



ICCA Recommendations on Modernization of The World Trade Organization (WTO)

The International Council of Chemical Associations (ICCA) has long supported the WTO and its efforts to drive global economic growth, enforce trade agreements, advance global objectives (e.g., sustainable development), and grow international trade and investment. As a global industry, we support and prioritize multilateral approaches to trade, particularly with respect to addressing the ongoing global COVID-19 pandemic¹ and advancing the 2030 UN Sustainable Development Goals (SDGs). Multilateral approaches describe a common set of enforceable rules based on reasoned, evidence-based policy, helping to ensure a level playing field and promote competition.

However, the WTO faces challenges in achieving multilateral commitments from its members on further trade liberalization and emerging trade rules. A number of WTO members and the private sector are pressing for necessary reforms to restore certainty, progress, and leadership by the WTO. With the appointment of Director General Ngozi Okonjo-Iweala, the time is right for WTO Members to increase their engagement on WTO modernization.

WTO modernization discussions should develop a vibrant new negotiating agenda that reflects the opportunities and challenges of the 21st Century and includes the emerging economies that will drive future global economic growth. This agenda must address both reform and negotiations. As the WTO has grown, the principle of consensus has hobbled the negotiations pillar, especially as members have prioritized domestic or political interests over economic interests and global opportunities. Weaker commitment to the working process of the WTO has also undermined the ability of Members to negotiate. The WTO not only needs to improve its processes (e.g., dispute settlement, transparency, and stakeholder engagement), but also to renew engagement on proactive negotiating opportunities – such as in the areas of sustainability, digital trade, investment facilitation, and new rules – that drive multilateral trade policy and enhance broader public support.

As modernization discussions progress, the global chemicals industry offers the recommendations below.

¹ <https://www.icca-chem.org/icca-issues-5-recommendations-for-g20-leaders-to-combat-covid-19/>



Section 1:

Setting A New Trade Negotiations Agenda for the WTO: Sustainability, Regulatory Cooperation, and New Rules

1A: Create a negotiating agenda to support sustainability, with a special focus on climate and circularity.

The trade agenda encompasses a wide range of commercial activity, including emerging areas of opportunity and application of products, technologies, services, processes and goods that can contribute to broader multilateral goals, such as the environmental agenda, the UN Sustainable Development Goals (SDGs), climate protection, and fostering greater economically and environmentally sustainable innovation. Linkage to other multilateral agreements (MEAs) will be important to complement efforts and avoid duplication.

The WTO should work together with members to identify and promote an enabling agenda that encourages further investment and streamlines access to third country markets worldwide in support of deployment and implementation of these products and technologies. Based on past experience with the Environmental Goods Agreement (EGA) negotiations, pragmatic, focused approaches are needed. WTO members should avoid restrictive or punitive policies that discourage innovation.

For example, an enabling agenda for new investments and deploying innovative products globally should:

- 1. Eliminate tariff and non-tariff barriers** on environmental materials and their inputs and environmental technologies in order to achieve greater sustainability in Members and globally;
- 2. Promote the sustainable trade of materials**, their inputs and technologies to help accelerate the achievement of the UN SDG objectives, climate protection, circularity and other societal and environmental priorities;
- 3. Help promote and encourage the uptake of standards**, such as product design, recycling and packaging standards to facilitate efficient customs treatment and ease of doing business;
- 4. Identify public policies and governmental programs that can spur innovation and investment** in sustainability-related technologies and processes, such as the protection/enforcement of intellectual property rights and rule of law/investment procedures;
- 5. Develop common principles** to ensure that national and regional approaches to sustainability (e.g., carbon border adjustments, extended producer responsibility, recycling, and circularity) are consistent with the rules-based trade system;
- 6. Encourage public-private sector dialogue** to identify specific challenges and barriers to building sustainable products and processes; and
- 7. Engage policymakers on removing regulatory and policy obstacles** to innovation and adoption of new environmental technologies to maximize societal impact.

1B: Take steps to foster greater regulatory cooperation.

