

Chapter 5 WTO Reform and Global Economic Governance

As an important part of global economic governance, the global trade governance system represented by the multilateral trading system is currently facing a complex and volatile international environment. The WTO has encountered multiple challenges as it carries out reforms, but members are still actively promoting negotiations to implement its reform agenda. At the 12th WTO Ministerial Conference held in June 2022, participants discussed WTO reform, including COVID-19 pandemic response, food security, fisheries subsidies, e-commerce, and other issues. They reached fruitful agreements and made achievements on the above-mentioned issues.

I. The Multilateral Trading System Faces Profound Restructuring

The world economic structure has undergone profound adjustments. Unilateralism and protectionism have been on the rise, economic globalization has encountered setbacks, and the authority and effectiveness of the multilateral trading system have been seriously challenged. Some countries advocate the inclusion of “values” in economic and trade rules, abuse security exceptions and unilateral measures, and even ignore existing international rules. Regional governance brings both opportunities and challenges to multilateral mechanisms. The crisscrossing bilateral and regional trade and investment agreements highlight the phenomenon of “spaghetti bowl”, and the trend of global trade governance fragmentation has become more apparent. The WTO has failed to show the core leadership, and it lacks internal driving force. The operation of the WTO faces many contradictions and obstacles:

1. The dispute between North and South members over the right to formulate rules and speak is becoming increasingly fierce.

On the one hand, some developed members hope to keep the old rules that are beneficial to themselves, and on the other hand, they have continued to dominate the designing of new rules, in an attempt to occupy the commanding heights of the global economic governance system. They even tend to make use of the “elite club” model of bilateral or regional trade agreements, such as the previous TPP, to replace the multilateral trade rules system. Calls of the emerging economies to reform the global economic governance have failed to receive effective response for a long time. The developing members, therefore, are generally reluctant to continue to be “passive recipients” of rules and hope to participate more actively and substantially in rule-making to correct the inequality of existing rules. Meanwhile, the developed members have limited space to further open up their domestic markets, while some developing members have attached increasing importance to protection of their domestic policy space. As a result, the room for exchange of interests between the developed and developing members has narrowed.

2. Inefficiency of the consensus-based decision-making mechanism affects the progress of negotiations.

The WTO adopts a consensus-based decision-making method, and any member has the right to veto. While ensuring equal participation of all economies in decision-making, regardless of their size, this mechanism also hampers many major and complex negotiation processes that involve complicated interests. The Doha Round of negotiations has been more than 20 years, trapped in stalemate and achieved very limited progress on such issues as agriculture, development, and rules, resulting in a long-term stalemate. The mechanism has also failed to promptly respond to such new issues as digital economy, investment facilitation, green development, trade and the environment, and small, medium-sized enterprises. The operating efficiency of the negotiation mechanism urgently needs to be improved.

3. The dispute settlement mechanism and the shutdown of the Appellate Body.

Since 2017, the United States has abused its power of veto to repeatedly obstruct the selection process of new judges and paralyze the dispute settlement mechanism,

citing the Appellate Body’s “judicial overreach” and its “excessive term lengths”, driving the mechanism towards “uncharted waters” and may even fall into a dangerous situation governed by the “law of the jungle”. As an interim mechanism, the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) is not a plurilateral agreement and does not belong to the category of international treaty. WTO members such as the United States, Japan, South Korea, and India have not joined the mechanism, whose operational space is limited.

4. Shortcomings in the review and notification mechanism.

In terms of deliberation and surveillance functions, the building of the surveillance mechanism for implementation of transparency and notification commitments should be strengthened. Given their differing transparency interests, the WTO members have been divided into two groups that advocate two types of governance philosophy, i.e., discipline restraint and capacity enhancement. The developed members, which advocate discipline restraint, have failed to take into consideration the differences in the notification capabilities of the WTO members; they have put the focus on increasing the cost of rule violation and advocated adoption of workable punitive clauses to spur member countries to fulfill their notification obligation. The developing members advocate capacity enhancement, emphasizing the provision of necessary capacity support for fulfilling notification commitments.

II. Fruitful outcomes of the 12th WTO Ministerial Conference

In June 2022, the 12th WTO Ministerial Conference (MC12) was held in Geneva, Switzerland. It achieved more-than-expected success, released one outcome document, and reached four agreements on COVID-19 pandemic response, fisheries subsidies, food security, and e-commerce. The conference not only enabled the WTO to “survive a desperate situation”, but also boosted the confidence of the international community in the multilateral trading system and multilateralism.

