



USCIB Recommendations for Modernizing WTO

The World Trade Organization (WTO) is a cornerstone of the global rules-based trading system and has helped spread growth and development for decades. The WTO's existing agreements, such as those on intellectual property rights, sanitary and phytosanitary measures, and technical barriers to trade, provide practical commercial benefits for business because they establish global frameworks of rules designed to facilitate international trade.

The WTO's continued existence and modernization, including an effective dispute settlement system, are necessary for American and global stability and prosperity. There are valid concerns about the adequacy of WTO rules to deal with 21st century issues, and about the need for improvements to the WTO's dispute settlement system. These concerns should be addressed through agreements/clarifications/modifications that enhance the credibility of the WTO and strengthen it as an institution.

USCIB members strongly support the WTO and its activities that have contributed to the dynamic growth of global trade by opening markets, combatting protectionist measures, driving new agreements such as the Trade Facilitation Agreement, assisting developing countries with capacity building to better benefit from open trade, and enabling business to pursue new avenues for driving global economic growth.

Our recommendations for modernizing the WTO should not in any way be read as questioning the business support for WTO. Instead, they are intended to highlight areas for action that would strengthen the ability of the organization to more effectively meet the demands of a changing world as it deals with the rapid evolution of technology that can quickly reshape the way companies do business and operate globally.

USCIB believes that effective WTO dispute settlement is a critical part of the global rules-based trading system. And, the U.S. has been a major beneficiary – bringing and winning more cases than any other WTO member. In fact, the U.S. has prevailed in over 90% of the complaints it filed. As noted above, a first principle is that the outcome of discussions to modernize the WTO must be focused on enhancing the effectiveness of the WTO dispute settlement system, not undermining it.

USCIB urges the Member States, as they continue to discuss modernization and improvements of the WTO and its underlying agreements, to be mindful that among the WTO Member States, private entities conduct the transactions that constitute trade and investment. Therefore, the private sector has a direct stake in the rules that will be the outcome of the government-to-government discussions and, accordingly, private sector comments and recommendations should be actively solicited and given careful consideration by the Member States. With this in mind, below are USCIB recommendations for reforms and/or new negotiations at the WTO that

we believe would modernize the WTO and enhance the effectiveness of the WTO rules and institution. USCIB looks forward to a continuing dialogue with the Member States, in greater detail, as the process unfolds.

More Effectively Addressing Subsidies and State-owned Enterprises

- Improve transparency and compliance with requirements for notification of subsidies by creating incentives for Member governments to fully comply.
- Establish new rules to more effectively address subsidies and other market-distorting support provided to and through state-owned enterprises (SOEs). Examples of other market distorting support that should be covered include government waivers of permits such as for environment, construction, and labor.
- Clarify what constitutes a “public body” and how to assess whether a Member government exercises meaningful control over an enterprise. Restrict government support to SOEs used to enhance SOE economic performance.
- Make the most harmful types of subsidies that are currently permissible subject to stricter rules by expanding the list of prohibited subsidies.
- Ensure that rules for dispute actions related to subsidies and other market-distorting support provided to SOEs allow for clear and effective remedies.

Pursuing New Rules for Current Issues

- Establish new rules covering digital trade, including data flows and data localization policies, as well as a permanent ban on applying customs duties and other customs processes on electronic transmissions.
- Promote further integration of services and investment into the international trading system.
- Demonstrate leadership on emerging areas of trade practice such as regulatory cooperation.
- Address behind the border discriminatory practices by reinforcing national treatment obligations (that do not unreasonably burden foreign direct investment) and developing strong domestic regulation disciplines ensuring non-discriminatory and transparent regulatory and enforcement processes in the services and non-services sectors.
- Refocus efforts on advancing cross-border movement of people and the rules needed to maximize measures that promote an inclusive and efficient labor market.

- SOEs often get special permitting and other benefits not available to privately-owned competitors. This practice should be disciplined as a non-tariff barrier to both entry and like services.

Modernizing WTO Rules and Implementation

- Increase negotiating flexibility at the WTO by making it easier for Members to pursue plurilateral agreements. The WTO Secretariat should be given more authority to support various negotiating processes and implementation of such agreements.
- Improve transparency and notification by creating incentives for Members to provide required notifications and applying sanctions for willful and repeated noncompliance with notification rules.
- Improve effectiveness of pre-litigation problem resolution by developing rules that require Members to give substantive replies within set timeframes to written questions from other Members or trade concerns raised in a WTO Committee meeting.
- Revise rules for special and differential flexibilities to better reflect development realities while ensuring they are available to those Member countries that actually need them.
- Reach agreement on measures to ensure that the national security exception is not applied in ways that undermine the key WTO provisions for opening trade.
- Commit greater resources to the work of the most effective WTO committees while also deactivating those committees that are no longer needed or are inactive.
- Treat forced localization as a WTO-illegal performance requirement.

Ensuring Properly Functioning Appellate Body

- While the dispute settlement system has been effective, improvements are needed to ensure its continued effectiveness and support among members. Steps should be taken to improve the operation of the WTO dispute settlement process and address the member differences over the activities of the Appellate Body (AB).
- The WTO members should review and agree on rules dealing with the scope of what can be decided by the Appellate Body, the timing of cases, and the limits of actions by judges after their term has expired.
- Members should ensure that the AB has the resources, staff and financial, needed to deal with a growing number of cases being brought by member countries.

January 8, 2019