



**European Round Table
for Industry**

ERT Position Paper on WTO Reform



Key Messages

1. The ERT encourages all governments to cooperate on an urgent basis in order to achieve a joint understanding for a comprehensive and feasible agenda aimed at reforming the World Trade Organization (WTO)
2. The rules-based multilateral trade system has laid the foundation for the international economic growth and development that has lifted millions of people out of poverty over the last decades. The WTO has been the backbone of this system and a guarantor for stability in trade relations. It should remain the core instrument for global trade rulemaking and dispute settlement.
3. The WTO has been and still is crucial for business and brings benefits such as:
 - Addressing regulatory and trade barriers and rising protectionism around the world.
 - Creating trade rules globally such as GATT, GATS, TRIPS, GPA¹ and fostering e-commerce negotiations.
 - Addressing concerns in third countries through cases launched by WTO members in the dispute settlement mechanism.
4. The ERT therefore makes the following recommendations:
 - Save the WTO dispute settlement system on an urgent basis.
 - Revise and modernise the current WTO rules (subsidies, distortive practices, market access, digital trade, differential treatment of developing countries).
 - Improve the WTO monitoring function and achieve transparency in particular in the areas of subsidies and technical barriers.
 - Increase the flexibility of the WTO rule making function by facilitating plurilateral negotiations.
 - Set up a stakeholder advisory body at the WTO.

¹ GATT: General Agreement on Tariffs and Trade; GATS: General Agreement on Trade in Services; TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights; GPA: Agreement on Government Procurement

ERT Recommendations

1. Save the WTO dispute settlement system on an urgent basis

- The ERT urges WTO members to find solutions to the current deadlock concerning nominations of new members to the Appellate Body of the WTO's dispute settlement system.
- The ERT calls on WTO members to review the procedures for the WTO dispute settlement system, above all concerning the Appellate Body, so that it will be able to handle an increased number of trade disputes that have become more complex. The ERT welcomes the proposals presented by the EU and other WTO members².
- Given the paralysis of the Appellate Body since December 2019, ERT supports the EU's proposal for an alternative dispute resolution mechanism as an interim solution under Article 25 of the Dispute Settlement Understanding of the WTO and encourages the EU to continue to move forward with other willing WTO members, in particular the frequent users of the system. The interim appeal arbitration arrangement between the EU and Canada is a welcome model for further bilateral and plurilateral interim solutions.

2. Revise and modernise the current WTO rules

- The ERT recommends that WTO rules must keep up with today's constantly evolving environment. Therefore, WTO members must revise and modernise the current WTO rules in order to continue to ensure free and fair competition for all businesses across all regions.

Case study: Subsidies to the aluminium industry in China

In January 2019, the OECD published a report³ on distortions in the international aluminium value chain. The report analysed state support provided to 17 of the largest aluminium companies in the world present along the value chain. The findings show that total government support reached up to USD 70 billion over the 2013-17 period but it was highly concentrated: 85% of the support went to just 5 companies – all of them Chinese. Chinese firms received mostly financial subsidies but also energy and input.

A vast amount of the financial support was provided by China's state-owned banks to Chinese aluminium state-owned enterprises (SOEs). However, two large private firms also benefitted. The report clearly states that upstream subsidies confer a support to the downstream and they explain growth of aluminium capacity in China.

The report states: "Two implications for the design of trade rules emerge from the analysis: (i) government support needs to be understood in the context of value chains, as upstream support has the effect of supporting downstream production; (ii) subsidy rules need to better account for the influence of the state, both as regards the dual role of SOEs as recipients and providers of support, and what this means for the transparency of support policies, including at the WTO." (p 7)

² http://europa.eu/rapid/press-release_IP-18-6529_en.htm

³ https://www.oecd-ilibrary.org/trade/measuring-distortions-in-international-markets-the-aluminium-value-chain_c82911ab-en

