

**PREPRINT**

# Strengthening WTO and the global trade system for sustainable development

## Policy brief for G20

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## Preamble

The dynamics of the global trade system is a key influencer in the transition to a sustainable future for humanity. This policy brief emerged from a consultation process with a panel of renowned experts. They focused on how the World Trade Organization (WTO) could be strengthened to provide a global trade system supportive of the sustainability agenda. It is recognized that the WTO was conceived in a different world from the one we live in today, geopolitically and ideologically. This policy brief raises several key recommendations that, in the view of the expert panel, could be implemented in the short term and would achieve a substantial impact to expand the mandate and influence of the WTO, within the broader context of improving global governance to address global societal challenges. For participants of the expert panel and their short bios, see [Annex](#).

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This policy brief has been coordinated by International Institute for Applied Systems Analysis (IIASA). Located in Austria and supported by 22 national and regional member organizations, IIASA conducts policy-oriented research into pressing concerns that affect the future of all of humanity, such as climate change, energy security, population aging, and sustainable development. A systems analysis approach, convening power, and political independence help IIASA to coordinate knowledge synthesis and co-development of policy recommendation efforts, including this policy brief.

## Challenge and context

The overwhelming evidence exists about the significant positive impact of trade on welfare<sup>2,3</sup>. The WTO's mission is to facilitate global trade by promoting and enforcing fair and open trade policies. It has been instrumental in liberalizing global trade and increasing economic growth, particularly in developing countries. However, in the recent years, the WTO has been facing numerous challenges, including increased protectionism, a lack of progress in multilateral trade negotiations, and the growing digital divide. The last WTO trade negotiation round, the Doha Round, did not yield any substantial results<sup>4</sup>. It has been the longest-running round for multilateral trade negotiations in history, which however seems to end, in practice, by the 2015 decision to respect the different positions of countries on the Doha Development Agenda. The Doha Development Agenda aimed to put development and the interests of less-developed countries at the core<sup>5</sup>. Allegedly, its failure was due to diverse expectations of the WTO members, and their conflicting visions about the role of trade and trade policy in development and regarding globalization benefits. The obvious schism was between developed and developing countries (BRICS countries in particular), but also within these two groupings. Two

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<sup>2</sup> Felbermayr, G. J., Larch, M., Yalcin, E., & Yotov, Y. V. (2020). On the heterogeneous trade and welfare effects of GATT/WTO membership. CESifo Working Paper, 8555. <https://doi.org/10.2139/ssrn.3699234>.

<sup>3</sup> Larch, M., Monteiro, J. A., Piermartini, R., & Yotov, Y. V. (2019). On the effects of GATT/WTO membership on trade: They are positive and large after all. CESifo Working Paper, 7721. <https://doi.org/10.2139/ssrn.3421148>.

<sup>4</sup> Soobramanien, T., Vickers, B., & Enos-Edu, H. (Eds.). (2019). WTO reform: Reshaping global trade governance for 21st century challenges. Commonwealth Secretariat. <https://doi.org/10.14217/544517c5-en>.

<sup>5</sup> [https://www.wto.org/english/news\\_e/news05\\_e/stat\\_lamy\\_28nov05\\_e.htm](https://www.wto.org/english/news_e/news05_e/stat_lamy_28nov05_e.htm).

promising initiatives, Aid for Trade<sup>6</sup> and Trade Facilitation Agreement<sup>7</sup>, supporting developing countries emerged in the Doha Round, however, several crucial issues remained unresolved around trade of agricultural goods, subsidies, and the conditions of application of the Special and Differential (S&D) treatment to large emerging economies, among other topics.

