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Recent Developments and the Outlook for Trade Negotiations: Report from Responsible Organization

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The purpose of this paper is to clarify the recent developments and the outlook for trade negotiations, taking into account the background of the Doha-Round negotiations and the current negotiation position of the WTO members. The results are as follows. The Doha-Round negotiations were carried out under the Doha mandate, which was recognized as giving special and different treatment to developing countries. However, there was an assertion of the need for a new approach at the 10th WTO Ministerial Conference in Nairobi 2015. In other words, the pros and cons of the continuity of the Doha-Round negotiations were stipulated in the Nairobi Ministerial Declaration. There were fierce arguments between developed countries and developing countries as to whether emerging economies such as China that have undergone economic development should be treated as developing countries. In addition to this problem, there are a lot of serious issues surrounding the WTO, such as the progress of the EPA/FTA, the U.S. trade policy under the Trump administration, the issue of the members of the Appellate Body in the WTO, the interpretation of national security concerning Article 21 of the GATT and the issue of handling public stockholdings for food security purposes. Despite these circumstances, the existence of the WTO is extremely important for its function in promoting free trade. In particular, it can be said that the WTO is significant in terms of being able to unify many trade rules by releasing countries from the complexity of rules created by the EPA/FTA. As Japan's economy depends heavily on trade and has achieved economic development through trade, Japan needs to positively engage in promoting the WTO not only at the administrative level but also through various international meetings such as those at the top level and the ministerial level.

Key words: WTO, EPA/FTA, Doha-Round negotiations, treatment of developing countries in the WTO

1. Introduction

The World Trade Organization (WTO)¹⁾ agricultural negotiations were undertaken based on Article 20 of the WTO agriculture agreement (continuation of the reform process) decided by the Uruguay Round Agreement, as the agreed-upon issue (Built-in Agenda). It should be started one year before the end of 1995–2000. For this reason, the committee on agriculture special session was held in March 2000, and in fact WTO agricultural negotiations were begun. Thereafter, the 4th WTO Ministerial Conference (MC4) was held at Doha, Qatar, from 9th to 14th November in 2000. It was on the final day that the launch of the new

round was adopted. This new round is the so-called Doha Development Agenda (DDA). Thus, in the Doha Round, the term development is used for negotiations under the mandate to consider the needs and interests of developing countries and give special and different treatment to developing countries. The Doha-Round negotiations have been undertaken for less than 20 years, and they have not yet reached an agreement until now.

On the other hand, negotiations on the Economic Partnership Agreement (EPA) / Free Trade Agreement (FTA)²⁾ are steadily progressing under the circumstances where it is difficult to agree on the WTO negotiations. The numbers of EPA/FTA agreements

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1) For more details of the WTO negotiations, see MAFF (2018b), METI (2018b), MOF (2018b) and MOFA (2018a).

2) For more details of negotiations on the EPA/FTA, see MAFF (2018a), METI (2018a), MOF (2018a) and MOFA (2018b).

reported to the WTO reached 669 in January 2018 (WTO, 2018). Fifteen EPAs have already become effective as of the end of March 2018 in Japan, since the Japan-Singapore EPA came into effect in November 2002. In addition, TPP 11 was signed on March 8 and preparations for signing are accelerating for the Japan-EU EPA.

Under such circumstances, as the current economic condition of Japan relies heavily on trade, Japan takes a position that it should pursue both the WTO and the EPA/FTA. Due to fact that Japan has achieved economic development through promoting international trade, it should consider that establishing a multilateral trading system under the WTO regime would lead to a basic foundation for the sound development of global trade.

Therefore, in this paper, with regard to the Doha-Round negotiations in which it is difficult to reach an agreement, the recent developments and the outlook for trade negotiations, taking into account the background when the Doha-Round negotiations were launched, will be discussed, reaffirming the significance of the Doha Round. It is necessary to consider the current negotiating position of the WTO members. In addition, the paper will consider significant change of the WTO negotiations in the past 20 years or so, following the position of the U.S. which has the most influence on the world economy and the status of the EPA/FTA negotiations.

2. Major Achievements of the WTO Ministerial Conference and Others

1) The Third WTO Ministerial Conference (Seattle)

The 3rd WTO Ministerial Conference was held in Seattle, U.S.A., from 30th November to 3rd December 1999 before the Doha-Round negotiations were launched. However, the position amongst the WTO members was greatly different, so there were no meaningful concessions at all. Amongst 135 WTO members, developing countries accounted for around three quarters and therefore developing countries have been able to hold considerable influence over the decision-making process of the WTO.