1. Safeguarding the multilateral trading system and advancing the reform of the WTO

The MC12 reached agreement on the outcome document of the conference, it

was the second time when all members reached consensus — 7 years after the 10th Ministerial Conference in Nairobi, Kenya in 2015. In the outcome document of the conference, all parties reaffirmed the strengthening of the multilateral trading system with the WTO at the core, emphasized the important role of international trade and the WTO in promoting global economic recovery, enhancing people’s well-being, and achieving sustainable development, and reiterated that special and differential treatment is an integral part of the WTO agreement. All parties expressed their support for the necessary reform of the WTO to ensure that the reform process is member-driven, open, transparent, and inclusive, and address the concerns of all members; they also agreed to authorize the General Council and its subordinate bodies to carry out relevant work, so that the next ministerial conference can review advancement in relevant areas. The parties pledged to secure a fully functioning dispute settlement mechanism accessible to all members by 2024. Moreover, members also made political commitments on WTO accession work, service trade, and issues related to the least developed countries.

2. COVID-19 pandemic response

The MC12 reached the Ministerial Decision on the Agreement on Trade-Related Aspects of Intellectual Property Rights, allowing developing members to exempt from the protection obligations of the COVID-19 vaccine patents, and developing members can authorize production and export vaccines to other eligible developing members without the consent of the patentee. The developing members enjoy greater flexibility in the way of implementing authorization, notification obligations, and providing appropriate remuneration to patentee. For example, they can authorize production through legislative acts as well as other acts, such as executive orders and emergency decrees, and they can notify the WTO after the authorization; they can also take account of the humanitarian and not-for-profit purpose in determining adequate remuneration for the patentee. The MC12 decision also has it that members will decide, no later than six months from the date of the MC12 decision, on the extension of the patent right obligation exemption to cover the production and supply of COVID-19 diagnostics and therapeutics. The decision encourages developing members with COVID-19 vaccine production capacity to waive the exemption. Before the MC12, China had voluntarily announced it would not seek the treatment provided by the

exemption decision so that agreement could be reached at an earlier time regarding the negotiations on intellectual property right exemption of COVID-19 vaccines.

MC12 also reached the Ministerial Declaration on the WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics, which covers comprehensive measures to respond to and actively cope with the pandemic and get well-prepared for any future pandemic; they include improving policy transparency, eliminating as many export restraints as possible, promoting trade facilitation, supporting the role of service trade, supporting an inclusive recovery, strengthening cooperation with international organizations, and implementing future action plans.

3. Fisheries subsidies

The WTO fisheries subsidy negotiation is part of the Doha Round of negotiations and have been underway for 21 years. The negotiations aim to promote the sustainable development of marine fishery resources by formulating new subsidy rules to restrain harmful fishery subsidies. After intensive negotiations and hard work among the WTO members, the MC12 finally reached the agreement on the fisheries subsidies, the first WTO agreement aimed at achieving sustainable environmental development goals.

The agreement contains two core disciplines. One is to prohibit illegal, unreported and unregulated (IUU) fisheries subsidies; the other is fishing, and the other is to prohibit subsidies for overcapacity and overfishing. To implement the negotiated authorization, the agreement provides special and differential treatment for developing members, stipulating that within two years after the agreement comes into force, relevant subsidies provided by developing members will not be subject to the WTO dispute settlement procedures, and a fisheries fund will be established to provide developing members with technical assistance and capacity building. The fund is financed voluntarily by members and will engage in cooperation with the Food and Agriculture Organization of the United Nations and the International Fund for Agricultural Development.

4. Agriculture and food security

The MC12 adopted the Ministerial Declaration on the Emergency Response to Food Insecurity to actively cope with the current global food insecurity problem.

The ministers of member countries expressed concerns about the disruption of trade in food and agricultural products, excessive fluctuations in international food prices, and relevant trade restrictions; they emphasized that trade, like domestic production, plays an important role in improving global food security; ministers of member countries committed to taking steps to facilitate trade in agricultural products, improve the functioning of global food and agricultural markets, to increase their long-term resilience; they reaffirmed not to impose export bans or restrictions that are inconsistent with WTO rules; they committed to minimizing the trade-distorting effects of any emergency measures taken to ensure food security and making them abide by WTO rules; food aid is encouraged to poor and weak countries to help least developed countries and net food-importing developing countries increase agricultural production capacity; it is emphasized that sufficient grain reserves are helpful for members to achieve domestic food security objectives, and it is important for information on policies that may affect agricultural trade to be rapidly shared.

