



## Introduction

The World Trade Organization (WTO) is fundamental to the functioning of the global economy. Businesses, farmers, consumers and workers in the United States and around the world rely heavily on the global rules-based trading system to provide certainty, standards and a sense of fairness to enable global commerce.

In Geneva, members are discussing a range of potential reforms to the WTO, including ideas for improving rules, increasing transparency and reforming the mechanism through which disputes are settled. Many of the proposals respond to recent criticisms leveled by the current U.S. Administration, though the issues that underlie these reform efforts have been under discussion among WTO Members for many years.

As the WTO comes under increased scrutiny, it is important to remember the central role the organization, including its dispute settlement function, plays in enabling global trade. This system benefits large and small businesses alike, as well as developed and developing countries. It creates opportunities and ensures greater certainty for producers, exporters and consumers throughout the world.

Businesses and workers in the United States benefit tremendously from the global trading system with the WTO at its core. Almost 39 million jobs rely on U.S. trade, and foreign markets are critical to many agriculture, manufacturing and services industries.<sup>1</sup> Maximizing the effectiveness of the WTO through American engagement and leadership is in the broad national interest as a means to greater economic stability and prosperity.

## Benefits of the WTO

The WTO enshrines essential principles that secure open trade and facilitate trust, fairness and transparency in the global trading system. The most important overarching principles help to ensure that WTO members treat one another equally and that they also treat foreign businesses no less favorably than domestic businesses in their regulatory and internal tax regimes. They also require members to respect their commitments for reduced tariffs, fair customs measures and transparent administration at the border.

Beyond these broad principles, a network of specific WTO agreements has helped to lower tariffs, remove trade frictions, and set basic standards that improve transparency and enable global commerce. These include several market access agreements, the Agreement on Trade-Related Aspects of Intellectual Property Rights, the Agreement on the Application of Sanitary and Phytosanitary Measures, the Information Technology Agreement and the Agreement on Trade Facilitation.

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<sup>1</sup> The Impact of Trade on U.S. and State-Level Employment:2019 Update, Prepared by Trade Partnership Worldwide for Business Roundtable, February 2019, available at <https://tradepartnership.com/wp-content/uploads/2019/03/Trade-and-American-2019-FINAL.pdf>

Developed and developing countries benefit from the ability to enforce these principles and commitments through binding dispute settlement:

- Small and less-developed countries count on the rules and dispute settlement function of the WTO, knowing that there is a baseline of commitments that promotes transparency and fair access to overseas markets and that they can get a fair shake when those rules are violated.
- The United States is by far the largest user of the WTO dispute settlement system.<sup>2</sup> From 1995 to 2007, the U.S. government utilized WTO dispute settlement to reduce foreign trade barriers in 53 instances, either by winning a final judgement or settling before the case was completed.<sup>3</sup> From 2008-2016, the United States brought 16 cases against China alone and won all of them.

The WTO is also a critical tool for development. It facilitates technical assistance to help build trading capacity within developing economies while driving consensus around commitments that lower costs and increase trade gains for developing and developed countries. For example, the Trade Facilitation Agreement improves trade gains for exporters from both developing and developed economies, who can export critical capital goods and consumer products with lower transaction costs, while providing technical assistance, capacity building and flexibility as appropriate to enable implementation. The WTO also benefits global development by insisting that new members institute needed reforms and adopt more market-oriented policies as a condition of membership. In fact, the WTO found that countries undertaking substantial reforms related to WTO accession grew approximately 2.5 percent faster for several years afterwards.

## Recommendations

The National Foreign Trade Council (NFTC) offers the following recommendations for WTO members to help strengthen the open, rules-based trading system and the WTO:

### 1. Update the rulebook for the 21<sup>st</sup> Century to align business, development and sustainability goals

WTO members have several opportunities to realize the promise of the organization's negotiating function to demonstrate that it can respond to the needs of businesses and society through new rulemaking. Members should:

***Expediently complete an ambitious plurilateral agreement on trade-related aspects of e-commerce.***

In order to participate meaningfully in the global economy, businesses rely on a global e-commerce ecosystem of technology tools to facilitate marketing, visibility, sales, payments and invoicing, shipping, transparency, trust, education, and movement of information.

