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German Chamber of Commerce and Industry

DIHK Idea Paper – Future Proof Rules for World Trade Guidelines for the 13th WTO Ministerial Conference

The 13th WTO Ministerial Conference is an important milestone for the highly internationalized German economy. After all, the world trade system has been eroding for years. Geopolitical developments in particular are leading to an increasing decoupling of the global economy, which is shaking the foundations of the multilateral rules-based trading system. In addition, WTO rules have not kept pace with the major economic changes since 1995. German businesses support the EU's approach to modernizing the World Trade Organization and calls on WTO members to advance the reform process constructively and swiftly – after all, more than half of non-European exports by German companies are based solely on WTO rules, and the bilateral European trade agreements are also based on them. Without these rules, German companies would no longer be able to rely on the strength of the law in foreign trade. For the export-oriented German economy, a global level playing field, market access, and legal certainty in foreign business are of paramount importance. Counteracting the fragmentation of the global trade system and developing modern multilateral or, if necessary, plurilateral trade rules is therefore in the interests of the German economy. Particularly in the area of sustainability, the EU should promote global rather than unilateral solutions through corresponding WTO initiatives.

The DIHK has been contributing to WTO policy making for many years.¹ From a business perspective, the following points in particular are highly relevant for a successful 13th WTO Ministerial Conference (MC13). To this end, MC13 should achieve results with binding and timely implementation deadlines:

- **WTO Reform**
- **Level Playing Field**
- **Sustainability**
- **Digital Trade**
- **Market Access**
- **Trade Facilitation**
- **MSME Agenda**

In detail

WTO Reform

The ongoing US blockade of new appointments to the WTO Appellate Body has been eroding the WTO dispute settlement since the end of 2019. The dispute settlement mechanism ensures the enforcement of global trade rules and is therefore indispensable for the economy. Without it, the WTO rules risk coming to nothing and might make right trumps the rule of law – to the detriment of the affected parts of the economy. The EU-led Multi-Party Interim Appeal Arbitration Arrangement (MPIA) secures dispute settlement at a plurilateral level and should be expanded, particularly to include other countries that are important for the German export industry, such as the USA, the United Kingdom, and Turkey, as well as countries in the Indo-Pacific growth region. Nevertheless, the EU's priority should be to replace the MPIA as quickly as possible with a functional appellate body at WTO level. Legitimate demands for improvements to dispute settlement should be part of the WTO reform process. This includes the rules for outgoing members of the Appellate Body to prevent renewed blockades, clarifications on the 90-day deadline for concluding proceedings and responsibilities for national legislation.

The inflationary use of "national security" as a justification for protectionist measures must be limited by a restrictive WTO definition of the term. The WTO-accessions of the EU's neighbouring countries Serbia, Bosnia-Herzegovina and Kosovo as well as Mediterranean countries and other candidates, particularly in Asia and Africa, is also worth supporting from a business

¹ DIHK Impulse 2021 <https://www.dihk.de/resource/blob/62024/57bdc9a7fbcf4fb6210cfafe02aa37ab/dihk-impuls-papier-zur-wto-ministerkonferenz-data.pdf>

DIHK Checklist 2019 <https://www.dihk.de/resource/blob/13098/4152cd8e22c6329e79145e9a3206b7f2/dihk-papier-wto-ministerkonferenz-data.pdf>

perspective so that WTO rules can safeguard a larger share of global trade. For companies, state notification obligations within the framework of the WTO monitoring mechanism TPRM are important for planning security in trade. To this end, compliance with state notification obligations should be made more transparent, monitored more effectively and better sanctioned, especially in the case of deliberate and repeated non-compliance. The new WTO advisory bodies with representatives from business and civil society should be more strongly institutionalized in order to better incorporate proposals into ongoing negotiations. In addition, WTO processes should be made more transparent, for example by opening meetings to the public. This could also contribute to greater acceptance and a better understanding of the WTO and its economic importance for Germany. The WTO Secretariat should be given the technical and financial resources to provide greater support for the further development of the WTO rules and regulations. Finally, the deliberative function of the WTO should be strengthened so that it remains the central forum for discussing and negotiating global trade issues.

Level Playing Field

In view of the new global subsidy race (particularly sped up by the US Inflation Reduction Act and the global reactions to it) and a stronger role of the state in the economy of many countries (keywords: industrial policy and resilience), closing loopholes in the WTO rules for industrial subsidies has become all the more urgent. A swift global agreement to reduce subsidies for fossil fuels would also be advisable. Based on the work of the Trilateral Initiative (EU, USA, Japan), the WTO Agreement on Subsidies and Countervailing Measures should be modernized and stronger rules against distortions of competition be developed. This means a broader definition of subsidies, more transparency requirements for subsidies, and stricter reporting obligations for state-owned enterprises as well as the inclusion of further types of subsidies and bans on state-enforced technology transfer. It would also be important to extend the agreement on trade in civil aircraft to key production countries such as China and India as well as to the New Space sector. Finally, a needs-oriented and evidence-based approach for the special and differentiated treatment of developing countries in the WTO is overdue. In particular, G20 or OECD countries should no longer benefit from the WTO advantages in this regard. At the same time, the "GVCs for LDCs" initiative should promote the integration of companies from developing countries into global value chains. In order to deter and ward off the increasing economic coercion of third countries worldwide, the EU should promote a plurilateral WTO declaration on the renunciation of "economic coercion". The declaration should also include a ban on the targeted withholding of products that are of fundamental importance to other countries and cannot be substituted, such as health products, food, energy sources, and raw materials.