Moreover, the MC12 also reached the Ministerial Decision on World Food Programme (WFP) Food Purchases Exemptions from Export Prohibitions or Restrictions, pledging not to impose export bans or restrictions on WFP's humanitarian food purchases.

5. E-commerce

The WTO started to clarify temporary exemption of customs duties on electronic transmission from 1998 through the Ministerial Declaration on Global Electronic Commerce and other forms of decision, but this practice can only be maintained after consensus at the ministerial conference. The MC12 passed the Ministerial Decision on the Work Programme on Electronic Commerce. It claimed to reinvigorate the work under the Work Programme on Electronic Commerce, emphasize the development dimension, intensify the discussions on the temporary exemption of customs duties on electronic transmissions, regularly review relevant research reports, and agreed to maintain the current practice of not imposing customs duties on electronic transmissions until next ministerial conference.

Previously, in December 2021, 86 WTO members announced that they had made substantial progress in the negotiation of eight articles on e-commerce, including open Internet access, electronic signature and verification, and paperless transactions, and

they will strive to complete the negotiations by the end of 2022.

In addition, the MC12 also adopted outcome document on issues such as supporting the development of small economies, sanitary and phytosanitary.

At a difficult time when the multilateral trading system is facing severe challenges, the success of MC12 marks a crucial and important victory for multilateralism, fully demonstrates the solidarity and cooperation of WTO members and their determination to overcome the difficulties together, further boosts the international community's confidence in the multilateral trading system, and injects a strong shot in the arm of the international community as it copes with global challenges and recovery of the world economy.

III. Progress in Negotiations on WTO-related Issues

Apart from a package of agreements the MC12 has reached, the WTO members have also made positive progress in promoting negotiations on investment facilitation and services domestic regulation in recent years.

1. Investment facilitation

In December 2021, 112 WTO members, including China, the European Union, Russia, and Japan, co-sponsored a Joint Statement on Investment Facilitation for Development, which aims to establish international rules, improve the transparency of investment policies worldwide, and simplify and speed up investment approval procedures, so that international investment cooperation can be further promoted. The joint statement is a transformation of the outcomes of the G20 Hangzhou Summit 2016 on G20 Guiding Principles for Global Investment Policymaking. Negotiations on that topic were co-sponsored at the WTO in 2017, and Chile is the current coordinator of the negotiations. The participants have reached a preliminary consensus on the agreement framework and main rules. They stressed in a statement that they will continue to adhere to the development orientation and advance the negotiations based on the existing negotiation text. The text-based negotiation is expected to conclude before the end of 2022, and ultimately the multilateral investment facilitation agreement will be inked.

The expected multilateral investment facilitation agreement will create a more

transparent, stable and predictable environment for global investment, promote global investment and trade development, and provide useful references for negotiations and reforms regarding WTO in other fields.

2. Domestic regulation of service trade

In December 2021, 67 WTO members, including China and the United States, jointly released the Declaration on the Conclusion of Negotiations on Services Domestic Regulations, announcing that they reached agreement on the Reference Paper on Services Domestic Regulations and that all participants will complete their respective formal approval work within one year. The agreement is the first plurilateral negotiation outcome based on the relevant joint statements and initiatives of the Buenos Aires Ministerial Conference in December 2017. It is a key outcome of the development and innovation of international service trade regulatory rules, covering 90% of the world's total volume of service trade. The document will help businesses around the world save around \$150 billion in annual costs, and the agreement is expected to attract more economies to join it, increasing its representation and multilateralism.

3. Trade and Environmental sustainability

The WTO members actively integrate environmental sustainability into the multilateral trade agenda. In December 2021, co-sponsors of the Trade and Environmental Sustainability Structured Discussion Initiative (TESSD), the Informal Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade (IDP), and the Fossil Fuel Subsidy Reform (FFSR) initiatives issued three ministerial statements simultaneously, marking achievements in pushing international trade to help address global environmental challenges.

4. Transparency

Disclosure and notification of trade-related information by WTO members in accordance with the rules of transparency is an important benchmark for monitoring whether they fulfil their obligations and keep disciplines, and it is also necessary factual evidence for the WTO to adjudicate trade disputes.

As normative procedural proposals, the joint statement released by the US, EU,

and Japan after their trilateral meeting of trade ministers in 2020 may become the text of basic rules for the discussion of the issue of transparency, and may be elevated to multilateral rules if approved by other WTO members. The proposal by India and South Africa in 2019 is a position paper representing the views of developing countries, which clearly demonstrates interests and demands of those countries regarding WTO transparency rules. China's Proposal on WTO Reform, submitted in 2019, provides a useful reference for solving the problem of insufficient capacity of developing members, and seeks a balance between safeguarding the interests of developing members and promoting the necessary reform of transparency rules.

