



ITUC Briefing paper on the outcomes of the 12th WTO Ministerial Conference (WTO MC12), 2022

After three postponements due to the pandemic, the 12th WTO Ministerial Conference (WTO MC12) was concluded in the early hours of Friday 17 June. The meetings were extended for one day to give additional time to Ministers and delegations negotiating the outcomes.

Much of the process took place in **Green Rooms** in which key Members negotiate outcomes that are then presented to all other Members for adoption. Most national delegations had no direct input in the negotiations and had virtually no ability to oppose the outcomes once presented. Civil society, trade unions among them, protested this practice.

The negotiations focused on a limited and rather specific number of issues, most notably a Waiver from TRIPS rules to boost global vaccines production, restrictions on fishing subsidies, and a series of Joint Statement Initiatives including on e-commerce and domestic regulation disciplines.

At time of heightened emergency and dire need, the world's trade Ministers did not reach a meaningful agreement about how global trade should be redesigned and the rules rewritten.

Part of the Membership initiated a discussion on the WTO Reform, a process that will figure high on the agenda of the next Ministerial Conference in March 2023.

The 12th WTO Ministerial Conference (WTO MC12) concluded:

- an Outcome Document,
- two Ministerial Declarations – one on the emergency response to food insecurity and another on the COVID-19 pandemic and preparedness for future pandemics,
- a Ministerial Decision on the TRIPS agreement,
- a Ministerial Decision on World Food Programme Food purchases exemption
- a Ministerial Decision on the Work programme on electronic commerce
- and a (partial) Agreement on Fisheries Subsidies

The Ministerial Conference (MC) did not adopt a Ministerial Declaration covering all areas of WTO work. The last MC concluded without a declaration because of divisions among Membership. This time, an Outcome Document is adopted which is lesser to Ministerial Declaration in its bindingness but which, for this reason, is easier to be agreed.

A watered-down, almost meaningless, TRIPS Waiver

The Ministers agreed to make a **minor exception from WTO rules** on trade-related intellectual property rights (TRIPS) to allow some countries to manufacture vaccines easier. The scope of the exception, which is not as substantial to be characterised as a “Waiver”, is tied to TRIPS article 31bis relating to “Other Use Without Authorization of the Right Holder”. Among other things, the Article restricts exports of goods made using a patent without the right holder’s authorisation and confines them to domestic consumption and use. This restriction is now lifted for Covid-19 vaccines.

The exception covers only the production of vaccines for COVID-19, not other forms of Covid in the future, and certainly not therapeutic treatments and diagnostics (like tests), which would have facilitated a more comprehensive response to the pandemic by developing countries producers. The topic of therapeutics and diagnostics will be opened for discussion again no later than six months. Given that it took developed countries 18 months to agree to this minimal concession in times of great emergency, one could assume the fate of the future talks.

The **so-called Waiver applies only for the next five next years** after which all patent monopolies are restored. The negotiators agreed at least that all “ingredients and processes necessary for the manufacture of the COVID-19 vaccine” are covered.

Only eligible countries can avail themselves of the exception. These are not developed countries, which could have helped boost vaccine production. Eligible are only developing countries. In practice, those who could benefit from the exception are sizeable markets with some ready capacity to produce – most notably India. China had opted out from the benefits of any TRIPS Waiver in May.

Another limitation however are the **notification requirements** both from exporting and importing countries. These requirements apply on every number of exported vaccines and they are burdensome and time-consuming, and certainly unfit for life-saving medical technologies and pandemic emergencies. This is a big victory for Big Pharma.

The exception includes also anti-diversion obligations compelling countries to “undertake all reasonable efforts” to prevent the re-exportation of manufactured vaccines.

The UK, Switzerland, and the EU, most prominently among other developed countries, fought against the Waiver proposed initially by India and South Africa and supported by more than 100 more countries, the international trade union movement, the UN AIDS and other UN agencies, and a host of civil society and grassroots organisations.

The Ministers agreed also to a Declaration on the pandemic. After recognising global trade’s contribution to the production of essential goods and related services needed in the fight against COVID-19 and future pandemics, the Ministers acknowledge that the recovery remains highly divergent and that the pandemic continues to pose evolving challenges. They also recognised that the pandemic resulted in balance of payments challenges and revealed fiscal limitations for some developing countries to withstand, respond to, and recover from the pandemic.

