

我國推動 WTO 因應新冠肺炎疫情之倡議

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摘要

世界貿易組織將於今 (2021) 年 11 月 30 日於日內瓦舉行第 12 屆部長會議，面對尚未完全消弭之新冠疫情，本次會議勢必得對因應疫情之策略有所表示，否則組織對於國際貿易的規範與影響力將愈發式微。職是之故，我國提案部長會議發佈「關於打擊、減緩和復甦新冠疫情及後續影響」的宣言草案，聲明如何對抗及緩解疫情帶來的衝擊，並矢志相互合作以協助開發中與低度開發會員自疫情中恢復。同時，為凝聚這方面的共識，亦積極參與以「新冠疫情及之後：貿易與健康」為題之總理事會宣言草案之連署。

距離世界貿易組織 (World Trade Organization, WTO) 第 12 屆部長會議 (12th Ministerial Conference, MC12) 剩餘不到一個月的時間¹，會員們皆積極推動各種倡議，設法在 MC12 為重要議題取得成果，其中之一即是有關新冠疫情之因應²。繼歐盟提出「因應新冠疫情危機的緊急貿易政策 (Urgent Trade Policy Responses to the COVID-19 Crisis)」後³，我國也為部長會議提出「關於打擊、減緩和復甦新冠疫情及後續影響 (Combating, Mitigating and Recovering from the Impacts of COVID-19 and Beyond)」的部長會議宣言草案⁴；同時為凝聚共識，亦與歐盟一同參加了總理事會宣言草案「新冠疫情及之後：貿易與健康 (COVID-19 and Beyond: Trade and Health)」之連署⁵。事實上，我國在起草部長會議宣言草案時，

¹ World Trade Organization [WTO], *Twelfth WTO Ministerial Conference*, https://www.wto.org/english/thewto_e/minist_e/mc12_e/mc12_e.htm (last visited Sept. 20, 2021).

² WTO News, *Chair Urges Members to Focus on Priorities, Outcomes for MC12* (July 28, 2021), https://www.wto.org/english/news_e/news21_e/gc_28jul21_e.htm (“Members are currently engaged on a wide range of issues where they are hoping to achieve outcomes in the run-up to, or at, MC12, including a global agreement on addressing harmful fisheries subsidies, ensuring rapid and equitable access for products critical in combatting COVID-19, securing progress on agricultural reform, and others.”).

³ Communication from the European Union to the WTO General Council, *Urgent Trade Policy Responses to the COVID-19 Crisis*, WT/GC/231 (June 4, 2021).

⁴ Communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, *Proposed Text on “Ministerial Declaration on Combating, Mitigating and Recovering from the Impacts of COVID-19 and Beyond”*, WTO Doc. WT/GC/W/822 (June 18, 2021) [hereinafter WT/GC/W/822].

⁵ Communication from Australia; Brazil; Brunei Darussalam; Canada; Chile; China; The European Union; Hong Kong, China; Iceland; Japan; Kazakhstan; Kenya; Republic of Korea; Mexico; Republic of Moldova; Montenegro; New Zealand; North Macedonia; Norway; Singapore; Switzerland; The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; The United Kingdom; Uruguay and Vanuatu, *COVID-19 and Beyond: Trade and Health*, WTO Doc. WT/GC/W/823 (July 15, 2021) [hereinafter WT/GC/W/823].

即是受到草擬該總理事會宣言草案之討論的啟發⁶。

以下主要介紹我國單獨提出之部長會議宣言草案，至於總理事會宣言草案，鑑於其內容較為限縮且相關行動建議與我國提案之第一部分相仿，故不另贅述，僅簡介其大綱，並說明我國同時連署該草案之意涵，最後則為結論。

壹、部長會議宣言草案三大面向

對抗新冠疫情和其他類似性質的公衛危機時，公平獲得疫苗和其他關鍵藥品甚為重要；而作為與處理新冠疫情最相關的國際組織之一，WTO 擁有一定的貿易和經濟工具可以全面地幫助其會員打擊、減緩和恢復新冠疫情所帶來的公衛及經濟衝擊⁷。因此我國提出含有三個面向的部長會議宣言草案，分別為打擊新冠疫情之措施、減緩疫情帶來的經濟和公衛衝擊，以及如何從此衝擊中復甦⁸，另外亦包含選擇性條款，以期填補 WTO 缺少處理公衛危機之專責機關的不足⁹。

