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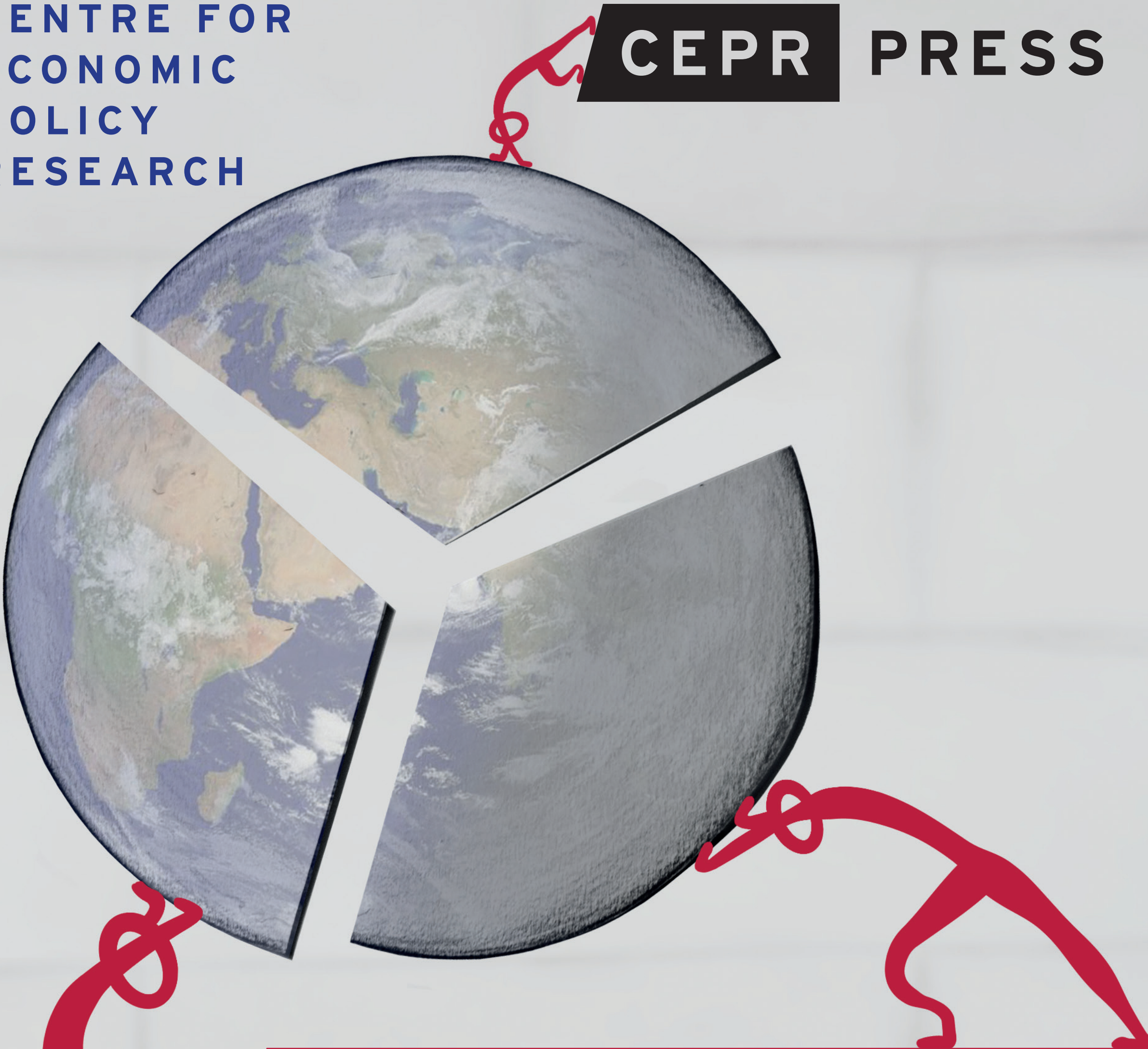

Simon J. Evenett and Richard Baldwin

Revitalising Multilateralism

Pragmatic Ideas for the New WTO Director-General

THE GRADUATE INSTITUTE GENEVA
CENTRE FOR TRADE AND ECONOMIC INTEGRATION
CEPR
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Centre for Economic Policy Research
33 Great Sutton Street
London, EC1V 0DX
UK
Tel: +44 (0)20 7183 8801
Email: cepr@cepr.org
Web: www.cepr.org

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Edited by Simon J. Evenett
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INTRODUCTION

Revitalising multilateral trade cooperation: Why? Why Now? And How?

Simon J. Evenett and Richard Baldwin

University of St. Gallen and CEPR; Graduate Institute, Geneva and CEPR

Trade has been a human imperative for millennia. The association between trade, peace, and war have long been acknowledged, even if their salience had waxed and waned over the years (Irwin 2008). Given trade's importance, norms governing its conduct can be traced back 3,800 years to the Code of the Babylonian King Hammurabi.[1]

Yet, in the midst of profound contemporary **shifts** and **shocks** facing humankind, a quarter of a century after its creation, the World Trade Organization (WTO) is evidently not where pressing trade problems are being solved.[2] All too often, the mindset and rhetoric are **shackled** to the past.

As the standing of WTO has diminished in the highest circles of government, accepted international norms for trade relations have given way more and more to the law of the jungle. Faltering US commitment to multilateralism descended in recent years to brazen unilateralism in the conduct of trade policy (Blustein, 2019, Davis and Wei 2020, Irwin 2017, van Grasstek 2019, Zeollick 2020). The sense of disarray and the lack of trust are palpable.

Yet, it would be wrong to overdo the pessimism. None of the 164 members of the WTO has decided to leave, which in recent years cannot be said of other multilateral organisations and leading regional integration initiatives. To the contrary, 23 nations are seeking to join the WTO. Moreover, there is widespread acceptance that the WTO needs to be reformed. "Mend it, don't end it", as the saying goes.

However, if statements of support for the WTO and calls for its reform were enough – the latest high-profile declaration being the Riyadh Initiative on the Future of the WTO issued on 22 September 2020[3] – this eBook wouldn't be necessary. Words are not being translated into deeds. The deeds witnessed in recent years have largely been incremental, largely reflecting thinking in silos – and their limits have been cruelly exposed by events.

1 This and other historical gems can be found in Wolff (2019). The Code is reproduced at https://avalon.law.yale.edu/ancient/hamframe.asp.

2 The shifts and shocks dichotomy has been usefully developed by Irwin and O'Rourke (2011) in their assessment of the historical evolution of the world trading system. As will become evident, we extend their dichotomy to include a further "s" namely shackles, to capture the legacy of outdated or over-emphasised ways of thinking about how to tackle the challenges facing governments in their commercial relations.

3 http://www.g20.utoronto.ca/2020/G20SS_Communique_TIMM_EN.pdf

Perhaps the time has come to stop papering over the cracks and take the time to reflect on what really are, or could become, areas of agreement among WTO members. The appointment of a new WTO Director-General affords an excellent opportunity to revisit the tenets of multilateral trade cooperation – four aspects of which we turn to now.

Fundamentally, our assessment is that WTO members are not aligned on the **purpose** of the organisation. Is the pursuit of integration into the world economy still a shared goal? It may be not be only goal. Perhaps more controversially, is the pursuit of reforms that give market forces a growing role over time a common goal? Recently, a Deputy Director-General of the WTO, Mr. Alan Wolff, identified 18 values or principles of the WTO.[4] It would be useful to know which of these values are shared by which WTO members – and whether the list is complete or needs pruning?[5] What common denominator can support a revived multilateral core? What other widely shared principles could form the basis of extensions from that core? Purpose must also map into a notion of success. What constitutes a legitimate balance of obligations across a diverse WTO membership?

In addition to disagreements about ends, there is discord over **means** – in particular as it relates to the extant trade rules. As one speaker at the 11th Ministerial Conference of the WTO put it: "If in the opinion of a vast majority of Members playing by current WTO rules makes it harder to achieve economic growth, then clearly serious reflection is needed".[6] If enough governments wish to pursue markedly different strategies for social, environmental, and economic development, then what role can trade norms play in limiting cross-border commercial frictions? A revival of discussions about the 'interface problem' between different forms of capitalism would seem to be in order.

NEVER LET A CRISIS GO TO WASTE

Compounding this is the sense that current global trade arrangements, and the levels of trade cooperation that they induce, don't offer national policymakers much as they tackle climate change and the associated energy transition, shape strategies towards the digital economy and, in the near-to-medium term, beard the COVID-19 pandemic. **Expectations** of the multilateral trading system are much greater these days it seems, at least when compared to the context in which the Uruguay Round was concluded in 1993. If the WTO is to remain in the first division of international organisations, its norms and the behaviour it induces in governments must contribute to solving the challenges that prime ministers and presidents regard as first order. Otherwise, trade policy will be relegated to merely a 'flanking policy'.

4 https://www.wto.org/english/news_e/news20_e/ddgaw_25jun20_e.htm
5 In this respect, the Riyadh Initiative documentation suggests that on certain principles the G20 members are not entirely aligned.
6 https://ar.usembassy.gov/opening-plenary-statement-ustr-robert-lighthizer-wto-ministerial-conference/

Given that the world economy has now faced two systemic crises in less than 15 years, a fourth unavoidable topic is whether the practices and capabilities of the WTO as an organisation need upgrading to better undertake **crisis management**. There is clearly a Geneva-based dimension to this – that is, how the WTO Secretariat and trade diplomats based there can ensure the proper functioning of the WTO during crises and can enhance trade cooperation as and when needs require.

There are two other dimensions associated with crisis management in urgent need of consideration. First, systemic crises can result in sharp policy changes outside the traditional boundaries of the WTO that have repercussions for international commerce (bank regulations towards trade finance being a case in point). Those policy changes are often debated in other international fora and naturally the question arises as to how the WTO and its staff engage with these bodies. Crises raise questions about the centrality of the WTO in the governance of the world economy.

Second, if the current and previous systemic crisis are a guide, profound shocks of this nature result in greater government intervention in national economies. Whether that intervention is temporary is far from clear at the time and, if not properly managed, could in turn become a source of trade tension. The traditional approach to this matter is to suspend relevant WTO rules (dressed up in the euphemism of 'flexibilities'). But surely the right question to ask is whether a more active state must be a more discriminatory one? Put differently, can new norms be developed to guide government responses to crises that generate less or no cross-border harm to trading partners?

Using the COVID-19 pandemic as a lens, the purpose of this volume is to offer insights into the underlying choices faced by WTO members and to offer suggestions for a WTO work programme over the coming three years. As will become evident, our assumption is not that the COVID-19 pandemic changes everything, but it is an excellent example of the type of shock that the governments and the WTO must respond to. That **shock** interacts with the underlying **shifts** taking place in the world economy, as many of the chapters in this volume make clear.

Furthermore, the suggestions made here take account of the inherited practices and mindsets among WTO members, some of which may no longer be fit for purpose (the **shackles**). No computer still uses the same operating system as 27 years ago, the year the current corpus of WTO accords were agreed. The operating system of multilateral trade cooperation needs an upgrade too – and its constituents need to develop habits conducive to further upgrades. Evidently, the trigger for producing this volume is the appointment of a new WTO Director-General. Even so, our overall goal is to contribute pragmatic suggestions to revitalise multilateral trade cooperation.

The rest of this chapter provides further contextual insights and amplifies several of the points made above. First, we begin by highlighting that, contrary to the ill-considered statements of some senior policymakers at the beginning of the COVID-19 pandemic, the trading system is delivering now for patients around the world and in other important respects. That being so, the following section acknowledges that the current multilateral trading arrangements are under considerable strain, some of which are the result of factors external to the trade policy community and some which reflect unforced errors by those within in it.

The third section of this chapter makes the case that the WTO is worth fixing – framed here in terms of revitalising multilateral trade cooperation. The final section outlines principles to guide such a revival. The WTO can serve important purposes, but the manner in which it does so will have to evolve in ways that may challenge the mindset of those who came of professional age during and immediately after the Uruguay Round.

THE TRADING SYSTEM IS DELIVERING AND WORLD TRADE HAS CONTRACTED LESS THAN EXPECTED

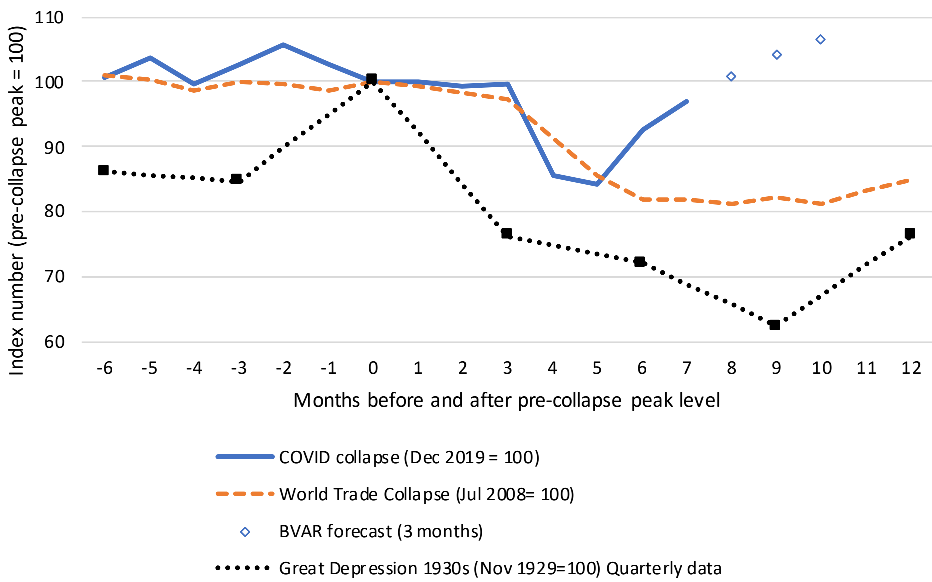
Given the containment measures implemented by many national governments and the near shutdown of international transportation linkages arising the from the global spread of COVID-19, it is not surprising that world trade fell. The supply shock induced by lockdowns combined with large reductions in consumption and investment expenditures, with deferrable spending hit worse. The WTO staff's forecast in April 2020 spoke to the bleak outlook at that time: world trade volumes were expected to fall between 13% and 32% this year.[7] In June 2020 the IMF forecast world trade volumes would contract this year by 13.4% in industrialised countries and 9.4% in developing countries (IMF 2020). Initial academic assessments were bleak as well (see, for example, Baldwin 2020).

The commercial fallout is turning out to be less than initially feared. On 6 October 2020, the WTO presented new a forecast, estimating a 9.2% fall in world trade in 2020 and a bounce back of 7.2% in 2021.[8] A day later, the IMF published a revised forecast for trade to fall by 10.4% this year before growing an expected 8.3% next year. For sure, both of these organisations' forecasts imply that world trade will not recover to its pre-pandemic levels until 2022 at the earliest. Still, the unprecedented predictions on the downside have not come to pass. Having written this, evidence very recently compiled from national authorities by the United Nations Conference on Trade and Development reveals that the recovery of imports and exports has been very uneven across the major trading economies (UNCTAD 2020).

Relative to key historical points of reference, the available evidence implies that this year's contraction is more limited in scale (see Figure 1).

7 https://www.wto.org/english/news_e/pres20_e/pr855_e.htm
8 https://www.wto.org/english/news_e/pres20_e/pr862_e.htm

FIGURE 1 COMPARING THE COVID COLLAPSE TO THE 2008/9 WORLD TRADE COLLAPSE AND THE GREAT DEPRESSION



Note: BVAR: Bayesian vector autoregression.

Sources: Eichengreen, and O'Rourke (2009) and CPB World Trade Monitor (data through to July 2020). See also https://voxeu.org/article/covid-19-and-world-merchandise-trade

As far as international commercial policy is concerned, the political fallout from the initial phase of the pandemic has been worrying. Even governments that did not destabilise supply chains of medical goods and medicines by arbitrarily imposing export controls have taken a public stance critical of cross-border supply chains in essential goods (Evenett 2020). For example, then Prime Minister of Japan, Mr. Shinzo Abe, went on record to declare the following shift in Japanese policy:

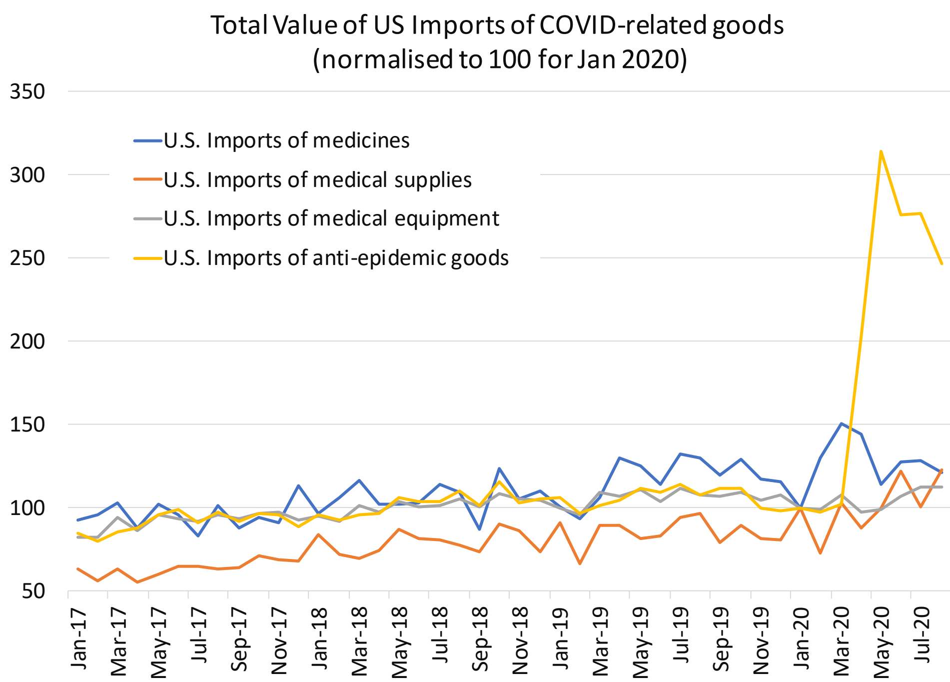
> "for those products with high added value and for which we are highly dependent on a single country, we intend to relocate the production bases to Japan. Regarding products that do not fall into this category, we aim to avoid relying on a single country and diversify production bases across a number of countries, including those of the Association of Southeast Asian Nations [Asean]."[9]

More generally, critics had a field day arguing that sourcing of essential goods had become too concentrated, in particular from China which, of course, turned out to be the source of the COVID-19 pandemic. For these critics, globalisation had gone too far.

9 Quoted in a news article in the South China Morning Post on 12 August 2020 (https://www.scmp.com/week-asia/opinion/article/3096911/coronavirus-has-complicated-china-japan-relations-how-will).

On the face of it, these criticisms of supply chains are misplaced because they wrongly attribute the root cause of the problem. The pandemic's attendant surge in demand for medical kit and medicines could not be met in full by domestic *or* foreign sources of supply. That plus the absence of relevant stockpiles generated the shortages witnessed. Had sourcing been entirely local, it would still have been affected by containment measures and disruptions to national transportation systems, just as the US learned with respect to its own meat supply chain in April and May 2020. Calmer analysts drew lessons from the extensive existing literature on the factors contributing to the resilience of supply chains (Mirodout 2020, Gereffi 2020).

FIGURE 2 FOREIGN SUPPLIERS OF MEDICAL KIT AND MEDICINES CAME TO THE RESCUE OF US HOSPITALS AND PATIENTS



Note: Anti-epidemic goods are a class of products including alcohol solutions, hand santisers, masks, and soap.
Source: Assembled from 10-digit US import data available from the US International Trade Commission.

Evidence-based rejoinders to these sweeping critiques are now at hand. The most recent trade data suggested a surge in cross-border trade in medical goods and medicines, especially into high-income nations. Figure 2 shows that, at its time of need, the US tapped world markets for medical kit and medicines this year. Compared to January 2020, US imports of anti-epidemic goods tripled at one point, imports of medicines rose one half in just five months, and imports of medical supplies rose 22%. During 2020 only

US imports of medical equipment failed to break out of the pattern witnessed before the pandemic. For the other three goods categories, this is exactly how international trade is supposed to work – filling in demand gaps that cannot be met by domestic suppliers.[10]

In addition, Evenett (2020) and Guinea and Forsthuber (2020) have demonstrated that sourcing patterns of medical kit and other goods were diversified before the pandemic hit. Evenett (2020) presented detailed evidence from the import sourcing patterns of France, Germany, the US, and the US, while Guinea and Forsthuber (2020) focused on the European Union member states. Looking beyond these countries and using the most detailed available United Nations data on imports of personal protective equipment (PPE) for 2015-2018, the years before the pandemic hit, it is possible to identify how much each country sourced from others, including China.

Figure 3 shows the extent to which nations sourced PPE from China in years during 2015 to 2018. Only Mongolia, Pakistan, Saudi Arabia, and certain nations in Africa sourced their PPE imports primarily from China before the pandemic. No nation in North or Latin America or in Western Europe sourced a majority of their PPE imports from China. Neither did India or Russia. Japan and Australia did source plenty of PPE imports from China, but the former is a significant exporter of PPE as well.[11]

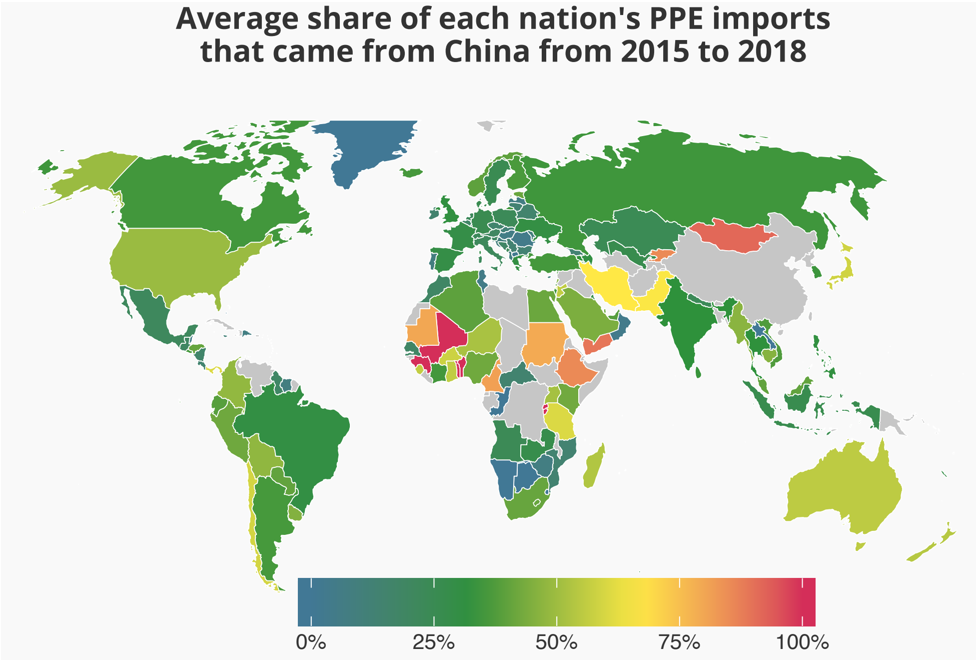
Overall, on the basis of this and other recent evidence, claims that globalisation had inadvertently resulted in a generalised 'dependence' on a single country for medical kits and medicines can be set to one side. Another corollary – that such overdependence created grave risks of 'hold up' problems from 'unreliable' foreign suppliers and their governments – can be dismissed as well.

Even though cross-border deliveries of medical goods and medicines this year have alleviated suffering, thereby demonstrating the social benefits of international trade, it cannot be denied that the WTO is in a bad place. Understanding some of the root causes and their manifestation is the goal of the next section.

10 The bidding war for such medical kit and medicines reported in the international press raises the possibility that some countries with lower incomes per head may have been unable to afford foreign supplies in the second and third quarters of 2020. Again, the problem here is not the fact that foreign suppliers exist, but the demand surge that led to the bidding war. Moreover, that bidding war likely had adverse societal consequences for those nations with lower incomes per capita and this is a matter of significant concern for development policy.

11 Indeed, it is worth recalling that the map in Figure 3 does not take into account the domestic production of PPE, therefore China's share in each nation's domestic consumption of PPE will be lower the higher is the domestic production and sales of PPE.

FIGURE 3 VERY FEW NATIONS SOURCED MORE THAN HALF OF THEIR PPE FROM CHINA BEFORE THE PANDEMIC HIT



Soure: Global Trade Alert.

THE WTO IS UNDER STRAIN: SHOCKS, SHIFTS, AND SHACKLES

The 21st century has not been kind to the WTO or, more precisely, to the rules-based multilateral trading regime established in 1993, as manifested by at least three symptoms. First, some WTO members have re-evaluated their approach to engagement with trading partners, calling into question the general presumption towards more engagement and openness. Second, the painful negotiations over the Doha Development Agenda made plain that trust between WTO members – a sufficient level of which is necessary in a system where compliance is in large part voluntary – has diminished over time.

A third symptom is the growing sense that the current trading arrangements are unbalanced. The notion of balance has been outlined by Deputy Director-General Wolff (2020) as follows:

> "Balance in the world trading system, as seen through the eyes of any WTO Member, is provided in a variety of ways:
>
> - Through the Member's judgment of the costs and benefits of the rights it enjoys and the obligations it has undertaken
> - Through its view of how its costs and benefits compare with those of other Members

- Through a Member's view of its freedom of action in relation to the freedom of action for others and specifically through its judgment of whether it has sufficient freedom to act to temper its commitments for trade liberalization (openness) with measures designed to deal with any harms thereby caused."

This definition is useful as it provides a lens through which to view the consequences for the standing of current multilateral trade rules of the systemic shocks witnessed over the past 15 years, of the broad shifts seen in the global economy, and of the shackles of the Uruguay Round. The first notion of balance relates to absolute benefits, the second to relative benefits, and the third to freedom of manoeuvre in response to unforeseen events.

Shocks

With the COVID-19 pandemic, the world trading system has had to deal with a second systemic economic crisis in 15 years. Systemic crises are important because many governments simultaneously face the pressures, even temptations, to turn inward – or at least to shift the burden of adjustment on to trading partners (Baldwin and Evenett 2020).

If one thinks about it, the WTO rules were designed to encourage a single government that had violated a legal obligation to come back into compliance. That the WTO dispute settlement procedure does not require compensation to be paid by an offending government indicates that this system seeks to encourage compliance, rather than punishment.

For this procedure to work, however, another WTO member must be willing to bring a case. And this is the Achilles' heel during a systemic economic shock. If each government – especially those of the largest trading partners – implements policy interventions that harm trading partners at roughly the same time, then the 'glass house syndrome' kicks in (as old the saying goes, "people who live in glass houses should not throw stones"). Under these circumstances, what little deterrence is provided by WTO dispute settlement weakens further. Compliance with WTO obligations is ultimately voluntary, particularly during global economic crises.

The interesting empirical question is whether the system self-corrects after a crisis has abated, in which case the departures from the principles of non-discrimination are temporary and normal trading conditions are restored. If not, shocks can lead to permanently distorted commercial flows. Seen in terms, then, of the three notions of balance articulated above: shocks result in governments exploiting the freedom of action implied by the third notion and, if trading conditions alter permanently, then the first two notions (absolute and relative benefits) may be implicated.

What does the evidence from the global financial crisis of 2008-9 show in this respect? Were the trade distortions implemented during 2009, when fears for the world economy at that time peaked, ultimately removed? To answer this question, we draw upon the evidence contained in the Global Trade Alert database. As of this writing, a total of

1,465 policy interventions were implemented by governments during 2009 that almost certainly harmed the commercial interests of trading partners. Of that total, 30% were trade-distorting subsidies paid to import-competing firms, 22.5% were state incentives to export, just under 16% were import tariff increases, and 14.5% were tariffs imposed following contingent protection investigations. Given this quantum of intervention, the possibility that any particular bilateral trade flow is hit more than once cannot be ruled out.

Taking import tariffs increases and contingent protection measures together and referring to them as 'transparent import restrictions', it was possible to calculate the share of world trade covered by measures introduced in 2009, correcting for how long each measure was in force after its implementation. Furthermore, taking account of when any policy intervention lapsed, it was possible to calculate in *every subsequent year* the share of world trade covered by transparent import restrictions imposed in 2009 that *survived*.

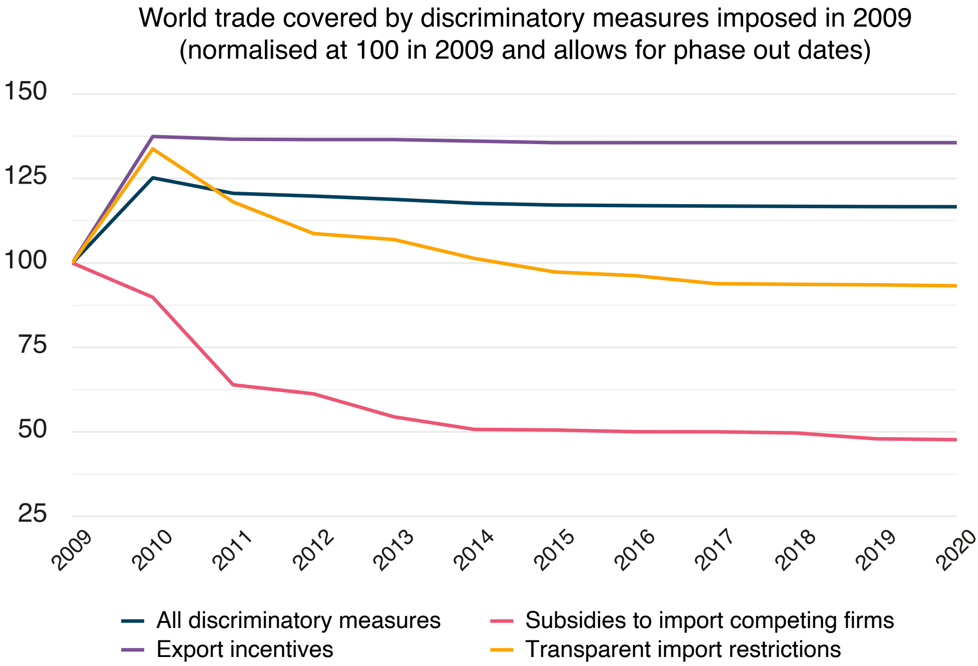
Bearing in mind that, for an import restriction imposed late in 2009 that also was in force for all of 2010, the duration-adjusted computed trade covered may increase from 2009 to 2010. A similar procedure was followed to calculate the world trade covered by surviving subsidies paid to import-competing firms, by surviving state largesse to exporters, and for all surviving discriminatory policy interventions introduced in 2009. Figure 4 plots the findings. Since our interest is in whether the trade covered falls over time, to facilitate comparability across policy instruments we normalised the trade coverage in 2009 to 100 for each class of trade distortion.[12]

While there is interesting variation across the classes of policy plotted in Figure 4, the overall finding is that relatively little of the 2009 discriminatory trade policy response was reversed in the decade after 2010. The jump in the levels shown for 2010 over 2009 reflects the fact that many trade distortions imposed in 2009 were in force for more days in 2010 (in some cases for the entire year). By 2020, 32.7% of world trade was still covered by discriminatory commercial policy interventions implemented in 2009.