Against this backdrop however, the text stresses that any measures, if necessary at all, should be targeted, proportionate, transparent, temporary and should not create unnecessary barriers to trade. The Ministers call for Members to avoid export restrictions as to not create shortages, as was the case with the export

restrictions on protective equipment, alcohol, and sanitizers by mostly developed countries and China early in the pandemic. They also call for the implementation of the Trade Facilitation Agreement to hasten custom procedures and ease imports, even if custom procedures have never been a problem for the delivery of highly-anticipated medical goods during the pandemic.

In practice, the Waiver will be of little, if any, practical use and only for the next five years.

An ambitious waiver would, at best, cover a tiny proportion of global trade. Nevertheless, the Waiver's cause reflected a common feeling shared all over the world and across the political spectrum: that this time the rich should do their part. The message gathered quickly wide support from citizens, workers, and movements and received high media coverage. It was the Ministers of democratic countries, in complete defiance of their public opinion, insisted on arguments that were repeatedly refuted by reason, evidence, and science during the negotiations.

The Covid TRIPS Waiver could have laid an exemplary precedent for expeditious rule-changing and emergency responses. The countries that toned down its ambition and relevance send a message that the current dysfunctional rules that prioritise profits over people are to be defended also in future global emergencies, including possibly those resulting from climate warming.

If there was a moment to signal a change of course on global thinking and policy-making, it was now, and the opportunity was wasted.

Food security

The **Ministerial Declaration on food insecurity** focuses on the emergency response rather than the long-term measures that are needed to build up food security for all countries.

The Ministers commit to

1. facilitating trade and improve the functioning of global markets for food and agriculture.
2. enhancing productivity and production, trade, availability and accessibility and affordability of food
3. ensuring that any emergency measures shall minimise trade distortions as far as possible and consider their possible impact on other Members, particularly least-developed and net food-importing developing countries

What is missing is a plan, with some level of detail and a time horizon, that would review all WTO Agriculture rules that have been undermining food security and growing import dependency, decades now. There is nothing as a plan to support net importers to become self-reliant and so, all focus is put on keeping trade routes open. It could be an implicit message to role Russia's war is playing to the current food crisis. However, keeping trade open is not enough because, as the pandemic showed, major exporters quickly turn into major hoarders without facing any WTO repercussions.

The Decision on the World Food Programme is a short document with which the Ministers resolve to not impose export restrictions on foodstuffs purchased by the World Food Programme.

Other issues

Fishing Subsidies: The agreement reached is far less ambitious than the initial negotiating texts. Some rules that prohibit subsidies for illegal, unreported and unregulated fishing were agreed but subsidies for fuel and ship construction were left out. Subsidies regarding overfished stocks were also agreed. Subsidies regarding artisanal fishing, provisions on forced labour, and specific time limits of transition as part of the special and differential treatment for developing countries were not agreed. The agreement reached is partial meaning that the left-over issues will be carried to the next Ministerial in March 2023.

Moratorium on e-transmissions: The developing countries agreed to extend the moratorium on e-transmissions, a term without an official definition, by which Members understand good and services made through transmission of electronic data: computer programs, movies, music, videogames, and other software but not physical goods that are delivered by online services. Applying tariffs on such transmissions is a complicated issue both politically but also in practice, and it is developing countries' favourite bargaining chip.

Instead of conclusion, the WTO Reform

The Ministers reaffirmed the foundational principles of the WTO and also committed to work towards "necessary" reform of the WTO. The Reform is a little-defined process and although a few countries have made their goals public since 2018, there is no wide agreement as to what the overall goals of this should be.

The narrative is not the same and the direction not agreed yet. In general, developing countries prefer a reform that would make rules more flexible (because they don't work for them) whereas the developed ones argue for an agenda that would increase enforcement of current rules (that work for them). As the developing world went for an expeditious relaxation of current IP rules, the industrialised countries seek rapid delivery of new liberalisation rules by means of Joint Statement Initiatives.

The WTO goes through an existential crisis but its existence is not yet seriously under question.