Against this backdrop, the WTO faces considerable criticism, leading to the view that a WTO reform is long overdue<sup>8</sup>. Concerns that the existing framework caters overtly to the interests of multi-national corporations and prioritizes economic growth at the expense of other policy priorities and values such as environmental protection, labor interests, human rights, public health, and poverty alleviation, has precipitated a dramatic decline in public support for trade liberalization, and raised a “legitimacy crisis for the WTO”<sup>9</sup>. Failure to implement timely reforms may lead to disastrous consequences for the WTO, including a withdrawal of some countries or a collapse or degradation to the margins of international relations. The subsequent breakdown in trust between countries may precipitate elevated trade costs, reduce dispute settlement opportunities, and ultimately have a negative impact on economic growth and global stability<sup>10</sup>. The COVID-19 pandemic underscored the critical role of trade in ensuring access to essential goods and services, and exposed vulnerabilities and inequalities in the global trading system, as well as the risks of focusing solely on trade efficiency rather than resilience. These costly lessons emphasized the urgent need for a more coordinated and encompassing global trade approach, that prioritizes sustainability, inclusiveness, and resilience. This need for urgent reform was graphically illustrated when during the pandemic, countries used unilateral trade restrictions on exports of medical supplies and personal protective

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<sup>6</sup> Hallaert, J. J. (2013). The future of Aid for Trade: Challenges and options. *World Trade Review*, 12(4), 653-668. <https://doi.org/10.1017/S1474745612000730>.

<sup>7</sup> Neufeld, N. (2014). The long and winding road: How WTO members finally reached a trade facilitation agreement (No. ERSD-2014-06). WTO Staff Working Paper. [https://www.wto.org/english/res\\_e/reser\\_e/ersd201406\\_e.htm](https://www.wto.org/english/res_e/reser_e/ersd201406_e.htm).

<sup>8</sup> Steger, D. P. (Ed.). (2009). *Redesigning the World Trade Organization for the twenty-first century*. Wilfrid Laurier Univ. Press. [https://www.cigionline.org/sites/default/files/redesigning\\_the\\_world\\_trade\\_organization.pdf](https://www.cigionline.org/sites/default/files/redesigning_the_world_trade_organization.pdf).

<sup>9</sup> Esty, D. C. (2002). The World Trade Organization's legitimacy crisis. *World Trade Review*, 1(1), 7-22. <https://doi.org/10.1017/S1474745601001021>.

<sup>10</sup> Caporal, J., & Gerstel, D. (2018). *WTO Reform: The beginning of the end or the end of the beginning*. Center for Strategic & International Studies, October, 23. [https://globaltraderelations.net/images/Article.WTO\\_Reforms\\_CSIS\\_10.24.18\\_.pdf](https://globaltraderelations.net/images/Article.WTO_Reforms_CSIS_10.24.18_.pdf).

equipment without any coordination or alignment with their partners<sup>11,12</sup>. Increasing use of unilateral trade restrictions as a foreign policy tool (e.g., unilateral tariff increases and quantitative restrictions) adds yet another dimension to the reform discussion<sup>13</sup>.

In response to these challenges, more than 30 reform submissions have been mooted by WTO members or groups of members. In 2018, G20 leaders stated that the system “is currently falling short of its objectives and there is room for improvement”<sup>14</sup>. The outcome of the WTO Ministerial Council in 2022 committed members to “work towards necessary reform of the WTO” with reforms aimed “to improve all its functions”<sup>15</sup>.

This policy brief builds on the previous proposals for the WTO reform, contributed to by authors of this brief, among others. Key recommendations featured in this brief include a renewal of the commitment to multilateralism, a recognition of the context of the Anthropocene, and the need to restore a dispute settlement system capable of ensuring that global trade facilitates sustainable, resilient, and equitable development of nations as well as the wellbeing of all of humanity.

