



## WTO: 12<sup>th</sup> Ministerial, COVID-19, and Ongoing Issues

### Overview

Due to the Coronavirus Disease 2019 (COVID-19) pandemic, the World Trade Organization (WTO) postponed its 12<sup>th</sup> Ministerial Conference (MC12) multiple times from June 2020 to June 2022. The biennial meeting, which usually involves active U.S. participation, has been widely anticipated as an action-forcing event for the WTO amid serious challenges facing the global trading system. Some members hope key results for ongoing negotiations could help bolster the WTO's relevance. In addition, a dispute settlement crisis continues, with the WTO's Appellate Body ceasing to operate in 2019, and no consensus on solutions. Broader reforms of the institution also remain under discussion, including some U.S. proposals. While MC12 and other meetings had been suspended during part of 2021, members continued some WTO operations virtually and resumed some in-person. WTO Director-General (DG) Ngozi Okonjo-Iweala, newly-appointed in February 2021, has faced the challenge of positioning the organization to advance multilateral cooperation in the wake of the pandemic and the war in Ukraine. As MC12 approaches, she has urged members to bridge differences and deliver results, while laying the groundwork for "what we need to do for life after MC12 and moving towards MC13."

Some view the WTO as playing an important role in coordinating international trade responses to help mitigate the global economic and trade challenges exacerbated by the pandemic. The WTO 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 WTO reform efforts (H.Res. 382, S.Res. 101), sought clarification on the Administration's positions, and proposed trade legislation in response to COVID-19.

### MC12 Delay and Implications

Following the onset of the COVID-19 pandemic, members cancelled the planned June 2020 MC12 meetings. With the emergence of new variants and travel restrictions at the end of 2021, MC12 was further postponed until June 12-15, 2022. With mixed results from the last ministerial in 2017, members look to MC12 as an opportunity for decisions on new rules and taking stock of ongoing negotiations, demonstrating the value of the WTO. The DG summarized potential deliverables in what she characterized as the "four

pillars plus": fisheries subsidies, agriculture, services, and the WTO response to the pandemic, plus WTO reform and development issues. WTO members have tempered expectations, however, signaling persistent differences may prevent major announcements. In addition, some members have been unwilling to negotiate with Russia, given the ongoing war in Ukraine.

### 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. Major provisions include prohibition of subsidies contributing to illegal, unreported and unregulated (IUU) fishing, fishing or fishing-related activities regarding overfished stock, and overcapacity and overfishing. Members intensified negotiations in May 2022, but differences remain in particular on the extent of special and differential treatment provisions for developing countries and exceptions for certain subsidies. The United States has generally supported equal obligations across members to limit subsidies, with some exceptions, and also proposed provisions related to forced labor on fishing vessels. See CRS In Focus IF11929.

**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' strong opposition. Separately, the United States and over 80 members are negotiating a plurilateral initiative on e-commerce. The parties aim to have a final draft in 2022, but would need to overcome contentious issues, including on cross-border data flows. The United States seeks an ambitious, high-standard agreement. See CRS In Focus IF11194.

**Agriculture.** Some observers have 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 contentious issues, including on 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. Global food security concerns have heightened following Russia's 2022 invasion of Ukraine due to disruptions to grains and other markets. See CRS In Focus IF11906.

### COVID-19 and WTO Reactions

In the wake of the COVID-19 outbreak, 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 estimated a 10.8%

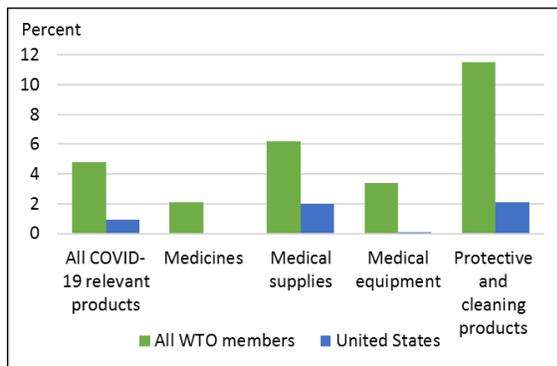
rebound in global merchandise trade in 2021, but revised its 2022 estimate downward to 3%, due to the impact of the Russia-Ukraine war and continuing pandemic.

### 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 reacted to the crisis with new trade measures. According to Global Trade Alert, by mid-2021 more than 200 export restrictions on medical goods and medicines were implemented. At the same time, more than 100 countries implemented reforms to ease imports of such goods. WTO agreements are generally 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. Some 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 emphasized use of WTO-consistent tools to address critical shortages and cautioned against the long-term costs and ripple effects of export curbs, as most major countries are both exporters and importers of medical supplies.

Some countries have issued principles for a COVID-19 trade response and advocated 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. A key aim of MC12 is a clear WTO response to the pandemic to potentially address issues such as export restrictions, trade facilitation, regulatory coherence, tariffs, and transparency. More broadly, such a framework would aim to lay the groundwork for the trading system to become more resilient and better prepared for futures crises. Another key component of this package would involve IPR related to COVID-19. Delay in production and uneven access to and distribution of COVID-19 vaccines has led to calls by some countries to issue compulsory licenses to manufacture generic versions, or to waive certain IPR rules related to vaccines and other products or treatments. In May 2022, following talks facilitated by the WTO DG among the United States, EU, India, and South Africa to find a path forward on this issue, a proposal was issued on a “TRIPS” patent waiver for vaccines, but debate over the final terms is ongoing and contentious. See CRS In Focus IF11858.

### Ongoing Developments Institutional Reforms

In addition to addressing the ongoing crisis, WTO reform remains a key issue for members concerned with its institutional viability. Proposals for reform of WTO policies and procedures have garnered intensive debate. In advance of MC12, members have disagreed on what a reform outcome should entail. At a baseline, members hope to set a path for future work, emphasizing the need for reform and that the process be open, transparent, and inclusive, and address interests of all members. U.S. priorities include:

- **Special and differential treatment (SDT).** The United States seeks to have more advanced developing members forego the use of SDT. To date, Brazil, Singapore, and South Korea committed to relinquish SDT; China and India continue to claim it.
- **Notification requirements.** The United States has called for improved compliance with transparent notification of policies and measures, such as subsidies. The latest U.S. proposal issued in May 2022 did not include potential punitive measures for noncompliance.
- **Nonmarket economies.** In 2022, U.S.-EU-Japan talks were renewed to enhance WTO disciplines on subsidies and to better address practices of nonmarket economies where the state plays a major role.

### Dispute Settlement Reforms

In December 2019, the Appellate Body (AB) lost its quorum to hear new cases, following the U.S. blocking of appointments of AB members, effectively limiting the enforcement of first level DS panel decisions. Successive U.S. administrations and some Members of Congress have taken issue with AB decisions and practices, amid the view that the AB exceeds its mandate by creating new obligations not specifically negotiated, ignoring deadlines for disposition of cases, making impermissible findings of fact, and opining on unrelated issues in decisions, among other issues. The United States has yet to agree to or propose specific reforms to address its concerns. The EU, with over 20 WTO members, initiated an interim appellate mechanism to hear appeals among themselves.

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