

Stockholm, 9 July 2021

ICC Sweden's Comments on the ICC Draft Paper on "Global Business Priorities for the WTO"

We welcome this opportunity to share our comments on the draft ICC paper on "Global Business Priorities for the WTO". Overall, we believe that it is a well-composed paper that in a concise and timely manner sets out key global business priorities for strengthening and reforming the WTO. Below you will find our comments, pertaining both to the overarching structure and balancing of the paper as well as to the priorities themselves.

These comments have been prepared in close dialogue with ICC Sweden's Trade and Investment Committee, which gathers senior representatives from major Swedish enterprises and business associations.

Structure and balance

- The WTO stands at a crossroad. It is obvious that the organization and its rulemaking has failed to keep up with the quickly evolving realities of modern trade, while the dispute resolution system that is supposed to ensure compliance with agreed upon rules is paralyzed. At the same time, with a new ambitious Director-General in place, there has for a long time not been a better opportunity for strengthening and reforming the organization. Thus, we feel that this is the time for ICC as the global voice of business to present an ambitious, forward-looking, and long-term vision for the future of the WTO that does not get bogged down in short-term priorities.
- A general concern of ours is that the current draft is too heavily focused on COVID-19 and the response to the pandemic. While we acknowledge the impact of the pandemic on both people and businesses and agree on the importance of a well-functioning WTO in times of crisis, the paper in its current version is unbalanced. The WTO can play an important role to help end the pandemic, but the main challenges facing the organization pre-dates the pandemic and its added value to global business is and remains ensuring a rule-based, predictable, and forward-looking multilateral trade system. That is also what will best support the economic recovery after the pandemic.
- The structure itself adds to the paper's unbalance. A chronological structure inevitably reflects that ending the pandemic takes precedence in the short-term. To reiterate, we, however, believe that this paper should reflect the long-term priorities of the global business community. Instead of dividing the paper chronologically, it could benefit from a more topical structure. The chronological order also makes it difficult to discern what the main priorities are, as high and low is now intertwined in the same sections. The paper currently becomes an enumeration of different things that business wants to see without a clear priority or sense of urgency to which issues are the most central in order for the WTO to function as it is supposed, such as updating obsolete rules and ensure a functioning dispute resolution system.

Relation to other ICC policy papers

- While the draft paper makes a reference to the 2019 ICC paper *"Reforming the Multilateral Rules-Based Trading System: The outcomes we want for people and planet"* it is a bit unclear how the two papers relate to each other. We would appreciate a clarification whether they

are to be read in conjunction with each other or if the new paper replaces the old one. In the latter case, many of the more concrete recommendations made in the previous paper have been lost and would have to be included in this one, e.g., in relation to subsidies and notification requirements, the appellate body and the call for global policy coherence between the multilateral trade system and other relevant international systems.

- We note that many of the recommendations made are general in nature. On several of these topics, ICC has previously published more detailed policy statements, relating to e.g., the e-commerce negotiations (*"A High Standard Outcome to Power the Post-Covid Economy"*) or the moratorium on electronic custom duties (*"The Business Case for a Permanent Prohibition on Customs Duties on Electronic Transmissions"*). We suggest that these and other relevant policy documents are clearly referenced in the paper as to, in addition to more general priorities, shine light on the concrete ICC proposals that have been previously brought forward.

Comments relating to the proposals, including suggestions of additional paragraphs

- A functioning WTO dispute resolution system is central to upholding the multilateral trade system and ensure compliance with the rules agreed by the WTO members. Currently, the para on reforming the dispute settlements system is too general. It should include concrete proposals on the fundamental components of such a reform, including increasing the number of Appellate Body members, making appointments permanent for a defined period of time with a competitive pay grade, and expanding the recruitment pool to include not only civil servants and professors, but also lawyers with practical experience from the private sector. Similar proposals were made in 2019 ICC WTO reform paper.
- We note that the paper does not mention industrial subsidies and advocate for including a new para on the need for further clarifying and improving WTO rules on subsidies and countervailing measures, mirroring the text of the 2019 ICC paper:

"[...] we consider there is scope to further clarify and improve the relevant WTO rules on subsidies and countervailing measures, with the objective of establishing—to the extent possible—a clear line between “public bodies” and “private bodies”. This should include, inter alia: (i) clarifying the definitions of state-owned enterprises, public bodies, and other state-controlled enterprises; and (ii) clarifying current categories of subsidies, such as those given to an insolvent or ailing company without a credible restructuring plan.”

Such a para should also include a reference to the need to forbid subsidies on fossil fuels, which is in line with the ICC statement on the EU Trade Policy Review from last year.

- It is clear that the WTO notification system is not working. We therefore welcome the proposals made in the para on agreeing to improve the Secretariat’s capacity to monitor trade policy developments. In addition to the suggestions made, ICC should express its support for the ongoing discussions between the EU, US, and Japan on ways to strengthen WTO rules on industrial subsidies. In line with this, ICC should also explicitly promote a system of reversed burden of proof in which subsidies will by default be seen as illegitimate should countries fail to meet their notification obligations. This para could also make reference to the TBT Agreement and the need for countries to adhere to the notification requirements on technical barriers to trade.