## Key recommendations

### 1. Renew the commitment to multilateral cooperation and related processes

#### 1.1 Reaffirm multilateralism as the foundation for global trade

The WTO was founded on the principle of multilateral cooperation, which is critical for promoting mutually beneficial trade and preventing trade conflicts. However, the erosion of multilateralism and the rise of unilateral actions have threatened the stability of the global trading system. To address this challenge, the WTO should take concrete steps to reaffirm multilateralism as a basic principle and combat its erosion. This includes encouraging all WTO members to adopt a multilateral approach towards economic actions, recognizing that cooperation and dialogue are essential for promoting collective

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<sup>11</sup> Hoekman, B. (2020). WTO reform priorities post-COVID-19. *East Asian Economic Review*, 24(4), 337-348. <https://doi.org/10.11644/KIEP.EAER.2020.24.4.383>.

<sup>12</sup> Wolfe, R. (2020). Exposing governments swimming naked in the COVID-19 crisis with trade policy transparency (and why WTO reform matters more than ever). *COVID-19 and Trade Policy: Why Turning Inward Won't Work*, 165. <https://www.graduateinstitute.ch/sites/internet/files/2020-04/Covid-19%20and%20trade%20policy%2029%20April%202020.pdf#page=176>.

<sup>13</sup> Bogdanova, I. (2021). Targeted economic sanctions and WTO law: Examining the adequacy of the national security exception. *Legal Issues of Economic Integration*, 48(2). <https://doi.org/10.54648/leie2021010>.

<sup>14</sup> [https://www.wto.org/english/thewto\\_e/minist\\_e/mc12\\_e/briefing\\_notes\\_e/bfwtoreform\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/mc12_e/briefing_notes_e/bfwtoreform_e.htm).

<sup>15</sup> <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/24.pdf&Open=True>.

economic prosperity and social welfare. Historical benefits of multilateralism including trade liberalization under WTO should be acknowledged, and not conveniently forgotten by relevant stakeholders<sup>16</sup>.

To foster progress in this direction, it is essential to bolster the capacity and leadership of the WTO Secretariat.

### 1.2 Explore the potential for expanding the use of plurilateral trade agreements where appropriate

While the WTO is based on the principle of multilateralism, plurilateral agreements provide opportunities for a group of interested WTO members to achieve specific trade objectives without requiring the consensus of all members. It is essential to ensure that these agreements are consistent with an open multilateral trading system, and that non-participants are not discriminated and their rights under the WTO rules are not encroached<sup>17</sup>. The Joint Initiative on E-Commerce<sup>18</sup> is an example of the ongoing negotiations by 89 countries which, if successful, can lead to a new plurilateral agreement on digital trade. While the importance of this dimension of trade is ever increasing, different countries have different positions which was difficult to reconcile. Challenging key topics include data flows provisions as well as customs duties on electronic transmissions<sup>19</sup>. A plurilateral agreement could be an acceptable compromise and pave the way for broader international cooperation on this matter in future.

The responsible use of plurilateral agreements should be reaffirmed, where consensus of all WTO members is not feasible. The WTO should provide a platform for plurilateral agreements under its general framework rather than letting such agreements proceed outside of the WTO. The alternative may lead to unintended geopolitical impacts and undermine the multilateral system.

### 1.3 Strengthen coordination with the regional integration arrangements

The WTO needs closer co-ordination with regional integration arrangements. To address this, several steps can be taken. First, the rules of accession to the WTO should be amended to allow the inclusion of customs unions as members, such as Mercosur.

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<sup>16</sup> For example, impact of the WTO accession on China's economic growth: Ching, H. S., Hsiao, C., Wan, S. K., & Wang, T. (2011). Economic benefits of globalization: The impact of entry to the WTO on China's growth. *Pacific Economic Review*, 16(3), 285-301. <https://doi.org/10.1111/j.1468-0106.2011.00548.x>.

<sup>17</sup> Hoekman, B. M., Mavroidis, P. C., & Nelson, D. R. (2023). Geopolitical competition, globalisation and WTO reform. *The World Economy*, 00, 1– 14. <https://doi.org/10.1111/twec.13406>.

<sup>18</sup> [https://www.wto.org/english/tratop\\_e/ecom\\_e/joint\\_statement\\_e.htm](https://www.wto.org/english/tratop_e/ecom_e/joint_statement_e.htm).