Sustainability

Unilateral measures are less effective and harbor the risk of economically damaging trade conflicts and more protectionism. Instead, the EU should increasingly promote regulations in prioritized aspects of sustainable corporate governance (such as climate and environmental protection or human rights) at an international level, so that these can be applied globally, and to avoid new trade disputes and competitive disadvantages. For these approaches to be successful, the EU should support developing countries with technical assistance in order to build appropriate capacities in the local administration and economy. Global solutions and coordinated actions by all relevant CO₂-emitting countries are needed, particularly with regard to the important issue of effectively mitigating climate change and dealing with its consequences. Following the introduction of the EU Carbon Border Adjustment Mechanism (CBAM), a coordinated multilateral approach to the climate and trade nexus should be initiated quickly within the framework of the WTO, including discussions on circular economies and the implementation of the Paris Climate Agreement. In addition to this, the international climate club, a global agreement on minimum standards for compliance with climate targets should be implemented with relevant trading partners in a binding form. Trade conflicts and competitive disadvantages could be avoided this way.² This applies to important energy sources such as carbon-neutral hydrogen in particular, which is also subject to CBAM. German companies will be dependent on hydrogen imports to achieve their climate targets as long as domestic capacities are not available in sufficient quantities and at competitive prices. From a business perspective, it is also advisable to revive negotiations for a WTO agreement on environmental goods and services in order to open up new opportunities on international markets for German companies that are active in this area.³ However, German industry rejects the abolition of intellectual property rights for health, environmental and climate technologies – as demanded by India, for example. This would reduce private research activities and lead to a loss of international competitiveness and thus to a decline in investment and innovative capacity for these core technologies. In addition, a WTO-wide ban on subsidies for the extraction and use of fossil fuels should be examined. In order to avoid further fragmentation of trade regulations, including competitive disadvantages due to different national regulations for corporate due diligence in the supply chain, WTO-wide regulations in the areas of due diligence, deforestation, and forced labor should also be examined – plurilaterally, if necessary, with important trading partners. An agreement on globally standardized reporting formats, interfaces, and measurement methods, for example on the CO₂ intensity of products, would already offer a great deal of bureaucratic relief and a level playing field for companies. The EU should also support Canada and Costa Rica's proposal for a WTO sustainability tool in order to create transparency on global sustainability projects, both

² DIHK Impulse 2022 <https://www.dihk.de/de/aktuelles-und-presse/aktuelle-informationen/g7-praesidentschaft-nutzen-um-einen-klimaclub-voranzubringen-75444>

³ DIHK-hearing in the German Bundestag 2022 <https://www.bundestag.de/dokumente/textarchiv/2022/kw41-pa-klima-energie-partnerschaften-913812>

between states and for companies and to be able to access these digitally free of charge in all WTO languages. Finally, the WTO Committee on Trade and Environment should be used to a much greater extent to exchange views on sustainability issues and related regulatory measures at a global level in order to prevent new trade barriers.

Digital Trade

Future-proof trade rules must take account of the increasing digitalization of global trade. The WTO negotiations on an e-commerce agreement can contribute to this. It is particularly important for the German economy that the WTO ban on customs duties on electronic transmissions does not expire in 2024 and moreover is made permanent. The cross-border flow of data must be guaranteed; companies' data and intellectual property must be protected, and standards and norms must be harmonized for digital trade wherever possible. Modern trade rules are needed for the sharing of services ("Mode 5") that flow into the production of physical goods. The promotion of open standards and interoperability should enable international compatibility. European legal standards, such as data protection, must be safeguarded. Both analog and digitally, discrimination must be counteracted by effective notification mechanisms and comprehensive state transparency obligations. Government decisions in particular, which are made with the help of algorithms and artificial intelligence, must always be made comprehensible and contestable for companies. The EU Commission should devote more attention to the international identification and removal of these digital barriers, but also to the enforcement of fundamental global trade rules in virtual platforms and metaverses with global market power. The rapid conclusion of agreements on domestic regulation in the services sector, investment facilitation, the globally recognized digitalization of trade documents, and customs procedures as well as the expansion of the Information Technology Agreement both in terms of products and countries covered is also relevant for the economy.