The WTO should foster regulatory cooperation on chemical substances to prevent barriers to trade. Restoring the WTO's multilateral rules-making mandate would benefit from increasing engagement across key industry sectors. For example, the work of the ICCA Global Regulatory Cooperation (GRC) task force has already established strong principles and enabled regulator-to-regulator dialogue – particularly among developing countries – to promote high quality science- and risk-based regulatory procedures. Global convergence on environmental, health and safety rules would ensure a level playing field for open and fair competition, across industry and especially for small and medium sized enterprises.

The WTO Technical Barriers to Trade (TBT) Committee has been a primary forum for advancing regulatory cooperation. We advocate for the WTO to place regulatory cooperation higher on its modernization agenda which would create a new opportunity for trade negotiators, regulators, and industry to negotiate better ways to prevent barriers to trade through greater regulatory transparency, data and information sharing, and the adoption of best practices.

We encourage work in the following chemical regulatory cooperation areas:

- 1. Promotion and collaboration on the implementation of international standards** in the field of chemicals, such as the UN Globally Harmonized System of Classification and Labelling of Chemicals (GHS) and the OECD Mutual Acceptance of Data (MAD) system;
- 2. Cooperation on prioritization of substances for review** and collaboration on chemical assessment;
- 3. Enhanced scientific cooperation**, particularly on emerging regulatory issues; and
- 4. Cooperation on data sharing** and use of available data to avoid redoing studies.

1C: Set new rules on subsidies and state-owned enterprises.

New rules on subsidies and state-owned enterprises are necessary to level the global playing field. The trilateral process between the European Union (EU), Japan, and the United States has fostered a number of ideas to update and improve WTO's oversight on subsidies and enforcing a level playing field.

For example, the WTO should expeditiously consider new rules on:

- 1. Updating the list of prohibited subsidies;**
- 2. Ensuring greater transparency and compliance** with notification of subsidies; and
- 3. Preventing governments from requiring that technology be transferred** to the state, state-owned enterprises, or other domestic companies as a condition of market access or investment.

The WTO should engage with industry to ensure a clear understanding of anti-competitive subsidies currently distorting trade and developing/implementing updated rules, particularly as Members support economic recovery post-pandemic and place a greater emphasis on sustainability in their domestic systems.

Section 2:

Recommendations for Reform

Reform Recommendations

- 1. Fix the WTO dispute settlement process.** A successful WTO that is valued by all Members and stakeholders requires an improved and functional dispute settlement process. The absence of an operational Appellate Body means that WTO members and their stakeholders have no guarantee that other members will abide by the terms of WTO agreements. A critical first step should be for all Members to agree on the initial reforms to allow the Appellate Body to operate at full capacity as soon as possible, allowing WTO agreements to be enforced yet again. This would pave the way for more detailed negotiations on modernizing the Dispute Settlement Understanding.
- 2. Support plurilateral initiatives.** Members should review the opportunity for willing countries to advance new initiatives, including negotiations. Supporting open, non-discriminatory, plurilateral initiatives offers the opportunity to move forward on critical issues, demonstrate progress in the negotiations pillar of the WTO, and set standards for further efforts by all members. These voluntary plurilateral initiatives should not require total consensus, but establish new criteria for reaching critical mass and advancing discussions and negotiations aligned with WTO principles. This would mandate a discussion on the existing most-favored nation (MFN) principle, especially to avoid “free riders” in trade agreements.
- 3. Enhance stakeholder engagement.** The WTO should formalize mechanisms for how civil society including industry provide input into negotiations and ongoing committee work. These mechanisms could be modeled on good practices adopted by other organizations and processes (e.g., OECD and BIAC). Such mechanisms would enable the WTO’s monitoring and negotiating functions to avail themselves of the expertise and experience of civil society and industry – ensuring that WTO activities are fully connected to real-world trade experiences. Suggested mechanisms include establishing a high-level business advisory council and granting observer rights in relevant working bodies of the WTO. Additional transparency would encourage greater public support for trade and the WTO’s leadership.
- 4. Make trade-related measures more transparent.** For the WTO to remain relevant to civil society and industry and function optimally, Members must make their trade-related measures as transparent as possible. New WTO commitments may be required to ensure this happens. During the COVID-19 pandemic, for example, WTO Members issued a wide-range of new trade-related measures, particularly in the area of export restrictions. Many WTO Members did not notify these measures to the relevant WTO Committees and did not offer stakeholders the opportunity to provide meaningful comment. WTO Members could also increase transparency by strengthening the systems of sharing notifications across Committees and with other Members through optimal and fit for purpose use of technology. This would also decrease the time Members and stakeholders spend on the review of measures.
- 5. Fully implement the WTO TBT Agreement, which is of particular importance to the global chemical industry.** The TBT Committee is a leader regarding transparency and notification. We recommend that WTO provide additional resources for helping its