- The WTO must urgently hold discussions aimed at achieving the following:
 1. Adoption of rules that will tackle trade distortive industrial and agricultural subsidies more effectively in the future. The ERT commends the efforts of the EU and China “to co-operate on reform to help the WTO meet new challenges and to further develop rules in key areas relevant for the global level playing field, such as industrial subsidies”⁴.
 2. Adoption of rules to more vigorously challenge and address market distorting practices by and from state owned companies including but not limited to forced technology transfers. In this regard, the ERT welcomes the trilateral talks between the EU, US and Japan “to address non-market oriented policies and practices of third countries that lead to severe overcapacity, create unfair competitive conditions for their workers and businesses, hinder the development and use of innovative technologies, and undermine the proper functioning of international trade, including where existing rules are not effective”^{5 6}.
 3. Increased market access for goods and services. The ERT calls on WTO members to explore ways of restarting negotiations on market access as discussed under the mandate of the Doha Development Agenda as well as in the negotiations on the Trade in Services Agreement. This could include the possibility of sectoral negotiations on issues such as pharmaceuticals, chemicals and environmental goods. Moreover, all WTO members are encouraged to sign the plurilateral Information Technology Agreement (ITA).

Market access example: Updating of WTO Pharmaceuticals Agreement

The updating of the WTO Pharmaceutical Tariff Elimination Agreement is a high priority for WTO-related market access policy. Established as part of the Uruguay Round package in 1995, the agreement introduces a zero-tariff treatment to medicines, active pharmaceutical ingredients (APIs), intermediates and some starting materials imported into signatory countries – the EU and its 28 Member States, the US, Canada, Australia, Japan, Macao (China), Norway, and Switzerland – on a most-favoured-nation (MFN) basis from all countries worldwide.

Unlike new medicines (including biologicals and monoclonal antibodies (mAbs)), which are automatically covered by the agreement, APIs, intermediates and some starting materials are only covered by the Agreement for zero duty where they are listed in the Pharmaceutical Annex. This list currently covers over 7,000 products and applies to the named product and any esters, salts and hydrates of that product.

Despite provisions stipulating the Annex be updated every 3 years, the last revision (the 4th Revision) dates from January 2010. This makes the Annex substantially out of date in light of the important pharmaceutical innovations and developments of the past decade, with over 600 key new products waiting to be added. Proposals for an update are being held up and hence there needs to be new momentum behind these technical negotiations.

Updating this technical Agreement would carry material improvements to the functioning of market access for pharmaceuticals, with real benefits to global populations at large. It would allow new, innovative pharmaceutical products manufactured on the basis of globalised supply chains and distribution networks to be traded among major markets without tariffs, irrespective of the existence of

⁴ http://europa.eu/rapid/press-release_IP-18-4281_en.pdf

⁵ https://eeas.europa.eu/delegations/united-states-america/56329/joint-statement-trilateral-meeting-trade-ministers-european-union-japan-and-united-states_en

⁶ The ERT has launched a joint statement in April 2019 with the US Business Roundtable and the Japan Business Federation Keidanren in support of the trilateral initiative <https://ert.eu/documents/business-leaders-from-u-s-europe-and-japan-express-support-for-revitalized-multilateral-trade-system>

specific preferential trade agreements. This is particularly important for new APIs with high production costs and prices, which are especially exposed to large potential duty impacts if the prevailing duty rate (typically 6.5% of the import value) is applied.

While products not listed in the WTO Pharmaceutical Agreement's Annex can in principle be imported under customs control and inward/outward processing relief procedures, the cost-mitigation impact of these are generally offset by statutory requirements to set up financial guarantees, authorisations/systems and resource to meet reporting, audit trail, control and risk management requirements.

Use of such reliefs can be a complete red line for SMEs – and often larger companies – which may not have the necessary know how or resource (financial, system and human) to operate them in light of significant duty and penalty risks in cases of non-compliance. Whether or not 'absorbed' by manufacturers, these costs are inevitably, at least in part, passed on to customers, resulting in higher costs to patients and health authorities.

