

## **The New Starting Point of the World Trade Organization: Evaluation of MC12 Outcomes and the Perspectives**

### **Abstract:**

In June 2022, the 12th Ministerial Conference of the World Trade Organization (WTO) concluded successfully with a series of outcomes on key issues including trade response to the Covid-19 pandemic, fisheries subsidies, WTO reform, etc., far exceeding expectations. These outcomes help to sustain the multilateral trading system (MTS) and to promote the WTO's role in international trade rule-making, while providing a generous multilateral space for positive interaction among key Members. However, the international political, economic and trade environment continue to remain complex, with some deep-rooted contradictions and structural problems unsolved. For the way forward, WTO still faces many challenges and a long bumpy path.

**Key words: WTO, Ministerial conference, Trade Rule-making**

On June 17 2022, the 12<sup>th</sup> Ministerial Conference of the WTO ("MC12") concluded successfully in Geneva, Switzerland. The Ministerial Conference is the highest decision-making body of the WTO, acting as a crucial moment to adopt new trade rules and other important decisions to promote the development of the WTO. Especially at a time when the MTS is bogged down in crises, the international community expects the MC12 to take concrete actions to help address these major challenges and to move WTO forward. MC12 has lived up to such expectations and achieved a package of outcomes on trade response to Covid-19, food security crisis, and fisheries subsidies, among other issues. It has also launched the process for WTO reform and the restoration of the dispute settlement mechanism. The MC12 outcomes have far exceeded expectations and put the WTO back into spotlights of international community.

The success of MC12 will, at least to a certain extent, help to maintain the MTS and to explore its reform, and will enable the WTO to continue its role in the making of international trade rules, while providing a greater multilateral space for positive interaction among key Members including China. However, the international political and economic environment continues to be complex, and some deep-rooted contradictions and structural problems faced by the WTO remain unresolved, so the WTO still faces many challenges in its future work. In this regard, it is of extreme importance to make an accurate analysis of the MC12 outcomes and its significance, so as to better prepare for the next steps of the WTO work and the evolution of the international trade and economic order at large.

### **Major Outcomes at MC12**

At MC12, Members have adopted the "Geneva package" of ten documents, the main contents of which are described below.

## **I. MC12 Outcome Document**

The Outcome Document consists of 14 paragraphs with the following four core elements:

First, it reaffirms that “special and differential treatment” (S&D) is an integral part of the WTO agreement and the original mandate of the Doha Round for S&D to be “precise, effective and operational”. It also says that the WTO will continue to improve S&D provisions and report on its progress at the 13th Ministerial Conference (“MC13”).

Second, it commits to work for necessary reforms of the WTO, to ensure that the reform process is Member-driven, open, transparent and inclusive, to address concerns of all Members, particularly development issues. It also authorizes the General Council and its subsidiary bodies to undertake related work and review the progress at MC13.

Third, it recognizes the importance and urgency of addressing challenges and concerns on the dispute settlement system, including the Appellate Body, and commits to restoring an fully and well-functioning dispute system accessible to all Members by 2024.

Fourth, it recognizes global environmental challenges such as climate change, notes the importance for the MTS to make contribution to sustainable development goals (SDGs), reaffirms the importance of providing relevant support to developing country Members, particularly LDCs, and notes the role of the WTO’s Committee on Trade and Environment (CTE) in facilitating a dialogue on trade rules and environmental measures.

## **II. Two Documents on the WTO Response to the COVID-19 Pandemic**

The two documents include the *Ministerial Decision on the TRIPS Agreement* and the *Ministerial Declaration on the WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics*

### *1. Ministerial Decision on the TRIPS Agreement*

The Decision, by simplifying and clarifying procedures on compulsory licensing, including those under Article 31 of the TRIPs, authorizes developing countries to produce and export new Covid-19 vaccines to other Developing country Members without the right holder’s consent. Developing country Members will enjoy more flexibility in terms of implementation of the authorization, notification obligations and appropriate remuneration to the right holder. For example, developing country Members can report to the WTO after authorization, in ways such as executive orders, emergency decrees, and judicial or administrative orders etc., and humanitarian and non-profit purposes can be taken into consideration in determining the remuneration of the right holder.

