



WTO BUSINESS FOCUS GROUP 2

Market Access, Trade in Services and
Investment Facilitation

Final report, March 2017



BACKGROUND AND OVERVIEW

The global business community highly appreciates the Trade Dialogues that have been initiated by the International Chamber of Commerce and B20 China (subsequently by B20 Germany) and facilitated by the WTO Secretariat. This is an excellent forum for direct exchange between business representatives from various companies and organizations across the WTO membership.

Business support for the WTO remains strong despite parallel efforts of members to conclude bilateral and regional trade agreements. Multilateral agreements among all 164 WTO members continue to be the optimal path to solve the current challenges of international trade. In the past decade, global value chains have become longer and have come to involve more economies; new dominant players have emerged, the amount of cross-border investment has multiplied, and services and digital trade/internet trade have turned into key factors in international business. At the same time, protectionist measures have been on the rise, despite commitments to keep markets open. The multilateral trading system must reflect on these challenges in order to stay at the core of today's business realities. Therefore, members need to continuously adjust the WTO rules, covered areas, procedures, and resources.

Members of the Business Focus Group 2 (BFG 2) have discussed issues regarding market access, trade in services, and investment facilitation. The recommendations outlined in this paper aim at supporting and facilitating the WTO process in a constructive way.

In brief, business advocates for

- a roll back of protectionism,
- the revitalization of WTO negotiations,
- new plurilateral initiatives,
- regional trade agreements in line with the multilateral process,
- the rapid and effective implementation of the Trade Facilitation Agreement,
- an improved rule book including regulatory issues and competition,
- strengthening trade in services,
- investment facilitation.

The upcoming 11th Ministerial Conference in Argentina, in December 2017, is a great opportunity to revitalize the multilateral trade agenda. The upcoming months should be used to initiate honest and open dialogues on the remaining issues of the Doha Round of negotiations (Doha Development Agenda, DDA) but also on new initiatives such as the facilitation of trade in services and investment as well as plurilateral initiatives on specific sectors.

Trade is a backbone of our economies and societies. In the past decades, it helped to lift millions of people out of poverty, enhancing prosperity and well-being worldwide. We acknowledge that not everybody, however, has benefited sufficiently from trade liberali-

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zation. But new barriers to trade are not the solution to income disparities or unemployment. Rather, we need to make trade more inclusive. The multilateral trading system is a centerpiece in this. The WTO is more important today than ever. We call upon members to strengthen the WTO and to resist nationalist go-it-alone strategies.

MARKET ACCESS

PREVENT AND ROLL BACK PROTECTIONISM

- *Guarding Core Principles:* The multilateral trading system must stick to and guard its fundamental achievements, especially the core principles of Most Favored Nation (MFN), National Treatment, and Non-Discrimination. The existing rules and exceptions offer sufficient room to pursue policies that aim at improving international trade and social and environmental goals.
- *Strengthening Public Support:* Public opposition to trade liberalization is growing. WTO members must consider convincing ways to address, explain to the public, and support the benefits of trade in order to take account of legitimate concerns about income distribution, employment, and adjustment. Otherwise, we will face a bleak future of increased protectionism, no progress on trade negotiations, and ultimately a weakening of the global multilateral trading system. The WTO and other international organization should continue to offer valuable information in support of a rules-based, transparent, non-discriminatory, open, and inclusive multilateral trading system.
- *Curtailing Local Content and Performance Requirements:* Such measures are becoming a widespread problem in international trade. Several WTO legal instruments exist which cover local content requirements (LCRs) – the General Agreement on Tariffs and Trade, the Agreement on Trade-Related Investment Measures, the Agreement on Subsidies and Countervailing Measures, and the Government Procurement Agreement. Yet LCRs remain a policy of choice for some WTO members. In addition to the dispute settlement of the WTO, members should reassess the scope of existing prohibitions and aim at more transparency and monitoring mechanisms for LCRs.
- *Strengthening WTO Monitoring and Reporting Mechanisms:* The trade monitoring exercise is useful and should be made more effective. In general, members should notify trade-related measures more consistently and actively to the WTO. To encourage and facilitate timely and active notification of trade-related measures by members, the WTO Secretariat may streamline, for example combine into one, the current two steps in the collection of information, i.e. reporting of information by members and verification by members of information that the Secretariat collects from other non-official sources. The Secretariat may also provide members with a standard notification template to ensure consistency in the for-

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mat of information provided by the members, and of the information that the Secretariat collects from other non-official sources to be verified by members. This would also make the WTO's integrated portal on trade measures, I-TIP, more valuable.