Figure 4 reveals interesting variation across classes of trade distortion. Measured in terms of world trade covered, close to none of the export incentives introduced in 2009 have been unwound. Some transparent import restrictions were unwound. Such was the phase-out of subsidies to import competing firms that, by 2013, only half of the world trade covered in 2009 remained distorted. Still, even that represents a long-term impairment in trading conditions.

12 This has the unfortunate effect of suppressing the information on the relative magnitude of the world trade covered by such trade distortions in 2009. Adjusting for the duration each discriminatory measure implemented was in force, 28% of world trade was covered by all forms of discriminatory policy intervention introduced in 2009. The comparable percentages for transparent import restrictions, subsidies to import-competing firms, and state largesse to exporters were 1.4%, 6.9%, and 20.8%, respectively. In terms of world trade covered, the import tariff responses of governments in 2009 were swamped by that of subsidies of differing kinds. Such statistics confirm that there was no 1930s-like trade policy response to the global financial crisis. Instead, far-reaching trade distortions took a different form, namely, state largesse. That nearly 30% of world trade was implicated by trade distortions introduced in 2009 vitiates the mantra that the WTO passed the 'stress test' brought about by the global financial crisis a decade or so ago.

FIGURE 4 OVERALL, WHEN MEASURED IN TERMS OF WORLD TRADE COVERED, FEW TRADE DISTORTIONS INTRODUCED DURING THE 2009 CRISIS WERE UNWOUND



Source: Gobal Trade Alert.

The 2008-9 global economic shock permanently altered the commercial playing field, no doubt reducing the benefits that many WTO members derive from their membership. To the extent that these trade distortions were implemented unevenly across WTO members, then some governments may regard their relative benefits to have deteriorated as well (especially if they perceive that the trading partners which implemented export incentives grabbed market share at the expense of firms based in their nation).[13]

There are grounds, then, for concluding that the 2008-9 global economic crisis impaired all three of Wolff's notions of balance. That shock mattered. It remains to be seen whether the commercial policy response to the COVID-19 shock will further erode the benefits of WTO membership.

13 Those governments that felt unable to offer state largesse to import-competing firms and to exporters may also have felt that their capacity to respond to the 2008-9 crisis was handicapped.

Shifts

At least three longstanding and increasingly inter-related trends bear upon the perceived balance of obligations and benefits from WTO membership: sustained faster economic growth in the emerging markets, technological developments resulting in the expansion of the digital economy, and climate change and the associated energy transition.

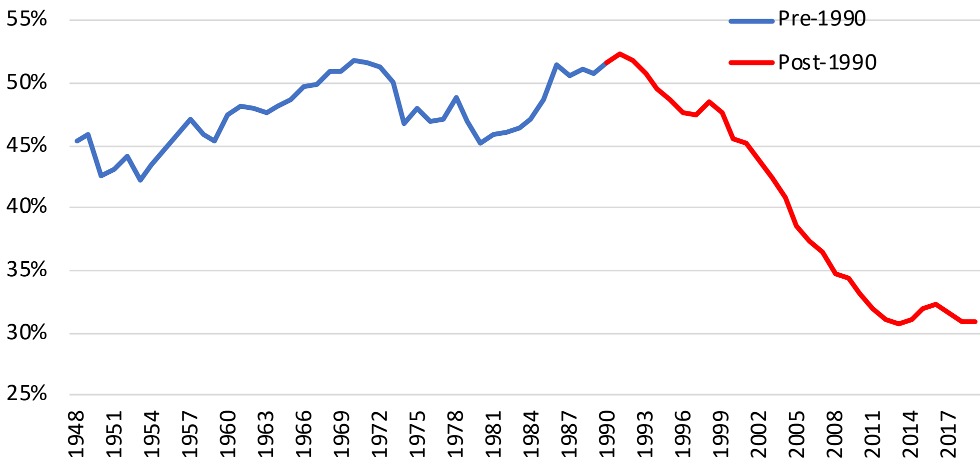
The first trend has resulted in a growing share of global GDP and commerce accounted for by emerging markets and diminished relative economic importance of the Group of Seven industrialised countries, whose members had essentially dominated the world trading system through to the end of the Uruguay Round (see Figure 5). In line with their growing economic heft, the governments of the larger emerging market economies – Brazil, China, India, and South Africa in particular – have asserted themselves more forcefully in the run up to and since the launch of the Doha Round of multilateral trade talks in 2001, as is their right.

Seen in terms of Wolff's three notions of balance, from the perspective of industrialised countries the impression could arise that, while they still benefit in absolute terms from WTO membership, their benefits relative to emerging markets have declined. To the extent that more intense import competition has resulted in painful labour market adjustments in both industrialised and developing countries, then the political calculus may have shifted towards lower perceived absolute and relative benefits of WTO membership.

These shifts in relative benefits have not been matched by corresponding increases in obligations taken on by developing countries – leaving some policymakers and analysts in industrialised countries to call for a rebalancing of rights and commitments at the WTO (Low et al. 2019). For their part, many developing country representatives insist that their multilateral trade obligations should reflect their nation's level of development, implicitly arguing that this consideration should determine level of obligation rather than the scale of membership benefits. That such a rebalancing has not happened is said to have contributed to the US essentially revoking most-favoured nation (MFN) privileges for China in its trade war. Stalemates have consequences.

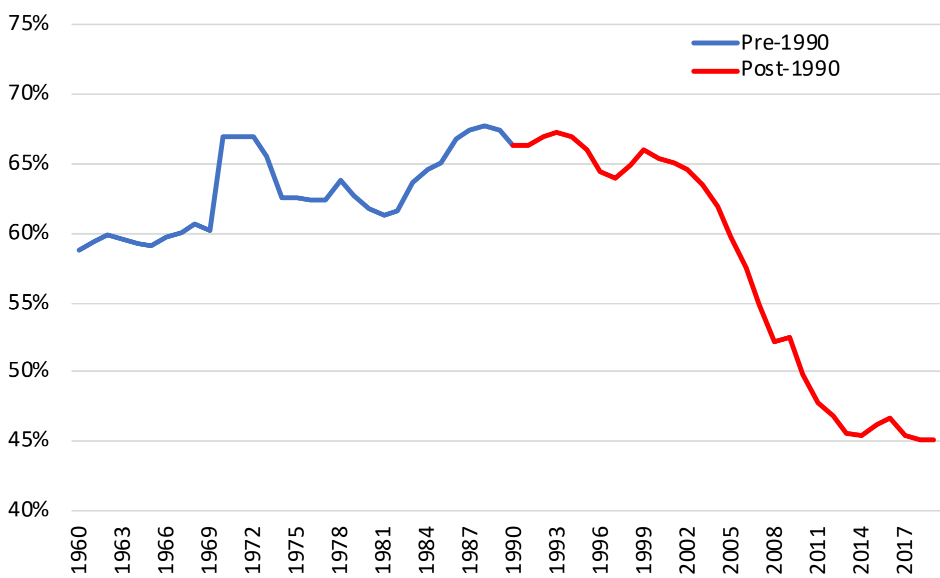
FIGURE 5 SINCE THE LATE 1980S, THE G7 GROUP'S SHARES OF WORLD GDP AND WORLD TRADE HAVE SHRUNK MARKEDLY

a) G7 share of world exports (1948-2019)



Source: WTO Database (October 2020)

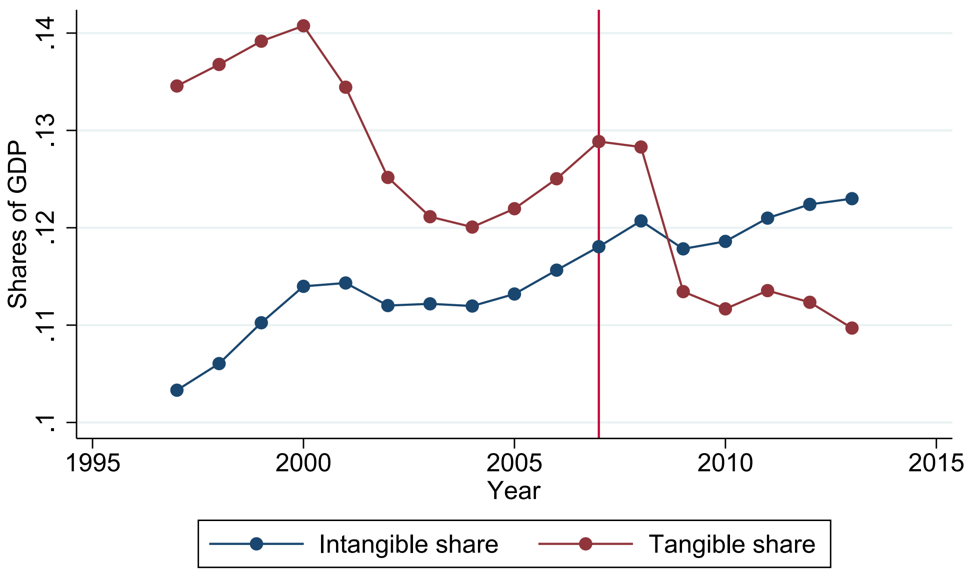
b) G7 share of world GDP (1960-2019)



Source: World Bank World Development Indicators database (October 2020).

The spread of general-purpose information and communication technologies and the subsequent development of the digital economy is the second trend that confronts the membership of the WTO. The rise in so-called digital commerce, with its implications for the disruption of traditional service providers, innovation, and relative economic performance, have not escaped the attention of governments. Growth in private sector investment in intangible assets has exceeded that of national income in many industrialised countries (see Figure 6). Plus, unlike tangible assets, investment in intangibles weathered the global financial crisis well.

FIGURE 6 FOR OVER A DECADE, PRIVATE SECTOR INVESTMENT IN INTANGIBLE ASSETS HAS EXCEEDED THAT OF TANGIBLE ASSETS



Source: Haskel and Westlake (2017).

Regulatory actions, competition law enforcement steps, and taxation measures have been introduced by states that implicate firms operating in the digital economy. While these state acts may be informed by traditional WTO principles, there is no distinct body of multilateral trade rules to cover the digital economy. Nor is there any official tracking of policies affecting the digital economy. Coming on top of no progress in expanding and updating the WTO's rulebook on service sectors, large swathes of economic activity now fall outside multilateral trade rules.

For governments whose economies are increasingly service sector-dominated, or where the leading edge in technological development is in the digital sector, the absence of WTO rules must surely diminish their own assessment of the value of WTO membership. To use Wolff's trichotomy, own benefits shrink as the sectors better covered by WTO rules diminish in economic importance. Moreover, WTO rules afford little or no protection against actions taken by trading partners that implicate commercial interests in a nation's digital sectors. In so far as the digital economy is concerned, the very relevance of the WTO is at stake.

Technological developments have fused with geopolitical rivalry to produce a heady brew of export bans, public procurement limits, restrictions on cross-border mergers and acquisitions, and a revival of industrial policies. Attendant to the recent tensions between China and the US is the re-emergence of the trade and national security policy nexus. To the extent that governments brook no interference on matters deemed related to national security, then this must effectively encroach upon the domain of economic activity covered by the WTO rulebook (Aggarwal and Evenett 2013).

The past decade has seen senior policymakers give more and more attention to the threats posed by climate change and the steps that can be taken to limit them. The Paris Agreement, negotiated in November and December 2015, was the high point in international cooperation in this regard. This first-order societal matter implicates the world trading system in a number of ways, not least because of proposals to impose border tax adjustments on imports from nations imposing no, or insufficient, carbon taxes.

For some policymakers and analysts, if WTO rules get in the way of tackling this pressing threat to humanity then these rules will need to be pared back. For others, policies to tackle climate change and to facilitate the associated transition towards renewable energies are a Trojan horse for the next wave of protectionism. Both perspectives could result in governments reassessing the balance of benefits from their membership of the WTO and their willingness to undertake further cooperation there. Indeed, the latter may be conditional on the outcomes of climate change-related negotiations in other international fora.

On reflection, given these three trends it is no wonder that the organisational and legal arrangements created by governments in 1993 to govern international trade relations are under strain. The world has moved on, but the WTO architecture has in major respects stood still (Baldwin 2012), leading appropriately to a discussion of the third dimension of the problem: the shackles.

Shackles

No iron law of international organisations requires that they be frozen in time. After all, the IMF, OECD, and World Bank have reinvented themselves at various points in the post-war era. That is not say that such reinventions happened overnight – but adjust they did. In contrast, the WTO appears to be shackled to arrangements and modes of thought over a quarter of a century old.

Right off the bat, it must be admitted that governments did attempt one major upgrade to the WTO rulebook. But that proved ill-fated, with negotiations reaching an impasse in the second half of the last decade (when exactly is a matter of debate, but many point to the breakdown in negotiations in July 2008). It was almost inevitable that after the 'successful' Uruguay Round, certain trade negotiators would try again to negotiate binding, enforceable commitments with common obligations for all. Soon it became apparent that progress could only be made by whitling down the notion of a Single Undertaking to the commitment that no deal would be agreed until every aspect was settled.

A commitment to address development concerns was essential to securing the agreement of developing countries to launch the Doha Round negotiations, making a common set of obligations infeasible. The commitment to less-than-full reciprocity by developing countries and what turned out to be a limited negotiating set were two design features that made concluding the Doha Round harder (Evenett 2014).[14]

An even bigger concern was that there was no 'landing zone' for the negotiation that would satisfy every major trading power. For all the talk of 'give and take' in trade bargaining, often reciprocity amounted to demanding the Earth of trading partners in return for the promise of meagre reforms at home. In light of this failure, the very notion of trade rounds has been called into question. The phrase Single Undertaking may rightly acquire another meaning – it happened only once!

The breakdown of the WTO's negotiation function was compounded by a reluctance to deliberate seriously (see Table 1 for a comparison of the multilateral trade rounds since the formation of the GATT). An unfortunate legacy of the Uruguay Round, where "only binding obligations matter", is that other forms of cooperation – including collectively scoping out the trade-related implications of significant external developments – were demoted. If negotiations are all that matter, why bother deliberating? Indeed, why not turn each deliberative exercise into a shadow negotiation? Such was the fate of several of the working groups set up to examine competition law, policies towards foreign direct investment, and transparency in government procurement in the context of the Doha Round.

14 They were not the only factors responsible for the impasse in the Doha Round trade negotiations.

TABLE 1 MORE PARTICIPANTS, MORE ITEMS, AND LONGER MULTILATERAL TRADE ROUNDS.

Year(s)	Place, name of round (international trade organisation)	Number of participating customs territories at the conclusion	Average cut in tariffs negotiated (%)	Policies subject to negotiation
1947	Geneva (GATT)	23	26	Traditional import restrictions
1949	Annecy (GATT)	13	3	Traditional import restrictions
1951	Torquay (GATT)	38	4	Traditional import restrictions
1956	Geneva (GATT)	26	3	Traditional import restrictions
1960 - 1961	Geneva – Dillon Round (GATT)	26	4	Traditional import restrictions
1964 - 1967	Geneva – Kennedy Round (GATT)	62	37	Traditional import restrictions and anti-dumping measures
1973 - 1979	Geneva – Tokyo Round (GATT)	102	33	Traditional import restrictions, non-tariff barriers and several multi-party Codes
1986 - 1994	Geneva – Uruguay Round (GATT)	123	38	Traditional import restrictions, non-tariff barriers, regulations, services, intellectual property, dispute settlement, textiles, agriculture, the creation of the WTO, among others
2001 -	Doha Round (WTO)	157	n.a.	Agricultural market access and subsidies, services market access and regulations, market access for industrial goods, trade facilitation, transparency and government procurement, investment policy, trade and competition policy and rules (antidumping, subsidies, etc.)

Source: Modified from Rojas and Cano (2018).

The notification and monitoring functions of the WTO have not reached their full potential either. WTO members have recognised the former problem but have not agreed a way to tackle it. The latter problem is the result of few resources being devoted to the independent collection of information on trade policy changes by the WTO Secretariat, non-cooperation by some G20 governments, and pressure by other G20 governments on the WTO Secretariat not to report certain policy developments. The fact that the WTO Secretariat reports have stopped reporting detailed information on "general economic support"[15] measures by G20 governments is telling.

To put this in context, the wave of transparency improvements witnessed in many nations over the past quarter of a century has not reached the official institution overseeing world trade. Intelligent deliberation is difficult in an organisation where many members practice obstruction.

That the WTO Appellate Body has gone into abeyance was the last shoe to drop. This followed the decision of the US to block the appointment of new members to the Body until its concerns were met. In such legal matters it is all too easy to get lost in the weeds and in the blow-by-blow accounts of which WTO member did what and when. It makes more sense to focus on the bigger picture and on this the United States Trade Representative, Mr. Robert E. Lighthizer has been clear. In an editorial in the *Wall Street Journal* on 21 August 2020, he argued:

> "...The Appellate Body was supposed to have a limited role, quickly correcting errors of law, not fact. But over time it came to see itself as something else—a high court empowered to create a new common law of free trade.
>
> "The undemocratic, overreaching tendencies of the Appellate Body have damaged both the global trading system and the U.S., which found itself on the receiving end of a quarter of all cases filed at the WTO. While America has often won these cases at the panel stage, the Appellate Body has consistently reversed those decisions by interpreting the WTO rules in ways that diminish rights and create new obligations not found in the text."

Essentially, Mr. Lighthizer is arguing that through its rulings the Appellate Body has upset the third notion of balance articulated by Wolff – the capacity of the US to respond to trade-related disruption.

We hold no brief for any government in this standoff. However, we think it appropriate to reflect on whether the degree to which rhetoric about 'trade law' has been elevated since the Uruguay Round was finalised is such a good thing. In this we are guided by the wise words of the late Professor John H. Jackson, regarded by many as the father of the WTO.

15 This is WTO-speak primarily for subsidies.

In an assessment of the WTO prepared three years after its foundation, he explicitly cautioned against a mindset based on 'rule of law' and a 'rules-based system'. Given what came to pass, it is worth quoting Jackson at length:

> "I suggest that the rule-oriented approach, particularly concerning international economic affairs, has considerable advantage. It is this approach that focuses the disputing parties' attention on the rule, and on predicting what an impartial tribunal is likely to conclude about the application of a rule. This in turn will lead parties to pay closer attention to the rules of the treaty system and hence can lead to greater certainty and predictability" (Jackson 1998: 60; emphasis in the original).

He goes on to differentiate a rules-oriented approach with approaches it turns out are frequently heard in contemporary discussions at, or about, the WTO.

> "The phrase 'rule-orientation' is used here to contrast with phrases such as 'rule-of-law' and 'rule-based system'. Rule orientation implies a less rigid adherence to 'rule' and connotes some fluidity in rule approaches which seems to accord with reality (especially since it accommodates some bargaining or negotiation). Phrases that emphasize too strongly the strict application of rules sometimes scare policy-makers, although in reality the different phrases may amount to the same thing. Any legal system must accommodate the inherent ambiguities of rules and the constant changes of practical needs of human society. The key point is that the procedures of rule application, which often centre on a dispute settlement procedure, should be designed so as to promote the stability and predictability of the rule system. For this procedure must be creditable, 'legitimate', and reasonably efficient –not easy criteria" (Jackson 1998: 61).

Evidently, the operation of the WTO dispute settlement system has lost credibility with a key stakeholder and, in an organisation where consensus is a cornerstone in decision making, ultimately this proved fatal. The mistake was, as Jackson warned, to repeat mantras about the 'rule of law', 'rules-based systems', and so on and fail to realise that the decisions of the Appellate Body could upset the balance that key WTO members saw in the benefits of their membership. Once again, shackles have limited the system's ability to adapt.

In sum, the WTO is under strain because the ideas and practices that many of its member governments and diplomats have shackled themselves to have proved incapable of adjusting to the shocks and shifts confronting the world trading system. The result has been a brittle institutional architecture that to date has proved unable to rise to the challenges of the 21st century. But is the WTO worth fixing? Our unequivocal answer is yes.

THE WTO IS WORTH FIXING TO HELP TACKLE TODAY'S GLOBAL CHALLENGES

Humanity faces massive global challenges in the years ahead and the solutions to these will require cooperation between governments and other stakeholders around the globe. International commerce will be part of those cooperative solutions. That alone is a compelling reason why the WTO should be fixed.

The WTO is not the only place for working on such solutions, but it is a vital one. The WTO's basic rules – such as reciprocity, non-discrimination, and transparency – are arguably the most universally accepted. The basic WTO rules – which build on the GATT rules agreed in 1947 – had been written into the domestic lawbooks of many nations well before most of today's national leaders were born. As such, the rules help align expectations for firms, governments, and civil society groups. This is an accomplishment worth building on.

The list of contemporary global challenges is long; here are five specific ones where a well-functioning WTO will be needed.

Perhaps the most pressing of the challenges is the need to facilitate the production and distribution of billions of doses of COVID-19 vaccines. 'Vaccine nationalism' cannot be ruled out and would slow down the global fight against this pandemic as well as exacerbate the trust deficit between governments. The WTO rules (especially its regime on intellectual property) are fit for purpose as long as members approach the challenge with a flexible and enlightened spirit.

Global **economic recovery** is another challenge that multilateral trade cooperation can help with. A fragmented, distorted trading system would hinder the global recovery. It would limit the contribution that exports, investment, technology transfers, and supply chains can make to getting the world economy back on its feet. The prognosis is, so far, good on this point. Governments didn't turn inward in response to the first wave of COVID-19, but with the second and third waves hitting countries, the WTO should be used to encourage the continuation of such 'enlightened self-interest.'

One particular point of worry are the massive subsidy programmes that some members have put in place this year. In principle, support for employees during crises need not raise red flags to trade policymakers. But if subsidies go too far and confer significant commercial advantage to corporate recipients, then they may slip from employment-stabilising to market share-stealing, thus risking trade conflict and retaliation that will harm all concerned. Sidestepping such a lose-lose situation is precisely what multilateral trade cooperation should be about.

The third concerns digital technologies, which are transforming international commerce at breakneck speed. The rules for this **digitally enabled trade** need to be written somewhere and soon. The WTO has an initiative in place on such matters, but it needs to be accelerated.

The largest and greatest existential challenge concerns **climate change**. Cooperative solutions to climate action will almost surely implicate trade and investment policies – be it an agreement to lower barriers to trade in environment goods, state largesse to ease the energy transition of firms, or the introduction of border tax adjustments related to carbon content. Climate change is also likely to shift rainfall in ways that will require much more trade in food and in advanced farming technology.

Finally, the most contentious challenge is the need to find an **interface mechanism** between competing forms of capitalism. Beijing's particular form of capitalism has been a roaring success for the Chinese economy, but the apparent attendant dislocation and upheaval in certain trading partners – above all, the US – has become a lightning rod.

The challenge is to find a way for the US-style market-led capitalism and the Chinese-style state-led capitalism to coexist. Governments have been involved in this sort of exercise before. France, for example, had five-year plans right up to 2006 and Japan's METI was involved in propelling that nation into the premier league of high per capita economies, while the US and other nations took a much more laissez-faire approach to investment and industrial development.

While many 21st century trade issues have been settled outside the WTO – in deep regional trade agreements, for example – and aggressive unilateralism has been revived under the Trump administration, the WTO has not lost its prominent place in the world trading system, even if its centrality has eroded. The organisation may be widely criticised as ineffective or even irrelevant, but members are not giving up on the WTO.

The WTO is worth fixing since it is one of the global forums for cooperation still seen as credible in the eyes of most nations. This can be seen in the modest progress that has been made in recent years in policy domains such as trade facilitation and more recently in the prospects for cooperation on e-commerce and fishing subsidies.

The alternative is a return to the gunboat diplomacy of the 19th century. A return to a world where 'might makes right' and of 'an eye for an eye' would lead to a lot of blind people and very little cooperation. Given the geo-economic shifts discussed above, a return to bareknuckle trade politics is unlikely to work out well for anybody. We are not, after all, in the world of Pax Britannica where a hegemon set and enforced the rules. We are in a world where no nation has the clout to successfully impose its will unilaterally.

In sum, the WTO is not perfect by a long shot, but it far better than the law-of-the-jungle – especially as we move further into an era of competing economic super giants and a possible Thucydides' trap.

THE WTO CAN BE FIXED – AND HERE IS HOW

We are not trade diplomats and nor are we trade policymakers, but we have been keeping a beady eye on them for decades. In our assessment, considerable progress can be made revitalising multilateral trade cooperation in the near-to-medium term, capitalising on both the appointment of the new WTO Director-General and the ramifications of the COVID-19 pandemic for the world trading system.

Don't overdo the pessimism – there is plenty of good trade policy news away from Geneva

We have no illusions that revitalisation will take time and will require starting with confidence-building measures. Still, a number of key building blocks are in place, not least the sense that the current stalemate and frictions serve no one's interests. Away from Geneva there are many instances of governments engaging in trade cooperation – whether bilaterally, regionally, or in other formations, such as the Ottawa Group. Even in Geneva, work continues on the Joint Statement Initiatives and the COVID-19 pandemic has brought together groups of WTO members that have made declarations concerning their trade policy intent. Put simply, governments haven't lost the knack for trade policy cooperation.

Nor have governments stopped integrating their economies into the world economy. By 30 October 2020, the Global Trade Alert has documented 554 unilateral policy interventions taken this year by governments around the world that liberalise their commercial policies. That's more than double the number recorded at this time last year (249) and more than 50% higher than the comparable total in 2018, the year which saw the most trade reforms since the global financial crisis of 2008-9.

A total of 116 governments have taken steps that integrate their economies into the world trading system this year or will implement measures doing so by the end of 2020. For all the doom and gloom about the world trading system's prospects, it is worth recalling that the Global Trade Alert's data imply that, since the first G20 Leaders' Summit in November 2008, on average a government has undertaken a unilateral commercial policy reform every 14 hours. Governments haven't given up on trade reforms either. And these unilateral reforms aren't ones where the officials involved insisted on some reciprocal gesture by trading partners. We need to build on that.

Not withstanding these positive developments, there is no hiding the fact that WTO members are different places when it comes to:

- signing new binding, legally enforceable trade obligations;
- their acceptance of the WTO dispute settlement system introduced in 1995; and
- the very purpose of the WTO.[16]

We see a mismatch between (i) the creativity that trade diplomats have shown in fostering inter-state cooperation in regional trade agreements and in formulating initiatives to keep trade routes open during the COVID-19 pandemic and (ii) the tensions between WTO members witnessed so often in Geneva. These tensions are a manifestation of a lack of alignment on foundational matters facing the governance of the multilateral trading system and this cannot be dodged anymore. Fixes to parts of the system that don't address these matters are unlikely to stand the test of time.

Going forward, there is considerable merit in WTO members proceeding on two tracks. The first involves collectively identifying a new common denominator for the WTO that will define, in broad terms, the organisation's purpose and trajectory in the decade ahead. That common denominator must be designed in such a way that each WTO member is convinced that there is an appropriate balance (in the sense discussed earlier in this chapter).

In parallel, on a second track potential confidence-building measures would be developed and some adopted. Doing so would signal to all that the WTO is place where governments can solve policy problems and where they lend each other support in normal trading conditions and, in particular, during times of crisis.

Identify a new common denominator concerning the very purpose of the WTO

What do we want to accomplish with multilateral trade cooperation orchestrated through the WTO? To us, this is the central question as it speaks to the purpose of the WTO, now and in the future. Elaborating on that question in the manner below differs from – but may complement – the approach taken recently in the Riyadh Initiative on the Future of the WTO. That Initiative sought common ground among G20 members on "common principles" and "foundational objectives", whereas our approach would be open to every WTO member and, as noted earlier, would focus minds on what this organisation is actually for.

16 Taken together, divergent views on these matters amount to differences in view as to the legitimacy and value of multilateral approaches to tackling commercial policy problems.

Reading widely and listening attentively, we have identified the following eight answers to this question, each of which is associated with a distinct, fundamental imperative. Nothing should be inferred about the relative importance of each imperative from the order in which they are presented here.

1. (Integration imperative) Multilateral trade cooperation is a vehicle by which governments enhance their societies' living standards by progressively integrating their economies into global markets over time, together or on their own.
2. (Uncertainty limitation imperative) Multilateral trade cooperation reduces uncertainty in commercial relations by locking policies into agreed ranges and by making national policy decisions transparent. Reducing uncertainty fosters cross-border commerce and all of the benefits which flow from that.
3. (Market reform imperative) Successful multilateral trade cooperation involves the adoption of more and more market-based economic governance by governments.
4. (Systems clash imperative) By acting as an interface between different, competing forms of capitalism, successful multilateral trade cooperation helps diffuse trade tensions and attendant disruption to global commercial flows.
5. (Disruption imperative) When faced with disruption to global markets, a successful system of multilateral trade cooperation recognises the right of governments to respond to such disruption, channels those responses along agreed lines, and does not circumscribe those channels over time, unless subsequently agreed by WTO members.
6. (Compliance imperative) A well-designed system of multilateral trade cooperation first and foremost encourages voluntary compliance by governments with their international trade obligations, and second, establishes procedures that encourage errant governments to come back into compliance in relatively short order.
7. (Relevance imperative) As the world economy evolves – in response to technological changes and to emergent global imperatives (such as tackling systemic health and environmental threats) – and as the distribution of economic power shifts between nations, a successful system of multilateral trade cooperation can adapt over time while retaining the support of the WTO membership as well as sustaining the perceived relevance of the WTO to key political, corporate, and societal stakeholders around the world.
8. (Crisis management imperative) Successful multilateral trade cooperation involves institutional arrangements that can be flexed for systemic crises and guides governments when addressing crisis-related disruption to their societies.