For COVID-19 diagnostics and therapeutics other than vaccines, such as respirators and testing reagents, Members will discuss whether to include them in the decision within the next six months.

In addition, the Decision encourages Developing country Members with existing capacity to manufacture COVID-19 vaccines to make a binding commitment not to avail themselves of the flexibilities under this Decision. It refers to the statements and binding commitments made by eligible Members at the General Council meeting on 10 May 2022. At that meeting, China voluntarily announced that it would not seek to benefit from the Decision.

## *2. Ministerial Declaration on the WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics*

The Declaration focuses on the WTO's overall response to the COVID-19 pandemic, including improving policy transparency, exercising due restraint on export restrictions, promoting trade facilitation, leveraging trade in services, supporting an inclusive recovery, and strengthening cooperation among international organizations.

The declaration also emphasizes the role of WTO provisions for future pandemics and reiterates the need to review and build on the lessons and challenges of the COVID-19 pandemic to develop effective solutions for future pandemics in the areas including balance of payments, development, export restrictions, food security, and intellectual property rights.

## **III. Agreement on Fishery Subsidies**

Negotiations on fisheries subsidies were unfinished work of the Doha Round. During MC12, Members reached a preliminary agreement and committed for further negotiations with a view to reaching "comprehensive disciplines" on fisheries subsidies.

The Agreement prohibits subsidies on "illegal, unreported and unregulated (IUU)" fishing activities and subsidies regarding overfished stocks, as well as high sea fishing, i.e., fishing outside of the jurisdiction of a coastal country or RFMOs. The Agreement obliges members to refrain from providing subsidies to vessels not flying that Member's flag, and subsidies to fishing or fishing related activities regarding stocks the status of which is unknown, but allows for disaster relief subsidies. The Agreement provides S&D for Developing country Members, specifying that, for a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members shall be exempt from the dispute settlement, and that a voluntary WTO funding mechanism shall be established to provide technical assistance and capacity building support to Developing country Members.

The Agreement was accompanied by a Ministerial Decision to continue the negotiations on certain subsidies that contribute to overcapacity and overfishing in order to reach "comprehensive disciplines" on fisheries subsidies. Article 12 of the Agreement also provides that, if "comprehensive disciplines" are not adopted within four years of the entry into force of this Agreement, and unless otherwise decided by the General Council (e.g., to carry on the negotiations), this Agreement shall stand immediately terminated.

#### **IV. Two Documents on Food Security**

The two documents are the *Ministerial Declaration on the Emergency Response to Food Insecurity* and the *Ministerial Decision on World Food Programme (WFP) Food Purchases Exemptions from Export Prohibitions or Restrictions*.

##### *1. Ministerial Declaration on the Emergency Response to Food Insecurity*

The Declaration commits to taking measures to facilitate agricultural trade, promote the function and long-term resilience global food and agricultural markets; reiterates that Members will not implement export prohibitions or restrictions that are inconsistent with WTO provisions; states Members will resolve to ensure that any emergency measures introduced to address food security concerns shall minimize trade distortions as far as possible and in line with WTO provisions; encourages Members to provide food aid to poor and vulnerable countries and to help the LDCs and net food-importing developing countries improve their agricultural production capacity; emphasizes that adequate stocks can contribute to the realization of Members' domestic food security objectives, and that it is important to promptly share relevant information about policies that may affect trade and markets for food and agriculture.

##### *2. Ministerial Decision on World Food Programme (WFP) Food Purchases Exemptions from Export Prohibitions or Restrictions*

The Decision states that Members shall not impose export prohibitions or restrictions on foodstuffs purchased for noncommercial humanitarian purposes by World Food Programme, but it shall not prevent the adoption by any Member of measures to ensure its domestic food security in accordance with the relevant provisions of the WTO agreements.