- *Introducing a Horizontal Mechanism for Mediating Concerns over NTBs:* Today, non-tariff barriers (NTBs) often represent a greater burden on trade than tariffs and should therefore be rigorously dismantled. The horizontal mechanism discussed under the DDA would be very helpful for discussing and clarifying potential disputes over NTBs. After receiving less attention in the debate among WTO members since 2011 and having adopted a similar tool in the SPS Committee, the horizontal mechanism should be explored further, while taking account of the special needs of developing members.
- *Strengthening the Secretariat:* Resource challenges confronting the WTO Secretariat should be addressed to make sure it can carry out its growing responsibilities, for example assessing members' trade measures and managing negotiating processes.
- *Supporting the Dispute Settlement Procedure:* The importance and relevance of the Dispute Settlement Procedure (DSP) should be reaffirmed, and it should be resourced adequately to deal expeditiously with the increased number of cases it is being asked to adjudicate. The WTO dispute settlement system should be made more efficient and effective. To this end, WTO members should consider appropriate ways to reduce the duration of the process, and increase the transparency over ongoing cases, while ensuring the protection of sensitive data.
- *Reaffirming the Primacy of the WTO on Trade Matters:* The WTO Secretariat must be included in inter-agency discussions regarding trade and given an equal share of voice to defend the rule-based trading system against encroachment by other international organizations. These organizations should consistently consult the WTO whenever they address trade-related issues. The WTO Secretariat and involved members should, at such occasions, emphasize the existing WTO jurisprudence to confirm that merely claiming a public health motivation, for example, is not sufficient to exempt policies from the trade rules that would otherwise apply. To legitimately qualify for a public health exemption from the WTO rules, policies must be based on sound science, supported by evidence that they contribute to the stated legitimate public policy objective, and must be non-discriminatory. The WTO Secretariat must be empowered to actively advocate for the adoption of the least trade-restrictive measure to deliver legitimate public objectives and inform its members of discussions that may impact the work of the WTO.
- *Allowing no Carve-outs from the Rulebook:* Trade rules of the WTO must apply equally to all legally traded product groups, with no product-specific carve-outs or exemptions.

REVITALIZE THE WTO'S NEGOTIATION FUNCTION

- *WTO Negotiations:* The WTO should make a fresh effort to conclude the negotiations on the remaining issues of the DDA while adhering to the fundamental objective of development. These include, among others, non-agricultural market access (NAMA), trade in services, intellectual property rights, and trade rules. Several WTO members have made clear that for them, the DDA, as originally intended, does no longer offer a promising basis for progress. Political will amongst the WTO members is critical to come to agreements on opening new markets and creating modern trade rules. Tariffs and especially tariff peaks must be reduced and bound. One aim should also be to promote trade among developing members. WTO members should gradually simplify and abolish complex tariffs, and ultimately achieve transparency about applied tariffs. Further aims should be to promote developing economies' agricultural development, guarantee the income of producers who depend on agriculture for their livelihood and the global food security, as well as end hunger.
- *Advancing Non-Agricultural Market Access (NAMA):* Liberalization of trade in goods should remain a central element of the WTO agenda. Non-agricultural market access needs to be significantly improved for all members in line with the recommendations made below.
- *Unblocking Negotiations on Trade in Agriculture:* The decisions of the 2015 WTO Ministerial Conference on agriculture and development must be rapidly and effectively implemented. The agricultural sector and associated industries require fair conditions of international competition. This includes fair rules on agricultural domestic support and the removal of barriers to market access. Despite the best efforts of the food and agricultural sector to strengthen food security and productivity, ultimately its success hinges on government policies that uphold the virtues of open and competitive markets for trade, investment, and innovation.