<sup>19</sup> <https://www.dfat.gov.au/about-us/publications/trade-and-investment/business-envoy-april-2021-digital-trade-edition/bridging-digital-trade-law-gap-wto-e-commerce-joint-statement-initiative>.

Secondly, a platform of cooperation and regular discussion should be created between the WTO and RTAs, similar to what exists between the International Monetary Fund (IMF) and regional financing arrangements. Inclusion of RTAs, especially those which are advanced, in discussions at the ministerial and trade rounds of the WTO could be also recommended. Thirdly, a "Regional Twenty" platform could be established within the G20, with the WTO as one of the key coordinators. Fourthly, a G20 group within the negotiation layer of the WTO could be created to strengthen connectivity between the WTO and G20.

#### 1.4 Promote participation of SMEs in international trade

The WTO should prioritize promoting the participation of small and medium-sized enterprises (SMEs) in international trade. This can be achieved through policies that recognize the important role that SMEs play in driving economic growth, development, and job creation, particularly in developing countries<sup>20</sup>. The WTO should work with its member states to identify and eliminate barriers to entry that prevent SMEs from participating in international trade. Additionally, the WTO should collaborate with the development agencies such as the World Bank to provide aid to SMEs in areas such as trade finance, capacity building, and technical assistance. This would contribute to the establishment of a more inclusive and sustainable global trading system, yielding benefits not only for SMEs themselves but also for their respective communities.

## 2. Address the credibility crisis and increase relevance

### 2.1 Ensure a fair balance of power among members

Reforming the WTO needs to address the credibility crisis, which stems from the perceived imbalances of power among its diverse members<sup>21</sup>. Although some progress has been made in recent years, it remains imperative to further rebalance the power dynamics between developed and developing countries and enhance the involvement of developing countries in all aspects of proceedings, including agenda setting. To achieve this goal, targeted capacity development programs for professionals from developing countries and especially, the least developed countries, that include various aspects from

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<sup>20</sup> Rodrik, D. (2023). Will new trade politics leave the developing world behind? Project Syndicate. <https://www.project-syndicate.org/commentary/new-rich-country-trade-policies-developing-world-must-shape-own-future-by-dani-rodrik-2023-04>.

<sup>21</sup> Low, P., Mamdouh, H., & Rogerson, E. (2018). Balancing Rights and Obligations in the wto—A shared responsibility. Government Offices of Sweden, 27. <https://www.swedenabroad.se/globalassets/ambassader/fn-geneve/documents/balancing-rights-and-obligations-in-the-wto.pdf>.

participating in trade negotiations to the design of trade agreements, should be enhanced.

## 2.2 Reconsider eligibility criteria for Special and Differential treatment

Conversely, the eligibility of the WTO members for Special and Differential (S&D) treatment based on their self-designation as a developing country does not resonate with the current economic realities. Different economic growth models used by countries and their differentiated success call for more efficient and fair eligibility criteria for S&D<sup>22,23</sup>. It is recognized that self-designation as a developing country may have other, for example, political reasons. Therefore, it is advisable to develop meaningful and objective eligibility criteria for S&D independent from any self-declared status. These criteria should ideally be informed by quantitative indicators which reflect heterogeneity of countries<sup>24</sup>. The WTO should set up a dedicated discussion forum and a work program to develop such a framework.

## 2.3 Address discrepancies between economic models of some members and the principles of neoliberalism

Economic models of some WTO members are based on strong state involvement and may involve other departures from the principles of neoliberalism, which forms the foundational basis of the WTO's approach. If this discrepancy is not addressed, the WTO is at risk of losing relevance. A dedicated forum and a work program could be set up within the WTO to initiate discussions aimed at resolving this discrepancy.