#### **V. Four Other Outcome Documents**

During MC12, Members have also adopted *Ministerial Decisions on the E-commerce Moratorium and Work Programme, on the Work Programme on Small Economies, and on the TRIPS non-violation and situation complaints*, as well as the *Sanitary and Phytosanitary Declaration for the Twelfth WTO Ministerial Conference: Responding to Modern SPS Challenges*. While the first three are regular items of all ministerial meetings, the SPS Declaration is a new initiative that will help keep the work of the SPS Committee up to date and help Members to more effectively address global challenges in areas such as sustainable development and food security.

### **MC12 Maintains the WTO's Fundamental Role in International Economic and Trade Governance Framework**

On the positive side, the MC12 outcomes are remarkable in the current situation where the WTO is suffering from multiple crises, including the economic crisis, the COVID-19 pandemic, geopolitical challenges, the Russia-Ukraine war, and food security crisis. In particular, the MC12 was postponed for a few times because of the pandemic and the domestic situations of the host country Kazakhstan, so the expectations for MC12 was not high at all. On June 12, Director-General Dr Ngozi Okonjo-Iweala, in her address at the opening session of MC12, said this about the outcomes: “Three deliverables are better than two, and two are better than one. But even one result is a bigger step towards our dreams (of a comprehensive agreement) than all of us going home empty handed.” And at the closing session on June 17, the DG said that MC12 had achieved “an unprecedented package of deliverables..... Not in a long while has the WTO seen such a significant number of multilateral outcomes”.

First, the outcomes of MC12 have far-reaching implications for the future of the WTO's active participation in and positive contribution to discussions from a trade perspective on global challenges in public health, food security, and climate change. In recent years, not only has the global production and distribution of medical products such as vaccines been uneven when the COVID-19 pandemic was spreading all over the world-according to statistics from the UNDP in September 2021, more than 60% of the population in high-income countries received at least 1 dose of vaccine, compared to 3% in low-income countries-but the absence of trade in the global responses to Covid-19 has also affected the effectiveness of such responses. That's why Members such as India and South Africa have submitted proposals, and Members have engaged in intense negotiations on TRIPs decision for vaccines and related medical products, and on WTO's response to the pandemic. At the MC12, Members reached a compromise, which, to some extent, can help improve vaccine production and supply capacity of developing countries and contribute to a comprehensive global response to the pandemic. In addition, MC12 has also provided solutions to other global challenges such as food security, and made clear statements on sustainable development challenges such as climate change, especially the role of CTE and SPS committees, which will have far-reaching implications for the WTO's active participation in discussions on these global challenges and positive contributions from a trade perspective in the future.

Second, Members finally yielded results on fishery subsidies at MC12 after 21 years of negotiation. According to the Food and Agriculture Organization (FAO), 34% of global fisheries resources are overfished, and government subsidies (estimated at \$14-54 billion per year by international agencies such as the World Bank and FAO) are one of the main culprits. To this end, the WTO began negotiations on fisheries subsidies in the Doha Round in 2001, and Article 14 of the 2015 UN Sustainable Development Goals (SDGs) specifically calls for the conservation and sustainable use of oceans and marine resources for sustainable development, with Article 14.6 calling for fisheries subsidies to be negotiated and agreed upon by 2020. After 21 years, the fisheries subsidies negotiations have finally yielded some results in MC12, partially living up to the requirements of the UN SDGs. In particular, the prohibition of subsidies that contribute to IUU fishing, overfished stocks and pelagic fisheries will contribute to the conservation and sustainable use of marine fisheries resources. The

WTO will establish the some mechanisms such as the Fisheries Subsidy Committee, which will also provide a permanent and stable platform for future discussions and solutions on fisheries subsidies.

Third, MC12 has formally launched the WTO reform process. On this, relevant discussions have been going on for more than ten years at various international occasions, and Members have put forward numerous proposals and engaged in heated discussions on the objective, contents and specific proposals of WTO reform. However, surprisingly, the WTO has not formally launched the negotiation process of its reform, hence not been possible to conduct institutionalized or systemic discussions on this issue. The MC12 formally launched the WTO reform process and committed to "improving all WTO functions," i.e., to seek comprehensive reforms in the areas of rule-making, transparency and deliberation, and dispute settlement. This provides the WTO with a clear mandate to negotiate its reforms and will enable Members to explore next step of work of such negotiations. In addition, the outcome on WTO reform, while emphasizing a transparent and inclusive process, also indicates that it does not exclude groupings of Members from meeting to discuss and make proposals, which is quite a positive element.