Developing countries such as Malaysia, India, Pakistan and Egypt had difficulty in fulfilling the obligations that were agreed on at the Uruguay Round, so they insisted on relaxing obligations in the case of launching a new round. On the other hand, developing countries such as Mexico, Chile and South Africa, which were aggressive in launching a new round, have recognized that they were not able to obtain enough benefits as a result of the Uruguay Round negotiations.

For these reasons, a common foundation was formed amongst developing countries in order to enjoy the benefits of free trade, including easing of obligations at the launch of the new round.

2) The 4th WTO Ministerial Conference (Doha)

As the WTO members failed to launch a new round in Seattle, they considered it significant to address special and different treatment for developing countries in promoting negotiations. One of them is to make efforts to improve market access for least developed countries' (LDC) products.

A wide range of fields was discussed in Doha-Round negotiations, including agriculture, non-agricultural market access (NAMA), development, trade-related aspects of intellectual property rights (TRIPS) and the four fields of so-called Singapore issues discussed at the WTO Ministerial Conference in Singapore in 1996, namely trade facilitation, investment, competition and transparency in government procurement.

China and Chinese Taipei were approved to join the WTO and officially became effective WTO members on December 11, 2001.

3) The 5th WTO Ministerial Conference (Cancun)

The 5th WTO Ministerial Conference was held in Cancun, Mexico from 10th to 14th September 2003 to conduct an interim review of the Doha-Round negotiations. However, due to fact that there were confrontations between developed and developing countries, the WTO members failed to reach an agreement.

The G20, consisting of India, Brazil, and others, was formed during the Cancun WTO Ministerial Conference. In short, a group of developing countries gradually came to play an important role in the Doha-Round negotiations.

4) The WTO General Council in June 2004

The WTO General Council was held from 27th to 31st July 2004 in Geneva. Consequently, the Doha-Round negotiations reached an agreement as a package of frameworks. The modalities to be developed need to incorporate operationally effective and meaningful provisions for special and differential treatment to developing countries in this agreement.

5) The 6th WTO Ministerial Conference (Hong Kong)

The 6th WTO Ministerial Conference was held in Hong Kong from 13th to 18th December 2005. Development support measures for developing countries were agreed on and a great momentum was brought forward for the progress of the Doha-Round negotiations. A negotiating group of developing countries

called G110 was formed in this Ministerial Conference. Therefore, developed countries including Japan released spontaneous development support measures.

The deadline for establishing agricultural modalities was set as the end of April 2006, and the deadline for submitting the draft schedules of concessions was set as the end of July of the same year.

6) Chairperson's text of the agricultural negotiations released in June 2006

Triangle issues emerged. In other words, the position of the major WTO members intersected complexly in three fields, namely, market access in the agricultural field, domestic support in the agricultural field, and NAMA. They could not take even the slightest step forward because of the good balance the triangle. Consequently, it was impossible to keep the deadline set at the Hong Kong Ministerial Conference.

A framework of G6 (Japan, the U.S., the EU, Brazil, India and Australia) and G4 (the U.S., the EU, Brazil and India) was established. Brazil and India amongst BRICs (Brazil, Russia, India and China) have played a central role in the Doha-Round negotiations.

7) The WTO informal Ministerial Conference in July 2008

The presidential election was going to be held in 2008 in the U.S. For this reason, the WTO members had begun to have a strong common recognition that it was necessary to conclude negotiations by 2007.

The agricultural negotiation chairperson's text was revised several times. Finally, the WTO informal ministerial conference was held from 21st to 29th in July in Geneva. Although the adjustment proposal was presented by the WTO Secretary General on 25th July, the U.S. and India-China could not fill the gap in the position concerning the Special Safeguard Mechanism (SSM) for developing countries. The WTO members failed to reach a modality agreement as a result of this conflict.

8) The 7th WTO Ministerial Conference (Geneva)

There were regime changes in the major countries such as the change of the administration in the U.S. and the change of the minister of commerce and industry in India, in 2009. The WTO Ministerial Conference is held in principle every two years. However, it was held in Geneva from November 30 to December 2 in the fourth year. There was no discussion of substance focused on the establishment of modality.

9) The 8th WTO Ministerial Conference (Geneva)

The 8th WTO Ministerial Conference was held in Geneva from 15th to 17th December 2011. The chairperson's summary document was issued and Russia

was approved to join the WTO. In addition, a revision of government procurement agreement reached a framework agreement.

The WTO members did not abandon their aim of concluding negotiations simultaneously but some members recognized the need to explore a different negotiation approach.