一、打擊新冠疫情措施

在這個面向，草案提出 8 大應有作為。

(一) 提高新冠肺炎疫苗及相關醫療用品之產量

增加新冠肺炎疫苗及相關醫療用品的產量，乃是對抗新冠疫情相當重要的對策，因此會員將以符合 WTO 目標與規範之方式，盡可能地提高與新冠肺炎有關之疫苗及其他關鍵藥品與醫材、還有個人防護設備等的生產及供應能力¹⁰。同時，會員將盡力鼓勵或協助民間企業透過自願性授權協議或其他適當方式進行技術移轉，以便擴大新冠肺炎有關之疫苗及其他醫療用品的產能¹¹。

(二) TRIPS 協定之彈性和豁免

⁶ WT/GC/W/822, *supra* note 4, at 1 (“The contents of this proposal are partly inspired by the proposal of ‘COVID-19 and Beyond: Trade and Health’(JOB/GC/251/Rev.2) originally submitted by the Ottawa Group and later joined by other Members....”).

⁷ *Id.* para. 2 (“We recognize the importance of fair and equitable access to vaccines and other essential medicines to fight the COVID-19 pandemic and other public health crises of similar nature. As one of the international organizations most relevant to addressing the pandemic caused by COVID-19, the WTO has certain trade and economic tools to comprehensively help its Members to combat, mitigate and recover from the public health and economic impacts arising from the single greatest and most urgent challenge facing the whole humanity.”).

⁸ *Id.* at 1 (“These aspects include combating COVID-19, mitigating the economic and public health impacts arising from COVID-19, and recovering from the economic and public health impacts arising from COVID-19.”).

⁹ *Id.* para. 38.

¹⁰ *Id.* para. 4.

¹¹ *Id.* para. 5.

印度和南非於去 (2020) 年 10 月 16 日「與貿易有關的智慧財產權理事會 (Council for Trade-Related Aspects of Intellectual Property Rights)」的會議上，提出為了預防、遏止和治療新冠肺炎，應豁免《與貿易有關之智慧財產權協定 (Agreement on Trade-Related Aspects of Intellectual Property Rights)》(以下簡稱 TRIPS 協定) 某些特定條款之適用¹²。惟會員對於豁免是否為適當且最有效處理疫苗不足及分配不公的手段始終存在分歧，至今仍無法達成共識¹³。

上述分歧勢將嚴重影響會員對 MC12 部長會議宣言形成共識之可能，故本草案仿照杜哈部長會議公衛宣言前言第 4 段文字¹⁴，重申 TRIPS 協定並不也不當阻止會員採取保護公衛的措施，該協定之解釋及執行方法能夠且當支持 WTO 會員保護公衛的權利，特別是在促進藥品之普及方面¹⁵。希望藉此在上述爭議中取得平衡點，以提高本草案被接受的可能性。

(三) 政府對於新冠肺炎疫苗及相關醫療用品研發的支持

許多會員已使用公共資金支持有關新冠肺炎疫苗和醫療用品之研發與製造生產、以及疫苗和醫療用品供應鏈中的其他活動、同時也用來預訂疫苗，這些補助已有助於抗疫產品的供應得以迅速地發展與擴張¹⁶。固然確保補貼的透明度很重要，但會員在疫情期間將避免利用《補貼及平衡措施協定 (Agreement on

¹² Communication from India and South Africa, *Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19*, at 3, WTO Doc. IP/C/W/669 (Oct. 2, 2020) (“The obligations of Members to implement or apply Sections 1, 4, 5 and 7 of Part II of the TRIPS Agreement or to enforce these Sections under Part III of the TRIPS Agreement, shall be waived in relation to prevention, containment or treatment of COVID-19, for [X] years from the decision of the General Council.”).

¹³ WTO News, *supra* note 2 (“[W]hile delegations remain committed to the common goal of providing timely and secure access to high quality, safe, efficacious and affordable vaccines and medicines for all, disagreement persists on the fundamental question of whether the proposed waiver is the appropriate and most effective way to address the shortage and inequitable distribution of and access to vaccines and other COVID related products. Likewise, in the discussions on the EU initiative, disagreement persists on the fundamental question of whether this proposal is the appropriate and most effective way to address the shortage and inequitable distribution of access to vaccines and some of the COVID related products....”); See Hannah Monicken, *WTO Members Agree to Extend TRIPS Moratorium, Remain Stalled on IP Waiver*, INSIDE U.S. TRADE, Nov. 5, 2021, <https://insidetrade.com/daily-news/wto-members-agree-extend-trips-moratorium-remain-stalled-ip-waiver>.