Finally, US-China cooperation was one of the highlights of MC12, and the negotiation process of MC12 was also notable. In addition to strong leadership of the Director-General, informal negotiation mechanisms such as the "Green Room" meetings, attended by some more or less representative WTO Members, were revived, effectively balancing the negotiation efficiency with the principle of transparency and inclusiveness. These informal mechanisms have also provided the possibility for positive interaction among key WTO Members and made US-China cooperation a highlight of the MC12. Certain source of information said that China and US have shown a certain level of mutual understanding and cooperation in MC12 negotiations on dispute settlement, TRIPs decision, fisheries subsidies, among other issues. The Swiss media Tribune de Genève reported on June 17 that the agreement between China and US on "eligible Members" of TRIPs decision negotiations was "décisif" (decisive) in reaching this deliverable. Director-General Dr. Ngozi Okonjo-Iweala also underlined in her twitter after the successful conclusion of MC12 that "U.S.-China cooperation helped get us through at the toughest moments".

In conclusion, the success of MC12 and its outcomes have not only provided the WTO with the possibility to contribute to addressing global challenges, but also demonstrated to the international community the vitality of multilateralism, and proved that the WTO can still effectively negotiate and reach results. This will help maintain the WTO's fundamental role in the international economic and trade governance framework.

**MC12 Outcomes are A Delicate Compromise Based on a Lower Level of Ambition, while the Deep-rooted, Structural Contradictions of the WTO are Far from Being Resolved**

We should also realize that MC12 outcomes are a delicate compromise based on a low level of ambition, with some sensitive issues put on hold and to be addressed in negotiations after MC12, and many commitments non-binding, thus posing challenges for their future implementation. Some deep-rooted structural contradictions in the WTO are far from being resolved. This includes the following five main aspects.

First, on trade response to the pandemic, whether essential medical products other than vaccine will be included in the TRIPs decision will be negotiated within the next six months. Moreover, since the outbreak of COVID-19 pandemic more than two years ago, the global supply of COVID-19 vaccines has shifted from insufficiency to exceeding demand, albeit some institutional and technical shortcomings in distribution, so the WTO's TRIPs decision of the vaccines is long overdue. In addition, the decision makes only general references to lessons and challenges and the need to find solutions for future pandemics, but without any specific details.

Second, on the issue of food security, the Decision, on the one hand, states that Members shall not impose export prohibitions or restrictions on foodstuffs purchased for noncommercial humanitarian purposes by the WFP, and, on the other hand, states that Members shall not be prevented from taking measures to ensure their domestic food security in accordance with the relevant WTO provisions. So, it will be quite tricky to see how Members will implement this Decision and they can ensure a balance between not restricting WFP procurement and their rights for domestic food security. It will also be a challenge to determine whether Members' measures for domestic food security are in line with WTO provisions and whether these measures are really for food security and not for trade protectionism.

Third, there are concerns about the level of ambition of the outcomes on fishery subsidies. Particularly the disciplines on subsidies for overcapacity and overfishing, which are most critical to the conservation of fisheries resources, are left for future negotiations, including, among others, subsidies for fuel and boat construction. The related S&D is also pending, and the gap of positions between developed and Developing country Members is reported to be staggering. Of particular concern is that the Decision provides that these issues will be negotiated within four years of the "entry into force" of the Agreement. The time for WTO agreements to enter into force range from four years (e.g., the Trade and Facilitation Agreement) to as long as 14 years (e.g., the TRIPs and Public Health Agreement), which means that Members must not wait for the Agreement to enter into force before implementing it and must not continue protracted negotiations for comprehensive disciplines on fisheries subsidies. Such a scenario would neither effectively bind the fisheries subsidies nor truly protect endangered fisheries resources.

