

# Evaluation of MC12 Outcomes: Korea's Perspective



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Postponed twice since the last Ministerial Conference in 2017, the 12th WTO Ministerial Conference (MC12) was finally held in Geneva, Switzerland and concluded with the “Geneva Package” on 17 June, 2022 after five days of heated finalizing face-to-face negotiations. The Package contains three ministerial declarations, six ministerial decisions, and the outcome document summarizing the entire MC12. Now it is time for us to evaluate what the implications of MC12 and its outcomes are.

Amidst escalating tension among large economies around the world, deepening global economic uncertainty caused by the COVID-19 pandemic, and geopolitical and economic instability triggered by the war in Ukraine, the MC12 securing the Geneva Package deserves to be evaluated as a success. Imagine that the MC12 ended in failure with no outcomes, just like the MC11 in Buenos Aires, Argentina in 2017. The WTO multilateral trading system could have suffered irreparable damage and lost its function, and most WTO Member countries may have by now abandoned their hopes for the WTO system and looked for other alternatives. Under the circumstances, reaching an agreement on the Geneva Package is definitely an achievement and can

be taken as least evidence that the WTO multilateral trading system is still alive and working.

Of course, MC12 concluded unsatisfactorily. The Geneva Package even includes self-conflicting clauses that may erode its effectiveness. An example is the ministerial decision on exempting the World Food Program (WFP) from export prohibitions or restrictions on foodstuffs purchased for non-commercial humanitarian purposes, which simultaneously allows any WTO Member to adopt measures to ensure its domestic food security in accordance with the relevant provisions of the WTO agreements. Ironically, as a result, economies are legitimately able to impose export prohibitions and export restrictions on the WFP purchases.<sup>1</sup> The fishery subsidy agreement also falls short in the sense that it fails to include disciplinary actions on fishery subsidies contributing to overcapacity and overfishing. In addition, the imposition of a sunset clause, which can terminate the whole existing agreements if there is not agreement reached within four years after the current deal enters into force, is just peculiar. Notwithstanding such inadequacy and peculiarity, it is still an achievement in that no negotiations have been concluded over the past 21 years on this matter.

In a broader perspective, the Geneva Package has three important underlying implications worth mentioning. First is the provision of special and differential treatment (S&DT) for developing country Members and LDCs. The outcome document emphasizes that S&DT in WTO agreements should be precise, effective and operational. It also urges WTO Members to work on improving the application of S&DT.<sup>2</sup> This could imply that there would be changes in the application of S&DT provisions to developing member countries. In fact, the ministerial decision on the TRIPS agreement<sup>3</sup> proves an interesting point in this regard. It says that all developing countries are allowed to temporarily use the relevant patents for the production and supply of COVID-19 vaccines; however, developing countries with the capacity to manufacture a COVID-19 vaccine are urged to make a binding commitment not to take advantage of this benefit. This decision could serve as good reference for future negotiations on improving the application of S&DT. That is, the so-called capable developing countries may face significant restrictions in utilizing the S&DT provisions in fulfilling their WTO commitments in such a way that they voluntarily announce that they will not fully use the S&DT benefits. Second is the possibility that plurilateral negotiations among like-minded member countries (the U.S. and the EU play central roles in practice, though) can be officially launched in the functional reform of the WTO. According to the outcome document, the ministers of the WTO Member countries are committed to push for reforms to improve all functions of the WTO, and the General Council and its subsidiary bodies will conduct the tasks required. It is stated in the document that groupings of WTO Members can hold a meeting to discuss relevant issues. This can be

<sup>1</sup> WTO, WT/MIN(22)/29, "Ministerial Decision on World Food Program Food Purchases Exemption from Export Prohibitions or Restrictions." (22 June 2022)

<sup>2</sup> WTO, WT/MIN(22)/24, "MC12 Outcome Document." (22 June 2022)

<sup>3</sup> WTO, WT/MIN(22)/30, "Ministerial Decision on the TRIPS Agreement." (22 June 2022)

interpreted as the start of plurilateral negotiations for WTO reform, which advanced countries such as the U.S. have long been insisting on. Third, the United States played a crucial role in securing the Geneva Package. The U.S., which had lost its interest in the multilateral negotiations in the recent decade, played a leading role and tried to reach a compromise through informal bilateral meetings with major Member countries such as India throughout the entire MC12 sessions. However, the durability whether the U.S. will continue to play such a role in the future is still in question.

As soon as the summer break ends, WTO negotiations will soon resume and follow-up issues to MC12 are waiting to be dealt with. However, these negotiations are not likely to pace up the speed. Not only will it be no simple matter for the Member countries to evaluate the outcomes of the MC12, but many of the follow-up issues are in sharp contrast among Member countries. For example, the U.S. spoke at a General Council meeting that the fishery subsidy agreement needed to be legally fine-tuned before commencing domestic procedures,<sup>4</sup> which the EU and Australia opposed and argued that the fishery agreement would not need legal scrubbing. Another example is on the extension of the TRIPS waiver. The U.S. argues that the decision at the MC12 extending the TRIPS waiver on COVID-19 vaccines to diagnostics and therapeutics no later than six months is only a deadline for discussions and not a mandate.<sup>5</sup> However, many developing countries strongly support expanding the scope of the so-called TRIPS exemptions for COVID-19 vaccines.

After all these considerations, what Korea should do from this point on is to prepare for and participate in follow-up WTO negotiations. This is because the rule-based multilateral trading system in place bears first and foremost significance to any open economies including Korea. At the same time, it is also necessary and probably smart for Korea to take a multi-layered strategy simultaneously utilizing regional negotiations such as the Indo-Pacific Economic Framework (IPEF) or Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), along with WTO multilateral/plurilateral negotiations, as the prospects for the WTO still remain at risk. **KIEP**

<sup>4</sup> Washington Trade Daily, "Differences on Moving MC12 Outcomes," 31(147). (July 26, 2022)

<sup>5</sup> World Trade Online, "As WTO members eye expanding TRIPS decision, U.S. treads carefully." (July 27, 2022)