CONCLUDE NEW AND IMPROVE EXISTING PLURILATERAL AGREEMENTS

- *Initiating a Dialogue on Plurilateral and Sectorial Agreements:* As highlighted in the recent G20 Leaders' Communiqué, "WTO-consistent plurilateral trade agreements with broad participation can play an important role in complementing global liberalization initiatives." Business shares this view. The WTO Ministerial Conference, at its last meeting in Nairobi, further noted that "Members have also successfully worked and reached agreements in plurilateral formats". The WTO should build on these achievements. Participants in the WTO Trade Dialogues also stress that any initiative in this regard needs to be open, transparent, and inclusive as well as complementary to the multilateral trading system. All sector-

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specific or plurilateral agreements should be negotiated and implemented in a transparent manner and open to all countries. They should adhere to the principles of voluntary participation. And they must be trade-enhancing rather than trade-restrictive. In this endeavor, the WTO should build on the experience of existing sectorial and plurilateral agreements.

- *Environmental Goods Agreement (EGA)*: As underlined in the G20 Leaders' Communiqué of the Hangzhou Summit in September 2016, core concerns need to be addressed to ensure a successful EGA that seeks to eliminate tariffs on a broad range of environmental goods. Negative effects such as new bureaucratic costs should be avoided wherever possible. The agreement should comply with WTO rules and principles. There is a legitimate debate beyond the EGA on what role international trade can play in protecting the global climate. Ideas for new policy approaches include differentiated import duties based on sustainability certification schemes. Policy-makers should abstain from revisiting the "like" products concept of the multilateral trading system. No WTO Member shall discriminate between like products from other WTO members (giving them equally "most favored-nation" status) or discriminate between its own and like foreign products (giving them "national treatment"). Differentiated import duties on like products based on production and processing methods or certification schemes would open Pandora's Box of new protectionism and trade disputes.
- *Strengthening the Agreement on Public Procurement*: The number of signatories of the Agreement on Government Procurement (GPA) should continue to grow while observing their respective development and national policy space. The provisions should be monitored more energetically and procurement practices inconsistent with members' obligations treated with more severity.
- *Implementing the Information Technology Agreement (ITA) II and Broadening the Agenda*: The Ministerial Declaration on Trade in Information Technology Products was sealed at the 2015 Ministerial Conference. Now implementation by all signatories is important if the tariff reductions are to come into effect as planned. All participants of ITA expansion negotiations should implement the results of the negotiations as soon as possible. The declaration of intent to discuss non-tariff barriers in this sector also needs to be quickly followed by binding agreements. As a next step, further WTO members should be encouraged to sign the ITA and participate in the extension of tariff reductions of information technology products. It is also important to regularly review the agreement.

REGIONAL TRADE AGREEMENTS MUST PROMOTE MULTILATERAL TRADE LIBERALIZATION

- *Ensuring the Compatibility of Multilateral, Plurilateral, and Regional initiatives:*

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- The WTO should take a more active role in monitoring the impact of all forms of regional trade agreements (including partial scope agreements, free trade agreements, customs unions and economic integration agreements) and preferential trade agreements on the multilateral trading system.
- The Committee of RTAs should swiftly implement the decision “to discuss the systemic implications of RTAs for the multilateral trading system and their relationship with WTO rules”, as put forward at the 2015 Nairobi Ministerial.
- The WTO’s transparency mechanism needs to be improved. The permanency of the mechanism must be agreed on regardless of the outcome of the DDA.
- The compatibility of RTAs with the multilateral trading system should be improved with more precise rules and clearer definitions in the WTO system. This could allow for work on the improvement of the current system and its effective operationalization.
- RTAs must be notified to the WTO, but there is no clearly defined procedure to determine whether they meet the WTO requirement of “covering substantially all trade” for trade in goods or “substantial sectoral coverage” for trade in services.-The WTO should take a more active role to ensure that RTAs meet WTO requirements.
- A mechanism should be developed to independently review and compare regional trade agreements. These reviews would compare major RTAs for commonality and provisions that might invite larger plurilateral or multilateral acceptance, increase the transparency of free trade agreements, and impact non-member-countries’ trade and investment. Additionally, the process could be used to identify best practices and high standards on emerging issues such as regulatory cooperation, cross boarder data flows, etc.
- The rules of origin in free trade agreements should be more strongly standardized through precise WTO rules.