¹⁴ World Trade Organization, Ministerial Declaration on the TRIPS Agreement and Public Health, Adopted on 14 November 2001, para. 4, WTO Doc. WT/MIN(01)/DEC/2, 41 I.L.M. 755 (2001) (“We agree that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all.”).

¹⁵ WT/GC/W/822, *supra* note 4, para. 7 (“TRIPS Agreement does not and should not prevent Members from taking measures to protect public health and that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all.”).

¹⁶ *Id.* para. 9.

Subsidies and Countervailing Measures)》控訴這些會員為因應疫情而為之補助¹⁷。

(四) 技術規章

新冠肺炎疫苗、藥品及醫材須經會員相關監管機關之許可，以確保品質、安全及效力¹⁸。不過為了在確保健康及安全之同時，讓更多的產品更快問世，會員將盡最大努力單方面地簡化管制符合性之查驗，包括單方面地承認第三國之許可、或暫時豁免相關的證明要求¹⁹。為了促進關鍵醫療用品之貿易並降低製造商的調適成本，會員也將在標準及技術要求上進行交流，包括透過在相關國際組織之合作，以加強管制之一致性²⁰。

(五) 出口限制

會員將減少或免除打擊新冠疫情所需之醫藥產品的不必要出口限制，並避免對這些產品實施新的出口限制²¹，若為了解決嚴重短缺而採取必要的限制時，會員也將確保是以具有針對性、透明性、符合比例原則、暫時性且符合 WTO 義務的方式；並特別考量開發中及低度開發會員；同時確保任何此類限制措施不會干擾基於人道主義而運送的關鍵醫療物資²²。同時，無論如何這些限制的存續期間皆不宜超過國家公衛危機期間²³，並應當立即通知 WTO，說明限制之理由以及解釋何以符合上述原則²⁴。

(六) 貿易便捷化

除了鼓勵尚未執行《貿易便捷化協定 (Agreement on Trade Facilitation)》之會員盡快執行該協定外，會員也將盡最大努力優先處理、加快、暫停或簡化新冠肺炎相關疫苗、藥品及其他產品之通關、許可證及其他進出口程序²⁵。

(七) 透明化和經驗分享

¹⁷ *Id.*

¹⁸ *Id.* para. 10.

¹⁹ *Id.*

²⁰ *Id.* para. 11.

²¹ *Id.* para. 12.

²² *Id.* para. 13 (“We will also ensure that any measures deemed necessary to prevent or relieve critical shortages are implemented in a manner that is targeted, transparent, proportionate and temporary, and consistent with WTO obligations; give particular consideration to the interest of the developing country Members, particularly LDC Members, many of which have scarce manufacturing capacities and are highly dependent on imports...and, ensure that any trade measures, including export restrictions, do not disrupt the provision of humanitarian shipments of essential medical goods....”).

²³ *Id.* para. 15.

²⁴ *Id.* para. 14.

²⁵ *Id.* para. 16.

鼓勵會員盡快通知 WTO 其為應對新冠疫情所採行的海關或是其他邊境措施²⁶。會員將分享為應對新冠疫情危機而採取的貿易便捷化和其他相關措施的經驗，以期建立因應危機之最佳實務典範²⁷。

會員亦將全力參與 WTO 的貿易監督活動，特別是在疫情期間遵循所有的通知要求，而所採行之監督和通知當得以迅速發現供應鏈之中斷，讓會員得以在最短時間內進行磋商以避免供應鏈之中斷²⁸。

(八) 與其他組織合作

會員肯定秘書處之努力而有了與新冠疫情有關之措施的完整資料庫，以及一系列的專門研究和報告，鼓勵其繼續這方面之工作，並聚焦於關鍵醫療物品供應鏈中斷的原因和影響，且參考其他國際組織的研究²⁹。

鑑於需加強流行病防範和應對當前和未來的流行病，會員強烈鼓勵秘書長加強與其他相關國際組織的合作，如世界衛生組織 (World Health Organization)、世界海關組織 (World Customs Organization)、世界智慧財產權組織 (World Intellectual Property Organization)、經濟合作暨發展組織 (Organization for Economic Cooperation and Development)、聯合國 (United Nations) 以及二十國集團 (Group of Twenty, G20)，以加強會員監控關鍵醫療用品的貿易和生產之市場發展時的分析能力。此將加強 WTO 會員對公衛危機的準備，並有助於建立關鍵醫療用品嚴重短缺時的預警機制³⁰。

二、減緩新冠疫情帶來的經濟和公衛衝擊

會員在疫情期間將盡可能維持貿易流通以確保貿易環境之穩定性及可預測性，並加強關鍵食品和醫療用品之取得，同時降低對就業和貧困產生的負面影響³¹。

會員也將盡最大努力避免對低度開發會員的關鍵食品和醫療用品貿易採取限制性措施，並將特別向有困難的低度開發會員提供援助³²。

²⁶ *Id.* para. 17.