## 3. Recognize the new Anthropocene context and support transformation to an equitable, sustainable, and resilient world

Trade and trade rules have the potential to be “points of leverage” to promote sustainable social and environmental development and for enabling the transition to a low-carbon future. Indeed, the Marrakesh Agreement, which established the WTO, highlighted

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<sup>22</sup> Coelho, C. F., Guijun, L., Prazeres, T., Tu, X., & Yeend, T. (2021). Trade and development in the WTO: Toward a constructive approach to the issue of development status and special and differential treatment. T20 Italy Policy Brief. [https://www.t20italy.org/wp-content/uploads/2021/09/TF3\\_PB03\\_LM04.pdf](https://www.t20italy.org/wp-content/uploads/2021/09/TF3_PB03_LM04.pdf).

<sup>23</sup> Caporal, J., & Gerstel, D. (2018). WTO Reform: The beginning of the end or the end of the beginning. Center for Strategic & International Studies. [https://globaltraderelations.net/images/Article.WTO\\_Reforms\\_CSIS\\_10.24.18\\_.pdf](https://globaltraderelations.net/images/Article.WTO_Reforms_CSIS_10.24.18_.pdf).

<sup>24</sup> Ukpe, A., & Khorana, S. (2021). Special and differential treatment in the WTO: Framing differential treatment to achieve (real) development. *Journal of International Trade Law and Policy*, 20(2), 83-100. <https://doi.org/10.1108/JITLP-08-2020-0052>.

sustainable development as a core objective for the restructured trade regime<sup>25</sup>. The 2001 Doha Ministerial Declaration specifically reaffirmed the WTO's commitment to the "objective of sustainable development" and to making environmental protection and trade promotion "mutually supportive"<sup>26</sup>.

With the observed shift towards more planned industrial policies in many economies<sup>27</sup>, WTO could play a key role in facilitating members to plan their industrial policies and international trade strategies in alignment with SDGs and their commitments to combating climate change. The following changes in the WTO approach can help to operationalize such commitments.

### 3.1 Trade practices with substantial negative spillovers should be avoided

As a principle, trade practices that cause substantial harm to others should be avoided. The primary challenge lies in achieving a fair balance between enabling countries to shield themselves from negative policy spillovers (such as transboundary environmental impacts), while also preserving the autonomy of policy-active nations to implement policies - that may however result in significant spillover effects for others. In what concerns environmental issues, this challenge is further complicated by the fact that different WTO members seem to attach different weights to these issues. The WTO should bolster a framework to support constructive deliberation among members with the aim to design concrete trade-related measures to ensure that negative spillovers are minimized. These deliberations should be informed by evidence-based analyses of the magnitude and incidence of specific policy spillovers notably those which include significant negative transboundary environmental impacts<sup>28</sup>. The WTO should work towards raising the awareness of the general public about major insights from such analyses.

### 3.2 Promote sustainability impact assessments

Sustainability impact assessments should be conducted before the launch of any new trade negotiation round. These assessments should involve a diverse range of experts and the results, especially regarding likely losers and winners, should be made explicit.

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<sup>25</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/04-wto\\_e.htm](https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm).

<sup>26</sup> Esty, D. C. (2002). The World Trade Organization's legitimacy crisis. *World Trade Review*, 1(1), 7-22. <https://doi.org/10.1017/S1474745601001021>.

<sup>27</sup> Rodrik, D. (2022). The new productivism paradigm? Project Syndicate. <https://www.project-syndicate.org/commentary/new-productivism-economic-policy-paradigm-by-dani-rodrik-2022-07>.

<sup>28</sup> Hoekman, B. M., Mavroidis, P. C., & Nelson, D. R. (2023). Geopolitical competition, globalisation and WTO reform. *The World Economy*, 00, 1– 14. <https://doi.org/10.1111/twec.13406>.



Similarly to the rigor adopted in climate change assessments conducted by the IPCC, areas of agreement and disagreement by experts should be made explicit.

### 3.3 Expand trade of environmental goods and services

The important role of environmental goods and services (e.g., technology for producing clean energy) for achieving sustainable development should be recognized, and the WTO should strive to expand international trade of such goods and services.