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<sup>2</sup> The effectiveness of the WTO dispute settlement system: A statistical analysis, European University Institute, Department of Law 2017, [http://cadmus.eui.eu/bitstream/handle/1814/47045/LAW\\_2017\\_11.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/47045/LAW_2017_11.pdf?sequence=1)

<sup>3</sup> Americans Reaping Benefits of WTO Membership, Dan Griswald, Washington Times, <https://www.cato.org/publications/commentary/americans-reaping-benefits-us-membership-wto>

Through the Joint Statement Initiative on Electronic Commerce, members have a unique opportunity to clarify and improve the existing framework of trade rules and commitments around trade facilitation, services, digital trade, transparency and trust. These changes would expand the ability of businesses of all sizes and across all industries to benefit from the global digital marketplace and realize the potential of e-commerce for development on a plurilateral basis.

***Pursue a meaningful services trade liberalization agenda.***

WTO members can further reinforce the relevance of the institution by developing a credible work program for services, which now account for the majority of economic activity worldwide. Members have an obligation to pursue services trade liberalization through successive rounds of negotiations, and yet no meaningful work has taken place since 2008. Members should get back to work, on a plurilateral basis if necessary, to create a more stable trading environment for the services sector.

***Demonstrate relevance to the global economy and environment by completing a meaningful agreement to curb fisheries subsidies and reinvigorating negotiations towards an ambitious Environmental Goods Agreement.***

WTO members can demonstrate the relevance of the institution to the global economy and environment by concluding a significant deal to curb subsidies for illegal, unreported and unregulated fishing. A meaningful deal would require countries to step up to commitments commensurate with their shares of production and exports.

Members should also revisit efforts that broke down in 2016 to liberalize and facilitate trade in environmental goods that is estimated at \$1 trillion annually among a group of 18 WTO members. The failure to conclude an agreement remains a significant missed opportunity for the global economy. NFTC remains committed to working with all negotiating countries to realize the benefits of an ambitious agreement, which would substantially broaden the list of 54 goods agreed upon in the Asia Pacific Economic Cooperation Forum in 2012.

***Ensure WTO members make commitments commensurate to their role in the global economy.***

As members update the WTO rulebook, the credibility of the global trading system will require members to undertake commitments commensurate with their role in the world. Advanced developing countries should enhance their development via reforms and updated rules at the WTO that will positively impact their economies, and should avoid hiding behind developing country status to avoid undertaking commitments.

***Develop a plurilateral initiative to promote women's participation in global trade.***

To demonstrate that the global trading system can provide more inclusive benefits to societies, WTO members should look to unlock more of the economic potential of women. The 2017 Buenos Aires Declaration on Women in Trade was a good start, committing 118 WTO members and observers to remove barriers to women's economic empowerment, but more is needed to ensure that women business owners, farmers, and entrepreneurs can overcome domestic barriers that limit their ability to trade. For example, if women are unable to open a bank account or take out loans, this limits the market for financial services won by partners in trade

agreements. WTO members should take steps to develop a new Plurilateral Trade Initiative on Women's Economic Empowerment with the goal of bringing down discriminatory barriers to women's entrepreneurship through new trade commitments.

## **2. Improve existing WTO rules**

### ***Enact a permanent ban on customs duties on electronic transmissions.***

Since 1998, the WTO moratorium on customs duties on electronic transmissions has kept digitally-delivered music, movies, social media, email, calls and the rest of the internet safe from border taxes, customs procedures, and government controls. The moratorium continues to serve as an important underpinning of the open internet.

Any effort to place customs duties on digitally-delivered "intangible goods" could fundamentally threaten the open internet. In addition to the burden of a new tax, imposing customs duties on internet content would also open those flows to inspection and audits by customs and tax authorities, allowing governments to monitor and inspect electronic transmissions. This regime would be difficult if not impossible to administer and would impose a crushing compliance burden on local businesses, who could be required to file an import declaration every single time they utilize a new email or cloud service function, buy a new app or enable their connected machines to communicate with the Internet.

WTO members should recommit to the moratorium and make it permanent to help ensure the ability of the global internet to continue facilitating global trade and economic empowerment.