- We note that the paper lacks priorities related to market access. Historically, increasing market access has been one of the central functions of the WTO and its predecessor GATT. This should remain a key priority of the ICC and get its own para. GATS is not up-to-date and the Domestic Services Regulation, while an important step forward, lacks provisions on market access for services. This could be a long-term priority for ICC and the foundation of a forward-looking agenda when it comes to trade in services. Equally, common rules to ensure open, non-discriminatory access to digital and digitally enabled markets is key to a successful future e-commerce agreement, as is increased market access in terms of increasing the participation in ITA I and ITA II to help promote connectivity and bridge the digital divide.
- It should seriously be considered whether ICC should at all open up for a waiver of intellectual property rights, even under the conditions enumerated in the paper. Intellectual property rights are a fundamental aspect of all market economies. There is a risk that the current situation is opportunistically used to undermine the intellectual property system as a whole, which would have far-reaching, long-term consequences for businesses globally. While there are challenges related to producing and distributing billions of vaccine doses, this is not a result of WTO rules. Should the last sentence of the para remain in the paper, it should be made very clear that a waiver must necessarily be very limited in scope and time. This is also an issue that the ICC Commission on Intellectual Property could address further.
- Moving from a system of self-designated development country status is a key priority. The para on Special and Differential Treatment would, however, benefit from clarifying what is meant by “case-by-case” approach. Does it mean that a country should be given developing status in relation to individual agreements? The para would also benefit from underlining that if developing status is awarded based on objective criteria, then developed economies will view capacity building measures and targeted technical assistance as more legitimate.
- We welcome the para on circular economy. It is central that the WTO addresses trade-related issues when it comes to the transition to a circular economy. The para could also be framed by underlining the importance of circularity in order to achieve the Sustainable Development Goals.
- We welcome the strong support for plurilateral negotiations expressed in the paper. We believe, however, that ICC should also ask for the introduction of a formal mechanism that would allow for plurilateral agreements to eventually become multilateral.
- We welcome the para on creating an enabling legal environment for paperless trade. This is a key priority that could have very positive practical effects for businesses as it would simplify, streamline, and expedite customs and trade procedures by minimizing physical paperwork. Apart from a ministerial statement championing the UNCITRAL Model Law on Electronic Transferable Records, the para should also make clear that a provision mandating the adoption and implementation of the model law is essential for a high standard e-commerce agreement.
- We welcome that the paper asks for the creation of a business advisory council and a civil society council. This is important to facilitate a structured stakeholder dialogue and ensure

that WTO rulemaking provides practical benefits to businesses and societies alike. However, we feel that this priority could be placed earlier in the paper and even be recommended as a deliverable for MC12.

- The paper suggests an increased mandate for the Secretariat in relation to notification and monitoring, but we feel that ICC could also present a more ambitious vision of the future role of the Secretariat. The Secretariat could play a role in collecting facts and best practices and contribute with analyses to ensure that discussions and negotiations are conducted on an as constructive and empirical basis as possible. The Secretariat could also play a role in developing compromise proposals, taking a mediating role. An increased mandate could also include a more pronounced role of the Secretariat in analyzing the effects of current global developments on international trade and how international trade could further support key policy objectives, such as combating climate change and support the transition to a circular economy.
- In relation to the para on trade and health, it should be explicated that the single best way for trade to support health policy objectives is zero tariffs on pharmaceutical goods and substances. An agreement eliminating tariffs and other duties already exists in form of the Agreement on Trade in Pharmaceutical Products concluded by a group of WTO member states in 1994, and which has since then seen several updates. ICC should promote increased participation in this agreement and an update when it comes to the products covered.
- The enumeration of new areas for rulemaking mentions several key areas for the WTO to address, but we believe that some of these warrants their own paras. Investment is one such area. Considering the ongoing structured discussions aimed at starting negotiations on an Investment Facilitation for Development Agreement, ICC should clearly express its support for an ambitious such agreement.
- Carbon border adjustment mechanisms are increasingly seen as an important instrument in ramping up sustainability ambitions while avoiding so called “carbon leakage”. At the same time, there are fears that such mechanisms can be used not only to promote legitimate policy objectives, but to distort the level playing field and protect domestic companies from foreign competition. Considering this, it would be advisable if a para was added that suggests that the WTO addresses this issue. As a minimum, the WTO Secretariat could propose guiding principles for such mechanisms that are compatible with WTO non-discrimination rules and develop generally accepted standards on how to measure carbon content in various forms of production.
- Consider adding a para on the need for updating the rules on protective tariffs. As the rules stand, protective tariffs are not seldom used to weigh up for a lack of competitiveness of domestic companies. Far-reaching use (and misuse) of protective tariffs, including in reference to national security interests, also undermine the multilateral trade system by providing an argument to countries which are not by default pro-free trade to introduce unilateral distorting measures in response.
- The increasing role of digital platforms as an intermediary and the way it changes the nature of international trade and business-consumer relations is a key policy issue in many

jurisdictions, such as the EU (Digital Services Act and Digital Markets Act) and the US (Shop Safe Act and Inform Consumers Act). As the challenge is global in nature, it would only be natural for the WTO to play a role. Are aspects of this already covered by the e-commerce negotiations? If not, ICC should propose that the WTO investigates how the issue can be addressed as to avoid regionally fragmented regulations.



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