

12th WTO Ministerial Conference

A Checklist of German Business

The 12th Ministerial Conference of the World Trade Organization (WTO) is due to take place in Geneva at the end of 2021. After years of deadlock and the disappointing previous conference in 2017, expectations in the business community regarding solutions for current trade policy challenges are subdued. In order to strengthen the practical relevance of the multilateral system, it is essential to quickly implement tangible improvements for businesses again. In particular, the WTO's dispute settlement and negotiation function, which provides legal and planning certainty for internationally active companies, must be reactivated. After all, WTO rules have not kept pace with the major economic changes since 1995. The German business community supports the [EU's approach to modernizing the World Trade Organization](#) and calls on WTO members to move forward constructively and swiftly with this reform process – after all, two-thirds of German companies' exports outside the EU rely solely on WTO rules. The window of opportunity for important reforms may only last until the follow-up conference in 2024. In view of global economic decoupling trends, increasing protectionism and a less coordinated trade policy, particularly among the major economic powers, there would otherwise be the risk of an erosion of the multilateral trade system – and this would be very much to the detriment of Germany's broad-based internationally active economy.

The following issues are highly relevant from a business perspective for a successful WTO Ministerial Conference:

- Reactivating the WTO dispute settlement
- WTO health agreement
- Fair competition rules for the 21st century
- WTO MSME Agenda (Think Small First)
- Digital Trade Rules
- Sustainability Rules
- WTO commitment against economic coercion
- Global tariff reduction
- Extension of the WTO procurement agreement

- Accession of new WTO members
- Harmonization of rules of origin
- More transparent WTO
- Consistent implementation of the Trade Facilitation Agreement.

In detail

Reactivating the WTO dispute settlement

Due to the continued blocking of new appointments to the WTO Appellate Body, the entire WTO dispute settlement mechanism has been eroding since the end of 2019. The dispute settlement mechanism ensures the enforcement of world trade law and is therefore indispensable for business. While the EU initiative for a replacement mechanism (MPIA) secures dispute settlement on a plurilateral level, it should be replaced by a functioning Appellate Body again as soon as possible – after all, the EU is the second largest user of the system. Legitimate demands for improvements to the dispute settlement system, such as rules for outgoing Appellate Body members, clarifications on the 90-day deadline for completion of procedures and on responsibilities for national legislation, should be part of the WTO reform process.

WTO Health Agreement

Tariffs, taxes, and non-tariff trade barriers are hampering much-needed global trade to combat the Corona pandemic. A [WTO health agreement](#) that removes trade barriers for Corona-related products such as vaccines, medicines, health goods, services and medical technology can help address this and future crises. Building on the WTO Pharma Agreement, countries should therefore agree to reduce relevant tariffs and export restrictions. In addition, the agreement should include state transparency obligations on relevant regulations and the exchange of best regulatory practices in order to prevent discriminatory non-tariff trade barriers. Based on the provisions of other WTO agreements (Trade Facilitation Agreement), special support should be provided to the least developed countries to facilitate their participation in the agreement. Concluding this agreement would be the WTO's greatest possib-



le contribution to combating the Corona pandemic and is a top priority. There should also be a focus on support for global capacity building and global recognition of vaccines that meet relevant health standards for movement of travellers. The commitment of companies in general also depends on effective investment protection and intellectual property rights to strengthen research and development.

Fair competition rules for the 21st century

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 should be developed. This means a broader definition of subsidies, stricter reporting requirements for state-owned enterprises and the inclusion of further types of subsidies as well as bans on forced technology transfer. It would also be important to extend the agreement on trade in civil aircraft to important producing countries such as China, Brazil, Russia, and India, as well as to the new space sector. Finally, a needs-based and evidence-based approach to special and differential treatment of developing countries in the WTO is overdue. In particular, G20 or OECD countries should not be able to claim these WTO benefits anymore. At the same time, the „GVCs for LDCs“ initiative should promote the integration of companies from developing countries into global value chains so that their products benefit from trade facilitation across the entire value chain.

WTO MSME Agenda

More than ever, the WTO needs an MSME agenda to facilitate the integration of micro, small and medium-sized enterprises into global value chains. The motto should be „Think Small First“. In the 2018 idea paper „[WTO SME Initiative Now!](#)“, the DIHK made detailed proposals on the individual aspects of a WTO SME initiative, such as regarding a WTO SME work program, a WTO SME committee, a WTO SME envoy, the Global Trade Helpdesk, a global de minimis, and government transparency obligations toward SMEs.

Digital Trade Rules

In view of continuing negotiating deadlocks, open plurilateral agreements are becoming increasingly important for adapting the WTO rules to the economic realities of the 21st century. The e-commerce agreement is particularly relevant in this regard: The increasing digitalization

of world trade requires future-proof trade rules. Companies need global rules that guarantee the cross-border flow of data, protect data and intellectual property of companies, as well as digital standards and norms that are enforced as globally as possible. The broadest possible consensual regulation of important detailed aspects surrounding digitization in international trade is important for companies. European achievements, such as data protection, must be safeguarded. Modern trade rules are needed for the share of services („Mode 5“) that become part of the production of physical goods. In both analog and digital terms, discrimination against companies on the global markets must be countered by effective notification mechanisms and comprehensive state transparency obligations. This should especially apply to decisions, e.g. on market access, which are made with the support of new technologies and complex algorithms. The processes behind these decisions are usually difficult to understand for the companies concerned and should therefore be made particularly transparent. A timely EU study on the international identification, legal action options and enforceability concerning these digital barriers could provide important insights in this regard. In addition, systems for secure digital identities and transaction data should be strengthened to improve the enforcement of national tax and compliance rules in e-commerce shipping. Since this shipping is largely done by third-party vendors via platforms to end customers, rules are often breached out of ignorance. Closer cooperation among enforcement agencies to effectively monitor the flow of goods against such competition-distorting practices would also be necessary. The rapid conclusion of agreements on domestic regulation in the services sector, on investment facilitation, the globally recognized digitization of trade documents and customs procedures, and the extension of the Information Technology Agreement to more products and countries is also relevant for business.