10) The 9th WTO Ministerial Conference (Bali)

The 9th WTO Ministerial Conference was held in Bali, Indonesia, from 9th to 12th December 2013. Regarding agriculture negotiations, when the government buys into public stockholding for food security purposes, even if it exceeds the promised trade-distorting domestic support level that is subject to reduction, the critical argument was whether the WTO members would take action. In short, would exceptional measures such as refraining from bringing a case into dispute settlement procedure as being a violation of agreement (the so-called peace clause) be made permanent or not? There were fierce conflicts between India, which insisted on permanent exceptional measures, and the U.S., which wanted to prevent them.

11) The WTO General Council in November 2014

Regarding trade facilitation, great progress was made in terms of the first multilateral agreement since the WTO became effective.

12) The 10th WTO Ministerial Conference (Nairobi)

The 10th WTO Ministerial Conference was held in Nairobi, Kenya, from 15th to 19th December 2015. Developing countries including India and China strongly insisted on the Doha-Round mandate. On the other hand, Japan, the U.S., the EU and others insisted on the necessity of a new approach as it could not be hoped to advance the negotiations as long as the Doha-Round and its mandate continued. Consequently, both arguments were included in the Nairobi Ministerial Declaration.

13) The 11th WTO Ministerial Conference (Buenos Aires)

The 11th WTO Ministerial Conference was held in Buenos Aires, Argentina, from 10th to 13th December 2017. However, the WTO members could not bridge the difference in the positions of developed countries and developing countries. For this reason, as no consensus on the Ministerial Declaration Draft was reached by the WTO members, the Chair's Statement was issued on its own responsibility.

14) Towards the 12th WTO Ministerial Conference

The WTO informal ministerial conference was held

in Delhi, India, on 20th March 2018. There was a critical argument whether it was necessary to handle developing countries as a unit according to economic scales.

3. Recent Developments and the Outlook for Trade Negotiations

1) Challenge for coordinated global economic policy

(1) The U.S. trade policy

The U.S. trade policy is seeking reciprocal trade relations under the America First in Principle since Donald Trump was inaugurated as President in the U.S. In other words, the huge trade deficit in the U.S., which is considered to be caused by unfair trade practices, has a negative influence on employment in the U.S. Therefore, the U.S. is focused on correcting these unfair trade practices.

The U.S. imposed an emergency import restriction measure (safeguard) for importing washing machines and solar panels in accordance with section 201 of the Trade Act in February 2018. Some WTO members are in a position to express concern whether this is consistent with the WTO rules.

In addition, the U.S. applied section 232 of the Trade Expansion Act in March 2018. The iron and steel imported into the U.S. may hinder the national security of the U.S., so import tariffs on these goods were raised. In relation to the WTO rules, although there are provisions in Article 21 of the GATT concerning the exception due to national security, there is a problem that it is not clear what kind of case can be specifically applied.

As a countermeasure, China has imposed additional tariffs on 128 items made in the U.S. Although the U.S. decided to suspend the imposition of this measure against the EU until May 1, the EU started a survey with a view to triggering a safeguard against steel products. The EU was concerned about the possibility of iron products that were shut out from the U.S. market flooding into the EU market. Japan has expressed its view to respond appropriately after carefully examining the impact on Japanese private companies and the interpretation of the WTO rules.

In response to this kind of movement in the U.S., many WTO members are arguing whether it is consistent with the WTO rules. It can also be said that many WTO members emphasize the importance of multilateral trading systems that have complied with the WTO rules.

(2) The UK withdrawal from the EU

A national referendum to question whether the UK withdraw from the EU was held on June 23, 2016. As a

result, the UK decided to withdraw from the EU. The UK notified the European Council of its intention to withdraw from the EU under Article 50 of the Treaty on European Union (TEU).

There are problems such as how long the UK will be bound by the EU law and how the UK will continue to maintain the EU single market and custom union. It is required to consider how the EU applies international commitments concluded with a third country to the UK. With regard to the WTO, it is necessary for the UK to formulate its own schedules of concessions and consult with its members under the WTO rules,

These UK decisions would affect not only the EU free trade system but also the WTO negotiations process. There would be no positive effect on the Doha-Round negotiations.

(3) The EPA/FTA

① GATT Article 24

The EPA/FTA can be concluded under GATT Article 24. It is required not to raise duties on the constituent territories by eliminating duties and other restrictive regulations within a reasonable period for substantially all trade. Application of a low tariff rate to a specific country in the EPA/FTA is regarded as an exception to the WTO Agreement, which is based on the MFN treatment of Article 1 of GATT. Regarding mutual reduction and elimination of tariffs amongst developing countries, the requirement of Article 24 of GATT does not apply.

