

# ITUC position brief: The WTO's response to the COVID-19 pandemic and the 2021 WTO reform agenda

March 2021



**NO WTO**  
WITHOUT WORKERS'  
RIGHTS FOR FAIR  
COMPETITION.

***A just system of trade must facilitate an inclusive development model that ensures decent work and shared prosperity. Reform is not limited to but must include the following provisions.***

## **Responding to the COVID-19 Pandemic**

One of the WTO's most urgent challenges is to facilitate access to vaccines. Vaccine nationalism is ugly and can only make both trade and political tensions worse if not ameliorated. The ITUC supports the call for a 'TRIPS waver' along with civil society groups and governments led by South Africa and India to relax TRIPS rules in order to enable production of more vaccines, COVID-19 tests, medical treatments, PPE products and vital public health tools.

In addition, the ITUC would like to see a "pandemic clause" or moratorium, declaring that WTO members will not bring disputes against other members for actions taken to control the SARS-CoV-2 pandemic or to address the economic effects of the pandemic on their populations.

Support for developing countries needs to ensure a moratorium on challenging actions taken to address the economic effects of the pandemic on workers, households and businesses. Indeed, almost all countries have put in place measures to maintain wages, make financial transfers to households with other social protection measures plus investments in care and support for businesses through direct aid or loan forgiveness. Many of these advances on the social contract need to stay if inequality and resilience against future global shocks are to be addressed.

## **A 2021 Reform Agenda**

Even before the pandemic we faced historical levels of inequality such that the OECD and other institutions declared this a global risk. The labour income share has slumped over the last thirty to forty years despite massively increasing wealth and that, along with dehumanising exploitation in global supply chains, has severely damaged trust in globalisation. The resulting anger and despair will not be overcome nor the promise of the UN Sustainable Development Goals and the Paris Agreement realised with more of the same policies.

There has been a growing body of evidence on the critical and very uneven distributional consequences of trade through its impact on employment, insecure jobs and stagnating wages. Political leaders increasingly recognise that a level playing field for trade cannot be achieved simply by addressing the rules for competition between private corporations. Instead, trade agreements must address the rules for workers' rights, their ability to have a minimum living wage, and see a fair share of productivity gains along with the right to safe work.

Labour rights and social clauses are now routinely incorporated in bilateral and regional free trade agreements as a step toward levelling the field on which companies compete, thereby reducing the risk of rights violations.

However, at the WTO, there has been no progress on addressing these realities. The WTO rulebook continues to operate from the economic consensus prevalent at its conception in 1995 being an unquestioning belief in trade liberalisation and market fundamentalism rather than the more inclusive approach of a broader governance foreseen in the Havana Charter.

# Reform of the WTO is an imperative. Labour must be back on the WTO agenda.

From Singapore to Seattle and Doha the labour movement and political allies made a case for a floor of labour rights to ensure trade had a level playing and a field fair competition floor that prevented exploitation.

After Singapore, labour rights were squarely on the WTO agenda in Seattle in 1999. The context was straightforward: to launch a comprehensive a new round of trade negotiations as well as to change and expand or modify the obligations that members would commit to observe. For trade unions, it was a matter of adding labour issues with ILO fundamental rights to the list of topics to be addressed in the negotiations.

Today there is an acknowledged need for reform and an emerging debate as to the substance of the reform.

In the lead up to the November 2021 Ministerial and ahead of more informal trade ministers' discussions the international union movement is calling for a dialogue with the WTO to address these issues.

With mandated human rights due diligence (HRDD) being put in place through negotiations for a UN Treaty on Business and Human Rights and the commitment to a directive in Europe, global trade rules and governance cannot continue to operate in opposition to human and labour rights and the reality of reform required to achieve the UN Sustainable Development Goals.

Unions propose four reforms at institutional and operational levels:

## **1. The WTO reaffirm and add human and labour rights to the opening paragraph of the Marrakesh Agreement that established the WTO.**

The agreement currently reads:

*“The Parties to this Agreement, recognising that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development”.*

We ask that Ministers reaffirm this paragraph and state that: These labour and environmental issues along with the addition of ‘human and labour rights’ are not only a goal but a necessary condition for trade that is mutually beneficial between countries and for different groups within countries and must be given priority in the actions of the WTO, including decisions of dispute settlement panels.