### 3.4 Expand trade of essential goods and services

Essential goods and services are those which are critical for sustaining health and life, for example, food. Hunger remains a big problem affecting about 10% of people worldwide<sup>29</sup> despite enough food is produced globally to feed the entire world population. International trade can help to address the distribution problem within the food system and facilitate access of people to other essential goods and services. The WTO should work together with other relevant international organizations to design and implement measures which would alleviate or eliminate trade restrictions on the supply of essential goods and services, especially to low-income countries.

### 3.5 Support developing countries' transition to a low-carbon economy

The WTO could consider renegotiating and re-activating the Trade Related Investment Measures agreement (TRIMS) to create a new Green TRIMS+ multilateral policy framework. This second generation of TRIMS should allow developing countries time to protect their infant industries aimed at facilitating a low-carbon economy, which would make it easier for them to commit to more ambitious CO<sub>2</sub> reduction targets until they are ready to drop these measures<sup>30</sup>.

In addition, the WTO should facilitate the phasing-out of fossil fuels subsidies and scale up support for green and clean fuels.

### 3.6 Strengthen cooperation between the WTO and institutions focusing on sustainability and climate change

Cooperation between the WTO and institutions focusing on sustainability and climate change (e.g., IPCC, IPBES, UNFCCC, UNEP, and others) should be strengthened. Experts from these organizations should be involved in the design of trade and other agreements coordinated by the WTO. The WTO should continue to expand cooperation with international organizations, such as the IMF, to support the development of the least-

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<sup>29</sup> <https://www.actionagainsthunger.org/the-hunger-crisis/world-hunger-facts/>

<sup>30</sup> Saner, R. (2011). International governance options to strengthen WTO and UNFCCC. Centre for Socio-Eco-Nomic Development. [https://www.researchgate.net/profile/Raymond-Saner-3/publication/271527207\\_International\\_governance\\_options\\_to\\_strengthen\\_WTO\\_and\\_UNFCCC/links/54c6ba3640cf24601c08826b4/International-governance-options-to-strengthen-WTO-and-UNFCCC.pdf](https://www.researchgate.net/profile/Raymond-Saner-3/publication/271527207_International_governance_options_to_strengthen_WTO_and_UNFCCC/links/54c6ba3640cf24601c08826b4/International-governance-options-to-strengthen-WTO-and-UNFCCC.pdf).

developed economies and ensure that trade liberalization is used as a tool to promote sustainable development and address challenges such as food security and health security in those countries.

### 3.7 Develop mechanisms to facilitate provision of vaccines and medical supplies

The WTO should strengthen its role in facilitating global cooperation, together with the World Health Organization (WHO), by developing mechanisms to fast-track the provision of vaccines and medical supplies in case of a global pandemic and ensure the liberalization of access to vaccines and medical supplies for least-developed economies. The WTO should support temporary waivers of intellectual property rights for essential medicines and vaccines during global health crises, to ensure access and affordability, particularly for low-income countries. Additionally, the WTO should facilitate voluntary sharing of technology and know-how through production agreements and simplify the use of compulsory licenses to encourage pharmaceutical companies to enter into voluntary licensing agreements.

## 4. Restore a fully functioning dispute settlement system

A well-functioning dispute settlement system should allow WTO member states to resolve trade disputes in a timely and efficient manner, providing a stable and predictable environment for international trade. At the time, the establishment of the WTO dispute settlement system represented a major advance in shifting the international trade system away from power dynamics and towards a more equitable and impartial resolution of disputes. It was designed with the overarching principle that a level playing field should be provided for all member countries, regardless of their size or economic power<sup>31</sup>.

It is imperative to have a robust and fair dispute settlement system ensuring that the WTO rules are upheld consistently. The WTO Ministerial Conference in 2022 acknowledged a number of challenges and concerns with respect to the existing dispute settlement system, recognizing the importance and urgency of addressing them, and being committed to “conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024”<sup>32</sup>. The following could be recommended.