These imperatives need not be mutually exclusive. Indeed, one immediate response is that the WTO should pursue all of them. The current institutional arrangements certainly don't deliver all of them. On the positive side, the uncertainty limitation imperative is assured somewhat by a current set of rules that were established over quarter of a century ago. And the evidence of unilateral and other commercial reforms mentioned earlier suggests that many governments haven't given up altogether on the integration imperative (although they maybe chary of doing so in the context of binding accords, compromising the uncertainty limitation imperative, thereby highlighting the potential trade-offs across imperatives).

However, the market reform imperative that was part of the *Zeitgeist* at the end of the Uruguay Round is, with the rise of state capitalism, no longer universally accepted (Lang 2019). With the demise of a unipolar global economy, the systems clash imperative needs reviving, which is related to what some referred to as the 'interface function' in the GATT era (Jackson 1997, 1998). At present, the compliance imperative has been set aside in part because of mismanagement of the disruption imperative that some associate with the rise of a multipolar world economy. The relevance imperative has clearly not been met, as those whose economic activities lie outside the 1990s global trade rulebook can attest.

Each of these imperatives needs considerable thought. For example, with respect to the integration imperative, a variety of approaches are taken in existing multilateral trade agreements – not only the reciprocal undertaking of market access improvements. Some accords prioritise and encourage further integration into world commerce (the GATS agreement being a case in point), while others condition levels of commitments on aid-related cooperation between governments (as in the Agreement on Trade Facilitation). Reflection is needed as to whether at this time one goal for all WTO members should be to further integrate at roughly the same time or to shape public policy when governments want to integrate? The answer to this question may well differ across types of cross-border commerce.

In thinking through the systems clash imperative, the starting point should not be a government's policy intervention or interventions per se, but rather whether there is a tangible demonstration of an adverse cross-border spillover to trading partners resulting from that intervention (Evenett and Fritz 2018, Hoekman and Nelson 2020). Formulated this way, however, there may be an immediate tension with the market reform imperative. In turn, this highlights that identifying a common denominator among the biggest WTO members may require demoting certain imperatives.

In our assessment, the relevance imperative should not be underestimated. Given that so many senior policymakers around the globe appear determined to take steps to address climate change, and to speed up the implied transition in related energy sectors, the absence of any meaningful multilateral cooperation on this matter is likely to relegate the WTO from the first division of international organisations.

A similar risk arises should significant progress establishing the rules of the game for digital trade not be forthcoming. We reiterate that meaningful multilateral trade cooperation need not only involve the negotiation of binding public policy commitments. After all, the reform of the world's major banking systems after the global financial crisis of 2008-9 did not require Uruguay Round-style binding policy commitments.

Once an understanding over that common denominator is identified, then the implications for the institutional arrangements of the WTO will have to be drawn. For example, a new understanding of the relative importance of the compliance and disruption imperatives may provide the rationale for revising the current, contested WTO dispute settlement procedure. Elaboration of the crisis management imperative probably calls for the adoption of a WTO crisis management protocol.

It may be the case, regrettably, that at the conclusion of this deliberation on the purpose of the WTO, governments may want to move ahead at different speeds, with some initiatives that will not involve all of the WTO membership. While no WTO member should be shut out of any negotiation, no member should be able to veto others moving from forward. A government is entitled to decide that it doesn't want to further integrate some aspect of its economy into global commerce, but that does not give it the right to block other WTO members from integrating further.

We are reluctant to endorse the phrase 'variable geometry' as a guiding principle for revitalising multilateral trade cooperation, as this term means different things to different people (Lloyd 2008). Still, it is necessary to reflect upon the experience of the GATT codes of old, on the experience with the current Agreement on Government Procurement, and on those leading regional integration initiatives that have had to accommodate significant diversity among their members, to devise a new understanding as to how accords involving a subset of WTO members can go forward. The insights of numerous scholars on the WTO becoming a 'club of clubs' (Lawrence 2006, Levy 2006) and on plurilateral agreements (Hoekman and Mavroidis 2018, Hoekman and Sabel 2020, Warwick Commission 2007) should inform such deliberation by WTO members.

Organise detailed deliberation around three themes

In terms of the subject matter for deliberation and potential negotiation, the COVID-19 pandemic provides a useful hook (in addition to ongoing initiatives, such as the negotiations over subsidies in the fishery sector). The mantra "never let a crisis go to waste" comes to mind. As the chapters in this volume make clear, COVID-19 has provided a significant stress test for the world trading system and it beggars belief that such an episode should not induce reflection among WTO members about:

- the effectiveness of the WTO during crises;
- the WTO's place in the firmament that is the world trading system, given that cross-border trade is so dependent on practices governed by other national, regional, and international bodies, such as those dealing with shipping, air transportation, and so on; and[17]
- the appropriacy of the current WTO rule book.

The table at the end of this chapter summarises suggestions for future multilateral cooperation in many policy domains and in pursuing important societal imperatives. Many of these suggestions have been formulated so that they can be incorporated into a potential work programme for the WTO members in the run up to the next WTO Ministerial Conference and the one that follows. Some recommendations relate specifically to enhancing the WTO's capacity to function effectively during crises. Many of the recommendations found in the table can implemented in the coming year.

Execute confidence-building initiatives in the near term

To kickstart revitalising multilateral trade cooperation, however, a series of confidence-building initiatives are needed. These initiatives don't require bare knuckled negotiations over binding commitments, rather the goal is to channel the cooperative and reforming spirit mentioned at the start of this section into greater collaboration among WTO delegations in Geneva, supported by a re-motivated WTO Secretariat. Such confidence-building measures should include the following:

- Discussions about solutions to common problems including those arising from arising from COVID-19 (e.g. resilience of supply chains) and steps to better to manage trade frictions arising from different types of capitalism (and the adequacy or otherwise of existing WTO accords in this respect).
- Negotiation of a Memorandum of Understanding on facilitating trade in medical goods and medicines that could later form the basis of a fully-fledged binding accord.
- Engagement with other bodies whose decisions seriously implicate cross-border commerce, including GAVI and others working on the production and distribution of a vaccine as well as the steps taken by other bodies to revive sea- and air-based cross-border shipment.
- A more ambitious project would be a commitment to a moratorium on tariff hikes and other taxes on imports.
- A joint study of next-generation trade issues, including the trade-related aspects of the digital economy and the relationship between commercial policies and climate change.

17 Bear in mind that the revival of international trade is a pre-requisite for global economic recovery.

- A review of the practices and operation of the WTO during crises, with an eye to ensuring extensive and sustained participation of members, stronger links and inputs to and from national capitols, and other pertinent organisational matters. The goal would be for the WTO membership to adopt a **crisis management protocol.**

Purposeful, pragmatic steps towards noble goals

Archbishop Desmond Tutu, that tireless campaigner against Apartheid, once remarked that "there is only one way to eat an elephant: one bite at a time". After a decade of drift and backsliding, the task of revitalising multilateral trade cooperation may seem daunting. It may seem even more so after the disruption of the COVID-19 pandemic and the attendant slump in world trade.

Yet, in the same emergency lies the seeds of revival – especially, if trade diplomats can demonstrate the relevance of the WTO to national governments fighting this pandemic – ideally through an accord that eases the cross-border shipment of needed medical goods and medicines. Step by pragmatic step, the WTO can regain its centrality in the world trading system.

Ultimately, the pandemic affords the opportunity to reframe discussions on multilateral trade cooperation away from the stalemate, frustration of recent years between governments, and the Uruguay Round mindset that ran into diminishing returns years ago. Rather, discussions between governmentsF need to draw lessons from the second global economic shock in 15 years so as to rebuild a system of global trade arrangements capable of better tackling systemic crises and, more importantly, better able to contribute to the growing number of first-order challenges facing societies in the 21st century. Doing so will require revisiting the very purpose of the WTO.

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ABOUT THE AUTHORS

Simon J. Evenett is Professor of International Trade and Economic Development at the University of St. Gallen, a CEPR Research Fellow, and Coordinator of the Global Trade Alert.

Richard Baldwin is Professor of International Economics at the Graduate Institute (Geneva), ex-President of CEPR, and Founder of VoxEU.org.

ANNEX: PRAGMATIC IDEAS TO REVITALISE MULTILATERAL TRADE COPERATION: A CHAPTER-BY-CHAPTER EXECUTIVE SUMMARY

Section 1: Enhancing the crisis management capabilities of the WTO.

Chapter	Subject matter	Suggestions and recommendations
1 Jara	Institutional response to systemic crises	In times of crisis business-as-usual won't work at the WTO. Collective action, however urgent and beneficial, can be blocked by any WTO member. Eight recommendations would enhance the capability of the WTO to respond to crises: 1. Undertake a review of trade policy implemented during the COVID-19 pandemic to set the stage for post-crisis initiatives. This should be undertaken by independent and impartial individuals and stress the reactions and costs that could have been avoided with better coordination. 2. The next Ministerial Conference should empower the Director-General (DG) with the right to convene an ad-hoc Working Group (WG) whenever the DG deems there a crisis that is far-reaching, both in terms of WTO members implicated and impact. The WG would be convened in consultation with the Chairs of the WTO's main bodies. The DG would chair in an ex-officio capacity. All members of the WTO would be entitled to be part of the WG. 3. This WG would be entrusted with the task of aligning national measures and could also make recommendations for multilateral action by the General Council or another WTO appropriate body. 4. The DG would invite all the relevant agencies to be observers, whether international or regional agencies, business or other stakeholders. Such observers can signal the actions taken within their bodies and thus achieve better coordination. This would help to place trade policy in the wider context of a global crisis and identify what contributions can be made by the multilateral trading system. 5. Regardless of whether there is a WG or another institutional setup, in a crisis the Secretariat should collect, organise and provide all the relevant information and analysis thereof and, if necessary, in collaboration with other international bodies, research centres, or academia. 6. To help WTO members resist protectionist pressures during crises, additional use of transparency protocols and peer reviews should be considered. The WTO Secretariat should present a set of Good Practices on transparency and analysis, to be enriched overtime with the benefit of experience.

		7. During crises, liberalisation of some goods and services can be useful. For example, some governments sensibly scrapped tariffs on imported soap during the COVID-19 pandemic. If greater certainty on market access is necessary, members could resort to temporary, or conditional bindings on trade in goods or temporary specific commitments for services trade. Such commitments could take the form of memorandums of understanding and are an improvement over unilateral measures. This could give time, if members wish, to negotiate trade-offs to make such bindings permanent. Any temporary accord need not involve every member of the WTO and an understanding should be developed that, in order to encourage keeping such memorandum "within the house," that no WTO member will veto any such collective initiative so long as it is implemented on a MFN basis. Taken together, these measures suggest that the DG be accorded, by the membership a more active role, particularly during times of crises. The point is that no one else has the power to command the work of a small but highly skilled Secretariat to assist members. It is the duty of the DG to be impartial. But the DG cannot be neutral, after all the DG is the guardian of the multilateral trading system.
2 Hoekman	Data and analysis to inform deliberation	To address the trade-related Covid-19 measures taken during the crisis, WTO members should launch a work programme to enhance policy transparency, data gathering, and analysis. The new DG should create space for the Secretariat to fill policy data gaps and to analyse the magnitude and incidence of policies affecting competitive conditions on markets —including in areas where WTO rules are weak or missing altogether. The WTO cannot outsource this core function, but it cannot do it alone. A policy transparency-cum-analysis work programme should include other organisations, especially the IMF, World Bank and OECD, all of which collect information on relevant policy and outcome variables. Such an initiative needs to be resourced properly within the Secretariat.
3 Low and Wolfe	Mainstream virtual meetings	The membership is eager to resume in-person meetings. That said, the WTO Secretariat should be prepared to continue virtual and hybrid meetings and deliberations, potentially well beyond the pandemic period. Five actions will facilitate this; strong leadership from the new DG will be important here. 1. More than two meeting rooms will need to be fitted out with the requisite equipment to allow for hybrid meetings. 2. Meetings set for Geneva time need to take place around the middle of the day in order that delegations in more distant time zones from the east and west can participate at a tolerable hour. Since that may unduly constrain the time available for meetings, our next point assumes greater importance.

		3. Written exchanges should be seen as an integral part of committee processes, which requires continuing efforts to make information available in writing and in advance. The eAgenda system should be expanded to all WTO bodies, and adapted for the 12th Ministerial Conference (MC12). 4. Rules of procedure may need to be modified, including the definition of a quorum, procedural timelines, the functions of annotated agendas, and recognising the existence of a consensus. 5. The provision of a larger share of technical assistance, training, and capacity-building on virtual platforms would provide an opportunity to upgrade the quality of the WTO's offerings in this area. Moves have already been made to deliver some assistance virtually. It will be especially important to provide more training for operating in a virtual environment.
4 González	Role of trade ministers	Trade ministers should discuss pandemic-related matters that hinder the global fight against Covid-19 in a forum that already exists - the WTO. That discussion should have the following objectives: 1. To exchange information on their domestic situations with a view to building a shared understanding of the role of trade in fighting the pandemic, thereby sharing experiences, and identifying lessons learned. 2. To commit to timely notifications, enhanced transparency, and monitoring, with greater support from the Secretariat and available technologies both to compile and assess data and to monitor the evolution of policy intervention. Enhanced information systems, following the example of the Agricultural Market Information System (AMIS), could be embedded in regular committee work as well as the Trade Policy Review Mechanism. 3. To commit to fight back home against discriminatory or otherwise WTO-inconsistent policy initiatives that, while ineffective, may also result in potential retaliation. 4. To discuss options to rollback unilateral restrictive measures adopted in the context of the pandemic and refrain from the introduction of new measures. 5. Identify key trade measures to fight COVID-19, exploring alternative options (e.g., a bargain to restrain importers from restoring restrictions while exporters constrain their resort to export restrictions (see, for example, proposals by Evenett and Winters 2020, and by Espitia, Rocha and Ruta 2020). 6. Accelerate the implementation of trade facilitation measures to expedite movement of critical medical supplies, with the support of international organisations as appropriate. 7. Explore the role of the WTO in facilitating affordable access to vaccines for all. 8. Establish a forum of senior officials to follow-up on the discussions with a view to preparing a package of trade measures to fight the pandemic to be adopted promptly and in the context of the next Ministerial Conference in 2021.

5 Bhatia	Medical goods including vaccines	The WTO should agree a programme - given effect through a Declaration to be adopted in the General Council – that address two types of challenges. Such a Declaration would add strength and resolve to the WTO's efforts and emphasise its continuing relevance. 1. Build consensus around a pragmatic programme which addresses the immediate public health priorities of its members, while emphasising the advantages to be obtained from global cooperation. The programme needs to be built around the following three elements: • Ensuring uninterrupted flows of medicines, vaccines, equipment and their components, including equitable access to tests, treatments and vaccines (building on the G20 Ministerial Statement) • Addressing pertinent intellectual property rights (IPR) matters including discussing and resolving difficulties in the exercise of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) flexibilities. • Ensuring transparency by strengthening monitoring, surveillance and review of all Covid-19 related trade measures around the world, including authorising the relevant WTO body to convene every month to review monthly reports based on information gathered from all relevant sources. 2. Confront key challenges to WTO rules that have been thrown up by national responses to the pandemic by engaging in an orderly discussion on the following issues through a mandated work programme. Here the principal matters at hand are: • Cross-border value chains (GVCs) and the need for resilience. • Market failures and the role of the state, including building agreement on a comprehensive work programme in the WTO on the role of the state in addressing market failures, the consistency of such actions with WTO rules, and the possible need for revision of such rules.
6 Nicita and Olarreaga	Tariff moratorium	Before the pandemic most WTO members' tariffs were set far below their bindings, raising the possibility that they could be unilaterally raised at any time without violating their WTO obligations. Generalised rises in tariffs would set back the recovery of the world economy. Indeed, even the possibility of such tariff hikes creates uncertainty that dampens private sector investment. WTO members should agree a temporary moratorium on tariff increases until the end of the crisis. The simplicity of a moratorium makes it easy to monitor, but less likely to be accepted so the moratorium might, instead, set a maximum for crisis-linked tariff rises. This could be a specific figure, say 20%, of applied rises within the bound range, or it could be a commitment to limit the number of tariff lines where import taxes can rise.

Section 2: Reassessing the WTO's place in the world trading system—the pandemic and beyond.

7 Heiland and Ulltveit-Moe	Port restrictions	Unilaterally imposed port restrictions have unintended consequences for the global flow of goods – including Covid-19 vital goods – since the global container shipping industry is organised in such a way that most countries rely on the port facilities of other countries. In such circumstances, win-win cooperation is usually possible, but there are no specific WTO rules in this area. The WTO should focus on port restrictions starting with these five steps: 1. The WTO secretariat should assemble information on the current state of port restrictions and update them monthly. This information should be made publicly available. 2. The WTO secretariat should provide information to each member on which trading partners' port restrictions cover more than X% of their imports and exports. X can be chosen. • This step will make clear the spillovers involved. The trade coverage totals could be updated monthly. This step and the previous step add transparency, which is a global public good. 3. The General Council or some other body (such as the Trade Policy Review Body) should convene to discuss the systemic importance of this matter. • Better practices should be identified. 4. WTO members should commit not to adopt port restrictions that are stricter than necessary. • Each WTO member's port restrictions would be benchmarked against best practices on a monthly basis and, when stricter than necessary, a WTO member must provide a compelling written justification within 30 days. • Those justifications would be published and a WTO body would convene to discuss each submitted justification, just as the Trade Policy Review convenes to discuss government answers about their national trade policies. 5. At the next Ministerial Conference this commitment would be codified into a crisis management protocol so as to establish procedures and precedent for the next time.

8 Bosanquet and Button	Air transport	Existing international oversight bodies were not designed to respond to sudden, large-scale emergencies. A major restructuring of air transportation's oversight regime deserves serious consideration with the WTO potentially playing a role. Two questions need to be addressed through deliberation by WTO members: (1) What does the world need from aviation to optimise trade? and (2) How can the WTO add value to what other oversight bodies do? Air transportation oversight will require a paradigmatic shift the WTO focusing on "transactions cost regulation." Disruption or abandonment of services can have severe adverse effects on local economies. Restructuring subsidies to allow airlines to adjust their activities in a structured way can limit the impact, but such interventions tend to be used excessively and for too long. Restructuring subsides and other aid should, therefore, have a clear sunset (termination date); they should be conditional on affecting change in air transportation to meet the new circumstances, and there should be on-going accountability. The WTO, acting in defence of the level commercial playing field, would be in a position to monitor and limit the misuse of restructuring subsidies in the aviation supply chain. Greater monitoring of aviation markets is necessary, including evaluating the consistency with which governments address unlawful mergers and monopolies, but going beyond that. While ICAO retains considerable technical expertise, it lacks depth in trade policy. On the other hand, the WTO has considerable experience in legal matters regarding trade. Ultimately, Covid-19's damage across complex air transportation networks underscores an exigency for a review of the industry's oversight regime.
9 Duval	Trade facilitation	Suggestions for a work programme to keep goods flowing across borders and to revive world trade include: 1. With respect to trade facilitation measures in times of pandemic and other crises: agree on a set of trade facilitation measures to be taken in times of crises, beyond those that arose with Covid-19 including measures that might be related to natural and man-made disasters. Coordination with the UN and disaster relief agencies should be maintained and strengthened where possible. 2. With respect to ambitious digital trade facilitation measures: coordinate implementation of digital trade facilitation measures, in particular those that require international cooperation (e.g. exchange and legal recognition of trade-related documents). One point of departure could be the ambitious proposals made by the Republic of Korea during the early stages of the Agreement on Trade Facilitation (TFA) negotiations, the on-going discussions on e-commerce under the Joint Statement on E-commerce Initiative, and electronic certificates under the WTO Sanitary and Phytosanitary Committee. Global instruments and standards that could be leveraged include the World Customs Organization (WCO) Framework of Standards on Cross-Border E-commerce and the UNCITRAL model law on electronic transferable records, among others. Regional trade digitalisation initiatives and agreements could provide another source of ideas for advancing trade facilitation (e.g. the Framework Agreement on Facilitation of Cross-Border Paperless Trade in Asia and the Pacific, the ASEAN Single Window Agreement, initiatives of the Pacific Alliance, and the Digital Economy Partnership Agreement recently signed between Chile, New Zealand and Singapore).

		3. With respect to inclusive and sustainable trade facilitation; give more consideration to the specific needs of groups of people and sectors relevant to the 2030 Agenda for Sustainable Development, specifically trade facilitation measures targeted at small- and medium-sized enterprises (SMEs), the agricultural sector, and women traders. Examples include: reduced fees and charges for SMEs, and establishment of a gender balance requirement in national trade facilitation committees. Mainstreaming these measures through the WTO TFA process may go a long way in accelerating implementation, while providing concrete evidence of the WTO's potential in building back better after the pandemic. 4. Strengthened implementation monitoring mechanism for trade facilitation measures, including developing better standards or benchmarks. Inspiration could come from the OECD's pioneering work in this area, breaking down many of the TFA provisions into subsets of measures included in their trade facilitation implementation survey that underpins its Trade Facilitation Indicators. Likewise, the UN Global Survey on Digital and Sustainable Trade Facilitation, which extended that approach to digital and other measures not explicitly included in the TFA. Establishing a peer review mechanism, strengthening implementation monitoring through national trade facilitation committees (NTFCs) and/or emphasising trade facilitation in the WTO trade policy reviews may all be considered, noting the importance of private sector input in any detailed assessment of trade facilitation performance. 5. Enhanced collaboration between WTO and regional and global trade facilitation organisations, ensuring collaboration is inclusive and synergistic. The UN and other international organisations have long-standing regional or global programmes related to trade facilitation. As part of an updated WTO trade facilitation work programme, these efforts should be referenced to avoid reinventing the wheel. Similarly, it may make sense to leave much of the aid and capacity building aspects of trade facilitations to partner organisations.
10 Miroudot	Supply chain cooperation	The pandemic has revealed shortcoming in international cooperation on GVCs and related supply chains. Cooperation could involve: 1. Conducting scenario analyses to assess true levels of supply chain risk and diversification. 2. Enhanced monitoring trade in essential COVID-19 goods and associated trade restrictions. 3. Initiating a specific discussion on trade facilitation measures for essential goods. 4. Steps to reduce uncertainty over investment-related policies and other flanking policies affecting GVCs.

11 Freund and McDaniel	Vaccine distribution	Ample vaccine production and distribution is in everyone's interest since the disease will not truly be gone anywhere until it is gone everywhere. A global vaccine-sharing agreement will not be enough. The WTO should take three additional steps to support the global distribution of a vaccine. 1. Let the data flow. Create a mechanism similar to what exists for the sharing of data and information on strains of the flu virus, pharma supplies, and regulatory processes. Information flows will reduce uncertainty, and attendant incentives to protect markets and hoard supplies, all of which tend to compound market failure. The Agriculture Markets Information System (AMIS) could be a model. 2. Leverage the Trade Facilitation Agreement (TFA) and its powerful network to prepare the necessary 'cold supply chain'. Vaccine storage, handling, and transport is complex. Suppliers, logistics networks, and the medical community will need to prepare for the distribution of millions, if not billions, of refrigerated glass vials from production sites to remote destinations. The 164-member TFA includes provisions on expedited trade and perishable goods that can help. 3. Ensure TRIPS provisions function to support production and exports. The WTO agreement on trade-related aspects of intellectual property rights—the so-called TRIPS agreement—allows production and exporting of patented critical medicines to developing countries in health emergencies. Streamlining paperwork requirements and facilitating agreements with groups of developing countries can promote more effective functioning of the existing mechanisms and exploit scale economies going forward.
12 Tu and Li	Investment screening	COVID-19 has accelerated the recent trend towards screening and regulation of Foreign Direct Investment (FDI). While national control over FDI is accepted practice, the flourishing of new rules and procedures, and the possibility of unintentional harm, unnecessary conflict, and non-cooperative outcomes suggest the time is ripe for a WTO-based conversation on these matters. The WTO should launch a work programme on investment screening to facilitate inter-governmental dialogue, in order to better align the FDI screening practices of members, and to provide baseline rules that could ensure the predictability, transparency, simplicity, and equity of the legal and administrative requirements pertaining to FDI.
13 Mikic and Sharma	Feminisation—the WTO's contribution to social progress	Research finds that the WTO trade agreements are gender neutral and that "they make a positive contribution to creating a level playing field and a fertile ground for women's economic activity." But more should be done. Five specific steps should be taken by the WTO membership: 1. Greater information sharing for the purposes of impact assessment of regional trade agreements (RTAs).

		• Impact assessment has been an accepted part of the approval/ ratification process of new RTAs by many countries with respect to labour rights and environment; this would encourage extension of the practice to gender impacts. • WTO could encourage, via the Trade Policy Review Mechanism (TPRM), collection of gender-differentiated data and sharing of information on best practices. 2. Making provisions enforceable in trade agreements. • Gender provisions need to be made enforceable and binding parts of current and future agreements. • Women's economic empowerment provisions could be added into the WTO agreements (as separate chapters). • Alternatively, this could be implemented a WTO plurilateral among like-minded nations. 3. Trade adjustment assistance and Aid for Trade (A4T). • The assistance to women adversely affected by trade agreements could be made more explicit in A4T packages. 4. Technical assistance provisions to enhance women's skills and knowledge of trade. • Such provisions could be added to RTAs and to WTO agreements. 5. Increased feminisation of the WTO Secretariat. • Much more could be done to "break the glass ceiling" in the Secretariat staff, building upon the very welcome appointment of the first female Director-General. • Members could be encouraged to promote women as their representatives and in associated decision-making bodies.
Section 3: Revamping the WTO rule book in light of the pandemic.		
14 Espitia, Rocha and Ruta	Trade in medical goods	Trade in medical goods is crucial to address the health crisis, but the lack of trade policy cooperation has disrupted, and threatens to disrupt, markets and trade flows. Unlike the usual mercantilist motives for protection, the policy actions have mostly been aimed at securing scarce supplies. This suggests that cooperation between exporters and importers could help avoid lose-lose outcomes. Five commitments could be usefully discussed in a future work programme for WTO members: 1. Limit trade policy discretion on medical goods during pandemics including: • A commitment by importers to retain policy reforms on medical goods enacted during a pandemic for a period of three years;

- A commitment by exporters that any export restriction would not exceed a period of three months and would not lower exports to partners by more than 50 percent of the average of the past two years;
- A commitment by both exporters and importers that proposed measures would take into account the impact on others – a requirement that already exists for export controls on agricultural products (but not for industrial goods).

2. Take actions to ease the flows of medical products across borders, such as commitments to abide to best trade facilitation practices for medical goods or adopt international standards for the critical medical goods for a period of three years.
3. Improve transparency on policies and production of medical goods.
   - Commit to improve notifications procedures.
   - Strengthening WTO monitoring, including expanding its analysis of trade effects of policy actions;
   - Create a platform for medical products like the Agricultural Market Information System (AMIS) for agricultural commodities to monitor underlying market conditions and identify potential vulnerabilities.
4. Commit to basic principles for dispute resolution.
   - For instance, agree on a norm that a trading partner's responses needs to be proportional and time-bound in case a party walks away from its commitments to restrain export policy or reverses import policy reforms.
5. Commitment to create a consultation mechanism
   - For example, create a forum for conversations on urgent, critical common and country-specific problems, such as the shortages of medical goods or medicines not covered by any new understanding among WTO members (see item 1 above). That forum could also address the cross-border effects of national decisions, highlighting their adverse social as well as economic consequences.
   - This consultation mechanism could be informed by the analysis and enhanced monitoring of policies.

15 Ambaw, Draper and Gao	Subsidies	The WTO should use the crisis to prepare the 'next chapter' on WTO subsidies reform by embarking on the followed three part initiative: 1. Information gathering. The WTO, in collaboration with other non-governmental organisations (NGOs) and international organisations, should collect the information on existing subsidies related to the pandemic and the Great Lockdown. This goal would be to produce a preliminary report on the types of subsidies, their scale and impacts on markets, by mid-2021. This would service discussions/negotiations including at the next WTO Ministerial. 2. By the end of 2021, WTO Members should agree on a basic work programme on the subsidies negotiations, which would identify the main issues to be addressed, the modalities of the negotiation, the membership of the negotiating group, and a timetable for negotiations. • The issue should be introduced in the General Council, and could be referred to the Committee on Subsidies and Countervailing duties for technical clarification and preparation of discussion topics. 3. With the work programme established, Members should aim for an early harvest by the end of 2022 that addresses the most urgent, pandemic-related subsidies issues shows the WTO constructive role in building global solidarity.
16 Kowalski	State ownership and state enterprises	Addressing any potential state-induced distortions to both domestic and international competition stemming from these support measures will be an important element of crisis exit strategies. Multilateral cooperation is likely to be needed as unilateral measures are only likely to go so far. Such cooperation could involve the following steps. First, as part of further international deliberation on these matters, governments should start by acknowledging that state ownership and state control of enterprises as a useful criteria for documenting and addressing trade-distorting state support. Second, a taxonomy should be developed of trade-distorting state support measures. Third, the collection of comprehensive information on these measures that would create a factual basis for the discussions concerning these measures. Fourth, the existing Agreement on Subsidies and Countervailing Measures (ASCM) has rules on various forms of trade-distorting financial preferences for SOEs and private firms in goods sectors, but there are no equivalent disciplines on non-financial forms of support in goods sectors, or on subsidies in services industries, and state support across different segments of value chains. These lacunae could be addressed.

17 Evenett	Export promotion	WTO members implemented a vast array of export support measures during the pandemic and many are contemplating further export measures. While trade finance and related export support matters have traditionally been taken up at the OECD, the spread of the practice far beyond OECD members suggests that the WTO could usefully play a role in organising reporting and talks aimed at reducing non-cooperative outcomes. There is a clear analogy with the way that the WTO was the natural home for addressing such measures with respect to agricultural export support in previous years. Before contemplating any negotiations in this area, the WTO should first undertake a scoping exercise that informs WTO delegations and provides a common basis for subsequent discussion. High quality information is a public good and unimpeded access to it builds confidence and trust, both of which are sorely needed among the WTO membership. Step-by-step, this scoping exercise should collect and disseminate information on: 1. A comprehensive list of policy interventions used to directly encourage exports. Tax-related and trade finance-related policy interventions should be within scope. In principle, any type of policy intervention where the purpose is to specifically expand exports should be within scope. Selective, that is sector-specific or firm-specific, export incentives should be included as well. 2. Accounting for the explicit and contingent fiscal cost of export support schemes. Here the expertise of the IMF may be valuable. 3. The distribution of state-provided export support by size of firm. The extent to which small and medium sized firms benefit from export support would then be revealed. 4. The availability of private sector provided trade finance and the factors affecting the quantum of private sector funds. 5. The extent to which publicly provided export support crowds out privately supplied trade finance. 6. The quantum of goods trade facing competition from subsidised rivals exporting from other countries. Here the broader notion of subsidies as state aid is intended. 7. The effects of export support in affected markets on prices, exports, and market shares. Here case studies as well as full blown econometric studies should be prepared. 8. The effects of sudden changes in export support policies.