IMPLEMENT THE TRADE FACILITATION AGREEMENT QUICKLY AND COMPREHENSIVELY

- The members of the BFG 2 welcome that the WTO Trade Facilitation Agreement (TFA) has entered into force for those 110-plus WTO members that have ratified the agreement so far. All WTO members that have not done so yet should ratify the TFA without delay. The TFA needs to be implemented fully in order to eliminate unnecessary trade costs. The G20 members in particular should ratify and

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implement their commitments of the TFA swiftly and urge all other WTO members to do the same.

- The support measures for developing countries should be made available as soon as possible in order to enable rapid implementation in all countries across the world. Developed and developing members should undertake different responsibilities, continue and strengthen their efforts to give technical assistance to WTO members who are having difficulties putting the TFA into effect, and encourage other relevant international organizations to strengthen their support to developing countries that are implementing the TFA.
- Where feasible, members should adopt individual implementation roadmaps that consider the introduction of “single window” and “authorized operators”. As part of these roadmaps, members should work to promote further cooperation on global data standards and their wider use within cross-border trade processes. In this process, members should take into account the expertise of the private sector. The WTO Committee on Trade Facilitation (to be established once the TFA becomes binding under WTO law) should monitor individual countries’ TFA implementation level. While implementing the TFA, members should press ahead with the digitization of the processes of customs, inspection, and quarantine. WTO members should encourage business representation in national trade facilitation committees.
- Discussion should start on how to build on the TFA in order to improve customs, inspection, and quarantine, tax and market access measures, and to better cover areas such as services, e-commerce, and investment.

IMPROVE THE FRAMEWORK ON TECHNICAL BARRIERS

- The WTO’s committees should reinforce discussions on how to better address barriers arising from various technical standards. The Agreement on Technical Barriers to Trade (TBT) is very useful and should be reinforced.
- In order to strengthen regulatory cooperation between WTO members, the regular reports on the implementation of the TBT Agreement and the TBT Committee’s discussions should lead to a more rigorous application of the key principles (non-discrimination, harmonization with international standards, etc.) and an expanded TBT Agreement. Provisions, transparency rules, and processes should be formulated as clearly and precisely as possible.
- Existing rules need to be promptly published and notified to the WTO, to enable exporters to become acquainted with all technical regulations relevant for them. Regulations need to be clear and transparent. Only technical regulations that have been notified to the WTO should be enforced with respect to imported goods.

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- There should be a clear and strong recognition that all voices need to be heard in policy development. Consultation during the process of policy development helps shield the final policies against future challenges. Industry is best placed to identify when a policy is trade-restrictive, and we have a legitimate and substantial contribution to make in defining “best practice” in regulatory policies set by governments. There is already a role for companies in the TBT Committee, and business perspectives are often at the forefront of discussions on “specific trade concerns”.
- The ongoing work in the TBT Committee to develop a model of “best practice” for the development and adoption of regulations may be an appropriate document to reinforce the importance of all stakeholders in the policy-making process. The TBT committee should also develop necessary rules or disciplines to address concerns from developing members and SMEs, and promote their better integration into global value chains.
- The TBT Committee should consider reviewing provisions on particular sectors in existing regional trade agreements. The aim should be to identify and list cases of “best practice” in TBT that may act as guidelines for members and future WTO provisions.

NEW RULES FOR WORLD TRADE

- *Clarifying Trade Remedy Rules:* The WTO members should continue their efforts to upgrade trade remedy rules in order to promote fair competition between companies in the world market.
- *Strengthening Competition Rules:* Many business participants in the WTO Trade Dialogues ask WTO members to put competition policy back on the WTO agenda. For that purpose, the WTO Working Group on the Interaction between Trade and Competition Policy should reconvene. The medium-term goal should be to anchor appropriate international principles into competition policy as “best practice” in order to achieve long-term convergence and a level playing field.
- *Curtailing Export Taxes:* In the WTO, export duties and similar levies are not regulated enough. Therefore, reflections started under the mandate of the DDA should continue on the multilateral level.
- *Fighting Corruption:* The WTO should discuss best practices to help fight corruption.

TRADE IN SERVICES

- *Bind Existing Openness:* Services need to become a key deliverable for the 11th WTO Ministerial Conference. Respective decisions should cover trade facilitation

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across all modes of the GATS well as regulatory disciplines. The schedules of market access commitments by members under the GATS are currently much more restrictive than existing levels of openness. This in itself means that a very substantial package of market access commitments can be developed to bind existing openness.