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<sup>31</sup> The analysis of the historical cases confirms that a significant GDP disadvantage, in principle, did not prevent a state from winning a dispute: Mitchell, K. M. (2013). Developing country success in WTO disputes. *Journal of World Trade*, 47(1) <https://doi.org/10.54648/trad2013003>.

<sup>32</sup> <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/24.pdf&Open=True>.

#### 4.1 Ensure that dispute settlement is depoliticized

Depoliticizing the dispute settlement process is a key challenge alongside improving efficiency and transparency. Periodic and independent review of decisions could be established to advance these objectives.

#### 4.2 Revise the process of selecting panelists

The WTO could revise the process of selecting panelists for dispute settlement. Recruiting permanent panelists with a fixed term could be one possibility, instead of having the WTO Secretariat choose them.

#### 4.3 Review the framework for dealing with national security arguments

Trade restrictions justified on the national security grounds have witnessed proliferation in recent years, and such measures are increasingly being challenged and subjected to litigation in the WTO dispute settlement system. With each WTO member having the authority to determine what it considers essential for its security interests, the current system is at risk of losing relevance.

The matter of national security arguments within the WTO is highly controversial and sensitive. A careful reviewing of the framework for dealing with national security claims is necessary<sup>33</sup>. One approach might be to adopt a system of scrutiny without justiciability when it comes to national security arguments. Under such a system, the focus would be on conducting thorough and rigorous assessments of the asserted national security interests and the trade measures imposed. This would involve expert analysis, dialogue, and exchange of information between the parties involved, as well as engagement with independent experts or specialized bodies to provide guidance and expertise.

#### 4.4 Restore binding dispute settlement

At the time, the two-tier formal dispute settlement process appeared as a logical instrument to improve consistency and equity in the interpretation and application of WTO rules and resolving trade disputes. However, the Appellate Body's cessation of functioning at the end of 2019 has deprived WTO members of a binding dispute settlement mechanism (unless they have made alternative arrangements for appeals), significantly undermining the stability of the multilateral trade system. Urgent progress is needed to restore a binding dispute settlement system to efficiently address individual disputes.

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<sup>33</sup> Bacchus, J. (2022). The Black Hole of National Security: Striking the Right Balance for the National Security Exception in International Trade. Policy Analysis no. 936, Cato Institute, Washington, DC.

A sustainable solution requires a careful design of a system with enhanced checks and balances within the WTO. This design process must genuinely involve the WTO member states to ensure their active participation and ownership. Several proposals have already been put forward, suggesting potential elements of such a system<sup>34</sup>. Notably, there is potential for enhancing the use of informal consultations and mediation as part of the dispute resolution process. Furthermore, to establish a well-functioning dispute resolution system, there will be a need for a significant expansion of the WTO's capacity.

#### 4.5 Revise the Investment-State Dispute Settlement system

Investor-state dispute settlement (ISDS) mechanisms need a complete revision as their current version hinders development as well as transition needs. The challenge is to find a balance between the protection of investments and the protection of the public interest<sup>35</sup>. A differentiated approach between developing and developed countries could be recommended as it was implemented, for example, in the US-Mexico-Canada trade agreement (USMCA)<sup>36</sup>.

### 5. Advance Digital Economic Agreements

In recent years, Digital Economic Agreements (DEAs) have become an increasingly important development in global trade policy. These agreements aim to liberalize trade, establish trade rules, and facilitate greater interoperability in the digital sphere across economies. However, the lack of standardization and interoperability among different DEAs can create barriers to trade and impede the growth of the digital economy. Currently such agreements are complementary to the WTO. The following can be recommended to advance digital trade via DEAs.

#### 5.1 Ensure interoperability across DEAs

The WTO could play a greater role in promoting DEAs and ensuring their interoperability, as well as their conformity with the norms of the organization in the sphere of e-commerce. This would help to promote greater standardization of DEAs, which in turn would facilitate trade in digital goods and services and the growth of the digital economy.

