

## **Background: Business Priorities for the WTO's 13th Ministerial Conference (January 2024)**

### **The Value of the WTO**

While the WTO was created in 1995, it built on the foundation of the 1947 [General Agreement on Tariffs and Trade](#) (GATT). Combined, the WTO and the GATT have revolutionized global commerce. Eight successful multilateral negotiating rounds have helped increase world trade from \$58 billion in 1948 to well above \$25 trillion today. This 40-fold increase in real terms has brought a rising tide of commerce, job creation, and rising incomes.

It isn't just the tariff elimination brought about under the GATT and the WTO that benefits American companies and the workers they employ. WTO rules have historically protected U.S. firms operating abroad from unfair, discriminatory treatment. American firms rely on these rules every day of the year.

It's become commonplace to say the WTO's accomplishments are long in the past, but this isn't so. The past decade has seen new WTO agreements to facilitate trade through customs streamlining, eliminate tariffs on tech products, open government procurement markets, and enhance the transparency and predictability of services regulation.

Most recently, WTO members agreed in July 2022 to prohibit harmful subsidies to illegal, unreported, and unregulated fishing, which is a major driver in the widespread depletion of the world's fish stocks. Just over 50 WTO members have ratified this first half of what proponents hope will be a broader agreement to discipline fishing subsidies.

### **On the Agenda: The E-Commerce Moratorium**

Retaining the moratorium on customs duties on electronic transmissions — often called the e-commerce moratorium — is critical to global commerce. In the early days of the digital era, WTO members agreed that for internet-based commerce to flourish, it made sense not to impose the kind of fees known as customs duties that are levied on conventional goods traded across borders. Instead, countries would let electronic transmissions be transferred duty-free. By keeping costs low and eliminating the need for paperwork, the WTO's 1998 decision to establish this moratorium helped usher in an era of rapid expansion in global access to internet services and communication tools.

Unfortunately, that time-tested approach is under fire. Some governments are questioning if they should continue to support the arrangement that keeps electronic transmissions duty-free. A small group of countries is seeking to end the moratorium, arguing that imposing duties on digital transmissions would be a revenue generator for governments; by hiking the cost of competing foreign products, they say, duties would give a leg up to local industries.

However, there is ample evidence that the moratorium remains sound public policy, judged by the economic and social benefits. Research has clearly documented the net benefits of the e-commerce moratorium. An [OECD study](#) found that putting duties on electronic transmissions would exact greater costs than any marginal gains in tariff revenues. The OECD's analysis indicated that countries that began imposing duties on electronic transmissions would face a net loss in consumer welfare and export competitiveness. These findings are consistent with earlier [research from the European Centre for the International Political Economy](#) (ECIPE), which likewise showed an economic benefit for countries that maintain the moratorium.

The agreement to protect digital trade from tariffs has stood the test of time. Digital trade has transformed consumer access to online products and services and boosted economic competitiveness around the world. From the Chamber's perspective, abandoning an approach that has worked so well for so long would be a costly mistake.

### **On the Agenda: The TRIPS Waiver**

The U.S. business community is also deeply concerned about the proposal to further waive commitments in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) beyond the scope agreed at MC12 in June 2022. Extending this waiver beyond COVID-19 vaccines to include therapeutics and diagnostics as well would undermine the U.S. manufacturing base, harm American workers, and erode the innovation ecosystem that enhances American prosperity.

The Chamber described the WTO's June decision as a "a solution in search of a problem: Intellectual property rights helped deliver COVID-19 vaccines in record time, and today the world is awash in vaccine doses. We can't let this unfortunate measure set a precedent for undermining IP rights."

Unfortunately, the waiver's champions have moved quickly to do just that. In the U.S. context, the Chamber views efforts to extend the waiver to new areas as antithetical to the Biden administration's sustained efforts to cement the strength of the U.S. industrial base, cultivate critical workforce skills and the American jobs they support,

and secure U.S. supply chains. As the Chamber wrote in a September 2022 [letter](#) to senior administration officials:

*“We are confused by the administration’s contradictory stance on this issue. On the one hand, the administration has prioritized domestic investment in cutting-edge technologies and innovative manufacturing. As President Biden frequently says: “‘Make It in America’ is no longer just a slogan; it’s a reality in my administration,” and the administration is rightly proud of the expansion of American manufacturing output and employment over the past 18 months. On the other hand, expanding the TRIPS waiver would undermine those investments by abrogating IP rights and expediting the transfer of U.S. innovative technologies to foreign governments.”*

The Chamber is urging WTO members to reconsider the effort to expand the TRIPS waiver—which would also add momentum to efforts beyond the WTO to force technology transfers in a host of cutting-edge sectors—and will be conducting outreach to that end in the leadup to and at MC13.

### **On the Agenda: Dispute Settlement**

In addition to serving as a forum for negotiations, the WTO also has a critical role in dispute settlement. The WTO’s Dispute Settlement Understanding outlines procedures for panels to rule on disputes brought by its member states, and it also established an Appellate Body in the event panel decisions are appealed.

The United States has been a major beneficiary of WTO dispute settlement, bringing and winning more cases than any other WTO member. In fact, the United States has won or favorably settled [93 of the 97 completed WTO cases](#) it had brought as of 2021. The U.S. record in WTO dispute settlement with China is especially strong: As the Peterson Institute for International Economics has [reported](#), U.S. officials had challenged Chinese practices 23 times in the WTO as of 2019 — and won 20 times, with the other three cases pending.

However, the benefits of this system go much further. The fact that the WTO’s rules are enforceable under its dispute settlement system motivates governments to adhere to the commitments they have undertaken without resort to litigation.

U.S. administrations over the past 20 years have raised concerns about “overreach” in Appellate Body decisions, arguing that some are not clearly supported in the WTO agreements and that the slow pace of its operations saps its utility. The Trump administration’s response was to block Appellate Body appointments to the point that, by December 2019, the retirement of term-limited Appellate Body members had

left it without the quorum it needs to function. This allows parties that lose a panel ruling to appeal it into the void as if they had no obligation to comply.

As a result, the United States has been unable to use the WTO to secure relief from discriminatory treatment abroad or to address instances in which a trading partner has otherwise violated its WTO obligations. The price of allowing this impasse to linger could be high. Executives with American companies fear that other countries' compliance with the WTO agreements will decline over time if its dispute settlement system is no longer binding. They are concerned that new trade barriers and discriminatory treatment will become more common.

The Chamber has urged the administration and other WTO members to engage substantively on U.S. concerns and restore a binding dispute settlement system, as members committed to do at MC12. The stakes are high, but the door is open for reform of WTO dispute settlement. The U.S. Chamber of Commerce and the U.S. business community stand ready to support this important undertaking.