- *No Sequencing of DDA Topics*: Multilateral efforts in the area of trade in services should no longer be made conditional on an agreement on agriculture or on any other area. Although WTO members have parted from the single undertaking in the DDA, they should make every effort to conclude all the remaining issues.
- *Advancing Mobility of Professionals*: Measures should be adopted to simplify rules for the mobility of skilled professionals. This should include an initiative to facilitate business visas. The initiative should be aimed at additional commitments of WTO members in their respective schedules of the GATS.
- *Domestic Regulation*: New regulatory disciplines which have an impact on services should provide enhanced levels of transparency. They should also ensure that through the formulation of rules and regulations, licensing and qualification requirements and procedures, as well as technical standards, do not constitute unnecessary barriers to trade.
- *Strengthening E-Commerce*: Please refer to the report of BFG 1.
- *Designing the Trade in Services Agreement (TISA) as an Enabler for Initiatives in the WTO*: TISA should liberalize services based on the principle of openness, inclusiveness, and transparency. TISA negotiations should make sure that the agreement acts as an enabler for initiatives in the WTO to integrate new multilateral disciplines on services.
- In this context, business welcomes the G20 commitment made in Shanghai in 2016 to policies that support an open, transparent, and competitive services market in order to facilitate the participation of service providers in global value chains (GVCs), recognizing that this can contribute to a smooth flow of goods and services along GVCs and support more efficient production and trade.
 - Financing, communications and business ICT, transport, insurance, and other logistics services as well as professional services are all needed to efficiently coordinate production and deliver intermediate and final goods and services. In consultation with business, it needs to be discussed further whether and how those areas should be covered in the WTO.
 - WTO members should consider adequate ways to remove or reduce regulatory impediments in GVCs, such as equity caps, lack of competitive bottleneck rules, and mobility of people's restrictions that all prevent optimization of the digital economy and the GVCs.
 - Regarding e-commerce (understood in the wider sense as covering B2C and B2B solutions) please refer to the results of BFG 1.

INVESTMENT FACILITATION

- *Initiating a Dialogue on a Cross Border Investment Agreement:* The WTO rules on trade-related investment measures should be modernized while adhering to the core principles of MFN, National Treatment, and Non-Discrimination. Following the G20 Guiding Principles for Global Investment Policymaking endorsed by G20 Leaders' Summit in Hangzhou, the G20 states should continue to discuss further coordination of multilateral investment policy.
- *Strengthening Coherence:* The WTO Working Group on the Relationship between Trade and Investment should foster its work on exploring options for strengthening global trade and investment rule coherence. Many elements common in trade facilitation provide lessons for the investment facilitation initiatives, such as strengthening cross-border coordination and collaboration initiatives between multiple investment promotion agencies from several parties.
- *Striving for an Investment Facilitation Framework:* G20 Trade Ministers at the Meeting in Shanghai welcomed efforts to promote and facilitate international investment. WTO members should strive for an investment facilitation framework aimed at improving transparency, sharing information, and simplifying as well as speeding up administrative procedures in national investment regimes. Part of it could be an integrated and user-friendly WTO portal – or single window, and/or one-stop shop – setting out members' trade and investment policies and regulations. Clear and transparent guiding principles on investment policymaking should be developed.
- *Adopting an Action Plan on Investment Facilitation:* The WTO members should adopt an international investment facilitation action plan with concrete, clear, and transparent policy options, measures, and implementation tracking to boost cross-border investment. This plan could be executed with technical assistance from the United Nations Conference on Trade and Development (UNCTAD) and the World Bank.
- *Initiating a Discussion on a Standard Model to Settle Disputes:* The UNCTAD, the Organization for Economic Co-operation and Development, and the WTO could cooperate to evaluate options for establishing a standard model that can be universally applied to settle investment disputes. In this process, all relevant stakeholders should be consulted. These include, among others, the International Centre for Settlement of Investment Disputes, the United Nations Commission on International Trade Law, the International Chamber of Commerce, and the World Economic Forum.¹
- *Investment in Infrastructure:* The WTO should encourage governments to develop local infrastructure that is beneficial to trade as well as the economy and society.

¹ CCPIT does not support the recommendations.

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