② The EPA/FTA in Japan

The EPA has come into effect with 15 countries and regions as of the end of March 2018 in Japan. The Japanese government is setting KPIs (Key Performance Indicators) with an FTA ratio of 70% or more by 2018, and will continue to promote the EPA/FTA in the future in the Japan Revitalization Strategy. It is necessary for Japan to take an initiative because the WTO negotiations are stagnating and the protectionism movement is expanding globally.

2) The expected role of the WTO

(1) Adjustment of the difference in the positions of developed countries and developing countries

Current political and economic conditions surrounding the WTO members are different from those in 2001 when the Doha-Round negotiations were launched. Although the WTO members have agreed on a major direction that the WTO should be developed towards liberalization of trade, the strategy has changed. It is becoming increasingly difficult as time goes by to match the ideas of some developed countries and developing countries that have great driving force in advancing the WTO negotiations.

There are no definitions of developed countries and developing countries themselves in the WTO. In other words, if the schedules of concessions prepared by using modalities applied to developing countries are applied with no objection from the WTO members, that country is recognized as a developing country. This approach will possibly lead to such a country's itself vesting in the treatment of developing countries.

Many developed countries are in a position that if the political and economic conditions of developing countries have changed, they do not need to treat them uniformly as developing countries. To raise the issue of applying to the special and differential treatment for emerging developing countries results in strengthening the unity of the developing countries among themselves. It may be difficult to shorten the gap of different positions between developed and developing countries. The idea of a new approach rather than the Doha-Round negotiations was also described in the Nairobi Ministerial Declaration for the first time. In short, both approaches have been shown in this Declaration.

(2) Consensus agreement

The WTO negotiations will not progress without consensus amongst the WTO members. There are 164 members in the WTO as of December 2018. As there are developed countries and developing countries, exporters and importers, the strategies to promote trade liberalization amongst the WTO members are getting complicated. It is very difficult to pursue contents that can be obtained based on consensus amongst the WTO members under such circumstances. However, some countries that have benefited from trade liberalization, including Japan, believe that it is necessary to advance the WTO negotiations by demonstrating strong leadership.

(3) Partial agreement

Partial agreement was also accepted rather than the single undertaking method at the 8th WTO Ministerial Conference in 2011. While it is moving forward in areas where agreement is easy, there is a risk of postponing fields where agreement is difficult. It is necessary to negotiate seriously amongst the WTO members on how to agree on balanced contents in proceeding with the WTO negotiations.

(4) Public stockholding for food security purposes

If a country purchases at a price (administrative control price) that exceeds the market price for stockholding, this price difference needs to enter Aggregate Measurement of Support (AMS) under the WTO rules. However, India strongly insists that public stockholding for food security purposes will not be subject to dispute settlement until the permanent measures are

agreed. The claim of India has recently changed to a stronger position and asserts that it should be excluded from entry into AMS. In terms of WTO rules, expanding the scope of policy of trade distortion is not consistent with the direction the WTO.

However, because of India's highly qualified position among developing countries, it is considered that some special consideration must be presented to India's assertion so as to conclude negotiations.

(5) Appellate Body Members

The WTO is a two-tiered court system. The report of the Panel of the first instance has been made public. It is possible to advance dispute settlement procedures and appeal to the Appellate Body within 60 days from the publication in the case of not being convinced of its contents. The Appellate Body will conduct an examination on the validity of the interpretation of the panel. The Appellate body consists of seven people who can represent the WTO members. Three people are assigned to each case, and the term of office is four years. They can be reappointed only once. However, three posts are vacant at this moment. It can also be said that the current four members have fallen into a situation where it is difficult to achieve the deadline "to distribute the report of the Appellate Body within 60 days from the appellate notice date, at the latest within 90 days". The term of office of one person will expired in September 2018, and there is concern that only three people would remain engaged in the work.

Regarding the selection of the members of the Appellate Body, currently the selection process is not functioning. This is because there is a member who has problematic views on the current role of the Appellate Body. If this situation continues, the WTO's ability to resolve disputes may fall into a dysfunctional situation.

(6) GATT Article 21

The U.S. applied section 232 of the Trade Expansion Act, but how to deal with the interpretation of Article 21 of the GATT is a major problem.

(7) Market Economy Status for China

When joining the WTO in 2001, China was deemed to be treated as a non-market economy for 15 years, assuming that foreign exchange markets are being controlled. When dealt with as a non-market economy country, domestic prices may also be policy-controlled intervention prices, so that it is possible to use the price of the third country rather than the price of the non-market economy country. It is generally possible to calculate favorably for countries that impose an anti-dumping duty.