		9. The effects of precedent cases where international trade disciplines have been used to phase out export support. Here the previous initiatives to limit, reduce, and then scrap agricultural export support would be relevant. The scoping exercise should start with goods and later be expanded to cover relevant state support for service sector exports. As the information base on export support grows and is updated over time, WTO members could discuss the implications and identify where the biggest cross-border spillovers from export support measures are. Such discussions should be supported by information collection and analysis by the WTO secretariat and other interested public sector international organisations, such as the OECD. Engagement with the Berne Union would be desirable. As would engagement with representatives of the national, regional, and international business community, such as the International Chamber of Commerce. Analysis and information from other experts could feed into this scoping exercise as well.
18 van der Marel	Digitally delivered services	Drawing upon both pandemic experience and longer standing trends associated with the development of the digital economy, a future work programme for the WTO could comprise of the following matters pertaining to cross-border digitally delivered services: 1. WTO members should flesh out a definition of digital trade. The Work Programme on Electronic Commerce delineates e-commerce in a broad manner. However, the treatment of new types of digital exchange remain unclear, e.g. the current approach does not explicitly cover data flows. 2. The WTO Secretariat should gather and report data and national policies concerning digital trade so as to inform deliberations. With up-to-date information, the WTO Secretariat, possibly together with the IMF, the World Bank and the OECD, should do more impact analysis of these new policies that potentially affect new digital flows. 3. A new Committee on digital services trade should be formed to serve as focal point for dialogue on new policies and regulations and their impact on digital services trade. The committee could strive to identify best practises and advance recommendations for consideration by the General Council. Similar to the Committee on Trade in Financial Services, it would provide a necessary venue for technical discussions, as well as the needed examinations of the regulatory developments of digital technologies and regulations impacting digital services trade. 4. The WTO should set up a Working Party to explore ways to update the existing GATS framework, including encouraging more WTO members to sign up to the non-binding Telecoms Reference Paper. That Working Paper should prepare a report for MC12.

19 Winters	Temporary movement of natural persons	Three classes of state action on Mode IV (Temporary Movement of Natural Persons) were witnessed during the pandemic: 1) Measures to increase the supply of medical personnel, 2) Suspensions of visa regulations for essential workers (e.g. food supply and agriculture), and 3) Widespread, health-related measures to restrict the access of residents of other countries to national territory. Reflecting on this experience, WTO members could develop a work programme along the following lines: 1. The WTO Council for Trade in Services should urgently establish a Working Group to define and operationalise the measurement of what "emergency measures" are and what "necessary, must be targeted, proportionate, transparent, and temporary" mean for Mode IV in the context of the 30th March 2020, G20 Trade Ministers declaration. 2. Take steps to boost transparency and information exchange on such emergency policies. The Working Group should: • set up a real-time reporting system which considers not only policies that impinge on Mode 4 commitments (which would be part of members' WTO obligations) but also a wider range of mobility-related policies on the grounds that, quite independently of Mode 4, restrictions on travel and mobility impinge on both trade and human health. • publish the data and arrange a monthly discussion of them both as a whole and with questions on specific policies, along the lines of the Specific Trade Concerns processes in SPS and TBT. • This could involve a joint WTO/WHO initiative, so that health aspects could be investigated and proportionality better understood, but it would be best to start with a 'coalition of the willing' – perhaps among participants in the Trade in Services Agreement (TiSA) negotiation plus other volunteers.
20 Ungphakorn	Agriculture	Generally, agriculture has been exempted from COVID-19 lockdowns but the sector has been indirectly squeezed. COVID-19 has highlighted the fragility of the food supply chain—not least when government disrupt food flows as they strive to feed their populations. The UN has warned of a worsening global food emergency with nearly 50 million more people pushed into extreme poverty, much of the vulnerability arising from existing poverty and conflict. Cooperation in the WTO could help avoid this.

		The WTO should adopt a work programme that covers three groups of activities: 1. Information sessions and thematic discussions, to clarify issues and help build confidence and understanding at a technical level, a first step towards WTO members collaborating. 2. Choose least damaging trade actions and rule-making where related directly to COVID-19, including on export restraints, mitigating the impact of the pandemic, and domestic support in stimulus packages. 3. Grasp the opportunity to update the trade rules more broadly on agriculture, particularly as they relate to domestic support, thereby reducing adverse cross-border spillovers This, in essence, is a good of example 'never letting a crisis go to waste'; minds are open to cooperation that avoids unintended lose-lose outcomes in medical supplies and this urge should be harnessed to pull the lethargic efforts in agriculture out of their rut.
21 Dhar	TBT and SPS	Regulatory matters are of ever-increasing importance – making transparency and reporting increasingly important – but compliance with already agreed procedures is falling short. The situation has been highlighted by the lack of notification of Covid-linked measures. Members have usually notified their standards well after they were adopted, and most notifications have not been in conformity with international standards. WTO members must find an expeditious solution to this shortcoming to avoid regulation-based protection - "murky protectionism" – from growing. An improvement in the reporting and in the early resolution of Specific Trade Concerns (STCs) would be beneficial to global trade as it struggles to recover from the pandemic-induced plunge. An important step forward was taken in May 2020 by registering notifications on a new online platform, the eAgenda. Such processes, reflecting the collective will of the membership of the Organization, should be strengthened. More generally, there should be an increased recognition of the importance of the transparency in minimising the avoidable burdens of technical regulations.

Section 1

Enhancing the crisis management capabilities of the WTO

CHAPTER 1

Against the clock: Eight steps to improve WTO crisis management

Alejandro Jara

Former Deputy-Director General of the WTO

Like most public international organisations, the WTO has mechanisms and safety valves that enable members to respond to critical and urgent problems. The current mechanisms were designed largely for national emergencies. However, at times a crisis is system-wide, such as the situation of GATT after the Tokyo Round that led to the launching of the Uruguay Round in 1986, or the present state of affairs of the WTO.

Certain crises are global in nature and exogenous to trade policy but require some response by the multilateral trading system, with leading examples including the 2008-09 Global Financial Crisis and the 2020 COVID-19 pandemic. The purpose of this chapter is to draw lessons from the latter two episodes with an eye to improving both the WTO's capacity to support the trading system and to add to the international cooperation efforts during systemic crises.

This chapter will address (1) the longstanding practices on how WTO members can unilaterally react to emergencies; (2) the actions undertaken by the WTO Secretariat in the 2008-9 Global Financial Crisis; (3) the actions by the WTO Secretariat and members during the COVID pandemic; and (4) recommendations on how to enhance the WTO in future crises, particularly the role of the Director General.

HOW WTO MEMBERS CAN REACT TO EMERGENCIES

Market access in the WTO is mainly ensured by contractual bindings of tariffs (or specific commitments in the case of services) complemented by disciplines that prevent discrimination (most-favoured nation) or attempt to minimise the impact of distortions (such as subsidies) or procedures on non-tariff measures (technical regulations, sanitary and phytosanitary (SPS) measures). By and large, market access should be stable and predictable – two features valued by the market.

These outcomes are made possible by the existence of numerous flexibilities that allow governments to act unilaterally to face emergencies and distortions that may cause serious injury to domestic production or pose serious risks that threaten human, animal or plant life or health. The implementation of these measures of an exceptional nature must meet requirements such as an investigation (for example, in contingency measures), comments and consultations (technical barriers to trade and SPS), and generally notifications. In some cases of urgency, however, the measures can be applied before the procedural requirements have been completed. Examples include the application of provisional measures in antidumping, countervailing or safeguard measures, or "where urgent problems of safety, health and environment protection or national security arise or threaten to arise for a member, that member may omit such of the steps enumerated in …. (Art. 2.20 of TBT)".

While all these measures are well established and there exists a longstanding practice and jurisprudence, they respond to problems that are of concern to an individual customs territory. However, when the problems are global or simultaneously implicate multiple trading nations and when urgent action is required, there is, at present, no specific crisis-related institutional setup at the WTO that members can use to foster cooperative responses. As a result, the evidence shows an array of measures were applied unilaterally by members during both the financial and the pandemic crises, with little if any consultation with trading partners, no notice to members or regard given to WTO disciplines and procedures.

ACTIONS UNDERTAKEN DURING THE 2008-9 GLOBAL FINANCIAL CRISIS

Pascal Lamy, WTO Director-General at the time, took the initiative to document and report quarterly on the trade measures, whether to liberalise or restrict trade, being applied worldwide. While there was no explicit mandate to do this, except for grumbling in a few quarters, for the most part WTO members welcomed the collection, collation, and diffusion of such information. This allowed for better-informed exchanges of views and was of particular importance for governments with less resources. Later, the G20 governments called on the WTO, as well as OECD and the United Nations Conference on Trade and Development, to monitor trade and investment policy developments by its members. The adoption of trade-restrictive measures during the 2008-09 crisis is well documented.[1]

Similarly, as concerns about the availability of trade financing became apparent, the then Director-General organised meetings of the relevant international agencies, key governments, banks and other stakeholders. Raising the profile of the trade financing problem ensured attention from senior political leaders and that action would be undertaken to expedite solutions.

This leaves two lessons: first, transparency is of paramount importance, and the Secretariat can contribute greatly by collecting and organising information; second, action can be taken even in the absence of formal mandates and institutions, and the Director-General can take the lead.

1 See Global Trade Alert (https://www.globaltradealert.org) and the WTO Secretariat Trade Monitoring Reports (https://www.wto.org/english/tratop_e/tpr_e/trade_monitoring_e.htm).

ACTIONS UNDERTAKEN DURING THE COVID-19 PANDEMIC

During the ongoing pandemic, many governments of producer countries moved quickly to restrict exports of medical equipment and medicine, while the non-producing countries moved to liberalise trade of such goods.[2] This time around, several governments have teamed up in different configurations (the G20, APEC, ASEAN, etc.)[3] to highlight the importance of keeping markets open, and some went so far as making commitments, inter alia, "[n]ot to impose agriculture export restrictions and refrain from implementing unjustified trade barriers on agriculture and agri-food products and key agricultural production inputs".[4]

However, no collective action (or coordination) has been taken or discussed at the WTO. This could be attributed to restrictions or limits on regular meetings in Geneva and social distancing. The General Council did meet virtually on 15 May 2020, in a session that was dedicated to information sharing and the exchange of views on COVID-19 trade-related measures. An impressive 65 delegations took the floor, some in the name of regional or other groupings. As foreshadowed in the convening notice, no substantive decision was taken by the General Council – probably because of the sensitivity of some members to hold virtual meetings. Even so, the Chair made some important concluding remarks in which he stated that:

> "Going forward, and as governments considered options for immediate responses to the COVID-19 crisis, as well as long-term ones, their biggest challenge in the trade sphere was to ensure that trade policies, and the work that they did as members of the WTO, were part of the solution to assist and support that recovery. As many had said, it was important that emergency measures did not have the unintended consequences to further aggravate the global economic crisis down the road which underlined the need to consider using the least harmful trade policy instruments and to adopt a coordinated and cooperative approach in addressing the global challenges they were facing. ... As many had also emphasised, as governments looked ahead and implemented the necessary policies for recovery, multilateral cooperation was more important than ever. A crisis of that magnitude – _unprecedented in their lifetime – _could best be addressed through the international community enhancing cooperation and coordination, including at the WTO."[5]

2 Ibidem. See also the chapter by Ruta and Rocha chapter in this eBook.
3 See https://www.wto.org/english/tratop_e/covid19_e/proposals_e.htm
4 WTO document: WT/GC/208/Rev.1.
5 Document WT/GC/M/183 pars, 1.243 and 1.244

The Secretariat, for its part, has done an impressive job at collecting, organising, and analysing information. Since the beginning of April 2020, it has issued at least 14 reports on different aspects of COVID 19 trade-related issues (for example, on agriculture, cross-border mobility, standards, services, e-commerce, export prohibition and restrictions.)[6] In addition, it collaborated with 35 other international organizations to issue a report on "How COVID 19 is changing the world: a statistical perspective", now in its second volume (Committee for the Coordination of Statistical Activities 2020a, 2020b).

Perhaps the reporting by the Secretariat on the pandemic-related trade measures could have begun earlier, judging by the performance of others (the European Institute University, Global Trade Alert, and World Bank initiative to document trade policy changes in essential goods being a case in point). In addition, as the evidence shows in another chapter of this eBook, the coverage of measures reported by WTO members is incomplete.[7] This highlights the need to have constructive institutional cooperation to achieve enhanced transparency.

In sum, some substantial, though perhaps delayed, action on transparency and analysis was accomplished by WTO members and the Secretariat, with uneven results. The question looms as to what has been, or will be, the contribution of the trading system to the pandemic and the economic recovery – or, to put it differently, how much more effective the contribution would have been had there been more cooperation.

RECOMMENDATIONS ON HOW TO ENHANCE ACTION BY THE WTO IN FUTURE CRISES, INCLUDING BY THE DIRECTOR-GENERAL AND THE SECRETARIAT

In times of crises, 'business as usual' won't work at the WTO. At present, of course, WTO members may call for a meeting of the appropriate WTO body, circulating a note and proposing any relevant action, including any contribution by the Secretariat. There are procedures that must be followed, such as the ten-day rule for circulating the agenda before a meeting, which, like most documents, must be translated. Moreover, any request for a contribution by the Secretariat must be agreed upon by consensus. To invite another international organization (WHO, for example), a consensus is also required. To invite business or other stakeholders could prove even more difficult.

In addition, at present, any collective action, however urgent and beneficial, can be blocked by any WTO member – for example, as a bargaining chip to trade-off for a decision on some unrelated issue. At times like these, the weaknesses in the WTO's deliberative functions come to the fore. A mindset that only the negotiation of binding accords matters, coupled with fears (no matter how erroneous) that anything agreed will become subject to dispute settlement, coming on top of a legacy of bad blood between key WTO members, accounts for the inability of the WTO to react collectively and expeditiously to system crises.

6 See https://www.wto.org/english/tratop_e/covid19_e/covid19_e.htm#reports.
7 See the chapter by Bernard Hoekman in this eBook.

What steps can be taken, then, to turn the WTO into a better crisis management organisation? I advance the following eight recommendations which would build confidence and enhance the capacity of the WTO to respond collectively and quickly:

1. A post-mortem review of trade policy undertaken during the COVID-19 pandemic would be a good place to start. To prevent inter-governmental peer protection (as opposed to review) the exercise should be undertaken by independent and impartial individuals. The review should show the reactions and costs that could have been avoided with better coordination.
2. The next Ministerial Conference could decide to empower the Director-General with the right to convene an ad-hoc Working Group whenever the Director-General deems there is a crisis that is far-reaching, both in terms of WTO members implicated and of significant impact. The Director-General would convene this Working Group in consultation with the Chairs of the WTO's main bodies. The Director-General would chair in an ex-officio capacity. All members of the WTO would be entitled to be a part of the Working Group.
3. This Working Group would be entrusted with coordinating national measures and could also make recommendations for multilateral action by the General Council or another WTO appropriate body.
4. The Director-General would invite all the relevant agencies – whether international or regional agencies, business or other stakeholders – to be observers. These observers could signal the actions taken within their bodies and thus achieve better coordination. This would help to place trade policy in the wider context of a global crisis and identify what contributions can be made by the multilateral trading system.
5. Regardless of whether there is a Working Group or another institutional setup, in a crisis the Secretariat should collect, organise and provide all the relevant information and analysis thereof (if necessary, in collaboration with other international bodies, research centres, or academia).
6. In the context of a response to a crisis facing the multilateral trading system, it might become necessary for WTO members to resist protectionist pressures. Transparency and peer review are effective tools to assist governments in their management of domestic political pressures to turn inwards during crises.
7. The WTO Secretariat should present a set of good practices on transparency and analysis, to be enriched overtime with the benefit of experience.
8. During crises, it might be advisable to liberalise trade in particular goods and/or services – for example, some governments sensibly scrapped tariffs on imported soap during the COVID-19 pandemic. If greater certainty over market access is necessary, members could resort to temporary (or conditional) bindings on

trading goods or temporary specific commitments for services. Such temporary accords could take the form of memorandums of understanding and would be an improvement over unilateral measures. This could give time, if members wish, to negotiate trade-offs to make such bindings permanent. Any temporary accord need not involve every member of the WTO, and an understanding should be developed that, in order to encourage keeping such memorandum "within the house", no WTO member will veto any such collective initiative so long as it is implemented on a most-favoured nation basis.

Some of the above recommendations reflect the need for the WTO Director-General to take a more active role, particularly in times of crises. No one else has the power to command the work of a small but highly skilled Secretariat to assist members. It is the duty of the Director-General to be impartial. But the Director-General cannot be neutral – after all the Director-General is the guardian of the multilateral trading system.

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ABOUT THE AUTHOR

Alejandro Jara is an international trade lawyer, former Ambassador of Chile to the WTO and a former Deputy Director General of the WTO.

CHAPTER 2

COVID-19 trade policy measures, G20 declarations and WTO reform[1]

Bernard Hoekman
EUI and CEPR

Many WTO members responded to the COVID-19 pandemic with a mix of export controls and import liberalisation/trade-facilitating measures for medical supplies and personal protective equipment (PPE) (facemasks, respirators, etc.).[2] The aim of these actions was to maximise domestic availability of critical products needed to combat the pandemic. Such national actions can – and did – create negative international spillovers and may impede supply responses to sharp increase in global demand by disrupting global value chains and production networks.

In this chapter, I focus on G20 declarations and behaviour during the first nine months of 2020 in light of the applicable WTO rules on the use of quantitative export restrictions in emergencies. Comparing G20 principles and WTO rules with observed behaviour suggests there is a significant gap between principles and practice: G20 countries have not 'walked the talk'. Closing the gap requires WTO members to launch a work programme to enhance policy transparency and give the WTO Secretariat the mandate to collect and analyse information on the broad range of policies used by members, establishing the evidence base needed for cooperation to attenuate cross-border policy spillovers.

G20 DECLARATIONS ON COVID-19 EMERGENCY RESPONSES

In recognition of the likely adverse consequences of purely national action, the 26 March 2020 Extraordinary G20 Leaders' Summit Statement on COVID-19 noted:

> "Consistent with the needs of our citizens, we will work to ensure the flow of vital medical supplies, critical agricultural products, and other goods and services across borders, and work to resolve disruptions to the global supply chains, to support the health and wellbeing of all people. We commit to continue working together to facilitate international trade and coordinate responses in ways that avoid unnecessary interference with international traffic and trade. Emergency measures aimed at protecting health will be targeted, proportionate, transparent,

1 I am grateful to Filippo Santi for compiling the figures used in this chapter, and to Simon Evenett, Petros Constantinos Mavroidis and Robert Wolfe for comments on an initial draft.
2 As of 18 September 2020, 91 jurisdictions had imposed 202 export controls on such products. See https://www.globaltradealert.org/.

and temporary. We task our Trade Ministers to assess the impact of the pandemic on trade. We reiterate our goal to realize a free, fair, non-discriminatory, transparent, predictable and stable trade and investment environment, and to keep our markets open."[3]

Four days later, G20 trade ministers stated that emergency measures designed to tackle COVID-19:

> "if deemed necessary, must be targeted, proportionate, transparent, and temporary, [...] not create unnecessary barriers to trade or disruption to global supply chains, and [be] consistent with WTO rules. We will implement those measures upholding the principle of international solidarity, considering the evolving needs of other countries for emergency supplies and humanitarian assistance. We emphasize the importance of transparency in the current environment and our commitment to notify the WTO of any trade related measures taken, all of which will enable global supply chains to continue to function in this crisis, while expediting the recovery that will follow."[4]

DO G20 PRINCIPLES ADD TO EXTANT WTO RULES?

The WTO includes agreed rules of the game for the exceptional use of trade policy. These overlap a lot with the principles contained in G20 statements.[5] Transparency, targeting, temporariness and necessity are all part of the WTO rulebook. The WTO requires that trade measures be published and notified to the WTO Secretariat. The WTO also imposes disciplines on the use of quantitative restrictions to address emergencies, notably that these be temporary. GATT Article XI:1 prohibits WTO members from imposing restrictions "other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures....". The types of export controls imposed by many countries during the early months of the COVID-19 pandemic fall under Art. XI and in principle therefore violate its ban on quantitative restrictions (QRs).

However, Art. XI includes some loopholes. One is Article XI:2(a), which states that the ban on QRs does not apply to export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to an exporting WTO member. More generally, QRs may be justified under the general exceptions provisions of the WTO. Art. XX GATT – as do other trade agreements,

3_https://g20.org/en/media/Documents/G20_Extraordinary%20G20%20Leaders%E2%80%99%20Summit_Statement_EN%20(3).pdf
4 http://www.g20.utoronto.ca/2020/2020-g20-trade-0330.html.
5 Two possible exceptions are calls by Trade Ministers to exempt "humanitarian aid related to COVID-19 from any export restrictions on exports of essential medical supplies [...] consistent with national requirements" and to avoid disruption of supply chains used to produce and distribute essential supplies. The latter arguably is covered in WTO disciplines, as these are agnostic about the type of trade involved. See the 14 May 2020 G20 Trade and Investment Ministers statement at: https://g20.org/en/media/Documents/G20SS_Statement_G20%20Second%20Trade%20&%20Investment%20Ministerial%20Meeting_EN.pdf

including deep regional integration arrangements such as the EU – permits governments to impose trade restrictions if needed to attain regulatory objectives, including pubic health and safety.[6] The relevant language reads as follows:

> "Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures"….
>
> "necessary to protect human, animal or plant life or health" (Art. XX:b); or
>
> "essential to the acquisition or distribution of products in general or local short supply [p]rovided that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist" (Art. XX:j).

The GATT Article XI:2(a) requirement that export restrictions to prevent or relieve "critical shortages" of "essential" products be temporary (until the critical shortage has been alleviated) provides the possibility for a WTO member to initiate consultations and launch WTO dispute settlement procedures. The same applies for measures justified under the general exceptions provision of the GATT, Art. XX. Formal dispute settlement procedures take 2+ years and thus are only relevant as a disciplining device in the longer term. This is appropriate given that it will take time for an emergency to pass, and for countries to determine that measures can no longer be justified.[7]

Whether the existing WTO framework – and the parallel G20 statements of good intentions – has much practical effect as a source of policy discipline is difficult to determine. The widespread use of export controls in the first six months of the COVID-19 pandemic suggests the framework was not constraining. This may well be appropriate. The Global Trade Alert database of COVID-trade measures documents that many countries reversed some or all export controls introduced in earlier stages of the pandemic, consistent with the WTO requirement that emergency use of QRs be temporary. At the same time, many measures remain in place at the time of writing. Only time will tell if WTO members roll back measures and how long this will take.

6 The EU treaties permit restrictions on intra-EU trade and other cross-border movement if member states can argue these are necessary to address emergencies and safeguard national public health and safety.

7 Launching disputes may serve little purpose until the Appellate Body crisis is resolved. Addressing this matter is critical for WTO rules to be meaningful (Hoekman and Mavroidis 2020).

TRANSPARENCY: PRINCIPLES VERSUS PRACTICE

Transparency is a fundamental dimension of WTO membership. This also applies to emergency measures. WTO members must notify QRs taken under Art. XI. The relevant 2012 Decision on Notification Procedures for Quantitative Restrictions (WTO G/L/59/Rev.1) stipulates that notifications must occur at two-yearly intervals and that changes be reported as soon as possible, no later than six months from their entry into force. The 2013 Agreement on Trade Facilitation similarly has transparency requirements requiring WTO members to publish promptly information on import, export or transit restrictions or prohibitions. Moreover, WTO members may engage in so-called reverse notifications, which is a complementary avenue to ensure transparency.

Transparency through notification and reverse notification supports discussion in the relevant committees of measures taken. Transparency arguably is both more important and less ambiguous than the temporary and necessity criteria embodied in WTO rules, which inherently are more subjective. Many WTO members are not living up to their transparency obligations – notwithstanding the above-mentioned 30 March commitment by G20 trade ministers to notify the WTO of any trade-related measures taken. As of 8 September 2020, 76 WTO members had submitted 233 notifications related to COVID-19.[8] These span export restrictions and import liberalisation/trade facilitation measures, changes in product regulation as well as support programmes. Brazil is the leader in having notified 29 measures, followed by Kuwait (16), the USA (13), Colombia (12), Philippines (11), Thailand (11) and the EU (10).

Three-quarters of COVID-19-related notifications pertain to product standards for medical supplies and PPE.[9] Through 8 September 2020, only 58 COVID-19 notifications did not pertain to sanitary and phytosanitary (SPS) or technical barriers to trade (TBT). This compares to some 600 measures – both export restrictions and import facilitation – targeting food and medical products compiled by the Global Trade Alert.[10] The first panel of Figure 1 illustrates the divergence by WTO member. Matters are even worse than suggested by the figure because some countries' notifications concern updates for the same measure and some pertain to support programmes,[11] neither of which are included in the GTA data. The second panel of Figure 1 plots data on export- and import-related measures compiled by the WTO Secretariat from official sources and that members have verified.[12] This shows more overlap with the data compiled by the GTA but also reveals that a significant discrepancy remains.

8 https://www.wto.org/english/tratop_e/covid19_e/notifications_e.htm#:~:text=COVID%2D19-,WTO%20members'%20notifications%20on%20COVID%2D19,notifications%20related%20to%20COVID%2D19.

9 This is consistent with the 14 May 2020 G20 trade ministerial commitment to: "Reduce sanitary and technical barriers by encouraging greater use of relevant existing international standards and ensuring access of information on relevant standards is not a barrier to enabling production of PPE and medical supplies." See footnote 3 above.

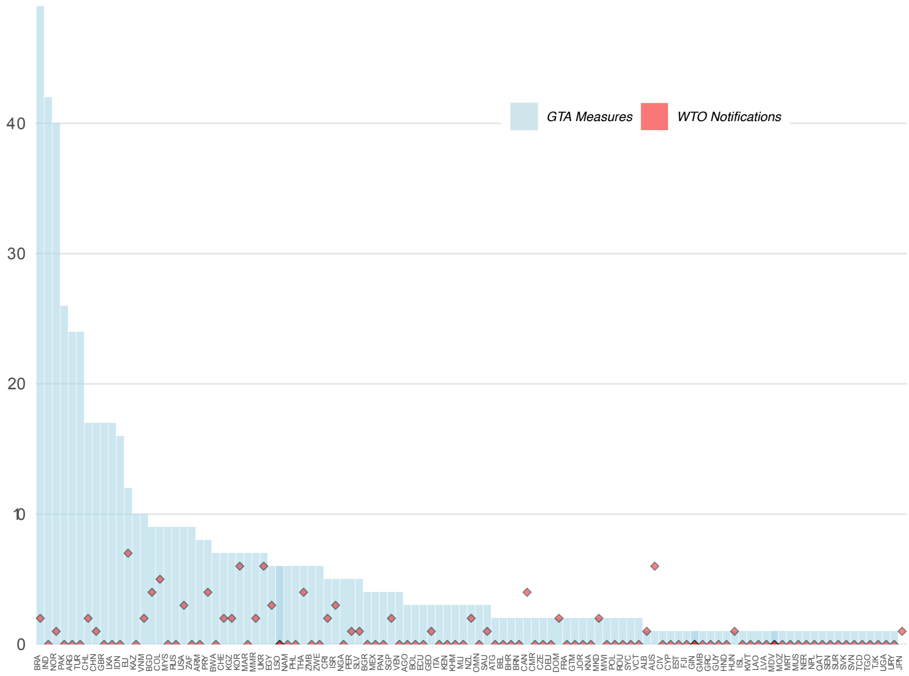
10 See footnote 2. The GTA COVID-19 monitoring exercise does not encompass SPS and TBT measures.

11 For example, Australia has more notifications to the WTO (6) than policies captured by the GTA (1). The latter aims to facilitate imports of PPE. Australia's notifications pertain to updates for this one measure.

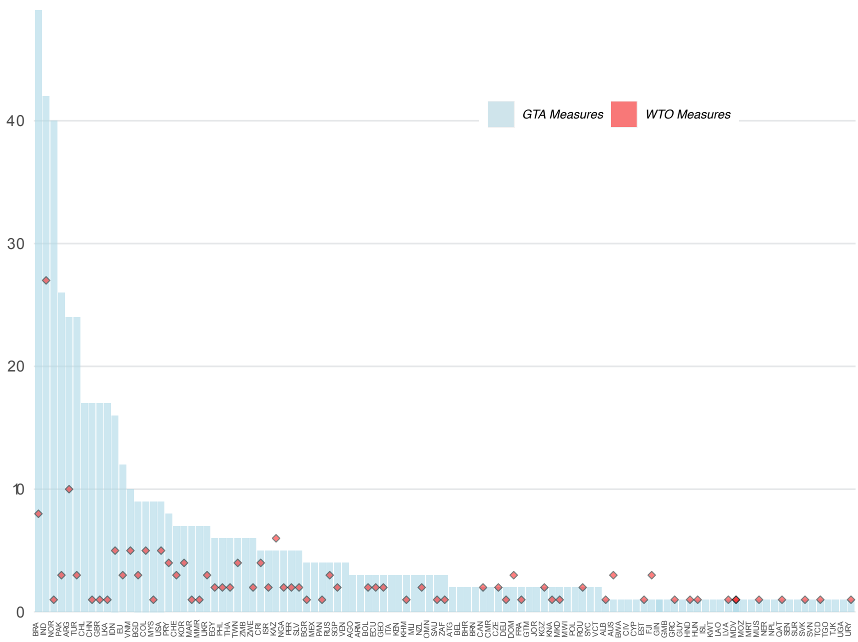
12 https://www.wto.org/english/tratop_e/covid19_e/trade_related_goods_measure_e.htm

FIGURE 1 COVID-19 TRADE MEASURES: GTA VS WTO

a) Measures captured by GTA (blue bars) and notification of measures to the WTO (red diamonds)



b) Measures captured by GTA (blue bars) and notification of measures reported by the WTO Secretariat (red diamonds)



Note: Figure includes only WTO members imposing at least one COVID-19 trade measure in the GTA dataset.

