

June 2022

country report

Multilateral Dialogue Geneva



Geneva Telegram – WTO gives clear life sign at Ministerial Conference

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The "Geneva Telegram" explores events in Geneva-based multilateral organisations on a current topic. This time, the focus is on the 12th Ministerial Conference of the World Trade Organization (WTO) between 12 - 17 June 2022.

After having been postponed several times, the 12th Ministerial Conference of the World Trade Organization (WTO) took place in Geneva from 12-17 June with a two-year delay.

Originally, the high-level meeting, to which several thousand delegates of the 164 WTO members, media and other stakeholders were invited, was to take place in Kazakhstan in 2020. However, the meeting had to be rescheduled multiple times because of the COVID-19 pandemic before it finally took place in Geneva - formally with Kazakhstan as co-host. In light of the WTO's crisis, which has been going on for years, the ministerial conference was seen as an important stress test for its ability to (re-)act.

After tough negotiations - including the extension of the conference, originally scheduled to end on Wednesday, until the early hours of Friday morning – partial successes were achieved on the issues that had been declared priorities in advance (reduction of harmful fisheries subsidies and food security). Moreover, the potential backsliding on one issue (moratorium on customs duties on electronic transmissions) could be averted. The agreement on an (albeit limited) suspension of patent rights for vaccines (so-called "TRIPS waiver") is a success for the WTO Director-General from a political point of view; in terms of

content, there is criticism of the agreement.

In the end, it was neither the question of the Ukraine conflict and the resulting dealings with Russia nor the US-China rivalry that made the discussions difficult, but the widely diverging interests of many member states and the tough stance of India in particular.

The fact that agreements could be reached on all central dossiers is an important sign of life for the World Trade Organization and a great success for Director-General Ngozi Okonjo-Iweala and the WTO Secretariat. Nonetheless, it is only a first step for the WTO out of its crisis.

Ministerial Conferences, which usually take place every two years, are the highest decision-making organ of the WTO where decisions are generally taken by consensus. After several postponements of the ministerial conference due to the COVID-19 pandemic, the gap between the last round in Buenos Aires had grown to 4.5 years. The last multilateral agreement of the WTO was adopted in 2013, so the pressure in the run-up to the conference was considerable. Nevertheless, it was unclear until the very end whether this ministerial conference would take place as planned. One of the reasons: Despite tough negotiations that even stretched over weekends in recent months, only minor progress was made ahead of the meeting of trade ministers. In the beginning of the

conference many of the draft resolutions still had some brackets, which meant that substantive negotiations still had to take place at the 12th Ministerial Conference (MC12) itself. Accordingly, WTO Director-General Ngozi Okonjo-Iweala, who has been in office for just over a year, had dampened expectations in the run-up to the meeting and prepared participants for difficult talks. She identified five priorities for the negotiations:

1. An agreement on a deal to reduce harmful fishing subsidies
2. A declaration to strengthen food security in the face of looming famines in several parts of the world
3. A declaration on the response to the consequences of the COVID pandemic (including an agreement on a possible suspension of the TRIPS Agreement)
4. A renewal of the 'Moratorium on Custom Duties on Electronic Transmissions'
5. A declaration on future steps in the WTO reform process.

By focusing on these specific issues, the WTO Director-General wanted to increase the likelihood of a successful outcome. Results on these issues were also meant to realise the WTO Director-General's mantra that the WTO must be able to deliver tangible results for the people. At the same time, she already made provisions by stating that even one or two breakthroughs would be tantamount to a successful ministerial conference. Accordingly, she warned about a "bumpy road" while also cautioning against the high costs of failure in her opening remarks.

Dealing with Russia's participation

In the build-up to the meeting, there had been speculation about the consequences of dealing with Russia for the Ministerial Conference's ability to act and make decisions. For several months now, more than 30 countries have regularly refused to negotiate in the presence of Russian representatives in WTO bodies. This was also the case at the Ministerial Conference. Through the experience of the past three months, the negotiators were

familiar with the practice (and the workarounds), so that this issue ultimately had a procedural but not a substantive impact on the talks at the Ministerial Conference.