China is in the position that the provision expired in December 2016. However, the U.S. and the EU continue to adopt the price of the third country to calculate

the dumping margin. Therefore, China has sued the U.S. and the EU through the WTO.

In the relationship between the U.S. and China, concerning the possibility that the domestic support of rice, corn, wheat in China exceeds the commitment level of domestic support and operation of the tariff quota is also inappropriate in China, in each suit was filed against the WTO by the U.S. in December 2016.

The differences in position amongst major countries may have an impact on the Doha-Round negotiations.

(8) Electronic Commerce (EC) and Information Technology Agreement (ITA)

Regarding electronic commerce (EC), there is no provision in the WTO agreement. However, the 2nd WTO Ministerial Conference (Geneva) adopted the ministerial declaration on global e-commerce in May 1998. A joint statement was issued by 70 countries and regions, and the goal of promoting the discussion of e-commerce at the WTO was shared in the 11th WTO Ministerial Conference (Buenos Aires) in December 2017.

As for the Information Technology Agreement (ITA), 29 countries and regions agreed to eliminate tariffs on information technology-related products (144 items (HS 6 digit base)) at the Singapore Ministerial Conference in December 1996. Eighty-two countries and regions are participating at this moment.

While the WTO negotiations are stagnating, there is a need to discuss the issue of how the WTO handles the movement of pluri-lateral like these towards multilateral.

3) Impact of the EPA/FTA conclusion

The more developed countries and developing countries progress with the strategy to promote the EPA/FTA, the more the strategy changes to advance the WTO negotiations. In terms of the level of the ambition of the WTO negotiations, if the EPA/FTA is concluded, it should aim to exceed the level of that ambition. On the other hand, if the WTO were concluded with an ambitious level that exceeds the EPA/FTA, some WTO members would think that the meaning of the EPA/FTA would be lost.

In relation to the WTO and the EPA/FTA, for example, the Agreement on the Application of Sanitary and Phytosanitary Measures stipulated in the TPP Agreement is based on the WTO's SPS Agreement. In this way, some discussions have been made based on the level of ambition in the WTO.

It can be said that it will be easier to promote trade liberalization through EPA/FTA negotiations because it is more flexible in some ways than the WTO negotiations. As a result, the more the number of EPA/FTA increases, the more it will affect the WTO negotiations.

However, there is a view that the conclusion of the EPA/FTA is the formation of a blocked economic zone. There are cases where the TPP/TPP 11 has provisions to accept new members. In other words, if some countries and regions want to become a member of a blocked economic zone, there is still a way for new members to join.

The conclusion of mega EPA/FTA may have a positive synergistic effect. As a result, there is a great possibility that it would affect the creation of world trade rules such as the WTO. However, the WTO is significant in promoting free trade in terms of being able to unify rules by being released from the complexity of EPA/FTA rules.

4) The Difference between the WTO and the EPA/FTA in the field of agriculture

The WTO is different from the current EPA/FTA in terms of domestic support discipline in agriculture. The significance of advancing WTO negotiations exists in reducing trade-distorting domestic support. However, the public stockholding for food security purposes proposed by India would go against WTO rules. It is contrary to the description in the preamble of the WTO. The WTO members must once again consider seriously the negotiating positions.

4. Conclusion

The outlook for trade negotiations must take into consideration recent developments in order to reconfirm the significance of the Doha-Round negotiations and the movements of the major countries affecting the negotiations. Political involvement is necessary in order to promote the WTO negotiations. Coordination among the WTO members where there is the huge gap in the handling of developing countries is the most important issue.

If the WTO does not function properly, there is the possibility that existence of the WTO itself may be problematic. With regard to the Appellate Body, it is necessary for the WTO members to make it functional as soon as possible. In terms of the functioning of the WTO, the WTO should fully demonstrate its monitoring function. Therefore, it is required for the WTO members to promptly notify, in line with the WTO rules.

Furthermore, there is also a field where discussion is progressing at the pluri-lateral meetings. It is necessary to examine how to tie these to the multilateral process in a way that brings a positive influence on the entire WTO negotiations.

The Japanese ambassador of the Permanent Mission of Japan to the International Organizations in Geneva was elected the Chairperson of the WTO General

Council on 7th March, 2018. It is necessary for Japan to positively engage in promoting the WTO not only at the administrative level but also through various international meetings such as at the top level and the ministerial level. It is very important for the WTO to be able to unify trade rules around the world. Japan needs to actively engage through all opportunities and also to encourage major countries in order to advance the WTO negotiations.

Opinions in the paper are all personal opinions of the author and do not represent the organization to which the author belongs.

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