Market Access

Negotiations on global tariff reduction (NAMA), especially for tariff peaks, remain important from the perspective of the German industry. In contrast to only temporary and reversible unilateral tariff reductions, the WTO's legal commitment to reduced tariffs also offers important legal certainty for companies. SMEs in particular can therefore be relieved of the customs bureaucracy that the use of preferential agreements generates. The WTO General Procurement Agreement secures German companies' important market access for public contracts in third countries. Other countries, specifically the G20 countries China, Brazil, India, and Turkey, should join the agreement, and the scope of application for the USA should be expanded to include the thirteen states of Alabama, Alaska, Georgia, Indiana, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, South Carolina, Virginia, and West Virginia, which have been left out. A WTO agreement to remove barriers to trade in

healthcare goods and services should also be agreed on in order to deal with future global health crises.⁴ The commitment of companies generally also depends on efficient investment protection and intellectual property rights in order to strengthen research and development. This must be taken into account in the ongoing negotiations to repeal Covid-19-relevant intellectual property rights. The intellectual property rights of therapeutics and diagnostics should be safeguarded. The dismantling and prevention of new non-tariff trade barriers such as the non-recognition of international standards and norms or disproportionate hurdles to product approvals at a global level is also of great importance to German companies.

Trade Facilitation

In the Agreement on Rules of Origin, WTO members have agreed to negotiate harmonized non-preferential rules of origin. These negotiations are still ongoing and around 40 WTO members currently apply national rules of origin for non-preferential purposes. A resumption of WTO negotiations on non-preferential rules of origin would benefit SMEs in particular. Increasingly complex and diverging global rules of origin represent a major burden for companies, especially against the backdrop of increasingly complex and burdensome information and reporting obligations at all levels. The European Union should therefore also advocate globally simple, harmonized rules of origin that lead to a noticeable burden reduction on SMEs. Further multilateral harmonization in the area of preferential rules of origin would also facilitate trade, especially for SMEs. The simplification of preferential rules of origin adopted at the 10th WTO Ministerial Conference, which affect the least developed countries, could serve as an example. All WTO members should also ratify and comply with the provisions of the revised Annex K of the World Customs Organization's Revised Kyoto Convention on definitions, principles, standards, and recommended practices relating to preferential and non-preferential origin. The DIHK explicitly supports the revision of Annex K currently planned by the World Customs Organization. However, in the area of non-preferential origin, the rule of origin of the last substantial working or processing, and the determination of origin in accordance with the rules of the exporting country, which has been tried and tested for decades, should be retained in principle. The WTO Agreement on Trade Facilitation (TFA) provides a clear and reliable framework for interaction between companies and authorities, especially customs authorities. Clear, timely, and reliable information on regulations and processes can greatly reduce the costs of foreign trade and make it possible for many SMEs to trade internationally in the first place. It is therefore all the more important to ensure that the requirements of the TFA are complied with by customs authorities in all countries and that a WTO reporting mechanism for violations of these requirements is examined.

⁴ DIHK Idea Paper 2020 <https://www.dihk.de/resource/blob/23282/dc2c6261675dbf3ee3c47f61996ffaa7/dihk-ideenpapier-ausweitung-wto-pharma-abkommen-data.pdf>

MSME Agenda

Small and medium-sized German enterprises play a significant role in the German export economy and are often among the global market leaders in their specific sectors. The WTO therefore needs an MSME agenda more than ever to facilitate the integration of small and medium-sized enterprises into global value chains. The motto must be: "Think Small First". In various idea papers since 2017, the DIHK has made detailed proposals on the individual aspects of a WTO SME initiative, such as a WTO SME work program, a WTO SME Committee, a WTO SME Representative, a Global Trade Helpdesk, a global De Minimis and government transparency obligations towards SMEs.⁵ As many WTO members as possible should join the WTO MSME Working Group and expand the existing agreements so that the review of the bureaucratic burden of new regulations on MSMEs becomes the standard worldwide.

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Who we are:

Under the umbrella of the German Chamber of Industry and Commerce (DIHK), the 79 chambers of industry and commerce (IHKs) have joined forces. Our common goal is to optimize the conditions for successful business operations.

At the federal and European levels, the DIHK advocates for the interests of the entire commercial economy in relation to politics, administration, and the public.

Several million businesses in trade, industry, and services are statutory members of the IHKs, ranging from kiosk owners to DAX-listed corporations. As a result, the DIHK and the IHKs serve as a platform for the diverse concerns of businesses. We consolidate these concerns through a regulated process based on legal foundations to form common positions of the business community, thereby contributing to the economic policy opinion-forming process.

Furthermore, the DIHK coordinates the network of foreign chambers of commerce with more than 150 locations in 93 countries.

⁵ DIHK Idea Paper 2018 <https://www.dihk.de/resource/blob/4182/35bebc693aa9555a3661152837b29aff/wto-mittelstandsinitiative-umsetzen--data.pdf>

DIHK Idea Paper 2017 https://www.wto.org/english/thewto_e/minist_e/mc11_e/dihk_kmu_initiative_ideenpapier.pdf