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WTO: Ministerial Delay, COVID-19, and Ongoing Issues

Overview

Due to the coronavirus pandemic (COVID-19), the World Trade Organization (WTO) canceled its 12th Ministerial Conference (MC12) planned for June 2020. The biennial meeting, which usually involves active U.S. participation, was widely anticipated as an action-forcing event for the WTO, amid serious challenges facing the multilateral trading system. Some members hoped key results for ongoing negotiations could help preserve the WTO's relevance. In addition, a dispute settlement (DS) crisis continues, with the Appellate Body ceasing to operate in December 2019 and no consensus on solutions. Broader reforms of the institution also remain under active discussion, including some U.S. proposals. While MC12 and other meetings were suspended, members are attempting to continue some WTO operations virtually.

The WTO can play a unique role in coordinating global trade responses, which could be critical in mitigating the grim global economic and trade outlook in the wake of COVID-19. The WTO has committed to work with other international organizations to minimize disruptions to cross-border trade and global supply chains—in particular those central to combatting the virus—while safeguarding public health concerns. It has sought to inform members of the impacts on trade and encouraged them to notify WTO of any trade-related measures taken in response to COVID-19. The number of countries implementing trade restrictions, including curbs on exports, has increased exponentially since the beginning of 2020, raising debate among analysts about the economic and policy rationales and impacts, plus questions about consistency with WTO rules. At the same time, other countries have committed to trade openness.

Members of Congress have expressed support for ongoing WTO reform efforts (see H.Res. 746), sought clarification on the Administration's positions, and proposed trade-related legislation in response to COVID-19.

MC12 Delay and Implications

After the declaration of COVID-19 as a pandemic, Kazakhstan, the host for the WTO's MC12, cancelled the planned June meetings. Following mixed results coming out of the last ministerial in 2017, the United States and other WTO members had hoped MC12 would mark a turning point to conclude some negotiations. They also hoped to announce significant progress on multiple initiatives, demonstrating the value of the WTO. MC12 was to serve as a critical forum for taking stock of various WTO reform proposals (see below). A new date for MC12 has not been set, but will likely occur in 2021. Some negotiations and other WTO activities continue in writing and virtually. Members are currently evaluating how those negotiations should proceed and whether these formats can be used to yield binding decisions.

Select Ongoing Negotiations of U.S. Interest

Fisheries. Members had committed to finish negotiations on fisheries subsidies at MC12, an achievement many view as critical to upholding the WTO's legitimacy. Primarily seeking to limit subsidies that contribute to overcapacity and overfishing, negotiations continue in written exchanges, and the negotiations chair is working to bridge differences. The U.S. has supported equal obligations across members, with minimal flexibilities for developing countries.

E-commerce. Members had extended the moratorium on customs duties on electronic transmissions until MC12, but it is unclear if the extension will be sustained, given the opposition of some developing countries. Separately, the United States and over 75 members are actively negotiating a plurilateral initiative on e-commerce. The United States seeks an ambitious, high standard digital trade agreement. The parties had hoped to publish a consolidated text at MC12 to gain momentum and attract new participants.

Agriculture. Some observers warned that MC12 would be deemed a failure without some agreement on agricultural issues. Talks have stalled in recent years, but members continue to exchange views in writing on issues, including public stockholding and special safeguard mechanisms for developing countries. Given renewed attention to lack of compliance with WTO notification requirements (e.g., on domestic support and export subsidies), some experts saw a transparency agreement as a feasible outcome for MC12.

COVID-19 and WTO Reactions

In the wake of COVID-19, the WTO Director-General emphasized, "Maintaining open trade and investment flows will be critical to protect jobs, prevent supply chain breakdown, and ensure that vital products do not become unaffordable for consumers." In early April, the WTO issued its trade forecast, estimating a plunge in global trade in 2020, ranging from 13% to 32%. A recovery is expected in 2021, but the extent depends on the duration of the pandemic and countries' policy choices. For the latter, the WTO has emphasized the importance of transparency.

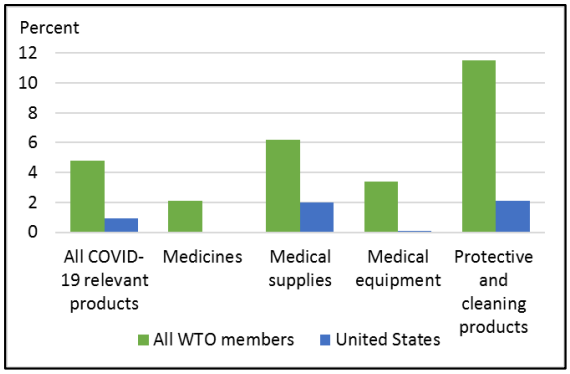
WTO Agreements and Trade in Medical Products

Several WTO agreements are relevant to health-related policies, such as technical barriers to trade, sanitary and phytosanitary measures, services, and intellectual property rights. Others guide implementation of policies, including through the WTO's fundamental principle of nondiscrimination, as well as rules on subsidies. Specific commitments have contributed to liberalization of trade in medical products: (1) tariff negotiations during the Uruguay Round; (2) a plurilateral Agreement on Pharmaceutical Products, updated in 2011; and (3) the expanded plurilateral Information Technology Agreement in 2015.