Limited transparency of national measures may help explain limited discussion in the WTO on the effects (or effectiveness) of national trade-related policies in overcoming the pandemic. For example, in its June 2020 meeting, the WTO Market Access committee, which covers the use of QRs, discussed work on transparency by the Secretariat and statements were made calling on governments to ensure trade-related measures implemented to combat the COVID-19 pandemic do not become permanent, but deliberations did not extend to the specific measures taken by WTO members. Instead, debate centred on other matters.[13] In discussions in the WTO Council on Trade in Goods, a proposal by Canada, Colombia, Costa Rica, Hong Kong, New Zealand, Norway, Singapore, Switzerland and Uruguay to make trade measures related to COVID-19 a dedicated item in the meeting agenda of the WTO Goods Council during the pandemic, and for the WTO Secretariat to prepare a factual report on their impact, was supported by some delegations but others "noted that this would only duplicate existing WTO trade monitoring efforts while some said there should be no further notification commitments".[14]

FILL THE TRANSPARENCY/ANALYSIS GAP

As argued at greater length in other work on WTO reform (Hoekman 2019, Wolfe 2018, 2020), improving transparency is necessary to support the substantive deliberation in WTO committees and Councils needed to ensure the organisation remains salient. The first order of business must be greater transparency and analysis by the WTO Secretariat of the cross-border effects of national policies to inform deliberations to update the WTO rulebook to encompass new policy areas (e.g. affecting the digital economy and associated cross-border flows of services and data).

A priority for the next Director-General (DG) should be to create the space for the Secretariat to fill policy data gaps and to analyse the magnitude and incidence of policies affecting competitive conditions on markets – including in areas where WTO rules are weak or missing altogether. A recent survey by Fiorini et al. (2020) suggests the DG should be able to bring together a critical mass of WTO members to support a work program on transparency and analysis of policy spillovers: monitoring COVID-19 trade responses was regarded a very high priority by WTO members and the trade community. The use of trade measures motivated by the COVID-19 pandemic is just one illustration why this should be a priority. Resurging use of subsidies and state control of investment and technology flows make clear this is a broader challenge.

The WTO cannot outsource this core function, but it cannot do it alone. A policy transparency-cum-analysis work program should include other organisations, especially the IMF, World Bank and OECD, all of which collect information on relevant policy and outcome variables. A corollary need is a shift in resource allocation within the Secretariat.

13 See https://www.wto.org/english/news_e/news20_e/mark_08jun20_e.htm
14 https://www.wto.org/english/news_e/news20_e/good_11jun20_e.htm

Reallocating a small percentage of the WTO's CHF200 million budget to collection of policy data and analysis – especially pertaining to subsidies and export controls – would make a big difference in the ability of the organisation to bolster the evidence base needed to inform and sustain multilateral cooperation on trade.

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ABOUT THE AUTHOR

Bernard Hoekman is Professor and Director of Global Economics in the Global Governance Programme of the Robert Schuman Centre for Advanced Studies at European University Institute and a CEPR Research Fellow.

CHAPTER 3

How the WTO kept talking: Lessons from the COVID-19 crisis

Patrick Low and Robert Wolfe

Asia Global Institute; Queen's University, Canada

INTRODUCTION

The WTO has three primary tasks: to negotiate new rules, monitor implementation (which depends on transparency), and settle any disputes that arise. All of these tasks require members to talk to each other, and they came crashing to a halt in March 2020 when meetings were cancelled and staff sent home.[1] WTO members and the Secretariat had some previous experience with digital tools and also role models in organisations, such as the OECD, that were quicker in embracing virtual technology to conduct their business. There are lessons for the reform of WTO working practices in how members managed to carry on talking through the pandemic. It may be some time before regular meetings can resume, but when they do members should institutionalize some pandemic-related innovations.

Dozens of virtual meetings have been held in international organisations since lockdowns took hold across the globe, including UN bodies, the G20 and the G7; even Heads of State participated virtually in the UN General Assembly. Beyond practical teething difficulties, adapting the WTO's three tasks to a virtual world posed some special challenges. Small group discussions of a crisis are one thing; ensuring that all of the WTO's diverse members can participate while maintaining an agreed balance of rights and obligations within a reciprocal framework is more complicated. Activities centred on learning, deliberation, and transparency have proven more straightforward than negotiating and agreeing to binding commitments.

Discussions on the reform of working practices in the WTO have been going on for some time,[2] but they slowed as the COVID-19 pandemic took hold. Yet the crisis has provided an opportunity to advance this reform agenda, not through grand designs but by incrementally experimenting and accelerating changes that were already underway. Building on this evolution in real time allows members to enrich the WTO and make it more effective.

1 The World Talk Organization is a worthy successor to what *The Economist* called "The General Agreement to Talk and Talk" (10 December 1988).
2 See, for example, the 2018 document "Strengthening the Deliberative Function of the WTO" (JOB/GC/211).

In the next section, we discuss a range of technical and practical aspects of holding fully virtual and hybrid (virtual and physical) meetings. We also consider the implications of various factors relevant to the distinction between traditional physical meetings and those with a virtual component. In the third section, we reflect on the challenges and possible changes that may result from a more systematic post-pandemic adoption of virtual and hybrid meetings. We consider how institutionalising pandemic innovations could contribute to the substantive content and greater effectiveness of various WTO activities. In the fourth section, we consider whether digital communication at a distance could be used by ministers to talk to each other at MC12, which is currently scheduled for 2021. The final section suggests an action plan for the new Director-General.

TECHNICAL AND OTHER PRACTICAL ASPECTS OF DOING WTO BUSINESS DIGITALLY

When ambassadors met with the Director-General in April to discuss how to continue the WTO's work in the face of the pandemic, it was obvious that virtual exchange was the only option while the WTO buildings were closed. When virtual meetings started, a number of delegations expressed concern about the medium. To begin with, meetings were conducted over Zoom, which some felt was insecure. The Secretariat then migrated to Interprefy, which had to be modified in order to accommodate WTO meeting requirements, including simultaneous interpretation in the three official languages.

When partial opening of the premises began towards the end of May, it was possible to consider hybrid meetings. The WTO currently has two meeting rooms fitted out for hybrid meetings. The Council Room can take up to 350 delegates and S1 up to 100. The understanding was that meetings would be populated by one person per delegation spaced at least one and a half metres apart, with other participants joining virtually. Over the last few months, many delegates continued to participate from their offices, as have some officials in capitals. At a recent General Council meeting, for example, 55 participants attended physically and 180 did so virtually. This experience has been repeated in other contexts, including the fisheries subsidies negotiations. By the end of July, dozens of meetings had been held, both formal and informal, involving numerous standing WTO bodies and others of a more ad hoc nature, notwithstanding the limitation imposed by the number of meeting rooms equipped for hybrid meetings. Prior to the COVID-19 crisis, more than a dozen meetings could be held simultaneously in the WTO building.

If virtual and hybrid meetings are to become an integral part of the WTO's working methods, more than two meeting rooms will need to be fitted out with the requisite equipment. The cost implications of doing so are non-trivial, but at the same time, having a virtual component of meetings is also cost-saving for officials who might otherwise travel from capitals. Virtual communication, of course, has the considerable advantage of opening up participation in meetings beyond the confines of Geneva.

If meetings are to involve participation from capitals, the hours available for real-time gatherings are significantly constrained by time zones. For practical purposes, meetings set for Geneva time need to take place around the middle of the day in order that delegations in more distant time zones from the east and west could participate at a tolerable hour. One way of addressing this constraint is to rely on written exchanges as an integral part of committee processes.

Even before the crisis, members in some committees were talking about improvements in working practices, exchanging ideas that proved useful when the COVID-19 pandemic hit (e.g. Wolfe 2020). The standards committees, for example, with support from the Secretariat IT staff had been developing an eAgenda system that encourages meeting documents, including questions and answers, to be posted online in advance. The system also allows statements to be posted for a period of time after the meeting for inclusion in the minutes. With this technology, members used a written procedure to raise a record 72 "specific trade concerns" at the May virtual meeting of the Committee on Technical Barriers to Trade. The Agriculture Committee used a similar written procedure to address dozens of questions at its July meeting. Continuing efforts to make information available in writing and in advance ought to facilitate preparation for meetings in several areas of the WTO's committee work.

The format of meetings and working procedures are largely left to each WTO body, considering that the purposes and practices of each one are different. In the case of the Dispute Settlement Body, for example, virtual participants are only permitted to listen, effectively relegating them to observer status. A similar arrangement applies in the Committee on Budget and Administration. As noted above, delegations have found it easier to deal with routine matters, deliberative exchanges and transparency exercises in hybrid meetings than with negotiations and decision-making.

A further question with hybrid meetings is whether rules of procedure need to be modified. Questions include the definition of a quorum, procedural timelines, and the functions of annotated agendas. The biggest question is about decision making, since the WTO never votes. Under the WTO Treaty, consensus means that nobody present objected – but who is 'present' at a hybrid meeting? Some of these questions may be decided in an evolutionary fashion by individual councils and committees on the basis of their own requirements. The General Council, however, may need to consider guidelines and possibly formal changes in rules of procedure.

THE PROS AND CONS OF INSTITUTIONALISING PANDEMIC INNOVATIONS

The WTO had no choice in the pandemic: moving online was the only way to keep talking. But virtual communication has both disadvantages and advantages in comparison to a purely physical model. Virtual interaction is more remote, and conducive to greater formality. Chairpersons and attendees at physical meetings are accustomed to reading the room and interpreting body language. Outside the meeting rooms, a sense of collegiality is built up through personal connections which can be lost in a virtual world, weakening the benefits of routine contact and rendering compromise more difficult. The disadvantages of physical distance are likely to be aggravated over time, as increasing numbers of officials who were not acquainted prior to the COVID-19 crisis try to work together without meeting 'in the flesh'.

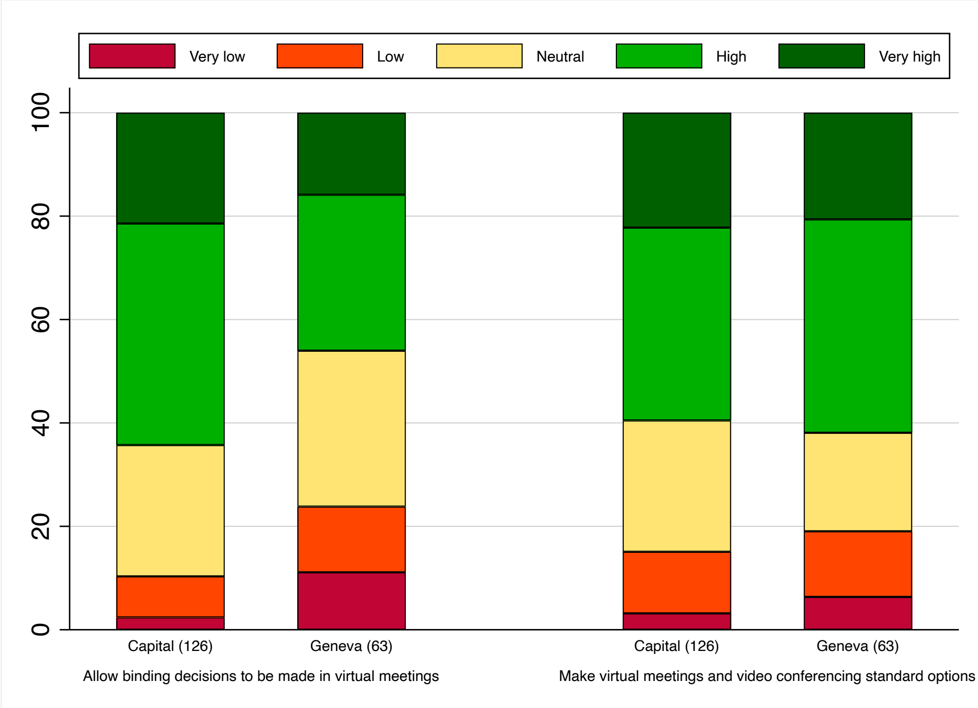
While it is reasonable to assume that greater inclusion through involvement from capitals would help to reduce contrasts in the capacity of different members to participate fully in the WTO's regular business, an important caveat is in order. There is a risk of an aggravated marginalisation of some developing countries on account of inadequate connectivity and/ or the need for more training for operating in a more virtual environment. Support for a hybrid meeting model is likely to increase if these challenges are addressed.

As for the advantages of virtual meetings, these are considerable and they make a case for thinking seriously about adopting virtual communication as a permanent feature of WTO business. More routine engagement of officials from capitals can increase efficiency in a number of ways. Discussions are likely to be better informed and based on more up-to-date positioning. The direct involvement of capitals facilitates inter-agency cooperation within governments, linking trade policy more organically to wider national policy frameworks. Capital-based officials involved directly in WTO meetings are also better able to understand the implications of a national stance for the wider WTO community. Business can be conducted more quickly, without the delays that arise when Geneva delegates invoke the necessity of consulting their capitals. In addition, for developing countries with scarce administrative resources, involvement from capitals facilitates a more streamlined approach to engagement with the WTO.

Traditional Geneva meetings at the WTO have become known for excessive speechifying and frequent repetition of well-known positions. Much of this could be swept away by the greater accountability that would result from regular participation from capitals in WTO deliberations. People are also less likely to talk at excessive length in a virtual setting. This problem has already been recognised, leading to the establishment of maximum speaking times in formal Trade Negotiations Committee (TNC) and informal Heads of Delegations (HODs) meetings, as well as in the TRIPS Council on the initiative of its chairperson.

Reliance on hybrid meeting arrangements involving capitals will not necessarily sit well with Geneva ambassadors, who may fear an erosion of their influence and functions. This concern is reflected in a recent survey of the trade community by Fiorini et al. (2020). The results shown in Figure 1 indicate support for an intensified use of video-conferencing in the daily operations of the WTO, but a significant contrast between Geneva-based respondents and others in respect of taking binding decisions in a virtual meeting: Geneva-based respondents were less supportive than other government officials.

FIGURE 1 COMPARATIVE SUPPORT LEVELS AMONG MEMBERS FOR DEPLOYING VIRTUAL COMMUNICATION



In sum, WTO members managed to keep talking despite the pandemic. What can be done better in future because of these innovations? So far, we have discussed a range of technical, practical and political economy issues relevant to the contrast between physical and virtual interaction in the conduct of WTO business, focusing on the advantages and disadvantages of the alternatives. Here, we note a number of ways that virtual and hybrid meeting arrangements could help the WTO to up its game if and when normal life resumes.

- First, virtual communication favours deepened knowledge and learning through deliberations and best practice discussions involving capitals.
- Second, links to capitals enhance policy coherence internationally and support better management of policy spillovers.
- Third, policy surveillance would be faster and more interactive through virtual exchanges.
- Fourth, the thorny issue of rendering notifications adequate would be considerably facilitated through direct communication with officials in capitals responsible for the work.

THE REAL CHALLENGE FOR THE NEW DIRECTOR-GENERAL: CAN THE WTO HOLD A HYBRID MINISTERIAL MEETING IN 2021?

We think the new WTO Director-General should seize opportunities for increasing efficiency and broadening the depth and scope of the WTO's activities through continued reliance on virtual and hybrid communication as a component of the WTO's working methods.

An interesting test of the versatility and effectiveness of virtual and hybrid communication methods would be whether a WTO Ministerial Conference – such as MC12, slated for 2021 – could be run satisfactorily along these lines. Could conference preparations proceed in virtual meetings of various configurations? The routine work of a Ministerial Conference could easily move online using some variant of the eAgenda system to post reports from WTO bodies and statements by groups of members, as well as the statements traditionally made by ministers in plenary. Virtual media could raise the level of transparency for the press and NGOs.

But could issues requiring minister-level negotiation and decision making – such as concluding fisheries subsidies negotiations, consolidating progress in agriculture or agreeing on the establishment of a work programme to tackle WTO reform issues – be accomplished without in-person meetings, or in a hybrid setting? The core question is whether multiple meetings of various sizes and permutations could be organised and managed across time zones, to eventually dovetail into the grand finale of a successful Ministerial Conference. In a reformed WTO that embraces virtual technology as an integrated vehicle for carrying out its work, organising a hybrid Ministerial Conference would be well worth a try.

AN ACTION PLAN FOR INSTITUTIONALISING PANDEMIC INNOVATIONS

We have suggested a number of things that members and the Secretariat can do to build on what has been learned already about how to keep talking in these difficult times. Everybody is eager for normal in-person meetings to resume, but we have no idea how long it will be before all Geneva delegates can safely attend meetings, let alone when delegates from capitals will be able to resume regular attendance at meetings. And even then, hybrid meetings should be part of an eventual new normal. In the meantime, continuing innovation will be needed as part of the preparations for MC12.

Here are the five most important actions. Engagement with all committee chairs and through them with delegates obviously matters, but strong leadership from the Director-General will make a difference.

1. More than two meeting rooms will need to be fitted out with the requisite equipment to allow hybrid meetings.

2. Meetings set for Geneva time need to take place around the middle of the day in order that delegations in more distant time zones from the east and west can participate at a tolerable hour. Since that may unduly constrain the time available for meetings, our next point assumes greater importance.
3. Written exchanges should be seen as an integral part of committee processes, which requires continuing efforts to make information available in writing and in advance. The eAgenda system should be expanded to all WTO bodies, and adapted for MC12.
4. Rules of procedure may need to be modified, including the definition of a quorum, procedural timelines, the functions of annotated agendas, and recognising the existence of a consensus.
5. The provision of a larger share of technical assistance, training and capacity-building on virtual platforms would provide an opportunity to upgrade the quality of the WTO's offerings in this area. Moves have already been made to deliver some assistance virtually. It will be especially important to provide more training for operating in a virtual environment.

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ABOUT THE AUTHORS

Patrick Low is a Fellow at the Asia Global Institute and former Chief Economist at the WTO.

Robert Wolfe is Professor Emeritus in the School of Policy Studies, Queen's University, Canada.

CHAPTER 4

Role of trade ministers at the WTO during crises: Activating global cooperation to overcome COVID-19[1]

Anabel González
Peterson Institute for International Economics and former Minister of Trade of Costa Rica

EXTRAORDINARY TIMES DEMAND EXTRAORDINARY ACTION

As of 2 November 2020, there are 46.9 million COVID-19 cases across all regions, with the number of deaths exceeding 1.2 million, and rising.[2] The economic and social impacts of the pandemic and its containment measures are not less daunting. Global growth is estimated at -4.9 in 2020, with over 95% of countries projected to have negative per capita income growth (IMF 2020). Trade volumes are expected to decrease by between 13% and 32% from last year,[3] while foreign direct investment flows could plunge by up to 40% (UNCTAD 2020). Is it estimated that the equivalent of 555 million jobs have been lost in the first half of this year (ILO 2020), which in turn could push up to 100 million more people into extreme poverty and would almost double the number of persons suffering from acute hunger (FAO 2020).

While there is some evidence that goods trade may be rebounding and that the worst-case trade scenario projected in April could be averted (CPB 2020, WTO 2020a), the recovery from the deepest global recession since World War II will depend on the sustained and effective containment of the virus and the quality of government policies. The World Bank/IMF Development Committee warned that the pandemic has the potential to erase development gains for many countries (World Bank 2020a). Some consequences may also be long-lasting, such as lower investment, erosion of human capital, and a retreat from global trade and supply linkages (World Bank 2020b).

It is no understatement to say these are extraordinary times. In many countries, governments are providing significant levels of fiscal support to try to stabilise their economies, sustain companies and minimise the impact on workers; in many others, limited fiscal space and informality constraint governments' capacity to mitigate the

1 I am grateful to María Cassarino, Fernando De Mateo, Victor Do Prado, Hernando José Gómez, Alejandro Jara, Horacio Sánchez and Roy Santana for sharing their views on the topic and to Chad Bown, Simon Evenett, Gary Hufbauer and Michele Ruta for commenting on an earlier version. Thanks also to Valeria Tiffer for the preparation of the tables. All errors remain mine alone.
2 https://www.worldometers.info/coronavirus/?utm_campaign=homeAdvegas1
3 https://www.wto.org/english/news_e/pres20_e/pr855_e.htm

damage. For advanced and developing economies alike, trade is a powerful, cost-effective tool to alleviate the devastating effects of COVID-19 on the health and economic fronts. And yet, protectionism is gaining an upper hand, deepening some of pre-pandemic confrontations that were already threatening the global economy.

The short-term response to the virus and longer-term growth prospects depend on strong multilateral cooperation to scale back obstacles to trade and investment, increase business certainty and leverage opportunities which the pandemic has accelerated in areas like the digital economy. It is also needed to preserve stable and coordinated international relations to avoid that heavy threats implicit in the pandemic could result in catastrophic disorders or conflicts (Jean 2020). But it will not happen automatically. Unless governments accelerate their efforts to collaborate, growing protectionism and increased distortions to global value chains (GVCs) risk being a by-product of the virus, at the same time further exacerbating its negative implications. This demands extraordinary action.

This chapter addresses the question of what role for trade ministers at the WTO in times of crises with a view to activating global cooperation to overcome COVID-19. In addition to the introductory section, the second section explores the need to reactivate the WTO to underpin collaboration among governments, the third section argues that trade ministers should call the shots during crisis, the fourth section suggests eight actions for ministers to rein in protectionism and mitigate further damage, the fifth section refers to the mechanics on how and when to do it, and a final section offers concluding remarks.

REACTIVATE THE WTO

Trade needs to be part of the response to COVID-19 and its upshots, and countries cannot afford the WTO, hobbled as it has been lately, to muddle through. Moreover, as the world confronts more frequent and severe profound shocks such as financial crises, terrorism, extreme weather and pandemics (McKinsey Global Institute 2020), the WTO needs to step up its role during systemic crises. The fact that the organisation has been faltering, that there is a leadership vacuum and that distrust runs high among major traders will not make it any easier. Exacerbated tensions related to the pandemic can only add to the feeling that WTO rules have been conceived for a very different context, increasing the risk of a loss of legitimacy (Jean 2020).

This is not about a major reset of the WTO. It is about (re)activating the organisation to serve its members as they combat the devastating impact of the pandemic and the global recession. The WTO needs broader reform, in particular to address structural changes in the global economy. While extremely important, this discussion should not hamper the ability of the WTO to deliver at times of systemic crisis. Moreover, should the WTO – or more accurately, its members – demonstrate they can actually rise to the occasion in the context of COVID-19, they will also contribute to increasing trust levels on the ability of the organisation to produce results.

The starting point is a shift in mindset: governments need to understand that international trade is not a problem in the crisis, but rather a core element of the solution (Baldwin and Evenett 2020). Take the shortages of medical supplies. There are three methods of assuring supply: stockpiling, investments in manufacturing capacity and trade. Of these options, relying on international trade is the most efficient and economic choice, provided the WTO can help assure security of this method of supply (Wolff 2020a). To be sure, many nations have taken unilateral steps to facilitate trade, especially in medical supplies and medicines. The Global Trade Alert reports that while 91 jurisdictions have adopted a total of 202 export controls on these goods since the beginning of 2020, 106 jurisdictions have executed 229 import policy reforms on these goods over the same period.[4]

After initial border closures, some neighbouring countries are beginning to facilitate the cross-border flow of goods. At the regional level and among subsets of countries, governments have issued different statements to keep trade lanes open and supply chains moving (see Table A1 in the Annex). After a tepid declaration from G20 leaders, trade ministers reaffirmed their determination to cooperate and coordinate to mitigate the impact of the COVID-19 pandemic on trade and investment and to lay a solid foundation for a global economic recovery. They also endorsed a set of short-term collective actions on trade regulation, trade facilitation, transparency, operation of logistics networks and support for small enterprises, and a group of longer-term actions on WTO reform, GVC resilience and investment; monitoring of implementation was left to senior officials (G20 2020).

These actions are positive and reflect the political will of governments to collaborate to some extent – even if they have not fully countered the flurry of barriers and restrictions surrounding trade in critical medical gear. They are no substitute for trade cooperation at the global level, either. In the case of medical products, for example, the EU, the US and China account for almost three-quarters of world exports (WTO 2020b); cooperation initiatives that do not include these members would fall short on impact. The venue for cooperation should be global and open to all, even if not all 164 WTO members opt to engage in all initiatives.

TRADE MINISTERS SHOULD CALL THE SHOTS DURING CRISES

Challenges notwithstanding, governments need to act now to empower the WTO to play an active part in coordinating the response to the pandemic. The WTO is more than an organisation immersed in myriad drama on the shores of Lake Geneva; it is a solid framework for global trade cooperation. It is in countries' interest to preserve the relevance of the WTO; its role can be critical in helping members help themselves.

4 https://www.globaltradealert.org/reports/54 (updated on 11 September 2020).

In a member-driven organisation such as the WTO, the role of the Director-General and the Secretariat is important and can and should be enhanced, for example with greater power of initiative and strengthened monitoring and analytics capabilities. The WTO dedicated page on the pandemic is a step in the right direction.[5] But the ultimate responsibility to provide direction and act rests with governments. The WTO is nothing more and nothing less than the collectivity of its members (Steger 2020), a point that is frequently forgotten in the public discourse. Without strong leadership, frequent engagement and serious interest among members in addressing its challenges, the WTO itself cannot deliver results (Cutler 2020). Paraphrasing VanGrasstek (2013), the multilateral trading system receives its inspiration from economists and is shaped primarily by lawyers, but it can only operate within the limits set by politicians.

Geneva ambassadors, while playing a critical role in the organisation, cannot carry the full weight of activating the WTO in times of crises. Trade ministers are accountable for providing leadership, direction and oversight over trade policy, as well as for conducting negotiations at the highest level. They are also normally in charge of monitoring compliance domestically, where other ministries or agencies often implement trade policy or trade-related measures. Engagement by trade ministers in the WTO brings the political will to the table; ensuing collective decisions strengthen their internal position vis-à-vis other colleagues or stakeholders, which comes in useful when shaping domestic policies. The foundation of greater domestic policy effectiveness is undertaking intergovernmental cooperation (Baldwin and Evenett 2020).

EIGHT ACTIONS FOR TRADE MINISTERS

While progress has been made in combating the virus, the pandemic is not yet under control and the threat of new outbreaks threatens precarious gains. Moreover, no country can be safe unless *all* countries are safe (Wang 2020). Unilateral measures, including export restrictions, imperil poor countries' access to medical supplies (Bown 2020a). Their quick adoption and sometimes opaque nature increase business uncertainty and deter investment decisions. In the face of desperation, access to medical supplies risks being weaponized in the broader context of geopolitical confrontations. Fears of vaccine nationalism loom on the horizon (Bollyky and Bown 2020).

Trade ministers should discuss these issues and take action in the forum they have available for them: the WTO. Several groups of countries have already started the dialogue and have issued important statements, including the Singapore–New Zealand declaration of principles to keep their markets open, joined by other countries; a Canadian-led initiative of 47 countries pledging openness and good practices with respect to world agricultural trade; and a Swiss-led initiative, supported by 42 countries, pledging to lift COVID-related export restrictions and take other actions (Wolff 2020b) (see Table A2 in the

5 https://www.wto.org/english/tratop_e/covid19_e/covid19_e.htm

Annex). Suggestions on different fronts have been made for leveraging the WTO in this crisis (e.g. Wolff 2020b, Evenett and Winters 2020, González 2020), as well as on the role of the WTO in systemic economic crises (Evenett 2009). Ministers could come together (virtually or in person, as the circumstances allow) with the following objectives:

1. Exchange information on their respective domestic situations with a view to building a shared understanding of the role of trade in fighting the pandemic in their respective countries, share experiences and lessons learned.
2. Commit to timely notifications, enhanced transparency and monitoring, with greater support from the Secretariat and available technologies both to compile and assess data and to monitor evolution. Enhanced information systems, following the example of the Agricultural Market Information System[6] for key agricultural markets, could also be considered (Hoekman et al. 2020), as an enhanced role for regular committee work and the Trade Policy Review Mechanism (Wolfe 2020).
3. Commit to fight back home against discriminatory or otherwise WTO-inconsistent policy initiatives that while ineffective, may also result in potential retaliation.
4. Discuss options to rollback unilateral restrictive measures adopted in the context of the pandemic and refrain from introduction of new measures.
5. Identify key trade measures to fight COVID-19, exploring alternative options – for example, a bargain to restrain importers from restoring restrictions while exporters constrain their resort to export restrictions, as proposed by Evenett and Winters (2020) as well as by Alvaro Espitia, Nadia Rocha and Michele Ruta in their chapter in this eBook.
6. Accelerate the implementation of trade facilitation measures to expedite the movement of critical medical supplies, with the support of international organisations as appropriate.
7. Explore the role of the WTO in facilitating affordable access to vaccines for all.
8. Establish a forum of senior officials to follow-up on the discussions with a view to preparing a package of trade measures to fight the pandemic to be adopted promptly and in the context of the next Ministerial Conference in 2021.

Two other urgent issues require trade ministers' attention. First, the massive support programmes used to address the economic dimensions of the pandemic could potentially result in added demands for countervailing measures, in particular in the context of asymmetric openings of economies and removal of subsidies; if not addressed collectively, this could bring significant friction to the system (Schneider-Petsinger 2020, Jean 2020, Bown 2020b). Second, increased subsidies and tax incentives to alter firms' location

6 http://www.amis-outlook.org

decisions and reconfigure GVCs to bring production back home or to 'trusted partners' (Pamul and Shalal 2020, Srivastava and Reynolds 2020) could alter the relation between the state and the market in many places, further complicating the already difficult discussion on industrial subsidies and state-owned enterprises. If large enough, these distortions could almost certainly influence trade flows (Jean 2020, Evenett 2020). Demands for increased protectionism may rapidly ensue, triggering a vicious circle that would weight down global growth and recovery prospects.

While recognising the complexity of these topics, trade ministers should also establish an effective mechanism for information sharing, transparency and monitoring. This would provide a better sense of the challenge at hand and allow the exploration of what flexibilities in the system are better suited to deal with pressures related to COVID-19 support programmes in the least damaging way (for example, safeguards) (Bown 2020b). It would also support the discussion of how to unwind the deeper intrusion of the state in the economy, including an enhanced understanding of the role of state-owned enterprises and disciplines on industrial subsidies (and domestic support to agriculture) (Wolff 2020c).

A NOTE ON THE MECHANICS AND A PROPOSED TIMELINE

Any attempt to bring trade ministers to the WTO normally faces two challenges, which in regular conditions entail long hours of discussion: who invites and whom to invite. Since this is not business as usual, more pragmatic, organic approaches could prevail. Because trade ministers have no established forum in the WTO outside of the bi-annual Ministerial Conferences (unless summoned by the Director-General), they normally gather outside Geneva, occasionally on the margins of another meeting. In this case, a group of maybe four or five ministers could come together to craft an agenda and invite all WTO trade ministers to participate, be it in Geneva (preferably) or virtually. All would be welcomed under the expectation of constructive participation.