Partial solution in the fight against harmful fisheries subsidies

A key indicator for the success of the Ministerial Conference was the successful conclusion of the negotiations on the reduction of harmful fishing subsidies, which have been ongoing for 21 years (!). The aim is to put a stop to overfishing in the world's oceans thus contributing to the achievement of a central goal of the sustainability agenda. The talks were supposed to have been concluded in 2020, but the discussions turned out to be extraordinarily tough. While the responsible negotiator, Colombian Ambassador Santiago Wills and other observers saw chances for a solution, other negotiators were much more cautious: although many issues were considered surmountable, India was considered a very difficult negotiating partner. After cautious optimism for a comprehensive agreement had prevailed at the beginning, it temporarily evaporated due to a very confrontational intervention by the Indian Minister of Commerce and Industry Piyush Goyal, who repeated India's maximum demands and drew many red lines: for example, he demanded massive exceptions for India in the measures against overfishing, as well as a 25(!) year transition period. This position was met with disbelief by several countries.

With negotiations going until late at night on Wednesday and Thursday, all that mattered was whether at least parts of the agreement could be saved. In the end, only part of the original text remained. The WTO members agreed on measures against illegal and unreported fishing and against subsidies for overfished stocks. Additionally, a separate fund - based on voluntary contributions - will be created from to finance transitional measures in coordination with the Food and Agriculture Organisation of the UN (FAO) and the International Fund for Agricultural

Development (Ifad). The EU and Germany already announced that they would provide financial support for such a fund. The members were unable to agree on more far-reaching measures against overfishing and overcapacity. Therefore, a clause was introduced stating that the agreement reached now will only be valid for four years. Beyond this period, it will only be valid if the excluded areas of negotiation can also be included in the overall deal in the meantime.¹

Limited suspension of patent rights for vaccines ("TRIPS waiver")

As part of the WTO's pandemic response, a declaration was adopted in which WTO members vowed, among other things, to exercise restraint on export restrictions².

The debate on the possible suspension of patent rights for vaccines, diagnostics, and therapeutics against COVID, which has been raging in international Geneva for more than one and a half years, was much more heated. In October 2020, India and South Africa submitted a very far-reaching proposal to suspend the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS or TRIPS waiver): The EU, Switzerland and the UK rejected a waiver, while the US, to the surprise (or horror) of many observers, also supported the waiver, albeit in a very limited form. The negotiations, which lasted one and a half years, initially brought little movement, and the discussions increasingly developed a toxic character that also spread to other dossiers. At the beginning of May, a paper was circulated outlining a compromise (with some very substantial issues still needing to be clarified) between the EU, the USA, India, and South Africa. Despite strong criticism, the draft served as a basis for discussion over the past six weeks. However, in the wake of the Ministerial Conference, very important questions remained unanswered: these included the duration (three to ten years), the scope (vaccines or also therapeutics and diagnostics) and the question of who would be allowed to apply the waiver: for example, one

clause stated that only developing countries would benefit from the waiver if they exported less than 10% of their vaccines - which would exclude China from the waiver - an important condition for the USA, but also for the EU. This text attracted massive criticism from various sides. Industry representatives vehemently opposed this text: copyright issues were not the cause of the unequal distribution, and there is now even an overproduction of vaccines. On the other hand, non-governmental organisations from the global health sector were also outraged: this text was no longer a real waiver. The ultimately agreed compromise provides a five-year waiver limited to vaccines and their ingredients. However, a decision whether to include diagnostics and therapeutics is to be taken within six months at the latest. Regarding the role of China, a wording was found that does not explicitly exclude China but calls for a voluntary commitment (already promised by China) for countries with vaccine production capacities not to make use of the waiver.

Decisions on food security

The negotiations on agricultural policy, which have been hard-fought for years, especially because of disagreements on questions concerning public stockholding, became a priority due to the war in Ukraine and the resulting risks for global food security. No less than five proposals (with different emphases) were submitted to the ministers. Even before the ministerial conference, most members were clearly in favour of exemptions from export restrictions on agricultural products for the World Food Programme (WFP). However, a small group of countries, led by India, insisted on public stockpiling for their own food security purposes and refused to agree to the bill until the very end. A similar situation occurred in the adoption-process of a ministerial declaration on trade and food security. A coalition of African, Caribbean, and Pacific countries as well as the G33 group had previously tabled a proposal for a decision on public stockholding for food security purposes,

¹ The full agreement is available [here](#).