WTO negotiations and agreements have improved market access for medical products, but barriers remain. An April 2020 report by the WTO estimates $597 billion in annual

trade in critical medical products with limited availability during the COVID-19 pandemic. For these products, the average applied most favored nation tariff is 4.8% (**Figure 1**). But for some, tariffs remain quite high, e.g., the average tariff on hand soap is 17% and for some countries as high as 65%. Tariffs on protective medical products range to 27%.

Figure 1. Average Applied Tariff on Medical Goods



Source: WTO, *Trade in Medical Goods in the Context of Tackling COVID-19*, April 3, 2020.

Countries have also reacted to the crisis with new trade measures, tracked by the WTO and others. According to Global Trade Alert, about 70 countries, including the U.S., have introduced export restrictions on medical equipment, supplies and medicines, as of the end of March. Some have imposed restrictions on food exports, despite no shortages. Broadly, WTO agreements are flexible in permitting emergency measures related to national security or health, but generally require that they be targeted, temporary, and transparent, and not "unnecessarily restrict trade."

The G-20 Trade Ministers committed to these same values in a March 30 statement. A group of seven countries, led by New Zealand and Singapore further committed to "maintaining open and connected supply chains." The WTO has emphasized the use of WTO-consistent tools to address critical shortages, such as unilaterally eliminating tariffs or other taxes, expediting customs procedures, and using subsidies to generate production. It has urged careful consideration of the ripple effects of policies like export curbs, given most major countries are both exporters and importers of medical supplies. Many analysts point to more coordination in trade policy as critical. In the near term, like-minded groups of countries could consider establishing principles for a COVID-19 trade response, and over the long term, a plurilateral agreement on medical goods.

Ongoing Developments

In addition to addressing the current crisis, WTO reform remains a key issue for the United States and other members concerned with its institutional viability.

Appellate Body (AB) Reforms

On December 10, 2019, the AB lost its quorum to hear new cases, following the U.S. blocking of new AB members and the term expiration of two members, effectively limiting enforcement of decisions. Successive U.S. administrations and some Members of Congress have long taken issue with AB decisions and practices. This stems from a view that the AB exceeds its mandate by creating new obligations not specifically negotiated, ignoring mandatory deadlines for disposition of cases, making impermissible findings of fact, treating prior AB decisions as precedent, and opining on unrelated issues in its decisions, among other issues. On February 11, 2020, the U.S. Trade Representative issued a 174-page report on the main issues. Other members have attempted to address U.S. concerns with various proposals, but the Administration has yet to specify the solutions that would resolve its concerns.

With no apparent resolution in sight, other WTO members have sought an *ad hoc* appeal process through the WTO Dispute Settlement Understanding's Article 25, which allows for the arbitration of disputes. These efforts culminated in 16 members agreeing to a "multi-party interim appellate appeals mechanism" in March 2020 as a temporary measure to replicate many of the functions and procedures of the AB. The participants include significant users of the current system, such as the EU and China. This mechanism does not apply to cases involving WTO members who have not joined, including the United States, the largest complainant and respondent in WTO DS.

Institutional Reforms

Proposals for other reforms of WTO policies and procedures have garnered intensive debate. Some solutions appear to be gaining traction, while others remain controversial among members. Key U.S. priorities include:

- **Reform of special and differential treatment (SDT).** The United States seeks to have more advanced developing or emerging members forego the use of SDT. Brazil, Singapore and South Korea committed to relinquish SDT; China and India continue to claim it.
- **Notification requirements.** The United States has proposed that members who do not provide required transparent notification of key decisions, such as subsidies, be subject to punitive measures (e.g., deeming violators "inactive members").
- **Nonmarket economies.** Since May 2018, the United States, EU, and Japan have engaged in intermittent discussions to push for expanded disciplines on subsidies and other practices of nonmarket economies. In January 2020, the three proposed to prohibit more types of industrial subsidies under the WTO Subsidies Agreement and otherwise constrict the use of subsidies.

Recent Congressional Activity

In December 2019, the House Ways and Means Committee considered and reported H.Res. 746 (Rep. Kind) for the House to reaffirm its commitment to the WTO, press for reforms, and "update the WTO rules to address the needs of the United States and other free and open economies in the 21st century." In addition, the 1994 Uruguay Round Agreements Act, allows every five years, any Member to introduce a resolution to withdraw from the WTO. Such a resolution may be introduced in 2020, although no Member has done so to date.

For more information, see CRS Report R45417, *World Trade Organization: Overview and Future Direction*.

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