As a result of that initial meeting, ideally with a new Director-General in place, a small ministers' ad hoc task force could be assembled to support the larger group of ministers in steering the process until the next meeting of the full group and then until the next Ministerial Conference, scheduled for June 2021. Ministers could also mandate the incoming Director-General, assisted by the Secretariat, to prepare an initial document to guide the discussion. Ministers would count on the support of senior officials and ambassadors, who would follow up on a more regular basis. Dedicated digital platforms and technological options could be established to maintain enhanced communications with colleagues. This could set the ground for a results-oriented Ministerial Conference.

CONCLUDING REMARKS

Trade ministers have a critical role to play in steering the WTO in times of crisis. This is certainly the case now. Their direct engagement could help galvanise collective action and mitigate damage, but it needs to come soon. Expectations are to be managed – the challenges of the current environment are not to be underestimated. But extraordinary circumstances call for extraordinary action. It is for trade ministers to leverage their organisation to help them recover from the pandemic. Valuable lessons from this experience could inform the development of a framework for strengthening the role of the WTO during systemic economic crises.

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States, and Uruguay, Responding to the COVID-19 Pandemic with Open and Predictable Trade in Agricultural and Products, 13 May 2020.

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G/C/W/778, Communication from New Zealand, Measures In Response to the COVID-19 Pandemic: Measures to Ensure the Free Flow of Trade in Essential Goods for Combatting the COVID-19 Pandemic, 16 April 2020.

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ABOUT THE AUTHOR

Anabel González is Nonresident Senior Fellow at the Peterson Institute for International Economics and host of the virtual event series Trade Winds. She is former Senior Director of the World Bank´s Global Practice on Trade & Competitiveness (2014-2017), Minister of Trade of Costa Rica (2010-2014), and Director of the WTO Agriculture Division (2006-2009), among others.

ANNEX

TABLE A1 DECLARATIONS AND MINISTERIAL STATEMENTS[7]

Organisation	Statement	International cooperation	Trade regulation	Trade facilitation	Transparency	Movement of goods	Support MSMEs	Global supply chains	Multilateral trading system	Investment	Sustainable and inclusive growth and recovery
African Union	*Communique of African Union Bureau of Heads of State and Government Teleconference Meeting*	X		X							
	Communique of the Bureau of the Assembly of the African Union Heads of State and Government Teleconference on COVID-19	X		X							
Asia-Pacific Economic Cooperation	*Declaration on Facilitating the Movement of Essential Goods by the APEC Ministers Responsible for Trade*	X	X	X	X	X					
Association of Southeast Asian Nations	*Joint Media Statement of the Eight EAS Economic Ministers' Meeting*	X	X		X	X	X	X	X	X	X
	Statement of ASEAN Ministers on Agriculture and Forestry in Response to The Outbreak of COVID-19 to Ensure Food Security, Food Safety and Nutrition in ASEAN	X	X			X	X	X		X	
	Declaration of the Special ASEAN Summit on COVID-19	X	X		X	X	X	X		X	X
	Strengthening ASEAN'S Economic Resilience in Response to the Outbreak of COVID-19	X	X	X	X	X	X	X		X	
G20	*G20 Trade and Investment Ministerial Meeting Statement*	X	X	X	X	X	X	X	X	X	X
	G20 Extraordinary Agriculture Ministers Meeting Statement on COVID-19	X	X		X	X		X			X
	Extraordinary G20 Leaders' Summit Statement on COVID-19	X		X	X	X	X	X		X	X
G7	*G7 Leaders' Statement on COVID-19*	X			X		X				X
MERCOSUR	*Declaration of the Presidents of MERCOSUR on COVID-19*	X		X		X					
MIKTA	*MIKTA Foreign Ministers' Joint Statement on the COVID-19 Pandemic and Global Health*	X	X	X	X	X	X	X			X
SICA	*Declaration of Heads of State and Government on the COVID-19 Pandemic*	X				X					
	Joint Ministerial Statement by Australia, Brunei Darussalam, Canada, Chile, Lao People's Democratic Republic, Myanmar, New Zealand, Singapore and Uruguay Affirming Commitment to Ensuring Supply Chain Connectivity Amidst the COVID-19 Situation	X	X			X		X			

7 Declarations and Ministerial Statements undertaken by regional groupings or subsets of countries, outside the WTO.

TABLE A2 WTO STATEMENTS

	International cooperation	Trade regulation	Trade facilitation	Transparency	Movement of goods	Support MSMEs	Global supply chains	Multilateral trading system	Investment	Sustainable and inclusive growth and recovery	Agriculture and food security	Medical supplies	Vaccines	Digitalization
Statement on COVID-19 and the Multilateral Trading System by Ministers Responsible for the WTO (WT/GC/212/Rev.2)	X	X	X	X	X	X	X	X		X	X	X		
Request for the Suspension of the Processes and Entry into Force of Reductions of Maximum Residue Levels (MRLs) for Plant Protection Products in Light of the COVID-19 Pandemic (G/SPS/GEN/1778/Rev.3)	X	X			X	X	X				X			
COVID-19 Initiative Protecting Global Food Security Through Open Trade (WT/GC/218/Rev.1)		X	X	X			X	X		X	X			
African Group Statement on the Implications of COVID-19 (WT/GC/219)	X	X	X	X		X		X		X	X	X	X	X
June 2020 Statement of the Ottawa Group: Focusing on COVID-19 (WT/GC/217)	X	X	X	X	X	X	X	X	X	X	X			X
Responding to the COVID-19 Pandemic with Open and Predictable Trade in Agricultural and Food Products (WT/GC/208/Rev.2)	X	X	X	X	X		X	X			X			X
Statement Highlighting the Importance of MSMEs in the Time of COVID-19 (WT/GC/215/Rev.1)	X	X	X	X	X	X	X	X						X
Joint Ministerial Statement on Action Plans to Facilitate the Flow of Goods and Services as well as the Essential Movement of People (WT/GC/214)	X	X	X	X	X		X	X	X	X	X	X		
Securing LCDs Emergency Access to Essential Medical and Food Products to Combat the COVID-19 Pandemic (WT/GC/211)	X	X	X	X	X						X	X		
Declaration on Trade in Essential Goods for Combating the COVID-19 Pandemic (G/C/W/779) (G/C/W/778)	X	X	X		X		X				X	X	X	

CHAPTER 5

COVID-19 and beyond: What the WTO can do

Ujal Singh Bhatia
Former Ambassador of India to the WTO

The COVID-19 pandemic has, in the space of a few months, brought the global economy to its knees, and global trade has declined precipitously. Given the present uncertainty about the pandemic's likely trajectory, it is difficult to predict its ultimate impact on the global economy and trade. Already, at the time of writing, over a million lives have been lost and the death count is mounting every day. Several countries which had worked hard to contain the pandemic are now witnessing a second wave. It is quite clear that unless the crisis is addressed successfully, apart from the loss of human lives, the shrinking of economic activity around the world will have a lasting impact on employment and incomes, especially of the poor, and the gains of decades of hard work to reduce global poverty and hunger will be at risk. Even after treatments and vaccines are available, the sharply enhanced public debt levels in most countries are certain to impact the poor disproportionately, including in advanced economies. In an interdependent world, pathogens know no borders and unless the virus is defeated in all parts of the world, it will continue to pose a global public health risk. It is therefore critically important that the world works together in not only facilitating rapid development of tests, treatments and vaccines, but also in ensuring that they are produced and distributed in a manner that ensures their equitable access around the world.

There are presently around 320 COVID-19 vaccine candidates under development, out of which over 40 are undergoing human trials, with over a dozen in phase III efficacy trials. Wealthy countries like the US, Japan and the UK, as well as the EU, have already advance purchased almost 4 billion doses of various vaccines under development, thus tying up the bulk of the world's production capacity.[1] On the other hand, the underfunded COVAX initiative (led by WHO, GAVI and CEPI), which is being supported by a large number of countries and institutions in its efforts to develop, manufacture and equitably distribute tests, treatments and vaccines across the world, is struggling to fulfil its mission. The uneven distribution of vaccines, in particular, has very significant implications for the

1 See https://www.wsj.com/articles/in-race-to-secure-covid-19-vaccines-worlds-poorest-countries-lag-behind-11598998776?mod=e2fb

world. If rich economies are allowed to largely monopolise vaccine supplies in the initial months, the number of COVID-related deaths around the world could be twice as large as in a scenario in which they are equitably distributed.[2]

Equitable access to tests, treatments and vaccines is not merely a moral imperative; it is in the interest of all countries, rich and poor. The global economy, with its inter-twined supply chains, markets and financial flows, cannot return to normalcy if large parts of it remain subject to COVID-related disruptions. Autarky is the most self-defeating response to this crisis.

COVID-19 AND THE WTO

A collaborative response requires the global trading system to ensure seamless trade in pandemic related products, services and technologies. The crisis comes at a time when the multilateral trading system is beset with various problems which call into question its fundamental principles. The rise of populism and nativism in several countries is translating into greater protectionism and challenges to the logic of cross-border value chains. The escalating US-China squabble has raised doubts about whether the decline of trade multilateralism can be reversed. The unresolved issue of the authority of the dispute resolution system in the WTO, which has led to the paralysis of the Appellate Body, is a product of these larger contestations. All these issues are inter-related, and sustainable solutions can only emerge when a new geopolitical balance is reached.

But given the existential crisis the pandemic represents, the WTO can ill afford to be rendered comatose due to political differences between its members, and it needs to respond urgently and effectively. An insipid response by the WTO will strengthen the impression that the multiple challenges to its legitimacy have drained it of any effectiveness or relevance.

The WTO's response needs to be structured around two broad areas:

1. First, WTO members need to agree on a programme which addresses their immediate public health priorities while recognising the advantages to be obtained from global cooperation. This would involve:
   b. ensuring uninterrupted flows of tests, treatments, vaccines and their components
   c. addressing related IPR issues and
   d. ensuring transparency by strengthening monitoring, surveillance and review of all COVID-19-related trade measures around the world.

2 See "Bill and Melinda Gates: Vaccine Fairness Will Make Us All Safer", *Financial Times*, 15 September 2020.

5. Second, WTO members need to acknowledge that the pandemic has thrown up possible fault lines in WTO rules in some areas which need robust discussion. Ignoring them can only put more pressure on an already over-stressed dispute settlement system, strengthen the hands of those who criticise the dispute settlement system for its alleged over-reach, and accelerate the WTO's slide into irrelevance. Two of the key areas in which an orderly debate is necessary, are:
   f. cross-border value chains and the need for resilience and
   g. market failures and the role of the state.

Under present circumstances, it will be difficult to obtain consensus on such a work programme. But WTO Members need to seriously reflect on the consequences of non-engagement on the key fault lines in global trade rules.

THE WTO'S RESPONSE

Ensuring uninterrupted flows of tests, treatments, vaccines and their components

The idea that a global pandemic can be addressed merely by uncoordinated national responses is obviously absurd. In a pandemic situation it is natural for governments to prioritise the needs of their citizens, but given the nature of global interdependence in development, production and distribution of tests, treatments and vaccines, dog-eat-dog policies can be counterproductive.[3] Value chains of vaccines often span international networks of research institutions, require rare inputs in manufacture (Davis Kominers and Taborrok 2020),[4] and involve multi-country clinical trials[5] and commercial production in fill-and-finish facilities in a number of countries. Disruptions caused by trade restrictive policies can severely delay the development, production and distribution of treatments and vaccines. This requires the WTO to ensure that its rules regarding export prohibitions and restrictions are respected by WTO members.

The beginning of the pandemic witnessed a flurry of export prohibitions or restrictions by a large number of countries.[6] The G20 Ministerial Statement of 30 March 2020 stressed that "emergency measures designed to tackle COVID-19, if deemed necessary,

3 See, for example, Bollyky and Bown (2020), who cite the example of an adjuvant produced from the bark of the Chilean soapbark tree. The bark is further processed in Sweden, and the product is used in several vaccines under development. Theoretically, each of these countries could leverage their supply to secure supplies of the vaccines for their citizens. Similarly, it is incorrect to assume that exports of medical products are highly concentrated in very few countries. Baldwin and Evenett (2020) point out that out of the 80 categories of medical products identified by the WTO, most categories involve substantial exports by ten or more countries.

4 Inputs include horseshoe crab blood for detecting harmful endotoxins and shark liver oil as an adjuvant. mRNA vaccines require a very expensive enzyme (VCE).

5 For instance, Phase III trials of the Astra-Zeneca-Oxford vaccine are being conducted in the US, UK, Brazil, India and South Africa.

6 According to an Information Note of the WTO Secretariat dated 23 April 2020, 80 countries and separate customs territories had introduced export prohibitions or restrictions as a response to the COVID-19 pandemic. Several of these measures were withdrawn or modified subsequently

must be targeted, proportionate, transparent, and temporary, and that they do not create unnecessary barriers to trade or disruption to global supply chains, and are consistent with WTO rules".

The situation has evolved since that time. While there is now a better understanding that the wide prevalence of trade restrictions is incompatible with international efforts to defeat the pandemic, the anxiety of several countries to privilege their citizens over others is still leading to a spate of trade restrictions. It is important that this issue is addressed firmly within the ambit of the extant WTO provisions.

WTO rules frown upon export prohibitions or restrictions but allow them for short periods in special circumstances.[7] In the present context, it would be a travesty if legal defences put forward by individual members to justify restrictions were allowed to trump a larger purpose of the global community.

There is a related issue of transparency. WTO rules require such measures to be notified,[8] but several of the COVID-19 related restrictive measures do not appear to have been notified; others have been notified after a considerable delay.

WTO members need to build further on the G20 Ministerial Statement by highlighting the importance of open trade in COVID-19-related products, services and technologies for an early resolution of the crisis, and urging WTO members to keep their markets open to enable an unimpeded flow of goods, services and technologies needed for addressing the pandemic. Where trade-restrictive measures are adopted, members need to ensure they conform to relevant WTO disciplines in their nature, justification and duration, as well as in the notification requirements.

Addressing related IPR issues

Like the other covered agreements of the WTO, the TRIPS Agreement reflects a balance between the interests of various stakeholders. Articles 7 and 8, which lay down the Objectives and Principles of the Agreement respectively, elaborate on this. On the one hand, the Agreement seeks to reward and protect innovation; on the other, it ensures that WTO members have the policy space they need to pursue legitimate socioeconomic interests. The Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 adds texture and content to this balance. Paragraph 4 of the Declaration reads:

> 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

7 See for example, Articles XI and XX of GATT 1994, and Article 12 of the Agreement on Agriculture
8 See Decision on Notification Procedures for QRs, 2012 and Article 12 of the Agreement on Agriculture

> 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.[9]

It is important that these understandings are brought fully into play while dealing with the pandemic. Difficulties in the exercise of TRIPS flexibilities need to be discussed and resolved. Some WTO members have argued for a waiver "from the implementation, application, and enforcement" of certain sections of the TRIPS Agreement in order to facilitate activities related to "prevention, containment or treatment of Covid-19".[10] It is essential that the systemic challenge the pandemic represents to intellectual property disciplines is well understood by WTO members. Cooperative approaches can obviate radical unilateral measures which could create new challenges to an already stressed system.

Ensuring transparency by strengthening monitoring, surveillance and review of all COVID-19-related trade measures

The WTO Secretariat has ramped up its monitoring of trade measures taken by various countries in the context of the COVID-19 pandemic. However, there are a number of constraints which need to be addressed by members. First, as pointed out above, such measures are not being notified in a timely fashion in a majority of cases. In such cases, the Secretariat has to rely on other, often informal, sources such as information from other members or reports in the media. The second issue is the periodicity of reporting and review. It is important that the information collected by the Secretariat is reported to the members and reviewed by them on a regular basis. The WTO members could consider:

- emphasising the need for timely notifications
- tasking the Secretariat to furnish monthly reports based on information from all relevant sources[11] and
- authorising the relevant WTO body to convene every month to review and discuss the report.

Debating key issues

The resilience versus efficiency debate

The resilience versus efficiency debate needs to be taken up in good faith. There is no doubt that the supply shocks generated by the pandemic highlight the need for building or expanding national capacities in critical products like medicines, diagnostics, PPE, and so on. But this cannot be construed as a license for protectionism. Given the way

9 WT/MIN(01)/DEC/2 dated 20 November 2001
10 India and South Africa's communication to the TRIPS Council dated 2 October 2020 (IP/C/W/669).
11 This could require an amendment of Annex 3 of the Marrakesh Agreement.

international production in these goods is organised, it is pretty much impossible for countries to achieve self-sufficiency in most of these products. A more practical approach would be to build capacities where possible, while at the same time working with cross-border supply chains. India's generic drugs industry provides a good example of both options. India is the largest provider of generic drugs in the world, but around two-thirds of the active pharmaceutical ingredients (APIs) that the industry uses are sourced from abroad, primarily from China. While the industry is working with the Indian government to develop a policy regime which incentivises production of APIs in India, it also recognises that much of its global competitiveness is due to its integration with international supply chains.

In view of the impetus built up by the pandemic to ramp up national capacities, it would be useful to develop a work programme in the WTO to study the various dimensions of the 'resilience versus efficiency' issue in the context of WTO rules.

Market failures and the state

It can be said with some conviction that the pandemic has buried the last vestiges of market fundamentalism. In less than a year, the pandemic has joined climate change in the super league of market failures. This acknowledgement may require a revisitation of the role of industrial policy in WTO disciplines. The issue of reform of subsidy disciplines in the Agreement on Subsidies and Countervailing Measures (ASCM) has been much discussed recently. Indeed, the present disciplines leave much to be desired in terms of the policy space required by WTO members to address pressing concerns related to economic development and the management of the global commons. The absence of a provision for non-actionable subsidies and the similar absence of a GATT Article XX type provision are some examples.[12] The fiscal measures being undertaken by several countries to revive their economies from the pandemic-related slowdowns are bound to highlight concerns regarding the inadequacy of ASCM disciplines. On the other hand, the pandemic cannot be allowed to be used as a justification for protectionist measures that drive a bus through WTO subsidy disciplines. This issue can presage serious differences among WTO members and overload an already pressured and truncated dispute settlement system with multiple disputes. It therefore would be useful to build agreement on a comprehensive work programme in the WTO on the role of the state in addressing market failures, the consistency of such actions with WTO rules, and the possible need for revision of the rules.

THE LARGER PICTURE

Stating that the pandemic is larger than any institution is merely acknowledging the obvious. While the WTO has to play the central role in trade-related responses to the pandemic, it clearly needs to do so in partnership with other institutions. The UN

12 For a detailed discussion, see, for instance, Howse (2020).

General Assembly's Resolution on Global Solidarity to fight COVID-19,[13] the 73rd World Health Assembly's Decisions,[14] the Statement of G20 Leaders[15] and similar statements/resolutions by other organisations all point to the need for global solidarity and global cooperation in efforts to fight the pandemic.

It is important for the WTO to join the consensus on solidarity and global cooperation. It can do so by agreeing on a Declaration encompassing the elements discussed above. Such a Declaration, approved by the General Council, would add strength and resolve to the WTO's efforts and emphasise its continuing relevance.

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ABOUT THE AUTHOR

Ujal Singh Bhatia is a former Ambassador of India to the WTO.

13 See https://www.undocs.org/en/A/74/L.52
14 See https://www.who.int/news-room/feature-stories/detail/73rd-world-health-assembly-decisions
15 See https://g20.org/en/media/Documents/G20_Extraordinary%20G20%20Leaders%E2%80%99%20Summit_Statement_EN%20(3).pdf

CHAPTER 6

A crisis-era moratorium on tariff increases

Alessandro Nicita and Marcelo Olarreaga
UNCTAD; University of Geneva and CEPR

If economic history is of any guidance, we can expect that the economic crisis brought by COVID-19 will be accompanied by increases in trade protection (Eichengreen and Irwin 2010, Irwin 2005, Knetter and Prusa 2003). As economic activity declines, policymakers become more inclined to use trade policy to favour domestic producers at the expense of foreign competitors. While this strategy may bring some relief to domestic firms, it generally damages exporters as other countries retaliate in kind. Ultimately, a tit-for-tat trade war may erupt, further damaging the world economy.[1]

Importantly, the ongoing crisis is largely unprecedented in its magnitude and extent (World Bank 2020).[2] Barring a quick rebound following the availability of vaccines or effective treatments, the expectations are for widespread prolonged economic disruptions on both the demand and the supply sides. A crisis such as this provides great incentives for governments to use trade-restrictive measures. For example, Saudi Arabia, the country currently holding the presidency of the G20, engaged in wide-ranging tariff increases in June 2020 with more than 2000 tariff lines affected.[3] If other countries were to follow the example set by Saudi Arabia, we could potentially observe tariff distortions substantially larger than during the Great Recession.

An additional reason to worry about protectionist responses to the current crisis is that the multilateral trading system is not as strong today as it was during past crises. There are mounting concerns over whether it will be able to effectively advance multilateral coordination while restraining unilateral responses to the deteriorating economic conditions. Even assuming that a crippled WTO may still be able to restrain governments from the use of beggar-thy-neighbour policy measures, the WTO agreements provide significant flexibility to governments who want to restrict imports.

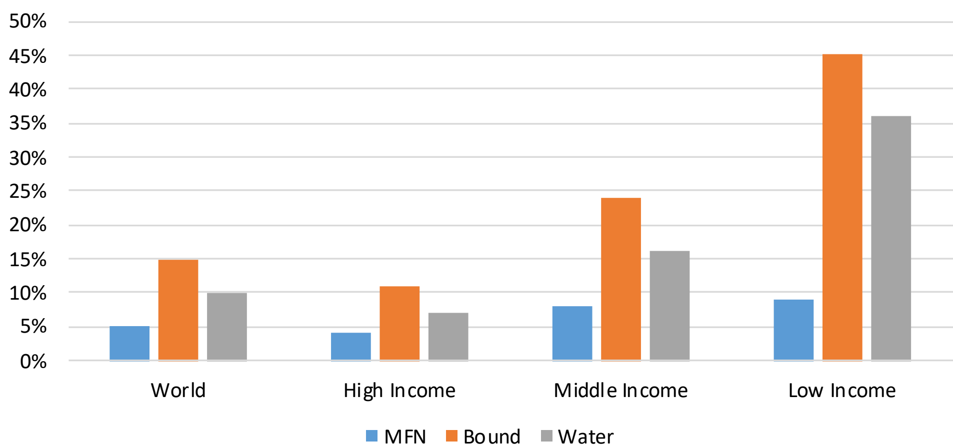
1 Madsen (2001) attributes more than half of the 66% decline in world trade observed during the Great Depression to the three-fold increase in tariffs that accompanied the sharp decline in economic activity.
2 During the Great Recession of 2009, world GDP declined by 1.7%. This time the forecasted decline for 2020 is three times larger: 5.2% according to the June predictions by the World Bank (2020), with many countries expected to experience two-digit declines in GDP. More than 90% of countries are projected to experience an economic contraction this year. This is 30 percentage points more than the share of countries that experienced a contraction during the Second World War and 10 percentage points more than the share that experienced a contraction during the 1930s Great Depression.
3 Saudi Arabia's tariffs have increased from a range of 0% to 12% to a new range of between 10% and 50% affecting various categories of products including food, chemical, textiles, plastic, paper, machinery, toys, and vehicles (Global Trade Alert 2020).

With this flexibility, WTO member nations have the potential to raise tariffs up to certain levels. These levels, referred to as 'bound rates', differ among WTO members and were decided either during the Uruguay Round or during accession. Bound rates are in many cases much higher than the tariffs currently applied by WTO members and therefore provide substantial policy space for members to raise their tariffs. The extent of this policy space is measured by the difference between the MFN applied and bound rates, and is generally referred to as 'tariff water'. Tariff water is an important source of trade policy uncertainty (Osnago et al. 2018). The ease and rapidity with which governments can increase tariffs without breaking WTO commitments therefore calls for some scrutiny in the current global downturn.

NAVIGATING THE WTO'S TARIFF WATERS

Tariff water is present in about three quarters of the WTO members' tariff lines, with WTO legally bound tariffs sometimes several times greater than the applied MFN tariffs (Nicita et al. 2018) . Figure 1 shows the average bound and applied tariffs, as well as tariff water by income level. Strikingly, if all WTO members were to increase their applied MFN tariffs to the maximum allowed by the WTO commitments, there would be a three-fold increase in average tariffs from 5% to 15%. The largest increases in tariffs would occur among low-income countries, which could raise their tariffs from the current 9% to 45% under WTO commitments.[4] As a comparison, the world average tariff increased from 9 to 23% during the Great Depression (Masden 2001).

FIGURE 1 TARIFF WATER ACROSS INCOME LEVELS



Note: Tariff water is the difference between the maximum WTO bound tariffs and the applied MFN tariff. High-, middle- and low-income countries correspond to the World Bank definitions.

Source: Tariff data come from Nicita et al. (2018).

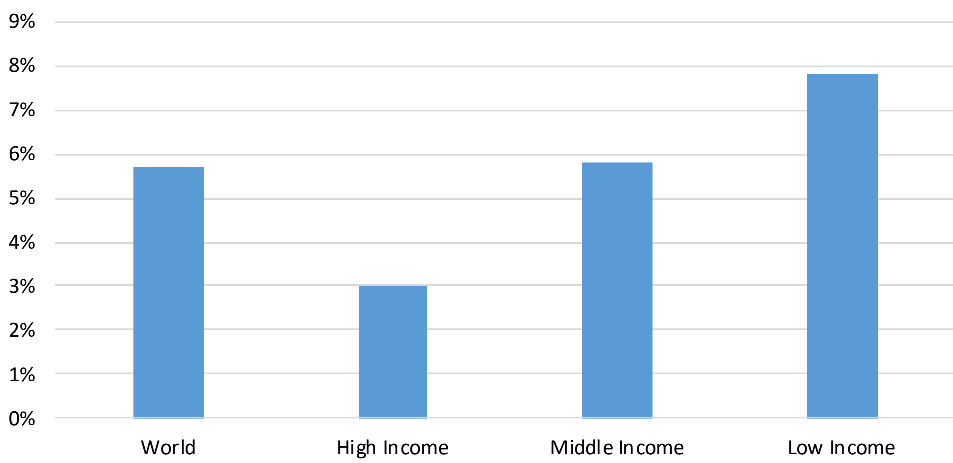
4 The average tariff in Bangladesh would increase ten-fold from 15% to 154%. In many sub-Saharan African countries – Mauritius, Kenya, Nigeria, Zimbabwe and Tanzania – the average tariff would increase to levels above 90%.

One argument often made is that tariffs are bound at lower levels where it matters most – i.e. in the larger economies. Although technically correct, this argument is flawed. Figure 1 shows that among high-income countries the tariff water (i.e. the difference between the applied MFN and bound tariffs), while relatively lower, is still at about 7 percentage points. It is 16 and 36 percentage points for middle- and low-income countries, respectively. Considering the economic importance of some middle-income countries to the global economy, this is concerning.

EXPORTS POTENTIALLY AT STAKE

While governments may see the benefit of increasing their tariffs, governments also need to consider the other side of the coin: the real possibility of retaliatory actions and the consequent increases in the tariffs that their exports will face. To assess the outcome of a worst-case scenario where MFN applied tariffs are raised to bound levels, we compute the reduction in market access that is potentially at stake for each exporting country.[5] The average increase in export restrictiveness that each exporting country will face is just below 6%. Importantly, the countries that are expected to see the largest increases in export restrictiveness are the ones who have the highest tariff water – i.e. low-income countries.

FIGURE 2 POTENTIAL INCREASES IN THE TARIFFS FACED BY EXPORTERS



Note: The average potential increase in tariffs is computed for every exporting country using the bilateral export weights and import demand elasticities of their trading partners as in the MA-OTRI indicator by Kee et al. (2010). We then take simple averages across countries. Income groups follow the World Bank definition.

Source: Tariff data come from Nicita et al. (2018).

5 This is equivalent to computing the MA-OTRI proposed by Kee et al. (2009) using tariff water at the tariff-line level in each country.

MOVING FORWARD

If the worst-case scenario were to take place and MFN tariffs were raised to bound levels, the large decline in market access among WTO members would represent a failure for an institution aiming to promote reciprocal tariff concessions among its members. More importantly, generalised higher tariffs would significantly hurt the world economy through the reduction of world demand.

The easiest way to prevent WTO members from increasing tariffs would be to impose a temporary moratorium until the end of the crisis. This would effectively eliminate all tariff water from the WTO's tariff schedules by binding all tariffs at their current MFN applied levels. The simplicity of a moratorium makes it easy to monitor, but less likely to be accepted. Indeed, it would be difficult for any WTO members to agree on a significant reduction in their policy space, especially if perceived as lopsided. Any reduction in policy space should be as fair as possible, but still effective at constraining the use of tariff water. Below we describe two options that fulfil these criteria.

One option would be to allow for tariff increases of less than a specific amount, say 20%, as long as the increase is within the member's tariff water. While allowing for large increases in high tariffs, this more flexible provision would greatly reduce uncertainty, as it cannot cause increases in the world's average tariff of more than one percentage point. Indeed, one percentage point is equal to 20% of 5%, which is the current average level of protection. So, if all members were to increase their tariffs by 20%, this cannot increase the average level of protection by more than 20%. While such a commitment would be preferable in terms of reducing uncertainty, a more palatable option for WTO members might be to allow for higher tariff increases but limited number of tariff lines. For example, the maximum tariff increase could be bound at 40% of the existing MFN tariff (but still constrained by the tariff bound), but limited to only 50% of tariff lines.[6] The latter approach would allow further flexibility while also significantly reducing uncertainty, although not as much as the previous alternative where tariff increases would be allowed up to a specified amount on all tariff lines. To further ensure that a minority of WTO members do not derail any meaningful outcome, an agreement could be reached by a majority of large and willing members in the spirit of the work already undertaken under the Ottawa Group. Enforcement could be also an issue, especially if economic conditions further deteriorate. While a formal pledge by WTO members would surely help, a more formal surveillance mechanism by the Secretariat, accompanied by press releases, could provide some deterrence.

6 To keep an average tariff increase below 20% as in the first alternative, we need the product of the maximum percentage tariff increase and the share of tariff lines affected by an increase to be equal to 0.2 (in our example above, 0.2=0.4*0.5). Member countries can potentially choose the maximum percentage tariff increase and the share of tariff lines, as long as the product of the two is below 0.2.