² The text is available [here](#).

which was unacceptable to other WTO members (including the EU). This proposal provided developing countries with almost carte blanche to increase their stockpiling programmes and in turn export their stocks. India, though not the only country, was also particularly firm on this dossier. After intensive rounds of negotiations, WTO members were nevertheless able to agree on the originally submitted ministerial decision to exempt the WFP from export restrictions. The ministerial decision on trade and food insecurity was also adopted at the last moment. The decision, which entered into force, was expanded to include commitments to support least developed countries and net food importing countries. In addition, the negotiators agreed on the establishment of a separate work programme for food security within the Committee on Agriculture. Interestingly, the Russian invasion of Ukraine was not mentioned in any of the draft texts as the main cause of the impending global food crisis. It also became apparent during the negotiations that some countries - especially from sub-Saharan Africa - had adopted the narrative that it was not Russia's invasion, the destruction of warehouses in Ukraine and the Russian blockade of Ukrainian ports that were to blame for the derailed food supply chains. Rather, certain countries are looking to the Europeans and the US for responsibility over the sanctions that have been imposed.

A proposal to establish a working group on the application of sanitary and phytosanitary (SPS) measures, inter alia with a view to achieving global food security and sustainable food systems, was adopted on the second day of the meeting.

E-Commerce - agreement in extra time

Surprisingly, the extension of the 'Moratorium on Custom Duties on Electronic Transmissions' (also known as the 'E-commerce moratorium') was hanging by a thread until the very end. The moratorium came into force in 1998, along with the establishment of a working programme on e-commerce. At subsequent

ministerial conferences, the suspension of tariffs on electronic transmissions had always been extended. South Africa, Indonesia, and India, which have been sceptical about the moratorium for several years, had - supported by Sri Lanka, Pakistan, and Cameroon - submitted a draft according to which only the mandate of the work programme should be extended, but not the moratorium. Their argument was that too little was known about its effects. Developing countries in particular would lose out on high tariff revenues that they could otherwise reinvest. On the other hand, 78 countries (see Map of the Month June 2022)³ had come out in favour of extending the moratorium until the next ministerial conference. It was also striking that the critical attitude towards the moratorium did not catch on with other countries of the 'Global South': Zambia, for example, was decisively against the suspension of the moratorium. Other countries from sub-Saharan Africa (e.g. Nigeria) expressed similar sentiments during the ministerial conference: more important than suspending the moratorium would be to set up accompanying programmes supporting the development of local digital economies. Ultimately, the members agreed to extend the moratorium until the next ministerial conference, which should take place before 31 December 2023 or (in case of a postponement) until 31 March 2024 at the latest. The moratorium could be extended beyond this date by ministerial decision or decision of the General Council. Members also committed to intensify discussions on the moratorium and mandated the General Council to regularly review new reports from other WTO bodies, particularly the definition and impact of the moratorium. Many companies were also relieved about the extension. The lifting of the e-commerce moratorium would have had unforeseen consequences for users and companies worldwide and would have caused great planning insecurity. Since there is no generally agreed definition of electronic transmissions, the interpretation would be a matter of interpretation for each country. How exactly global data traffic would be subject to customs

³ See Map of the Month June [here](#).

duties would also be completely unclear. The introduction of tariffs, especially if the interpretation of electronic transmissions is not mutually recognised, could lead to retaliatory trade measures. The primary victims of the abolition of the e-commerce moratorium would be the many companies, especially SMEs, that rely on the free and international movement of data (e.g. databases, cloud services, digital services, etc.). For developing countries, too, the differently enforced digital trade barriers would be a damper on the path to more innovation and economic growth.