### ***Address non-market-oriented policies and practices.***

Building on work conducted under the trilateral process between the European Union, Japan and the United States, members should:

- Consider how best to utilize WTO enforcement and rule-making to address distortions caused by state enterprises;
- Seek to negotiate stronger disciplines on industrial subsidies;
- Consider how to utilize the WTO to address forced technology transfer;
- Take steps to improve adherence to existing WTO notification obligations and commitments of members related to these obligations.

## **3. Resolve the Appellate Body crisis and guarantee a fully-functioning dispute settlement system**

The WTO's dispute settlement system, comprised of ad hoc panels subject to review by seven Appellate Body (AB) "judges," is the glue of the global trading system. Since 1995, countries have pursued more than 500 disputes through the system and the body's decisions have largely been honored by member countries.

Currently, the AB system is in crisis. Since 2017, the United States has blocked the appointment of new AB members, citing concerns with judicial overreach and the continued work of AB judges beyond their appointed terms. The result is that the pool of AB judges has shrunk to three. By the end of 2019 the AB will cease to function. Absent an interim fix to the AB system

or the establishment of an alternate mechanism, panel rulings will no longer be able to be reviewed and WTO decisions will no longer be binding.

The Peterson Institute characterizes this eventuality as running "...the risk of returning the world trading system to a power-based free-for-all, allowing big players to act unilaterally and use retaliation to get their way. In such an environment, less powerful players would lose interest in negotiating new rules on trade."<sup>4</sup>

The AB system is not perfect, and concerns around issues including terms of members' service and "judicial overreach," predate the Trump Administration in the United States and are shared by other WTO members. However, a fully-functioning and binding dispute settlement system is essential to the credibility and functioning of the global trading system.

WTO members must resolve this crisis immediately and agree on a way forward that addresses the legitimate concerns that have been raised. Those Members who have raised these concerns have a unique responsibility to put forward specific reform proposals that would enable the AB to resume operating and perform its function more effectively.

#### **4. Reinvigorate the committee system to facilitate learning and best practices among WTO Members**

Re-committing to robust work programs under key WTO committees and councils could build trust between member economies, focus members on the practical implications of emerging trade issues and eventually lead to new reference documents or codes of good practices that would improve the global rules-based framework.

"These [committee] bodies flourished in the period between 1995 and 2001," noted Ambassador Stuart Harbinson in prior analysis for NFTC. Since Doha, he said, "the regular machinery of the organization has to a significant extent faded into the background."<sup>5</sup>

There is precedent for this type of mechanism. In 2013, the TRIPS Council engaged in a series of dialogues supported by members as diverse as Brazil and the United States on issues such as IP and sports or innovation and small and medium-sized enterprises. These dialogues focused on the practical implications of IP rules in different business settings and helped Members gain a greater appreciation of stakeholder concerns.

Other, more informal groupings have helped advance important work in Geneva. A group calling itself *Friends of e-Commerce for Development* helped to promote a robust dialogue between WTO members over several years, laying the groundwork for many of those members to participate in conversations leading up to the establishment of the Joint Statement Initiative on Electronic Commerce at the Ministerial Conference in Buenos Aires.

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<sup>4</sup> The Dispute Settlement Crisis in the World Trade Organization: Causes and Cures, Peterson Institute for International Economics, available at: <https://piie.com/system/files/documents/pb18-5.pdf>

<sup>5</sup> De Meester, Bart and Harbinson, Stuart, "A 21st Century work program for the multilateral trading system," prepared for the National Foreign Trade Council, available at: <http://www.nftc.org/default/trade/WTO/NFTC21stCenturyTradeAgenda2012.pdf>

Future initiatives could include:

- **Establishing a Committee on e-Commerce under the auspices of the Joint Statement Initiative (JSI) on electronic commerce.** Co-conveners could convene regular dialogues and workshops on the practical implications of digitally-enabled trade, serve as a resource for members interested in joining the JSI initiative and monitor implementation of anticipated future commitments.
- **Establish a mechanism under the Joint Statement Group on Micro, Small and Medium Sized enterprises to exchange information on private sector programs and government best practices, thereby helping small businesses engage in global e-commerce.** Governments maintain a variety of trade promotion programs and initiatives to assist small businesses, entrepreneurs and women-owned businesses, but these arrangements vary in their scope and effectiveness. The WTO has an opportunity to conduct workshops and share best practices about trade promotion programs and initiatives to assist small businesses to access international markets and facilitate women's and men's equal access to global opportunities, tools and resources.