Moving beyond the crisis, WTO members may want to question whether the presence of such large levels of tariff water is counterproductive. It is true that any regulation system needs safety valves, and among the GATT's safety valves there are safeguard and antidumping measures, but also tariff water. However, when a safety valve offers such a vast extent of flexibility, the regulation itself becomes meaningless. Once the crisis is over, a reconsideration of bound rates should be part of the WTO work programme. Since the countries that enjoy the largest amount of tariff water are also the ones which are at the greatest risk of seeing their market access curtailed by an indiscriminate use of such flexibility, it should be in the interest of most, if not all, WTO members to at least start negotiating on bound rates. However, any agreement aimed at reducing tariff water should be part of a greater bargain in which countries relinquishing large amounts of tariff water will receive compensation. Given the fact that tariff water is higher for low-income countries, a relevant matter would be additional technical assistance and aid for trade, especially if targeted at improving productive capacity. Another concession in the interest of many low-income countries would be a reassessment of the agricultural subsidies by industrial countries. A reduction of the water in the amber box (i.e. the difference between amber box commitments and current agricultural subsidies falling in the amber box category) is an interesting possibility.

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ABOUT THE AUTHORS

Alessandro Nicita is an Economist at the United Nation Conference for Trade and Development.

Marcelo Olarreaga is Professor of Economics at the University of Geneva and a CEPR Research Fellow.

Section 2

Reassessing the WTO's place in the world trading system: The pandemic and beyond

CHAPTER 7

Cumulative COVID-19 restrictions and the global maritime network

Inga Heiland and Karen Helene Ulltveit-Moe

University of Oslo, Statistics Norway, and CEPR; University of Oslo and CEPR

The world's production systems rely on tight global value chains. These value chains in turn rely on frictionless international trade and stable transport networks. Unfortunately, the same transport networks may potentially also facilitate the global transmission of diseases. Hence, it comes as no surprise that transport and travel restrictions have been an important part of the policy response to the COVID-19 pandemic. At the same time, these measures have directly affected trade in goods and services. They have disrupted freight transport, business travel and global value chains by causing delays of shipments and by increasing trade costs.

G20 governments committed to minimising disruptions to trade and global supply chains at their emergency meetings in the spring of 2020. Despite these announced commitments, the global maritime industry, which carries 80% of world merchandise trade, is still facing significant port restrictions, ranging from port closures and crew-change restrictions to additional documentation requirements and physical examinations on vessels. According to March et al. (2020), 77% of national jurisdictions globally showed a decrease in maritime traffic density in the spring of 2020.

The harm that port restrictions have done to global trade reaches beyond the countries that have imposed them. In a study with two co-authors (Heiland et al. 2019), we find that 94% of the shipping routes connecting exporters and importers involve stops in the ports of other countries. Port restrictions thus not only affect the ships carrying a country's imports or exports, but also have consequences for third countries' exports and imports.

In an empirical analysis, we combine information on port-specific restrictions, satellite data on ship movements and data on bilateral trade flows to investigate how the detrimental effects of COVID-19-related port restrictions on global trade have unfolded through the shipping network. To that end, we develop a new index to measure the degree to which shipping routes connecting two countries are affected by the port restrictions imposed all over the world. Our analysis confirms that that the negative impact of port restrictions is not limited to bilateral trade relationships, but has wide-ranging consequences for global trade due to the network nature of global shipping routes.

Our evidence on the impact of the COVID-19 crisis illustrates how important it is to make progress on common port protocols that ensure uninterrupted shipping; not only regarding protocols that apply in normal times, but also those that apply in times of crisis. Moreover, our empirical findings underscore the importance of making progress on the development of common rules for maritime transport within the multilateral framework of the WTO.

THE INTERCONNECTED CONTAINER SHIPPING NETWORK

In contrast to most other restrictions aimed at curbing the spread of COVID-19, unilaterally imposed port restrictions have unintended consequences for the global flow of goods. A key feature of the global container shipping industry, the workhorse of global trade, is that most countries rely on the port facilities of multiple other countries in order to ship goods to destinations around the world. In Heiland et al. (2019), we use satellite data for container ships to establish a set of key facts about the transportation network.[1] We find that even the best connected port is directly connected to only around one sixth of the global set of 515 container ports, which are allocated across 151 countries. Only 6% of the 22,650 pairs formed by these countries share a direct shipping connection. Trade between these countries accounts for only 54% of world trade. Hence, a large share of global trade does not travel on direct routes, but on routes with multiple hops. A fastest path calculation reveals that 52% of all country-to-country connections involve stops in more than two other countries in between.

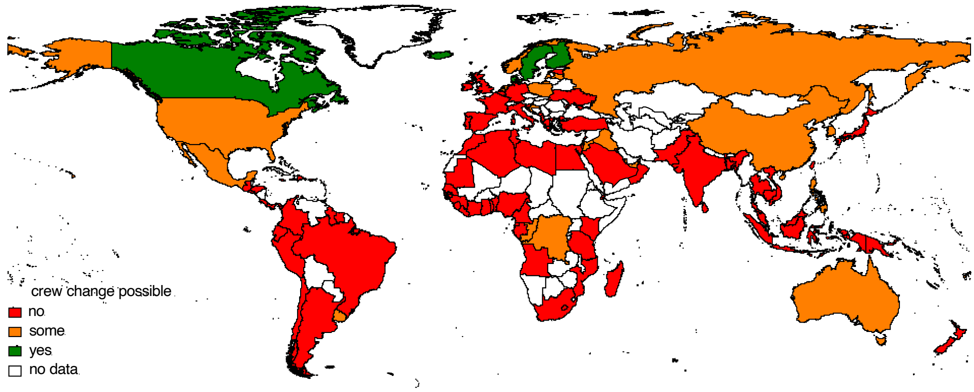
As a consequence, port protocols containing restrictions that were launched in response to COVID-19 not only impact the ships carrying a country's imports or exports, also but have consequences for the ships transporting other countries' goods. Policymakers are unlikely to internalise these consequences.

PORT RESTRICTIONS IN THE WAKE OF THE COVID-19 PANDEMIC

By 14 April 2020, 120 countries had imposed restrictions on crew changes at their ports, with 92 of them banning crew change entirely. Figure 1 shows that all major players in international trade imposed at least some restrictions. Only six countries, including Sweden, Finland and Canada, kept their ports open to crew.

1 The rapid advent of the global Automated Identification System (AIS) over the last years has made it possible to construct data sets that cover the worldwide movement of all significant vessels. Vessels send out AIS signals identifying themselves to other vessels or coastal authorities, and the International Maritime Organization (IMO) requires all international voyaging vessels with a gross tonnage above 300 as well as all passenger vessels to be equipped with an AIS transmitter. AIS messages include information regarding vessel identity, physical appearance, and voyage-related information such as draught and destination.

FIGURE 1 CREW CHANGE RESTRICTIONS IMPOSED BY 14 APRIL 2020



Note: The figure shows port restrictions imposed by Apr. 14, 2020.
Source: https://www.iss-shipping.com/pages/coronavirus-port-country-implications

In further contrast to the majority of COVID-19-related restrictions, port restrictions have persisted in most countries. Table 1 lists the number of countries by level of restrictiveness, showing that as of 7 September, crew change restrictions were in place in 118 countries. In 48 countries, crew change is still impossible.

TABLE 1 NUMBER OF COUNTRIES WITH RESTRICTIONS ON CREW CHANGE

	14 April 2020	7 September 2020
CREW CHANGE POSSIBLE?	NUMBER OF COUNTRIES	
No	92	48
Some	28	70
Yes	6	20

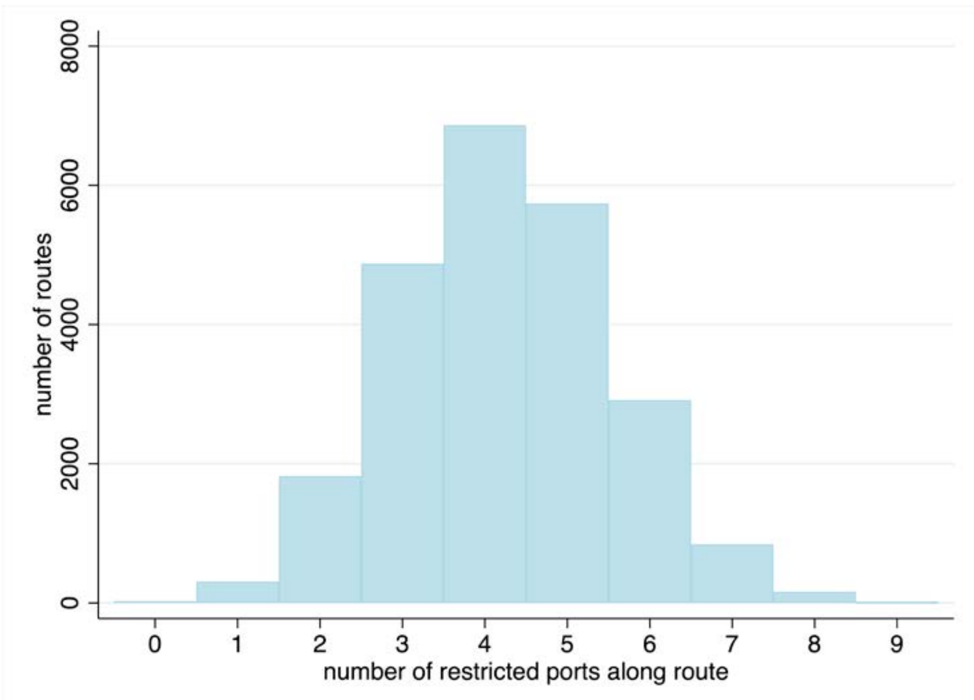
Source: https://www.iss-shipping.com/pages/coronavirus-port-country-implications

MEASURING THE COMPOUND RESTRICTEDNESS OF COMPLEX SHIPPING ROUTES: THE CCR INDEX

The detrimental effects of unilaterally imposed port restrictions are amplified and distributed to multiple countries through the network of container shipping routes. Indirect shipping routes imply that trade flows between a given origin and destination country are subject to restrictions imposed by other countries on ports where containers on a given route are supposed to pass through or to be reloaded.

Figure 2 demonstrates the quantitative relevancy of port restrictions in third countries. The majority of shipping routes connecting a given exporter's biggest port to the importer's biggest port involve between three and five restricted ports along the journey. To measure the compound effect of direct and indirect restrictions on the shipping route connecting two countries, we develop the Cumulative Covid Restrictions (CCR) index. The index reflects the number of ports on a given route that face COVID-19-related restrictions, measured as a share of the total number of ports passed along the route. To take into account varying degrees of restrictiveness at the port level, we weight ports allowing no crew changes at all by a factor one and ports where crew changes are possible but subject to restrictions by a factor of 0.5. The resulting index lies between 0 and 1. A CCR Index value of 0 indicates a completely free route with no restrictions on any of the ports involved, whereas a value of 1 indicates a fully restricted route where crew change is forbidden at all ports.

FIGURE 2 RESTRICTED PORTS ALONG THE SHIPPING ROUTE CONNECTING THE BIGGEST PORT OF ANY EXPORTING COUNTRY WITH THE BIGGEST PORT OF AN IMPORTING COUNTRY



Note: The figure shows the number of routes involving various numbers of restricted ports among all routes that connect the biggest ports of all countries. Routes are based on AIS data and calculations described in Heiland et al. (2019). Data on port restrictions is sourced from https://www.iss-shipping.com/pages/coronavirus-port-country-implications and reflects the status on Apr. 14, 2020.

Table 2 summarises the CCR index across all country pairs in our data. For countries with multiple ports we provide two aggregation schemes:

1. We compute a port-size-weighted average across a country pair‘s multiple port-to-port connections.
2. We use the route connecting the biggest port of a respective exporting and importing country.

Both schemes produce very similar results at the macro level. On average, countries' shipping routes exhibit restrictiveness indices of 0.78. Focusing on the connections between biggest ports, only 26 are completely unrestricted (CCR = 0). At the other end, 5,587 connections are fully restricted (CCR = 1), implying that at none of the ports is crew change possible under any circumstances.

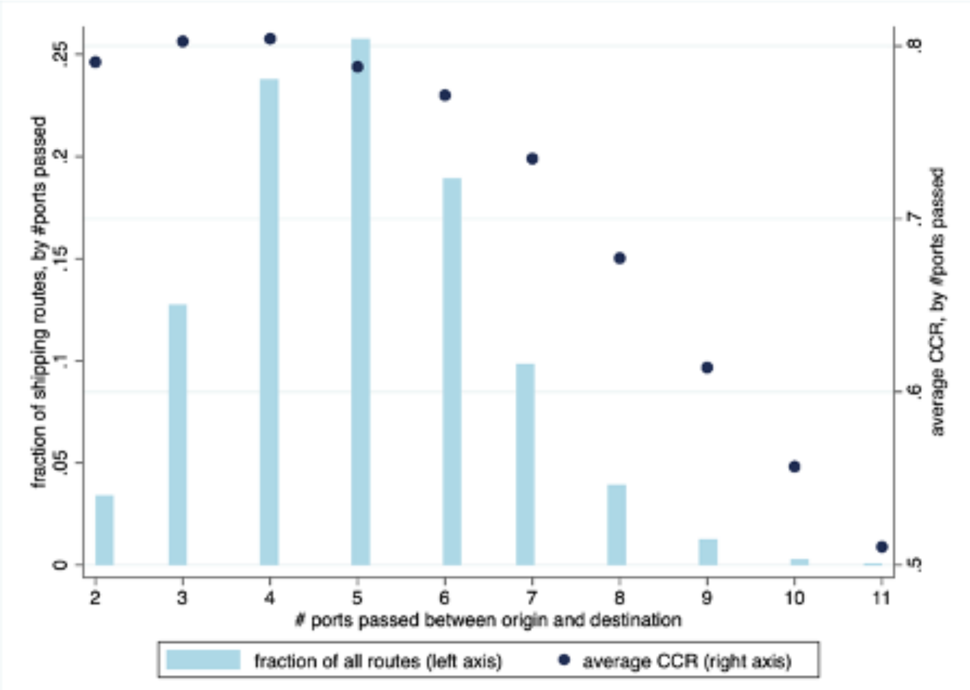
TABLE 2 SUMMARY STATISTICS OF THE CCR INDEX

CCR by aggregation method	# Observations	Mean	Std. dev.	Min.	Max.
Weighted average	23,562	0.779	0.178	0	1
Biggest ports	23,562	0.778	0.184	0	1

Note: Own calculations based on AIS data and described in Heiland et al. (2019). Data on port restrictions sourced from https://www.iss-shipping.com/pages/coronavirus-port-country-implications.

Figure 3 displays the average level of restrictedness for routes of different lengths as measured by the CCR Index (black dots). The figure focuses on one route per country pair – namely, the route connecting the biggest port of the exporting and importing country, respectively. The majority of routes involve multiple port stops (routes with four to six ports account for more than 60% of all routes) and levels of restrictedness that are very large (close to 0.8) and very similar to the level of restrictedness of non-stop routes (that is, routes involving only two ports). This implies that indirect exposure to port restrictions is as important as direct exposure. The small fraction of routes involving a large number of ports exhibits relatively lower but still fairly high average levels of restrictedness (well above 0.5).

FIGURE 3 CUMULATIVE COVID RESTRICTION INDEX BY ROUTE LENGTH



Note: The figure shows share of routes involving various numbers of port stops and the average restrictedness of these ports according to the CCR index. The set of routes is comprised of all routes connecting the biggest ports of all countries. Routes are based on AIS data and calculations described in Heiland et al. (2019). Data on port restrictions is sourced from https://www.iss-shipping.com/pages/coronavirus-port-country-implications and reflects the status on Apr. 14, 2020.

MEASURING THE HARM ON GLOBAL TRADE CAUSED BY CREW CHANGE RESTRICTIONS

Next, we turn to an empirical analysis assessing to what extent port restrictions along shipping routes contributed to the drop in trade, over and above the supply-side and demand-side effects that hit exporters and importers directly. The results are presented in Table 3.

We measure the degree to which a shipping route is restricted by the CCR index, constructed based on a weighted average of all individual port-to-port connections of a country pair (columns 1 and 2) or, alternatively, based on the connection between the importer's and exporter's biggest port (columns 3 and 4). Columns (1) and (3) show that in March and April of 2020, growth in imports with respect to the same month in the previous year was 17-18 percentage points below the level of growth observed during the 22 months leading up to March 2020.

TABLE 3 TRADE GROWTH AND THE CCR INDEX

	(1)	(2)	(3)	(4)
	Weighted avg. across port-to-port connections		Biggest port-to-port connection	
Post	-0.17* (.111)		-0.181* (.096)	
Post X CCR	-0.091 (.133)	-0.652** (.3)	-0.082 (.124)	-0.422* (.216)
Post X #Ports	0.034** (.016)	0.06** (.025)	0.031** (.012)	0.047** (.019)
Fixed effects:				
iy,jy,im,jm	X		X	
it,jt		X		X
N	150,849	150,849	150,849	150,849
R^2	0.03	0.07	0.03	0.07

Note: The table shows results of the regression $\Delta X_{ijt} = \beta_1 Post_t + \beta_2 Post_t \times CCR_{ij} + \beta_3 Post_t \times \#Ports_{ij} + FE + \varepsilon_{ijt}$ where ΔX_{ijt} is year-on-year growth in log trade from country *i* to country *j* in month *t*. $Post_t$ equals one for t ≥ March 2020 and zero otherwise. $\#Ports_{ij}$ denotes the number of port stops along the shipping route from *i* to *j* and CCR_{ij} denotes the share of these ports subjected to COVID19-related restrictions after February 2020. *FE* denotes fixed effects; *i* x *year*, *j* x *year*, *i* x *month*, *j* x *month* in columns 1 and 3 and *i* x *t*, *j* x *t* in columns 2 and 4, respectively. The sample period covers 24 months; May 2018 – April 2020. In columns 1,2 (3,4), the CCR index is based on a port-size-weighted average across a country pair's multiple port-to-port connection (the connection between the biggest port of the importer and the exporter). Bilateral monthly trade data is sourced from Comtrade.

Moreover, we find that country pairs exhibiting high levels of the CCR index – that is, country pairs connected by shipping routes involving intermediate stops in countries subjected to port restrictions – fared even worse. The coefficient estimates in columns (2) and (4) imply that trade between country pairs for which 50% of ports along the shipping routes were restricted (CCR = 0.5) experienced 21-33 percentage point lower trade growth than countries with completely unrestricted shipping routes.

Notably, the results in columns (2) and (4) are based on an empirical strategy where we only consider residual trade growth, that is, trade growth that cannot be explained by restrictions imposed by the importing or exporting countries themselves. In other words, we abstract from the direct effects of port restrictions, and focus on the possibly less evident indirect effects of the restrictions on global trade flows.[2] The empirical analysis also allows us to account for the effects of other restrictions in the importing and

2 See Heiland and Ulltveit-Moe (2020) for an empirical analysis of the direct effects on sea transportation.

exporting countries, such as lockdowns or business closures, which were often imposed simultaneously with the port restrictions and thus make it generally hard to attribute trade effects to port restrictions.[3]

GETTING SHIPPING GOING AGAIN

Going forward, we need to ensure that the continuity of freight distribution is given priority. Our empirical evidence shows that the imposed COVID-19 restrictions have propagated through the maritime network and had far-reaching effects. Ports are the fundamental nodes of the global transport system. Our analysis illustrates that bad governance at one node has severe spillover effects. There is a need for harmonised port protocols that allow for efficient crew changes and rely on automated and digital processes rather than on personal contact. The WTO has an important role to play in making the maritime transport network more resilient and less vulnerable in times of crisis.

At this time, there are no specific WTO rules in this area, and our analysis underscores the potential for major adverse spillovers from unilateral action. There is an urgent need for the WTO to focus on port restrictions, and the following five steps stand out as natural places to start:

The WTO Secretariat should assemble information on the current state of port restrictions and update them monthly. This information should be made publicly available.

The WTO Secretariat should provide information to each member on which trading partners' port restrictions cover more than X% of their imports and exports (with X to be chosen). This step will make clear the spillovers involved. The trade coverage totals could be updated monthly. This and the previous step would add transparency, which is a global public good.

The General Council or some other body (such as the Trade Policy Review Body) should convene to discuss the systemic importance of this matter. Better practices should be identified.

WTO members should adopt a commitment not to impose port restrictions that are stricter than necessary. Each WTO member's port restrictions would be benchmarked against best practices on a monthly basis and, when stricter than necessary, a WTO member must provide a compelling written justification within 30 days. Those justifications would

3 Port restrictions in the exporting and importing countries are absorbed by time-varying importer and exporter fixed effects. These fixed effects also purge the growth in bilateral trade of the effects of other restrictions in the importing and exporting countries, such as lockdowns or business closures, which often were imposed simultaneously with the port restrictions and thus make it generally hard to attribute trade effects to port restrictions. Our methodology of considering port restrictions imposed by other countries along the shipping route of an exporter-importer pair is not subject to the same concern.

be published and a WTO body would convene to discuss each submitted justification, just as the Trade Policy Review convenes to discuss government answers about their national trade policies.

At the next Ministerial Conference this commitment would be codified into a crisis management protocol so as to establish procedures and precedent for the next time.

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ABOUT THE AUTHORS

Inga Heiland is an Assistant Professor in the Department of Economics at the University of Oslo, a researcher at Statistics Norway, and a CEPR Research Affiliate.

Karen Helene Ulltveit-Moe is Professor of International Economics at the University of Oslo and a CEPR Research Fellow.

CHAPTER 8

Reviving air transportation and global commerce

Camilla B. Bosanquet and Kenneth J. Button

Schar School of Policy and Government, George Mason University

Air transportation is a major lubricant of international trade. In 2019, cargo air moved goods valued in excess of $6 trillion, representing 35% of global trade in value (although less than 1.5% by tonnage).[1] Such goods typically are high-value, perishable, living, and time-sensitive (e.g. watches, electronics, flowers, vaccines, emergency response supplies, critical parts, and mail). In terms of passenger services, airlines executed more than 4.5 billion individual departures in 2019, involving 8.6 trillion revenue passenger kilometres.[2] Carrying about 58% of all tourists in 2019, aviation served as the largest provider of transportation to the tourism sector. Overall, passengers account for 60% of airlines' revenue with 12% of fliers – business travellers – accounting for two-thirds of this.[3]

EFFECTS OF COVID-19 ON AIR TRANSPORTATION

Much of the industry's pre-pandemic growth followed steady macroeconomic gains, coupled with expansions of world trade. Air transportation contributed substantially to global trade in both services and goods. Major overt consolidations in the industry, plus less explicit forms of coordination in the form of expanded alliances, steadied air transportation. Technology also made aviation cheaper and enabled longer flights with larger payloads. The liberalisation of markets furthered cost reductions within both passenger and cargo airline markets. It was against this fairly stable background that COVID-19, plus governments' reactions to it, struck aviation markets.

The demand for air transportation is derived from the needs of the passengers it carries and the consignors that send their cargoes. In the case of passengers, the combination of a reluctance of individuals to travel for fear of infection and government policies of quarantining or banning arrivals from specified countries caused a catastrophic collapse of demand. As for cargo, the global recession accompanying the pandemic meant less movement along global supply chains, resulting in a collapse in freight traffic. Regarding

1 https://www.iata.org/en/programs/cargo/
2 https://www.iata.org/en/iata-repository/publications/economic-reports/airline-industry-economic-performance---december-2019---report/
3 https://www.investopedia.com/ask/answers/041315/how-much-revenue-airline-industry-comes-business-travelers-compared-leisure-travelers.asp

supply, network economies of scale, scope, and density underlying modern hub-and-spoke air transportation system simply evaporated. This pushed down load factors and pushed up costs. The immediate challenge now is to reverse these forces.

The resultant situation is easily understood by comparison of forecast year-end 2020 figures to 2019 data:

- *Air passenger traffic*: Reduction of annual international and domestic air passengers by 56% to 60% (source: International Civil Aviation Organization)
- *Airports*: Loss of some 60% of passenger traffic and over $104.5 billion in airport revenues (source: Airport Council International)
- *Airlines*: Decline of 54.7% in international and domestic revenue passenger kilometres (source: ACI)
- *Tourism*: Decline in international tourism receipts of between $910 billion and $1.17 trillion from $1.5 trillion (source: World Tourism Organization)
- *International trade*: Decrease of 13% to 32% in global merchandise trade volume (source: WTO)
- *Global economy*: A 4.9% to 5.2% contraction in world GDP (source: IMF and World Bank)

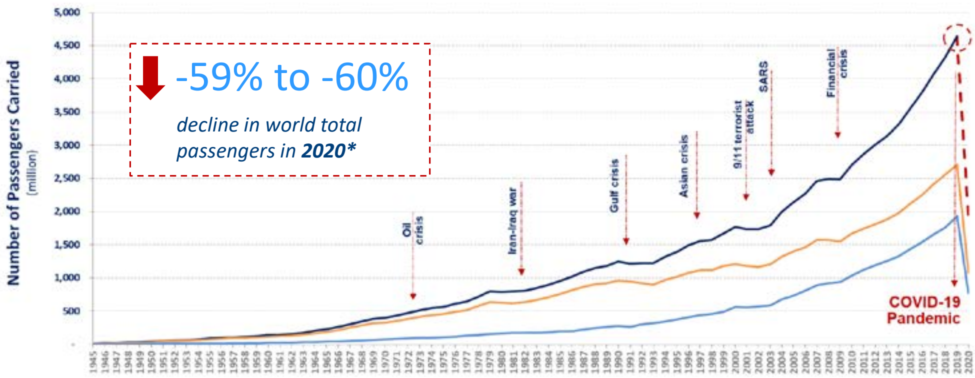
The suddenness of the pandemic greatly compounded the problem of COVID-19 for airlines. With no time to adjust operations or realign business models, the industry quickly suffered a collapse in domestic and international air passenger markets (Figure 1). The rapid decline in passengers led to global airlines having to park more than 17,000 passenger jets by May 2020.[4] At least two dozen airlines have collapsed, despite measures by many governments to sustain their carriers' finances and retain at least a core network of services. US airlines alone reduced employment from around 512,000 workers in March 2020 to 380,000 in June.[5]

A similar, yet nuanced, situation occurred for cargo. Comparing 2019 and 2020, international cargo flights during the six-month period of February to July showed an increase of about 2%. Yet this included supplemental airlifts required to relocate medical equipment and supplies, plus a significant volume of cargo relocated from passenger aircraft belly holds to dedicated cargo planes (for example, in July 2020, airlines removed 70.5% of belly-hold capacity from the market).[6] Figure 2 provides year-

4 https://www.cirium.com/thoughtcloud/tracking-the-in-storage-fleet-at-a-time-of-uncertainty/
5 https://www.google.com/search?client=firefox-b-1-d&q=23+airlines+that+have+collapsed+since+Covid-19
6 https://metroairportnews.com/iata-reports-stable-global-traffic-in-july/

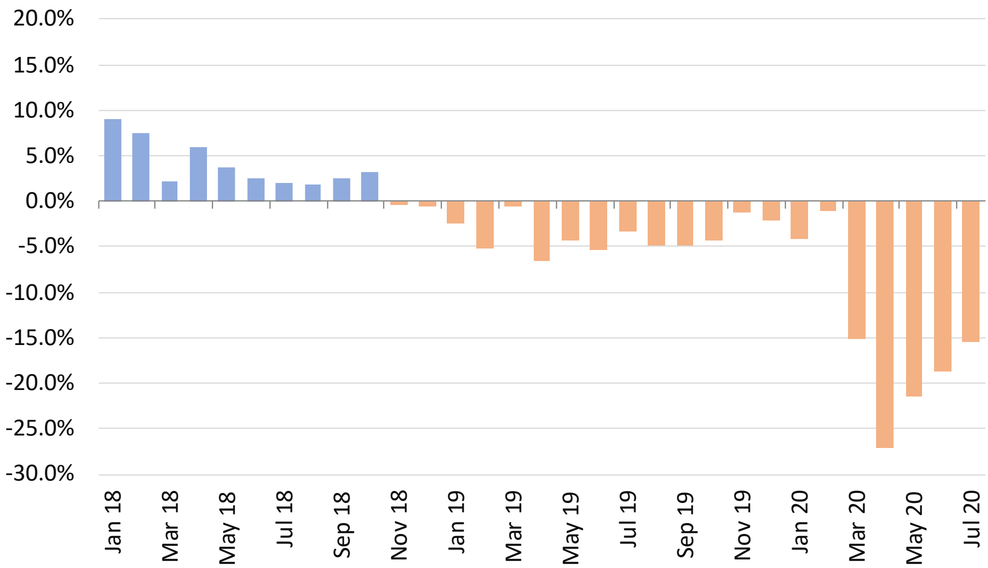
on-year comparisons of transported cargo volumes. Although air cargo markets showed weakening throughout 2018 and 2019, the situation had stabilised by early 2020. The onset of COVID-19 produced a precipitous decrease in demand.

FIGURE 1 PASSENGERS CARRIED IN THE GLOBAL AIR TRANSPORTATION MARKET



Source: ICAO IATA (2020), "Effects of Novel Coronavirus (COVID-19) on Civil Aviation: Economic Impact Analysis", 2 September.

FIGURE 2 YEAR ON YEAR CHANGES IN INTERNATIONAL AIR CARGO (TONNE-KILOMETRES)



Source: IATA "Air Freight Monthly Analysis" (https://www.iata.org/en/publications/economics/).

What these airline data do not account for are the secondary and tertiary economic implications of COVID-19 for the aviation supply chain – for example, on airports, aircraft manufacturers, and global distribution systems. Boeing, for instance, lost $2.4 billion between May-July 2020,[7] while airport revenue is estimated to have fallen globally by 59.6%.[8] Likewise, Sabre, a global distribution systems service supplier, lost $384 million in the second quarter of 2020.[9]

INTERNATIONAL OVERSIGHT

The international aviation industry does not function in an institutional vacuum. Two major intergovernmental agencies have various oversight global remits.

The International Civil Aviation Organization (ICAO) is a specialized agency of the United Nations consisting of 193 sovereign states, together with 'invited', non-voting organisations. ICAO develops aircraft and air navigation safety standards and practices, audits member states' oversight of these, and produces air transport performance metrics. To facilitate this, the organisation maintains multiple and extensive aviation databases and produces voluminous analytics.