Rough roadmap for WTO reform

No concrete decisions on WTO reform were taken; however, such an undertaking would have been unrealistic. At least the WTO members set the priorities for the coming discussions. One of the most important issues is the WTO's dispute settlement function, which has been dysfunctional since 2019 due to the blockade of the Appellate Body. A large majority of WTO members continues to be in favour of a dual-instance solution (i.e. with an appellate body). In the final agreement, the countries agreed to make the reform discussion open and transparent and to include all functions of the WTO⁴. Concrete proposals, if any, are to be presented by the next ministerial conference. In particular, discussions are to be held with the aim of making the WTO's dispute settlement function operational again by 2024 - an ambitious timetable.

Other topics

Even before the hectic negotiations of the 12th Ministerial Conference began, members of the so-called Plurilateral Initiatives (consisting of 'coalitions of the willing') on Inclusive Trade and Gender and on Trade and Environment (trade and environmental sustainability, plastic pollution and fossil fuel subsidies) had agreed to adopt Ministerial Declarations.

Remarkably, the WTO Director General, who is known for her candour, was very outspoken at the beginning of the meeting about the negative reporting on the WTO and criticised the discourse of some NGOs who tried to portray the WTO as a club of interests of a few members. On the other hand, representatives of civil society repeatedly criticised the limited access of civil society representatives to the WTO premises during the Ministerial Conference, which, according to the WTO, was due to the security concept of the Swiss authorities.

Commentary - a sign of life and a success with caveats

After years of bad press, the WTO and its members succeeded - somewhat unexpectedly - in making positive headlines again with this ministerial conference and sending a clear signal of their ability to act. A failure of the negotiations would have further fuelled the smouldering criticism of the WTO and questions about its relevance. For the first time in many years, the WTO succeeded in producing multilateral solutions. Nevertheless, it is a success with limitations: The fisheries agreement could only be saved by deleting important parts of the original text. It can only achieve its goal of stopping the overfishing of the world's oceans by expanding the scope of the agreement in the coming years. In addition, the agreement must now be implemented accordingly in the member countries. The declarations on food security are important, but also make concessions regarding India's protectionist demands. The TRIPS-Waiver compromise is a success from a political point of view, also because it puts a stop to the increasing poisoning of the Geneva discussion. From a content point of view, however, it is questionable despite its rather narrow formulation: not only because it comes at a time of overproduction of vaccines, but also because it could set a precedent - with a discouraging signal to research and industry. In the end, the slogan seems to have prevailed: Better an unsatisfactory deal than no deal at all.

⁴ See the Outcome Document [here](#).

The fact that people are celebrating the extension of the 24-year existing Moratorium on Tariffs on Electronic Transmissions until the next Ministerial Conference shows how real the risk of a backlash with unforeseen consequences was here.

It is also unclear to what extent the ministerial conference can give fresh impetus to the reform debate. Observers urge the EU to take a leading role here.

In the end, however, the overall result is considerably better than many would have expected for the WTO in the current situation. It is an important success for the new WTO Director-General and the WTO Secretariat, but also a sign of the political will of the negotiating countries. Also through persistence and negotiation, Ngozi Okonjo-Iweala succeeded in helping to forge the compromises. At the closing ceremony, she admitted: "[...] there were many moments when I feared we would come out of MC12 with nothing at all"⁵.

Nevertheless, the doggedness of the negotiations, the threat to overturn the e-commerce moratorium and the protectionist

reflex of some countries should be cause for concern.

Observers also doubt whether India has really done itself a favour with its tough stance: The government may score points domestically, but many other WTO members are increasingly irritated with India's position, not only at this ministerial conference, but also in the negotiations in Geneva in the months before. Despite the multilateral compromises reached, this will encourage many actors to rely even more on "coalitions of the willing", i.e. plurilateral agreements.

However important, this summit is only a first step for the WTO out of the crisis: several agreements will be put to the test in the next six to 24 months through various deadlines and clauses. Future conflicts are already inevitable, and not just because member states will want to return to the particularly contentious issue of WTO reform. The next ministerial conference, which is expected to take place in 2023 (Cameroon and the United Arab Emirates have already expressed interest in hosting the conference), will be another important test for the organisation.

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⁵ The statement at the closing session can be read [here](#).