²⁷ *Id.* para. 18.

²⁸ *Id.* para. 20.

²⁹ *Id.* para. 22.

³⁰ *Id.* para. 23.

³¹ *Id.* para. 24 (“We will maintain trade flows to the largest extent possible during and after the COVID-19 pandemic so as to ensure a predictable and stable trade environment, to enhance access to essential food and medical products and to limit negative impacts on jobs and poverty.”).

³² *Id.* para. 25 (“[For the vulnerable members] We will make best endeavour to avoid applying restrictive measures to trade on essential food and medical products with LDC Members and to provide

另一方面，會員亦堅定承諾促進婦女和其他弱勢族群之經濟賦權，並使微中小企業 (micro, small and medium-sized enterprises, MSMEs) 更融入全球貿易體系，以使 WTO 更具包容性³³。而會員所為之提高弱勢族群和 MSMEs 能力的補助，不宜被視為對其他會員有不利影響之補貼³⁴。

三、從上述衝擊中復甦

會員承諾將加強與其他多邊和雙邊夥伴、私部門和民間社會的合作，以建立應對新冠疫情和未來類似性質之公衛危機所必要的架構³⁵；也將在符合 WTO 規範下，採取適當的貿易工具和經濟措施，以加強、刺激及促進短期和長期的經濟復甦和就業機會，並使全球供應鏈更具彈性，促進永續的經濟成長³⁶。

鼓勵尚未對低度開發會員之產品提供免關稅與無配額限制待遇的已開發或開發中會員，擴大免關稅與無配額限制待遇的範圍，以對低度開發會員提高市場開放程度，助其從疫情影響中恢復³⁷。

會員重申對貿易援助倡議 (Aid-for-Trade initiative) 之支持，以便動員資源處理開發中和低度開發會員因新冠疫情所面臨的貿易相關限制，並為了弱勢族群和 MSMEs 的利益，也動員資源加強經濟復甦³⁸。且會員也承諾將共同改善弱勢族群和 MSMEs 獲得貿易融資的機會，以助彼等自疫情中恢復³⁹。

會員體認有許多開發中和低度開發會員在新冠疫情期間和之後存在結構脆弱性問題，也體認到貿易對經濟復甦可以扮演的角色⁴⁰；更進一步體認到該些會

aids and other technical assistances to Members in need, particularly LDC Members.”).

³³ *Id.* para. 27 (“We firmly commit to make the WTO more inclusive by empowering women and other vulnerable groups and better integrate MSMEs into the global trading system.”).

³⁴ *Id.* para. 28.

³⁵ *Id.* para. 29 (“We commit to strengthen cooperation with other multilateral and bilateral partners, the private sectors, and civil societies to set up necessary framework for dealing with COVID-19 and future public health crises of similar nature.”).

³⁶ *Id.* para. 30.

³⁷ *Id.* paras. 31-32 (“Developed-country Members that have not yet provided full duty-free and quota-free market access for products originating from LDC Members... are encouraged to improve their existing duty-free and quota-free coverage for such products ...so as to provide greater market access for LDC Members, at least for a specific period, to help them recover from the impact. 32. Developing-country Members... are encouraged to provide duty-free and quota-free market access for products originating from LDC Members, or encouraged to improve their existing duty-free and quota-free coverage for such products... so as to provide greater market....”).

³⁸ *Id.* para. 33 (“We reinforce our support to the Aid-for-Trade initiative to mobilize resources to address the trade-related constraints caused by COVID-19 identified by developing and least-developed country Members and to enhance their economic recovery for the benefit of vulnerable groups and MSMEs.”).

³⁹ *Id.* para. 34.