With this recognition we ask for the establishment of a working group on labour issues equivalent to that existing for environmental issues.

## **2. Affirm that ‘public morals’ includes human and labour rights.**

In order to prevent the trade in goods and services that were produced or performed in violation of labour rights, the WTO must, through an interpretive statement under Art IX:2 of the WTO Agreement, affirm an interpretation of the “public morals” clause contained in GATT XX and GATS XIV stating that measures taken by a member to restrict trade in goods or services so as to give full effect to ILO fundamental rights Conventions are per se necessary. Moreover, such measures shall not constitute disguised restrictions on international trade unless they were motivated by an improper purpose.

### **3. Expansion of Article XX(e), which is the clause that gives countries the right to ban imports made with prison labor.**

This is the only specific labour provision in the WTO rules. The proposal would be to revise this clause to add respect for all ILO core labor standards. Therefore, the proposal would start with the existing Article XX chapeau, which reads:

*“. . . nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:”*

and then add:

“(e) relating to the protection of the rights covered by the ILO Declaration on Fundamental Principles and Rights at Work, including freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation;”

Further it should add Occupational Safety and Health.

This would establish the right for countries to suspend the preferential tariff rates of the WTO or even prevent imports of products made in violation of the core labour rights, as they are now able to do with respect to products of prison labor.

### **4. The mandate of the ILO**

Should the DSB be called upon by a member to review a measure described above, the DSB needs to solicit the opinion of the ILO on all labor-related matters and defer to that opinion.

### **5. The revision of Article XX to include full employment as a policy priority.**

This is important to ensure that actions to effect full employment but that diverge from WTO rules would not be subject to punitive action, which would create further civil unrest and opposition to global trade.

### **6. Coherence**

Finally, to reestablish coherence if a working party on labour issues is established it could also consider incorporating best practice regarding labour provisions and compliance measures in bilateral and regional free trade agreements into the WTO provisions.

Specifically, it would incorporate into the WTO rulebook the provisions that currently require members to other trade pacts “to adopt and maintain in law and practice labour rights as recognized by the ILO’s Declaration on Fundamental Principles and Rights at Work”, as well as requiring them to effectively enforce labour laws that meet these standards and not to waive or derogate from these laws.

Rebuilding trust in the WTO will also require a recognition that countries cannot be asked to sign away their sovereignty where domestic actions are critical to ensuring the health, safety and prosperity of their people.

Trade policy and trade rules cannot ignore the commitments of the world’s leaders to the UN Sustainable Development Goals and the Paris Climate Agreement. A just development model is central to realising these ambitions. To ensure global trade reforms work for people of all countries the trust and support of social partners should be recognised as necessary for implementation and thus a more inclusive WTO must make the necessary reforms to embed the practice of social dialogue.

The WTO can facilitate healthy trade on a just, rights based, environment friendly, development model where people and the planet are front and centre. But it requires significant reforms.

## Summary of ITUC proposals for the WTO pandemic response:

- a ‘TRIPS’ waiver to stop vaccine nationalism in its tracks, and facilitate access to tests and other vital health tools; and,
- a “pandemic clause” or moratorium, declaring that WTO members will not bring disputes against other members for actions taken to control the SARS-CoV-2 pandemic or to address the economic effects of the pandemic on their populations.

## Summary of ITUC proposal for WTO reform:

- the inclusion of human and labour rights in the opening paragraph to the Marrakesh Agreement
- the establishment of a working group on labour issues equivalent to that existing for environmental issues
- expanding Article XX(e) to include respect for all ILO core labor standards and Occupational Safety and Health
- revising Article XX to include full employment
- a working party on labour issues, once established, could also consider incorporating best practice regarding labour provisions and compliance measures in bilateral and regional free trade agreements into the WTO provisions
- embed the practice of social dialogue within WTO structures.



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INCLUSION

**A New Social Contract  
for Recovery and Resilience**