Fourth, in terms of WTO reform, MC12 has only launched the negotiation process, but lacks roadmap or staged results for reform, and it is not clear how to distinguish this negotiation process from the regular work of General Council and its subsidiary bodies. Such a problem also exists for the future negotiations on dispute settlement and Appellate Body.

Fifth, some deep-rooted contradictions and structural problems within the organization are far from being solved, which will continue to handicap next step negotiations on WTO reform as well as on some specific issues. These include the long-standing delay in the negotiations on traditional issues such as agriculture, the special concerns of developing country Members (e.g., on cotton), the differences over the status of developing countries and S&D, the constraints of the WTO's negotiation process and decision-making mechanism, the lack of political trust among major players, the interference of domestic politics and the missing leadership in certain major countries, the collision of different systems, and the turmoil in the WTO by Russia-Ukraine war, and so on.

### **Next steps for the WTO**

The MC12 outcomes are encouraging and will provide impetus for future work of the WTO. However, the WTO reform and specific negotiations will be a long, and probably bumpy way to go. Its results, and whether the goal of revitalizing the multilateral trading system can be truly achieved, will very much depend on the leadership role and collaborative spirits of all WTO Members, especially the key Members, as well as their political will to overcome the interference of domestic politics and to make necessary compromises. To this end, WTO Members should focus on the following areas for the next step.

First, WTO must immediately implement the outcomes of MC12.

These include food security (WFP humanitarian purchases of foodstuffs, improvement of global food security through trade, etc.), response to COVID-19 pandemic (vaccine production in developing countries, international flow of vaccines and medical supplies, etc.), fisheries subsidies (establishment of the Fisheries Subsidies Committee and relevant notification mechanisms, and assistance to LDCs and other developing countries, etc.) In terms of the fishery subsidies, WTO must take quick actions for rapid adoption of the Agreement through domestic procedures of at least two-third Members, a precondition for the Agreement to enter into force. It is also important to keep the SPS Committee up-to-date as said in SPS Declaration, which not only helps SPS Committee contribute to addressing global challenges such as food security and sustainable development, but also respond to the need to strengthen the role of the WTO Committees as discussed in the WTO reform. This should also be discussed in the SPS Committee as early as possible.

Second, the WTO should immediately start negotiations on outstanding MC12 issues.

These include inclusion of other COVID-19 medical products in TRIPs decision, comprehensive disciplines on fisheries subsidies related to overcapacity and overfishing as well as related S&D, and reform of the dispute settlement mechanism and Appellate Body, all with clear deadlines. Members must begin negotiations on these issues without delay, and take stock of progress and discuss ways to move forward within the provided timeline.

Third, Members should discuss how to advance the WTO reform.



WTO reform is crucial to the future of the multilateral trading system. On the basis of the MC12 mandate to launch the process, Members should urgently discuss the future roadmap of WTO reform, including the negotiation procedures, mechanisms, timetables, contents and sequencing. It is not advisable to rush for quick outcome of the reform negotiation, but rather to move steadily first on the easy tasks and then the more difficult ones, and to stage harvest of results at future ministerial conferences and General Council meetings. Members should also consider to set up a "policy dialogues" in future WTO reform process to discuss deep-rooted structural issues in the WTO, especially politically sensitive ones. This dialogue could move forward in parallel with negotiations on specific issues, so as to harvest early outcomes on specific issues through negotiations, and to enhance mutual understanding among Members on structural issues through this policy dialogue, hence gradually building up the needed common purpose for WTO reform in the long run.

Fourth, Members should continue to exploit informal consultation process and connect it with the inclusive process involving all Members.

Based on the successful experiences of MC12, WTO should continue to use the informal process such as "Green Room" meetings, with particular attention to their representativeness, and connect it with the inclusive process the heads-of-delegation meetings and General Council meetings involving all Members to enhance the negotiation efficiency while reflecting the ownship of all Members.

All in all, the success of MC12 is not yet the finishing line, but rather a new starting point for the WTO reform. Thankfully, the success of MC12 has restored our optimism, albeit with prudence, in the multilateral trading system and and its future.