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<sup>34</sup> Wolff, A. Wm. (2022). WTO 2025: Restoring binding dispute settlement. PIIE Working Papers 22-5. <https://www.piie.com/sites/default/files/documents/wp22-5.pdf>

<sup>35</sup> Lester, S. (2016). The ISDS controversy: How we got here and where next. CATO Institute, July, 1. <https://www.cato.org/commentary/isds-controversy-how-we-got-here-where-next>.

<sup>36</sup> Lai, J. L. (2021). A tale of two treaties: A study of NAFTA and the USMCA's investor-state dispute settlement mechanisms. *Emory Int'l L. Rev.*, 35, 259. <https://heinonline.org/HOL/P?h=hein.journals/emint35&i=267>.

## 5.2 Facilitate expansion of DEAs

The WTO could provide greater impetus for multilateral participation in DEAs, thereby ensuring that the benefits of the digital economy are shared more widely, and that all countries can participate in the global digital marketplace. Strengthening the WTO's role in advancing digital economic agreements would therefore be an important step towards promoting a more open and inclusive global digital economy.

## Annex

Participants of the consultation that informed this brief:

**James Bacchus** is the Distinguished University Professor of Global Affairs and Director of the Center for Global Economic and Environmental Opportunity at the University of Central Florida. He was a founding judge and was twice the Chairman – the chief judge – of the highest court of world trade, the Appellate Body of the World Trade Organization in Geneva, Switzerland. He is a former Member of the Congress of the United States, from Florida, and also a former international trade negotiator for the United States. He is a Global Fellow of the Centre for International Governance Innovation in Canada and an Adjunct Scholar of the Cato Institute in Washington, D.C.

**Péter P. Balás**, Ambassador (Rtd) has been dealing with trade policy and international economic relations during his entire professional carrier starting in 1972. Ambassador Balás was working until 2005 in the Hungarian public administration in various posts and areas, finally becoming Deputy State Secretary. He had several postings abroad, the last one as Hungary’s Ambassador to the WTO.

In 2005 Ambassador Balás joined DG Trade of the European Commission as Deputy Director General in charge of such issues, as relations with the non-EU European countries, including Eastern Europe, trade defence, trade in goods and services, etc. In 2014 he have become the first Head of the EC’s Support Group for Ukraine, retiring in 2016. Since that time he have been working with various firms and organisations, including as senior advisor at the Brussels office of Covington&Burling.

**Dan Esty** is the Hillhouse Professor at Yale University with appointments in both the Law and Environment Schools and secondary appointments in the schools of Management and Global Affairs. He is the author or editor of a hundred+ academic articles and 14 books including Greening the GATT and the recent prizewinning volume: A Better Planet: 40 Big Ideas for a Sustainable Future. He is currently on public service leave from Yale and working at the World Trade Organization in Geneva.

**Yaroslav Lissovlik** is a member of the Russian International Affairs Council (RIAC) and the Bretton Woods Committee. Senior member of the Advisory Council at the Center for Russia-China Strategic Cooperation of the CITIC Foundation on reform and development. He has published several books and numerous papers on Russia’s entry to the WTO and Russia’s integration into the world economy.

**Petros C. Mavroidis** is the Edwin B Parker Professor of Law at Columbia Law School. His latest publications are the WTO Dispute Settlement System (Elgar, 2022), and China and the WTO (with Andre Sapir, Princeton U Press, 2021).

**Lisa Sachs** is the Director of the Columbia Center on Sustainable Investment. Since joining CCSI in 2008, she established and oversees CCSI's robust and interdisciplinary research portfolio and advisory work on the alignment of investment law, investment practice, and investment policy with the sustainable development goals. She is a globally recognized expert in the ways that laws, policies and business practices shape global investment flows and affect sustainable development.