Sustainability Rules

Effective mitigation of climate change requires global solutions and coordinated action by all relevant CO₂-emitting countries. This will reduce the competitive disadvantages German companies face as a result of national and European climate protection regulation. Nevertheless, many companies are still dependent on effective and efficient protection against carbon leakage. Regarding the contentious issue of the CO₂ border adjustment mechanism, compatibility with WTO law should be key and a coordinated multilateral approach should be quickly initiated within the WTO framework, including a discussion of circular economies and the implementation of the Pa-



ris Climate Agreement. From a business perspective, it is also advisable to conclude the WTO Agreement on Environmental Goods in order to open up new opportunities on international markets for German companies active in this area. In addition, a WTO-wide ban on subsidies for the extraction and use of fossil fuels could be examined.

To avoid further fragmentation of trade requirements and competitive disadvantages due to different national supply chain requirements, WTO-wide regulations in the area of due diligence and forced labour should also be examined, if necessary, on a plurilateral level with important trading partners.

WTO commitment against economic coercion

To be able to deter and repel increasing economic coercion by third countries worldwide, the EU should push for a plurilateral WTO declaration to ban economic coercion. The declaration should also include a ban on targeted withholding of products that are of elementary importance to other states and cannot be substituted, such as food, energy sources and raw materials.

Global tariff reduction

Negotiations on global tariff dismantling (NAMA) remain important, especially for tariff peaks and for important German import and export goods. Legally binding reduced tariffs in the WTO offer important legal certainty for companies as opposed to merely temporary and reversible unilateral tariff reductions. SMEs in particular can thus be relieved of customs bureaucracy that the use of preferential agreements generates.

Extension of the WTO procurement agreement

The WTO procurement agreement ensures important market access for German companies for public contracts in third countries. Further countries, especially the G20 states China, Brazil, India, Turkey, and Russia, should accede to it, and the scope of application for the USA should be extended to include the thirteen states that are so far excluded.

Accession of new WTO members

In particular, the accession of the EU's neighbouring countries Serbia, Bosnia-Herzegovina, Kosovo, and Belarus, but also other candidate countries, especially in Africa and Asia, is important so that WTO rules can secure a larger share of world trade.

Harmonization of rules of origin

In the Agreement on Rules of Origin, WTO members agreed to negotiate harmonized non-preferential rules of origin. These negotiations are ongoing, and about 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 are a major burden on businesses. The origin of a product must then be determined depending on the respective destination country according to its rules of origin. This is practically impossible, as manufacturers, for example, often do not know the target country at the time of production of a good. Therefore, in the case of non-preferential rules of origin, the rule of the exporting country must continue to be applied. The application of rules of origin of the importing country must be limited to a few cases of the application of trade protection measures. Ideally, a globally harmonized, simple law of origin will emerge. Annex II of the Agreement on Rules of Origin sets out rules for achieving preferential origin. At the ninth and tenth WTO Ministerial Conferences, additional instruments were adopted in connection with unilaterally granted preferential arrangements, i.e., trade preferences for the least developed countries. In the area of preferential rules of origin, too, further multilateral harmonization would facilitate trade, especially for SMEs. The simplifications for rules of origin in the preferential area, which were agreed at the 10th WTO Ministerial Conference and affect the least developed countries, can serve as an example here. All WTO members should also ratify and comply with the provisions of the World Customs Organization's Revised Kyoto Convention Annex K on definitions, principles, standards, and recommended practices concerning preferential and non-preferential origin. DIHK expressly supports the revision of Annex K currently planned by the World Customs Organization. However, in the area of non-preferential origin, the well-proven rule of origin of the last significant processing and the determination of origin according to the rules of the exporting country should be adhered to in principle.

More transparent WTO

For companies, state notification obligations under the WTO's TPRM monitoring mechanism are important for planning security in international trade. To this end, compliance with governmental notification obligations should be monitored more effectively and better sanctioned, especially in the event of deliberate and repeated non-compliance. A WTO advisory committee with repre-



representatives of business and civil society would also be helpful in introducing proposals into ongoing negotiations. In addition, WTO processes should be made more transparent, for example by opening meetings to the public. The WTO Secretariat should be put in a position, in terms of competence and funding, to provide greater support for further advancing the WTO rulebook.

Consistent implementation of the Trade Facilitation Agreement (TFA)

The TFA provides a clear and reliable framework for interaction between companies and public administrations, especially customs authorities. Precise, timely and reliab-

le information on regulations and procedures can greatly reduce the costs of foreign trade and make allow many SMEs to trade internationally. It is therefore all the more important to ensure that the TFA requirements are meticulously observed by customs authorities in all countries and that a WTO reporting mechanism for violations of this is examined.

The Association of German Chambers of Commerce and Industry (Deutscher Industrie- und Handelskammertag, DIHK), the network of foreign Chambers of Commerce with 140 locations in 92 countries worldwide, as well as the 79 Chambers of Commerce and Industry in Germany, are trade policy driving forces and multipliers.