⁴⁰ *Id.* para. 35 (“We recognize the structural vulnerability of many developing country Members and all LDC Members during and after COVID-19 pandemic. We also recognize the role that trade can play in economic recovery from COVID-19 pandemic, including mobilizing resources to address the trade-

員需要政策空間，以便應對當前疫情挑戰、加強對未來類似危機之準備以及促進經濟復甦或實現結構轉型⁴¹。基此，會員將考慮向有困難的開發中及低度開發會員提供符合 WTO 目標和規則的其他可能之特殊援助，以幫助其迅速從極端經濟困境中復甦⁴²。

四、選擇性條款

草案中提及，因 WTO 內尚無專責機構處理如新冠疫情這類的公衛危機和全面審查相關貿易措施，故設計了兩種可選擇的機制，一是由會員決議以令總理事會設立「貿易與公共衛生委員會 (Committee on Trade and Public Health)」專司此職；或者不另立專責機構，但要求相關的 WTO 機構定期向總理事會報告相關工作，然後由總理事會審查，並做必要的協調或建議以因應公衛危機⁴³。

貳、總理事會宣言草案簡介與連署

至於總理事會宣言草案則是由 25 個會員共同提出，採取之行動分為五個面向，分別為 (一) 出口限制、(二) 海關、服務和技術規章、(三) 關稅、(四) 貿易措施的透明化與檢討及 (五) 積極擴張關鍵醫療用品產能和增強對抗公衛危機的能力⁴⁴。雖架構有所不同，但具體內容和台灣提出之部長會議草案中打擊新冠疫情部分有著極高的相似度，只是隻字未提減緩新冠疫情影響及復甦方面之內容⁴⁵。整體而言，總理事會宣言草案因要凝聚更多共識，導致範圍相對限縮。

我國在發表部長會議宣言草案後，又連署了總理事會宣言草案，原因其實非常簡單。我國尚未提出部長會議宣言草案前，本就已參加總理事會宣言草案之討論⁴⁶，斷不可能因自己單獨提案後就退出該宣言草案之連署，這不但有負當初該討

related constraints caused by COVID-19 pandemic as identified by developing country Members, particularly LDC Members.”).

⁴¹ *Id.* para. 36.

⁴² *Id.* para. 37 (“We will consider other possible special assistances consistent with the objective and rules of the WTO to be provided to those developing country Members in need, particularly the LDC Members, to help them swiftly recover from the extreme economic difficulties.”).

⁴³ *Id.* para. 38 (“[N]oting that there is no WTO body responsible for addressing such public health crises and for reviewing the related trade measures in a holistic manner, we decide to direct the General Council to establish a Committee on Trade and Public Health open to all members of the WTO ...; [N]oting that there is no WTO body responsible for addressing such public health crises and for reviewing the related trade measures in a holistic manner, we decide to direct the relevant WTO bodies to report to the General Council on a periodic basis their related works. The General Council will review the works and make necessary coordination or recommendation to respond to the public health crisis when necessary.”).

⁴⁴ WT/GC/W/823, *supra* note 5.

⁴⁵ *Id.*

⁴⁶ Communication from Australia; Brazil; Brunei Darussalam; Canada; Chile; China; the European Union; Hong Kong, China; Iceland; Japan; Kenya; Republic of Korea; Mexico; Republic of Moldova; Montenegro; New Zealand; North Macedonia; Norway; Singapore; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; the United Kingdom; Uruguay and Vanuatu, *COVID-19 and Beyond: Trade and Health*, WTO Doc. JOB/GC/251/Rev.2 (May 19, 2021).

論給予我國之啟發，也將使我國提案失去該草案連署之其他會員之支持。只是為何已參與該總理事會宣言草案之草擬，又考慮單獨提案？這或許與該草案之屬性（總理事會宣言而非部長會議宣言）以及其涵蓋之範圍有關。若 WTO 在兩年一次的部長會議上對影響全人類如此重大之新冠疫情毫無聲明，顯非作為國際重要貿易組織所當為，因此我國之提案應是想拋磚引玉。另一方面，除了因應目前之公衛危機，如何特別扶持於疫情中受害更為嚴重的弱勢族群及會員、以及如何於疫情後協助復甦，應是同等重要。我國之單獨提案即在此些方面有所著墨，尤其對極具爭議之 TRIPS 協定豁免亦提出拉近正反兩方的文字建議，或許也是希望藉此能在 MC12 解決該對峙。

參、結論

WTO 是我國少數具有正式會籍之國際組織，為避免 WTO 在今年部長會議未對影響人類如此之鉅的疫情有所表態，進而降低 WTO 在國際上之影響力，我國不僅單獨提出有關之部長會議宣言草案，亦參加有關之總理事會宣言草案之連署，顯現我國在 WTO 參與過程中之積極。同時由提案內容亦可看出我國對開發中會員、低度開發會員，以及疫情中受創更為嚴重的弱勢族群及 MSMEs 等，展現高度的人道關懷，並思索在 WTO 規範下保留給予適當協助之政策空間。