members to make their measures as transparent as possible and to embrace a culture of notification where they provide at least 60 days for interested parties to comment and provide meaningful feedback. Through greater transparency and notification, the WTO will advance its efforts on enforcement to prevent barriers to trade. And importantly, WTO members should comply with their existing transparency commitments in full, particularly under the TBT Agreement.

- 6. Review and improve WTO institutional performance.** WTO Members should ensure that all WTO Committees adopt the best practice of triennial reviews (e.g., in the TBT Committee) for ongoing work to implement WTO Agreements. Such a committee-by-committee process of deliberation should include the Dispute Settlement Body – which can help re-build the trust needed for constructive, good faith engagement on substantive policy questions based on solution-oriented proposals. Deliberations must be inclusive and engage the whole membership. Regular assessment of the performance of the WTO as an organization – spanning both WTO Members and the Secretariat – will enhance transparency, improve best practices and operational performance, and improve information on implementation of WTO agreements. The WTO should also consider ways for stakeholders to assess the performance of the WTO as an organization and its Members with respect to their implementation of WTO agreements and Member-specific commitments.

Section 3:

Potential Negotiating Opportunities

- 1. Investment Facilitation.** ICCA is encouraged that WTO members are engaged in negotiations on investment facilitation, and urges a focus on the business case for investment (not only investment policies and incentive programs). Investment facilitation should focus on promoting the best enabling environment possible while also supporting more sustainable, circular economy investments by prioritizing the value-added environmental and social elements of economic projects (e.g. investments that reduce greenhouse gas emissions and help create jobs).
- 2. Digital Trade/E-Commerce.** The chemical industry benefits substantially from digital investment to support advanced manufacturing. Digital trade based on the free flow of data across borders is critical to chemical manufacturers, which generate data for regulatory compliance, technical innovation, employee development and workplace safety, and global customer management. State-of-the-art provisions on promoting data privacy, enabling open cross-border data flows, prohibiting data localization requirements, and strengthening cybersecurity while respecting intellectual property rights will be critical. Data flows are essential for establishing and maintaining global value chains. They are, therefore, essential for strengthening manufacturing around the world and to the benefit of downstream industries that the business of chemistry supports (e.g., agriculture and automobiles). ICCA supports the ongoing Joint Statement Initiative (JSI) negotiations on digital trade and e-commerce, including on making permanent the moratorium on customs duties on electronic transmissions. ICCA urges the WTO to set economically-viable rules on data privacy, cybersecurity, and other digital trade matters.
- 3. Tariffs.** WTO Members should renew their collective commitment to trade liberalization through tariff elimination. Opportunities could include , voluntary accessions to existing sectoral tariff initiatives such as the Chemical Tariff Harmonization Agreement (CTHA) and voluntary plurilateral tariff initiatives that respond to urgent priorities outlined in the

UN SDGs such as health, climate, environment and emerging priorities such as circularity. As the COVID-19 pandemic demonstrates, in a world with global supply chains, open borders for goods and the duty-free import of medicines and medical goods and their raw materials strengthen pandemic response. The WTO should learn from the temporary tariff relief on COVID-19 essential goods that many Members have already offered unilaterally. And as Members advance sustainability goals on their own or with other Members, they should consider a new WTO trade liberalization initiative on environmental materials and technologies.

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