4. Adoption of new rules facilitating digital trade and data flows in order to prevent unjustified data localisation measures and ensure that services that are equivalent are subject to the same rules, no matter the underlying technology, the location (local or remote) or the type of company that provides services. The plurilateral negotiations on e-commerce provide a critical opportunity to address "digital protectionism".
5. Adoption of clearer rules so that the "Special and Differential Treatment" under the WTO should be reserved to those WTO members that are in need, according to their real economic weight and level of competitiveness.

Plurilateral negotiations on e-commerce

The new rules should acknowledge the critical role of data in the modern economy. Strong trade rules that allow for the free flow of data across borders are needed to stimulate investment and innovation. Forced localisation of storage and data processing must be prevented (unless justified to protect personal data and being legitimate, necessary and proportional), as it increases the cost of doing business and prevents companies from benefitting from economies of scale that global data centres can provide.

In general, data protection rules cannot be the subject of WTO rules and need to follow separate tracks. In order to ensure that the level of protection for data subjects is in line with highest international standards, mechanisms of international transfers of personal data should be implemented in line with the existing EU regime (the General Data Protection Regulation (GDPR)). The EU's diplomacy on GDPR has influenced other jurisdictions around the world, contributing to an alignment of privacy protection levels that can be spread even more through incorporating it in WTO commitments. The EU should continue to assume its role as a global leader by promoting its personal and non-personal data transfers standards.

Cyber security and confidentiality of business data should be seen as trade enablers. A global commitment to industry-driven baseline cyber security requirements should be envisaged at multilateral level. Government mandates on the design of technology for civilian use, including the creation of backdoors, may weaken data security and privacy. In addition, forced transfer of technology, source code, algorithms and encryption keys create uncertainty regarding the protection of intellectual property and customer data, significantly impacting exports and should be prohibited.

Finally, data itself has and generates economic value and is a new factor of production, that should be taken into account when analysing dominance and market powers.

3. Modify and improve the WTO monitoring function

- The ERT recommends that the WTO's monitoring function be modified and improved in order to achieve full transparency in the mandatory reporting by WTO members of all necessary policies and in particular in the areas of subsidies and technical barriers.
- In this regard, the ERT commends the proposal on notification and transparency rules within the WTO which was co-sponsored by the EU, US, Japan and others⁷. The initiative is an important contribution to improve transparency in particular in the area of subsidies. The ERT encourages other WTO members to engage.

4. Increase the flexibility of the WTO rule making function by facilitating plurilateral negotiations

- The ERT fully supports the rule that in principle multilateral solutions based on consensus should always be the targeted approach. The ERT urges WTO members to show the necessary political will, flexibility and responsibility for the global trade order to allow the WTO to keep delivering tangible results under its negotiating function.
- However, in case a multilateral consensus cannot be achieved, the ERT believes that the WTO must open up avenues for coalitions of the willing, front runners and critical masses to lead the way through plurilateral negotiations so that negotiations can be successfully achieved in areas such as e-commerce and digital trade.

5. Set up a stakeholder advisory body at the WTO

- The ERT calls for a more structured cooperation between the WTO and non-governmental stakeholders from developed and developing countries. Stakeholders that have trade as their core activity and a vital need for a strong and transparent multilateral trading system can provide valuable input to the rulemaking of the WTO.
- A bidirectional dialogue, between the WTO secretariat, WTO members as well as a stakeholder advisory body could provide insights of the tangible impact of the WTO's rules, updates about market trends or challenges that need to be addressed by the WTO and help stakeholders understand the WTO's policies and their implications.
- The ERT urges WTO members to review other existing Advisory Bodies such as Business at OECD (BIAC) as useful best practice examples.

⁷ https://www.wto.org/english/news_e/news18_e/good_12nov18_e.htm



The European Round Table for Industry (ERT) is a forum that brings together around 55 Chief Executives and Chairs of major multinational companies of European parentage, covering a wide range of industrial and technological sectors. ERT strives for a strong, open and competitive Europe as a driver for inclusive growth and sustainable prosperity. Companies of ERT Members are situated throughout Europe, with combined revenues exceeding €2 trillion, providing around 5 million direct jobs worldwide - of which half are in Europe - and sustaining millions of indirect jobs. They invest more than €60 billion annually in R&D, largely in Europe.

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