IV. Priorities for Future Global Economic Governance Reform

Currently, the great changes “unseen in a century” and the COVID-19 pandemic, have been intertwined, posing serious challenges to the recovery of the world economy, and global development has encountered serious setbacks. All parties should hold high the banner of multilateralism, firmly safeguard the multilateral trading system with the WTO at its core, and actively build a more just and reasonable global economic governance system and institutional environment to jointly cope with global economic challenges.

1. Leading the interaction and integration of regional and global governance to shape a mutually reinforcing positive relationship

In an international environment where economic globalization has encountered “adverse currents” and the global economic governance mechanism has stagnated, regional economic governance is an important starting point for enabling the high-quality development of global economic governance. Efforts should be made to further amplify the effect of regional trade and investment to make use of regional economic governance to promote global economic governance. First, the strength of regional economic and trade partners should be united, and the idea of mutual opening-up should be promoted to disintegrate the “clique multilateralism”. Second, the core values of the non-discrimination and openness of the multilateral trading system should be effectively safeguarded, and it should be ensured that the new regional governance mechanism is consistent with the WTO rules in terms of macro development direction.

On the basis of integrating existing regional economic governance mechanisms, a model of “integration before expansion” should be adopted, so that regional experience can be drawn to facilitate global practice; in this way, the antagonism in various governance rules can be resolved and regional economic governance can become a beneficial supplement to, and vital component of, global economic governance. Third, the guiding role of Asia-Pacific regional cooperation should be brought out to promote the building of an open world economy. With the implementation of the RCEP, a favorable environment for economic and trade cooperation should be promoted, groundwork should be laid for the creation of rules and regulations, and an “Asia-Pacific solution” based on common regional interests should be explored, so that a strong impetus can be injected into world economic recovery and global economic governance reform.

2. Promoting South-South and North-South cooperation and Properly Handling Relationship between Developed and Developing economies

Properly dealing with the disputes of the traditional major powers and emerging powers that arise from conflicting interests are important parts of promoting the reform of the global economic governance system. The developed economies should work together with the emerging and developing economies to address global economic issues. On the one hand, the emerging and developing economies have been catching up with the developed economies and even surpass them in terms of their status in the global economic governance; therefore, they should bring out their respective strengths to actively participate in bridging the global economic governance deficit and make greater contributions in new industries, renewable energy, and ecological protection, among others. On the other hand, the North and the South should gradually converge in their targets of international trade and investment cooperation and bridge their distance. Through taking advantage of the inclusiveness of the new governance rules, they should gradually eliminate their differences arising from conflicting interests, take into account the economic development levels of countries at different stages of development, reach a basic consensus on important issues, and actively bridge their differences and reach a consensus, so that a new impetus can be injected into North-South cooperation.

3. Giving full play to the role of G20 and other multilateral platforms to improve the global economic governance system and rules

The major economies are still the main providers of global and regional public goods, and their willingness and ability to provide global public goods have the most profound impact on global governance. Therefore, it is urgent to use the core multilateral economic governance platforms to mediate the relationship between the major economies in the system. First, the role of the G20 as a core platform for global economic governance should be fully brought out and efforts should be ensuring the G20 summits, ministerial conferences and other supporting meetings achieve more results. Second, the cooperation benefits of multilateral mechanisms involving emerging economies, such as BRICS, should be brought out; the BRICS spirit of openness, inclusiveness, and win-win cooperation should be promoted; the BRICS+ mechanism and other mechanism innovations should be fully utilized, so that mutual understanding and trust among different parties can be promoted and progressive forces can join hands to form a stronger force to expand the cooperation and solve the fundamental problem of peace, development, governance and trust deficits.

4. Firmly upholding the core values of the multilateral trading system and actively promoting WTO reform

All parties should consistently and firmly uphold the multilateral trading system and maintain its status as the main channel in the process of global trade liberalization and facilitation. They should support the development of WTO reform in the right direction, the inclusive development of the multilateral trading system, and the legitimate rights and interests of developing members. They should uphold the core values of the multilateral trading system, such as non-discrimination and openness, follow a consensus-based decision-making mechanism, and jointly determine the specific issues, work agenda, and final outcomes of reforms on the basis of mutual respect, equal-footed dialogue and participation by all parties. Priority should be given to key issues that threaten the survival of the WTO, the problem of fairness of trade rules should be resolved in response to the needs of the times, special and differential treatment for developing members should be ensured, and the respective development models of WTO members should be respected.