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

Overview

Due to the Coronavirus Disease 2019 (COVID-19) pandemic, the World Trade Organization (WTO) postponed 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 had hoped key results for ongoing negotiations could help bolster the WTO's relevance. In addition, a dispute settlement 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. Members also face final selection of a new WTO Director-General (DG). The post has been vacant since fall 2020, after the Trump Administration objected to Nigeria's Ngozi Okonjo-Iweala, the candidate who had received the majority of WTO member support. In early February, the Biden Administration announced support for her candidacy, removing a major obstacle to her appointment.

The WTO can play a unique role in coordinating global trade responses, which could be critical in mitigating the global economic and trade downturn 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 of the pandemic on trade and encouraged them to notify the WTO of any trade-related measures taken in response to COVID-19. The number of trade restrictions, including curbs on exports, increased significantly during 2020, raising debate about the policies' economic impacts and consistency with WTO rules. At the same time, other countries have since lifted the temporary restrictions and committed to trade openness.

Some Members of Congress have expressed support for ongoing WTO reform efforts, sought clarification on the positions of the Administration, 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 meetings. A new date and venue have yet to be confirmed given the ongoing pandemic. Following mixed results from the last ministerial in 2017, the United States and other WTO members look to MC12 as a turning point to conclude some negotiations and announce significant progress on multiple initiatives, demonstrating the value of the WTO. The delayed MC12 may serve as a critical forum for taking stock of various WTO reform proposals (see below). Some WTO activities and negotiations continue virtually. An informal ministerial was held virtually in January 2021 and members, including the United States, expressed an urgent need to move forward with finalizing the new DG selection and postponed MC12.

Select Ongoing Negotiations of U.S. Interest

Fisheries. Members had committed to finish negotiations on fisheries subsidies by MC12, an achievement many view as critical to upholding the WTO's legitimacy. The chair has continued talks virtually and issued revised consolidated negotiated text for members to review and debate. The United States had supported equal obligations across members to limit subsidies that contribute to overcapacity and overfishing, with minimal flexibilities that some developing countries have been demanding. The Biden Administration has not yet taken an official position.

E-commerce. Members extended the moratorium on customs duties on electronic transmissions until MC12, but it is unclear if the extension will be sustained thereafter, given some developing countries' opposition. Separately, the United States and over 80 members are negotiating a plurilateral initiative on e-commerce. The co-conveners noted progress in multiple areas such as e-signatures and consumer protection, while data flows issues are still under debate. They shared a consolidated text in December 2020 and aim for substantial progress by MC12. The United States seeks an ambitious, high standard agreement.

Agriculture. Some observers warned that MC12 would be deemed a failure without some deal on agricultural issues. Talks have stalled in recent years, but members continue to exchange views 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, export subsidies), some experts see a transparency agreement as a feasible outcome for MC12. Members are also discussing exempting World Food Programme purchases for humanitarian purposes from export restrictions.

COVID-19 and WTO Reactions

In the wake of COVID-19, the WTO DG 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." The WTO's latest forecast estimated a 9% decline in global trade in 2020—a more optimistic outlook than earlier assessments. While a recovery is expected in 2021, the extent depends on the duration of the pandemic and countries' policy choices.

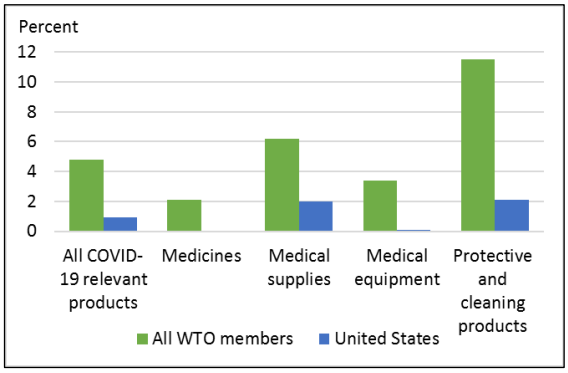
WTO Agreements and Trade in Medical Products

Several WTO agreements are relevant to health-related policy, such as technical barriers to trade, sanitary and phytosanitary measures, services, and intellectual property

rights (IPR). Others guide implementation of policies, including the WTO's core principle of nondiscrimination and rules on subsidies. Specific commitments contributed to liberalized 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 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 estimated $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**). For others, 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. According to Global Trade Alert, as of late 2020, more than 100 export restrictions on medical goods and medicines remained in force. At the same time, more than 100 countries implemented reforms to ease imports of such goods. Broadly, WTO agreements are flexible in permitting emergency measures related to national security or health, but require that they be targeted, temporary, and transparent, and not "unnecessarily restrict trade." In May 2020, the G-20 Trade Ministers committed to these same values in a ministerial statement. Seven countries, led by New Zealand and Singapore committed to "maintaining open and connected supply chains." 42 WTO members also pledged to remove emergency measures expeditiously. The WTO has emphasized use of WTO-consistent tools to address critical shortages, such as unilaterally eliminating tariffs, expediting customs procedures, and subsidizing production. It has cautioned against the long-term costs and ripple effects of export curbs, as most major countries are both exporters and importers of medical supplies.

Many analysts view more coordination in trade policy as critical. Some countries are considering principles for a COVID-19 trade response and advocate for a plurilateral agreement on medical goods. In December 2020, the Ottawa Group of 13 WTO members introduced a "trade and health" initiative calling for cooperation among WTO members and a range of actions relating to exports, trade facilitation, technical regulations, tariffs, and transparency.

Delay in production and distribution of COVID-19 vaccines has led to calls by some countries to issue compulsory licenses to manufacture generic versions. Compulsory licenses are authorized under certain conditions under the WTO's Trade-related Aspects of Intellectual Property Agreement (TRIPS). A proposal by India and South Africa for a temporary waiver of IPR for all coronavirus-related medical products, vaccines, and treatments has yet to achieve consensus among WTO members, being opposed by members with research oriented pharmaceutical industries, including the United States. While individual countries may resort to issuing compulsory licenses, successful reproduction of novel and complex generic vaccines may be difficult.

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 the last members, effectively limiting enforcement of first level DS panel decisions. Successive U.S. administrations and some Members of Ciongress have 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 decisions, among other issues. In the meantime, 22 WTO members, including the EU and China, initiated an interim appellate mechanism to hear appeals among themselves.

Institutional Reforms

Proposals for reform of other WTO policies and procedures have garnered intensive debate. Some solutions have gained support, while others remain controversial among members. Key Trump Administration priorities included:

- **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 2018, the United States, EU, and Japan have engaged in intermittent talks to push for expanded disciplines on subsidies and practices of nonmarket economies. In 2020, the three proposed to prohibit more types of industrial subsidies under WTO rules and otherwise constrict subsidies use.

The Biden Administration has yet to weigh in on WTO reform issues. For more, see CRS Report R45417, *World Trade Organization: Overview and Future Direction*.

Cathleen D. Cimino-Isaacs, Analyst in International Trade and Finance
Rachel F. Fefer, Analyst in International Trade and Finance

IF11513

Ian F. Fergusson, Specialist in International Trade and Finance

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