitoring trade policy developments is critical for achieving transparency. Exclusive reliance on notifications by WTO members limits the pool of information that the Secretariat relies on to produce its reports and analyses. The Secretariat should consistently be able to draw on other sources of information to enrich its contribution to the monitoring function of the WTO, including regular and structured consultations with the private sector, which can provide their real-world experience of how WTO agreements and rules are being implemented in practice or the impact that new ones may have on them.

The Secretariat should also be tasked with proactively identifying and analysing new and emerging trends with a view to limiting fragmentation between country and regional regulations. For example, the WTO Secretariat could play a leading role in analysing the regulation of artificial intelligence and 3D-printing, where fragmented regional and national approaches could lead to trade barriers in the future.

Secretariat reports and trade data should be freely available to allow for transparent and evidence-based discussions on trade issues with the broader trading community. At the same time, this would position the WTO as a trusted source of trade information for businesses across the world.

The Secretariat should also be allowed to play a more active role in assisting members in their negotiations. The Marrakesh Agreement establishing the WTO explicitly stresses the international and impartial character of the Secretariat. Paragraph 4 of Article VI of the Marrakesh Agreement states that:

“The responsibilities of the Director-General and of the staff of the Secretariat shall be **exclusively international in character**. In the discharge of their duties, the Director-General and the staff of the Secretariat **shall not seek or accept instructions** from any government or any other authority external to the WTO. They shall refrain from any action which might adversely reflect on their position as international officials. The Members of the **WTO shall respect the international character of the responsibilities of the Director-General and of the staff of the Secretariat and shall not seek to influence them in the discharge of their duties.**” (emphasis added)

This places the Secretariat in a unique position to serve members as the “honest broker” in a most professional and impartial manner with no affiliation or external influence. The Secretariat embodies a world-class pool of knowledge and expertise that combines sound political judgement with authoritative substantive knowledge of issues confronting the WTO. Empowering the Secretariat will benefit members and business alike and will raise the standing of the organisation as the world's trade body.

6 Conclusion

At the upcoming WTO ministerial conference (MC13), the global business community urges trade ministers to reaffirm the common purpose of the WTO, agree on a coherent and holistic vision for WTO reform based on the organisation's foundational principles, and deliver on a work programme for WTO reform covering all three pillars of the organisation—negotiations, dispute settlement, and monitoring and deliberation.

Whilst the current challenges facing the WTO are great, the opportunities are even greater. A thriving, fit-for-purpose WTO will provide needed certainty and predictability to traders across the world, levelling the playing field and driving economic growth whilst ensuring that the WTO is a key partner in addressing global challenges.

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About the International Chamber of Commerce

The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 170 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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