The WTO coordinates 164 member states in opening markets, negotiating agreements, resolving disputes, and monitoring trade. It succeeded the General Agreement on Tariffs and Trade, of which the General Agreement on Trade in Services is a component. The latter contains an Annex on Air Transport Services covering (1) aircraft repair and maintenance services, (2) the selling and marketing of air transport services, and (3) computer reservation system services. Such oversight can even extend to early elements of the air transportation supply chain (e.g. subsidies to airframe manufacturers).[10] The WTO's remits do not, however, apply to aviation traffic rights or services directly related to the exercise of traffic rights.

Additionally, while not an oversight body, the International Air Transport Association (IATA) serves as the airline industry's global trade association. Comprised of some 290 carriers from 120 countries,[11] it facilitates networking, formalises industry positions on a range of subjects, informs policy makers, works towards viable regulation, and develops commercial standards. The Airports Council International (ACI) plays a similar role for its members.

7 https://wsvn.com/news/us-world/boeing-lost-2-4-billion-in-three-months/
8 https://store.aci.aero/wp-content/uploads/2020/08/COVID19-4th-Economic-Impact-Advisory-Bulletin.pdf
9 https://investors.sabre.com/static-files/02af1519-0c18-4765-ab30-ead5373c6d9c
10 https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/may/us-notifies-full-compliance-wto-aircraft-dispute
11 https://www.iata.org/

International aviation policy remains within the purview of national governments, in accordance with the 1944 Chicago Convention.[12] Countries have sovereign rights over their air space. The Convention established "freedoms of the skies" as a mechanism for standardising agreements between countries concerning flights involving foreign territories. Until the 1990s, most bilateral air service agreements were highly restrictive, directing which airlines could serve specific routes, aircraft capacities, fares, and so on. More recently, there has been liberalisation of these agreements – largely following the US's Open Skies policy – with relaxation of fare and capacity controls on services between pairs of countries. Even more liberal multilateral agreements have since emerged whereupon member states effectively allow carriers from other members to enter their markets openly and, at the extreme, allow cabotage and cross-country ownership of carriers. The European Common Aviation Area is an example of this. Such multilateral block agreements, however, can be distortive in terms of overall world trade in air transportations services.

Industrial organisations have retained some purview within this modern structure. IATA, for example, remains influential regarding safety, security, and data collection, as does the ACI within its own domain. However, market forces remain important for the economic growth of aviation, as do bodies like the EU in forging agreements between groups of aviation markets.

AIR TRANSPORTATION'S REACTION TO COVID-19

The mobility afforded by international and domestic air transportation networks contributed to the spread, and the speed of the spread, of COVID-19. Early reactions of industry leaders and policymakers were designed to contain the pandemic. Subsequently, governments provided support to air transportation with the aim of enabling their later participation in a global economic recovery.

COVID-19 affected air transportation markets differently, requiring diverse response measures. Some airlines accelerated aircraft retirement (as with Lufthansa's A380s),[13] reduced their fleets, put aircraft into 'long-term storage', or cancelled orders (as EasyJet did).[14] British Airways, Singapore Airlines and Cathay Pacific grounded more than 90% of their fleets. In other cases, including Austrian, Swiss, and Icelandair, carriers reconfigured their planes for cargo use. Operationally, some carriers developed joint ventures over specific routes (for example, Air France-KLM with Delta/Virgin Atlantic).[15] Others pulled out of mergers (for example, the withdrawal of Polish airline LOT's bid for Germany's Condor).[16]

12 https://www.icao.int/about-icao/History/Pages/default.aspx
13 https://www.airfranceklm.com/en/phase-out-air-france-entire-airbus-a380-fleet
14 https://www.theguardian.com/business/2020/apr/09/easyjet-agrees-delay-with-airbus-on-delivery-of-24-new-aircraft
15 https://www.airfranceklm.com/en/air-france-klm-delta-and-virgin-atlantic-launch-worlds-leading-partnership
16 https://simpleflying.com/lot-polish-airlines-owner-pulls-out-of-condor-purchase/

National governments have sought to tide over their carriers.[17] Italy effectively nationalised Alitalia.[18] Some governments provided loans, including Germany ($10.5 billion to recapitalise Lufthansa), France ($8.25 billion to Air France-KLM), and Korea ($970 million to Korean Air).[19] Some provided payroll grants – for example, the US ($30 billion for US carriers) – while others offered easy credit facilities. Additionally, some governments supplied aid for activities further back in the air transportation supply chain – for example, $10 billion from the US government to support airports[20] and $3 billion for contractors employing baggage handlers, wheelchair attendants, food service workers, and others.[21]

Given their strategic roles, the oversight bodies could do very little besides proffering advice and collating information. The ICAO, for example, developed a COVID-19 Recovery Platform offering guidance for airports, airlines, aircraft, crew, and cargo handlers on how to reduce public health risk while strengthening confidence among the travelling public, the global supply chain, and governments;[22] this was done in conjunction with the World Health Organization.[23] The WTO has provided up-dates on the effects of transportation bottlenecks on trade.[24] Industrial bodies like IATA and ACI have advised and coordinated the actions of their members, drawing heavily from lessons learned during the 2003 SARS outbreak.

Many second-tier, 'regional' aviation regulatory bodies also contributed little to handling the COVID-19 induced aviation market meltdown. More precisely, they lacked proper instruments to cope with the speed and severity of the crisis. Furthermore, the EU's policies on state-aid were effectively ignored by member states as were, with the closure of routes, agreements to free market access by airlines.

THE WTO LOOKING FORWARD

In the immediate future, national governments will inevitably work to revitalise their own airlines and civil aviation infrastructure. Political leaders appreciate that air transportation is an important driver of national recovery; this point is made clear in official statements from countries such as Germany[25] and Italy.[26] However, the post-

17 https://www.transportenvironment.org/what-we-do/flying-and-climate-change/bailout-tracker
18 https://www.businessinsider.com/alitalia-nationalized-by-italy-history-2020-3
19 https://www.reuters.com/article/us-health-coronavirus-korean-air/korean-air-to-get-up-to-971-million-support-from-state-owned-banks-idUSKCN2260XE.
20 https://www.faa.gov/airports/cares_act/
21 https://www.npr.org/sections/coronavirus-live-updates/2020/03/27/822528688/relief-package-includes-billions-for-boeing-and-airlines
22 https://www.icao.int/covid/cart/Pages/CART-Take-off.aspx
23 https://www.who.int/news-room/detail/01-08-2020-statement-on-the-fourth-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-coronavirus-disease-(covid-19)
24 https://www.wto.org/english/news_e/news20_e/covid_13aug20_e.htm
25 https://www.ft.com/content/5c32cd83-e639-4421-9ae2-8165ecdd5097
26 https://www.forbes.com/sites/jamesasquith/2020/04/01/could-airlines-be-nationalised-as-italy-takes-full-ownership-of-alitalia-will-more-airlines-follow/#227e5f3777df

COVID-19 world will necessarily be different than its predecessor. Major restructuring of air transportation's already 75 year-old oversight regime will inevitably require serious consideration.

The principal problem is that existing international oversight bodies were not designed to respond to sudden, large-scale emergencies. Rather, they were established as politically acceptable institutional structures to facilitate stability and growth in international trade. Two critical questions for the WTO today are: (1) What does the world need from aviation to optimise trade? and (2) How can the WTO add value to what other oversight bodies do?

Responses to COVID-19 strengthened a growing appreciation for the significance of networks in air transportation.[27] Much of the existing international-trade oversight structure is, however, based upon examining distortions in horizontal markets – for example, for airlines, for airframes, and for global distribution systems. However, most transportation supply transpires through vertical chains with market distortions occurring, and interacting at various points, within them.[28]

Effective global oversight will require collection of different data than those presently available for horizontal analysis. Some of this work will originate from outside of the immediate aviation sector. The WTO would seem the appropriate body to accomplish this given its broad remit over trade. It does, after all, already have oversight over elements in the chain, such as trade in airframes. As we move into the post-COVID age, the WTO could serve as an appropriate body to do the post-mortem on the immediate effects of interventions in air transportation markets on international trade, and to monitor subsequent developments

In line with this, the orientation of air transportation oversight will require a paradigmatic shift within the WTO from a focus on anti-trust work towards considering 'transactions cost regulation'. Aviation users, with their just-in-time orientation, are often concerned with stability in services rather than costs. Disruption or abandonment of services can have severe adverse effects on local economies. Restructuring subsidies to allow airlines to adjust their activities in a systematic way can, in some cases, limit the transaction costs suffered by these economies. The tendency in the past, however, was to use them excessively and well-past the time frame required.

The questions then become: (1) When are such transition measures justified? and (2) How should we evaluate their different forms? In a perfect world, one could argue against any such market interventions. But the world is not perfect. Further, air transportation involves a derived and not a final demand, thus producing effects both up and down the supply chain, affecting numerous dependent actors. Indeed, airports policy or aircraft acquisition policy may be points of trade distortion. Policy needs to take a wider

27 https://www.lexology.com/library/detail.aspx?g=ed57b73c-19af-4019-ac07-bd7826383ea6
28 https://capacify.wordpress.com/2014/07/07/whats-the-supply-chain-for-an-airline/

perspective than just levels of competition between airlines. This is a major argument for restructuring international air transportation oversight; there is a need for a much more comprehensive approach.

Restructuring subsides and other aid should, therefore, have a clear sun-set – given that they are intended to contribute to a short-term smooth transition of an airline. They should be conditional on affecting change in air transportation to meet the new circumstances. There should be ongoing accountability. The objective of oversight should not be to pick winners, but rather to ensure smooth market transitions.[29] There should be clear evidence that the subsidies do not adversely affect other transportation supply chains. Attempts to ensure this, however, by regional bodies such as the EU, have been singularly unsuccessful in area like optimising subsidies.[30] The WTO, acting in the global market, would be in a position to monitor and limit the misuse of restructuring subsidies in the aviation supply chain.

CONCLUDING REMARKS

Challenges for restoring international air transportation after COVID-19 are compounded by its being a major industry in its own right. In addition to facilitating trade, aviation often earns significant foreign exchange for supplying countries. There is, therefore, a need for global oversight of the sector. Whether such need requires the consolidation of existing international agencies, or their restructuring, remains under debate. The WTO's Council for Trade in Services, for example, has since 2000 been engaged in reconsideration of the exclusion of international air transportation from its remit, but with minimal progress.

Special treatment afforded to air transport and maritime shipping upon the UN's establishment made perfect sense then, given that their industries' revitalisation was critical to global post-war reconstruction and trade resumption. But aviation policy has become increasingly complex with the proliferation of international trade networks and lengthening of intricate global aviation supply chains. COVID-19 simply underscored the fragility of our contemporary systems of oversight.

Greater monitoring of aviation markets is necessary, including evaluating the consistency with which governments address unlawful mergers and monopolies, but going beyond that. While ICAO retains considerable technical expertise, it lacks depth in trade policy. On the other hand, the WTO has considerable experience in legal matters regarding trade. Ultimately, COVID-19's damage across complex air transportation networks underscores an exigency for a review of the industry's oversight regime.

29 https://www.ft.com/content/1ca8d0cb-48e5-4c99-b4ea-ac60b47344b9
30 https://www.reuters.com/article/us-eu-aviation/eu-to-tackle-unfair-airline-competition-with-new-rules-idUSKBN18Z1A0

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ABOUT THE AUTHORS

Camilla B. Bosanquet is a doctoral student of Public Policy at the George Mason Schar School of Policy and Government and a retired US military senior officer.

Kenneth J. Button is a University Professor at George Mason's Schar School of Policy and Government. As a diplomat, he headed up work on International Aviation for the Organization for Economic Cooperation and Development.

CHAPTER 9

Lessons from the pandemic for trade facilitation and the WTO[1]

Yann Duval

United Nations Economic and Social Commission for Asia and the Pacific (UN ESCAP)

The COVID-19 crisis has once again highlighted the importance of trade facilitation – i.e. the ongoing need to streamline procedures associated with the movement of goods across borders. Accounting for up to 15% of the cost of goods,[2] complex documentary requirements and inefficient border procedures have contributed to making access to essential products and relief goods unnecessarily difficult during the pandemic, and potentially hampering recovery from the crisis. In this context, this chapter attempts to identify elements of a future programme of work on trade facilitation at the WTO.

After a brief review of trade facilitation at the WTO, a summary of some of the main trade facilitation measures taken by countries during the COVID-19 crisis is presented. Lessons learned are discussed in a following section, based on which a number of ways forward for trade facilitation at the WTO are proposed.

TRADE FACILITATION AT THE WTO

One of the more concrete achievement of the WTO during the past decade has been the adoption of the WTO Trade Facilitation Agreement (TFA). The TFA was adopted at the Bali Ministerial Conference in 2013 and entered into force in 2017. As of September 2020, 153 members of the WTO – more than 93% of the WTO membership – have ratified the TFA.[3] The agreement features a specific list of measures to be implemented by countries to make import, export and transit procedures more transparent and efficient and generally expedite the movement of goods across borders.

The TFA was originally expected to be part of the overall Doha Development Agenda (DDA) outcomes. It is unique in that it links implementation of its provisions by developing countries to their implementation capacity, emphasising special and differential treatments for developing countries and facilitating access to capacity-building and

1 Without implicating them, the author is grateful to Jan Hoffman and Poul Hansen at UNCTAD, as well as Nora Neufeld and Sheri Rosenow at the WTO for useful discussions during preparation of the paper. Comments from Evdokia Moise and Mia Mikic, as well as research assistance by Runqiu Du and Simon Hardy, are gratefully acknowledged. The views expressed by the author in this chapter are his own and may not be interpreted as being those of ESCAP or the United Nations.

2 See, for example summary of selected studies on estimates of trade transaction costs in Asian Development Bank and United Nations (2013).

3 See https://tfadatabase.org/ (accessed 9 September 2020).

technical assistance. Developing countries were initially very reluctant to make any kind of binding commitments on trade facilitation, a 'Singapore issue'[4] strongly promoted by developed countries for inclusion in the DDA, given the expected difficulties and costs associated with implementation of the measures. The ten-year negotiation process of the TFA was extremely valuable in that respect, as many developing countries gradually realised how much benefit they could derive from simplifying their own trade procedures. Trade facilitation was once discussed and promoted only by a small number of technical experts at the United Nations or at the World Customs Organization, or through specific bilateral and regional agreements. The development of the TFA helped make trade facilitation a core issue deserving the attention of senior trade officials previously focused on negotiating new trade regulations rather than on their implementation at the border.

Overall, implementation of the TFA is at an advanced stage in most countries. The rate of implementation of all measures across the 153 members who have ratified the treaty currently exceeds 66%, according to the implementation commitments submitted by individual members to the WTO Secretariat. However, implementation commitments by LDCs average only 33.8%. These implementation rates have to be interpreted carefully, however, as some countries decided to under-report implementation in the hope of gaining greater access to capacity-building and technical assistance, while others possibly over-reported. As many TFA provisions are not binding, it is in fact unclear what is meant by 'implementation'. For example, the provision on a Single Window in the TFA is not binding. Implementation only requires that a country shows it is endeavouring to set up a trade single window, a system that many developed countries – all committed to have implemented the agreement as of 22 February 2017 – still arguably lack. Still, the most recent data from the UN Global Survey on Digital and Sustainable Trade Facilitation[5] and OECD[6] both suggest that implementation accelerated following the entry into force of the TFA, narrowing the implementation gap between developed and developing countries.

Looking at the actual trade facilitation measures included in the TFA, they are largely based on the International Convention on the Simplification and Harmonisation of Customs Procedures, also known as the Revised Kyoto Convention,[7] an instrument adopted at the World Customs Organization (WCO) 20 years ago (and entering into force in 2006). Arguably the most advanced measure in the TFA is establishing a Single Window, a measure implemented in several Asian countries in the early 1990s and issued as a UN/CEFACT Recommendation in November 2003.[8] Overall, the TFA shows rather limited ambitions or innovations in terms of digital trade facilitation and paperless trade, as many countries were understandably reluctant to make commitments in this area,

4 Trade facilitation was one of four issues introduced to the WTO agenda at the December 1996 Ministerial Conference in Singapore.
5 See www.untfsurey.org.
6 See https://www.oecd.org/trade/topics/trade-facilitation/.
7 See http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx.
8 See https://www.unece.org/fileadmin/DAM/cefact/recommendations/rec_index.htm.

given lack of human resource capacity and concerns about potential costs. The special and differential treatment flexibilities agreed in the final TFA, however, would certainly allow for much more ambitious measures to be included.

TRADE FACILITATION DURING COVID-19

In response to the COVID-19 crisis, additional border controls have been implemented in essentially all countries, along with orders to reduce physical contacts between people. While the movement of goods across borders was generally not banned, the movement of people was and continues to be extremely limited. This affects cross-border trade reliant, for example, on road transport, as drivers have faced serious difficulties in crossing borders. Additional sanitary and phytosanitary requirements were also put in place, as countries were concerned that the virus could be imported through the goods themselves, for example food products (WTO 2020). New technical barriers to trade were also put in place, for example to ensure that imported medical equipment and test kits were safe. Observers have found it difficult to track all the new regulations put in place, as they are often temporary, and removed or added with little if any advance notice.[9]

At the same time, many countries also tried to find ways to ensure that the procedures associated with both existing and the new trade controls and regulations would not unnecessarily affect trade, in particular trade in essential goods such as personal protective equipment (PPE), medicines and food. Aside from high-level declarations and pledges to remove barriers, many countries have taken concrete actions, some of which have been notified to the WTO. An exploratory stakeholder survey found some evidence that access to information on trade regulations and procedures had improved during the COVID-19 crisis, although respondents also indicated that further improvement were needed in this area, as well as in inter-agency coordination.[10]

Interestingly, only China, the Dominican Republic and the EU notified temporary COVID-19 measures under the WTO Trade Facilitation Agreement.[11] Looking at the broader compilation by the WTO of temporary COVID-19 trade measures taken by members, about 10% (25 of 242 measures listed) can be considered trade facilitation measures.[12] If elimination or reduction of import tariffs and other fees and charges, as well as removal of licensing requirements on essential goods, are considered, a little more than 40% (103 of 242) of measures are trade facilitating – implying that still more than half of the measures are trade restricting, consisting essentially of export restrictions and/or bans on exports of essential goods.

9 See https://www.globaltradealert.org/ for an independent and continuously updated database of state interventions affecting trade.

10 The survey was led by the WTO TFA Facility, the Global Alliance on Trade Facilitation and the International Chamber of Commerce, with a majority of respondents from the private sector (WTO, ICC and GATF 2020).

11 Based on the WTO Trade Facilitation Agreement Database (https://tfadatabase.org).

12 Based on https://www.wto.org/english/tratop_e/covid19_e/trade_related_goods_measure_e.htm.

A significant number of case studies and guidance notes on trade facilitation have been issued since the onset of the crisis.[13] Groups of countries have adopted practical guidelines on keeping cross-border trade and transport going during the crisis at the (sub)regional level.[14] Trade facilitation measures and actions taken by countries can be classified into two groups: those aimed purely at facilitating trade in 'essential' products, and those more generally applicable to all goods – in an effort to meet physical distancing requirements, reduce trade costs and limit the economic damage caused by the crisis. The great majority of measures apply only to specific 'essential' or 'emergency relief' products, where the list of essential products vary depending on each country. Trade facilitation practices that have been put in place on a temporary basis include:

- Temporary relaxation of administrative procedures on imports of certain used medical machinery and equipment (e.g. Brazil), as well as for certain agricultural products (e.g. simplification of license renewal and approval in China). This includes simplified import and export declaration forms for relief goods (e.g. Japan). In some cases, import certification and/or licensing requirements on imports of certain essential products – for example, for certain food products, as well as PPE or medical products – are temporarily eliminated altogether (e.g. Indonesia, Brazil, Singapore).

- Implementation of 'green lanes' for ensuring availability of goods and essential services, with reduced inspections and facilitation measures implemented along designated transport corridors and networks (e.g. intra-EU and within selected economic communities in Africa). This includes prioritisation of customs clearance for relief goods (e.g. Japan) but also measures to facilitate transport – for example, exemption from weight control of vehicles transporting food and non-food necessities in certain cases (e.g. the Russian Federation).

- Exemption of imports of essential goods from certain fees and charges (e.g. certain medical and surgical instruments and apparatus in India; import license fees waived in Myanmar). This includes temporary elimination of import tariffs (as well as excise taxes and VAT in some cases) on various goods thought to be in short supply during the COVID-19 crisis.[15] In some cases, the payment of excise duties on imports of certain goods is not waived but postponed (e.g. Indonesia).

Beyond these types of product-specific trade (and transport) facilitation measures, several countries have also aimed at accelerating implementation of trade facilitation measures applicable to all goods. Many countries have focused on enhancing transparency and

13 For example, see the World Bank guidance note (April 2020) on Trade Facilitation Best Practices Implemented in Response to the COVID-19 Pandemic, Subregional studies on good trade facilitation practices in times of pandemic supported by ESCAP, as well as country case studies issued by WCO, among others, available at https://www.tfafacility.org/covid19-trade-facilitation

14 See the excellent report by ECA comparing guidelines developed in different African subregions (United Nations Economic Commission for Africa 2020).

15 This type of measure has been implemented by many countries, often together with export restrictions or bans of the same goods.

making information available to traders as soon as possible. For example, the Russian Federation has implemented a 'COVID-19 single window' (Vassilevskaya 2020), while Japan is providing information in both the local language and English, enabling easier access to information to both domestic and foreign stakeholders (Fu 2020). Some countries have also temporarily extended time limits for completion of customs procedures and payment of customs duties across the board, taking into account the special difficulties faced by both officials and traders as they comply with health measures put in place to reduce the spread of COVID-19 (e.g. Japan, Saudi Arabia, Spain, Switzerland, the US) and possibly also to support financial relief to firms, particularly SMEs.

Many of the new, broadly applicable measures are digital or paperless trade facilitation measures. Such measures can help meet physical distancing requirements imposed in most countries (Kim and Duval 2020). For example, many countries put in place authorisation to accept certificates of origin in electronic form (e.g. Argentina or India), although often on a temporary and exceptional basis. The Eurasian Economic Commission also provides the option of an electronic copy of the certificate of origin for goods imported from developing and least developed countries. Some countries are accelerating implementation of electronic single windows and encouraging the private sector to maximise the use of paperless systems already available. For example, China has actively guided and encouraged enterprises to apply for import and export licenses in a paperless way, further simplifying the materials required for the paperless application for these licenses and facilitating the obtainment of electronic keys (signatures).

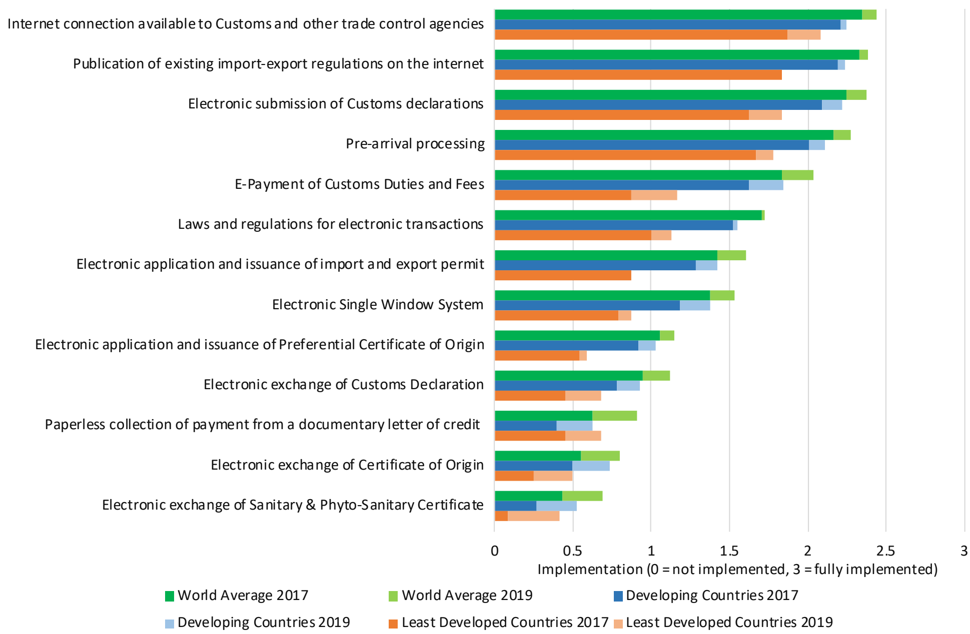
LESSONS LEARNED

Several lessons emerge from these trade facilitation policy responses. First, they show the need for pragmatic and integrated/holistic trade facilitation responses, not limited to the narrow definition of trade facilitation, as envisaged in the WTO TFA. The importance of measures to facilitate transport services, such as setting up clear procedures for controlling risks associated with the health of drivers or cargo operators, was clearly highlighted by the crisis, as was the need to provide credit facilitation and financial relief to small traders, including through exemption or postponement of certain fees and duties. This implies, as repeatedly stressed in various UN recommendations and guidelines, that the role of national trade facilitation committees (NTFCs) established (or, more often, re-established) after the entry into force of the WTO TFA should not be limited to implementation of the WTO TFA. NTFCs should instead support the development of comprehensive national trade and transport facilitation strategies in cooperation with the private sector, also covering essential trade-related services such as ICT and financial services.

Second, the trade facilitation policy responses highlight the need for paperless – and contactless – trade. Figure 1 shows the world average implementation level of a selection of digital trade facilitation measures included in the UN Global Digital and

Sustainable Trade Facilitation Survey as of mid-2019, before the COVID-19 crisis. While implementation levels of the measures vary greatly across countries and regions, the pattern of implementation is broadly similar across countries. Many countries have made great progress in making internet access available at border crossings, publishing existing import-export regulations and procedures on the internet, and providing for electronic submissions of customs declaration. However, implementation of electronic Single Windows – enabling traders to submit all information required to all government agencies through one integrated online platform – is still very much work in progress. As discussed above, implementation of some of the measures on a temporary basis increased sharply during the height of the COVID-19 crisis, although many countries will likely revert to paper-based documentary requirements post-crisis, given the limitations they face from a legal and technical perspective.

FIGURE 1 STATE OF IMPLEMENTATION OF SELECTED DIGITAL TRADE FACILITATION MEASURES PRE-COVID-19



Source: Calculated by the author, based on UN Global Survey on Digital and Sustainable Trade Facilitation (accessed 13 September 2020).

Third, political will and inter-agency coordination remain key to facilitating trade. Political will has enabled customs and other agencies to streamline procedures for essential and other goods at short notice during the crisis. Inter-agency coordination enabled by political will has been a key factor in ensuring goods could continue to flow across borders. Within borders, the pandemic has highlighted the need for better coordination between health, customs, immigration and quarantine authorities, as additional health, sanitary and phytosanitary measures were put in place. The need for better coordination among agencies across borders also became apparent, for example to ensure that drivers' health certificates could be recognized by all countries along a given transit corridor or for electronic documents or signatures to be accepted on a temporary basis due to physical distancing requirements. As shown by the very low implementation rates associated with the bottom three measures in Figure 1, electronic data, documents and systems used nationally by traders and government authorities are still seldom recognised or interoperable with those of partner countries, making cross-border paperless trade a long-term challenge even in the most advanced economies. Continuing 'political will' will be necessary to further develop inter-agency cooperation within and across border to make temporary trade facilitation measures permanent after the crisis.

FIVE ELEMENTS FOR A RENEWED WTO TRADE FACILITATION WORK PROGRAMME

The TFA includes a standard clause indicating that members shall review the operation and implementation of the agreement four years after entry into force (i.e. in 2021).[16] At least in principle, this could provide a bridge to make revisions or extensions to the TFA, ultimately depending on member states' appetite for changes and their level of ambition. Keeping this in mind, five elements for a renewed WTO work programme on trade facilitation are put forward.

1. Trade facilitation measures in times of pandemic and other crises

First, in the context of the Covid-19 crisis, the first recommended element is to agree on a set of trade facilitation measures in times of crises.[17] This set of measures could build on those tested during the COVID-19 crisis but should not be limited to pandemic situation but extend to other types of crises, such as those linked to natural disasters (e.g. floods and earthquakes) as well as manmade disasters (e.g. large-scale explosions and air/water contaminations).

The call for special trade procedures for relief goods in times of crisis is a long-standing issue and recommendations by UN and disaster relief agencies do already exist in many cases.[18] As part of their COVID-19 response, the UN Regional Commissions, together with UNCTAD, have developed such a set of trade facilitation measures in times of crisis and pandemic for inclusion in the 2021 global survey on digital and sustainable trade facilitation.[19] A basic measure to consider here would be that all countries have a plan in place for rolling out emergency trade facilitation measures in times of crisis.

16 TFA art. 23.1.6.

17 This could possibly come as an amendment to the WTO TFA or as a new separate agreement or protocol covering other trade facilitation (TF) issues outside the scope of the TFA, e.g. on transport and/or medical services.

18 For example, see the 2013 Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance of International Federation of Red Cross and Red Crescent Societies (https://www.refworld.org/docid/5242cee74.html), among others in Anidolfi (2018).

19 See https://www.unescap.org/events/expert-group-meeting-trade-facilitation-times-crisis-and-epidemic

2. Ambitious digital trade facilitation measures

The second recommended element of a renewed WTO work programme on trade facilitation is to increase emphasis on the digital implementation of existing TFA measures and consider additional digital measures, in particular ones that cannot be readily implemented unilaterally, such as measures for cross-border exchange and legal recognition of trade-related documents. The WTO may revisit the more ambitious proposals made by countries such as the Republic of Korea during the early stages of the TFA negotiations and draw from the ongoing discussions on e-commerce under the Joint Statement on E-commerce Initiative (JSI), as well as those related to electronic certificates under the WTO Sanitary and Phytosanitary (SPS) Committee. Global instruments and standards that could be leveraged include the WCO Framework of Standards on Cross-Border E-commerce and the UNCITRAL model law on electronic transferable records, among others.

Importantly, a growing number of regional trade digitalisation initiatives and agreements have emerged that may be useful in developing a more forward-looking agenda for trade facilitation at the WTO. Relevant WTO TFA+ initiatives that could provide building blocks for an updated set of trade facilitation measures or related mechanism include, inter alia, the Framework Agreement on Facilitation of Cross-Border Paperless Trade in Asia and the Pacific,[20] the ASEAN Single Window Agreement, initiatives of the Pacific Alliance, as well as trade facilitation elements of the Digital Economy Partnership Agreement recently signed between Chile, New Zealand and Singapore.

3. Inclusive and sustainable trade facilitation

The third recommended element for a future WTO work programme on trade facilitation is to give more consideration to the specific needs of groups of people and sectors relevant to the 2030 Agenda for Sustainable Development. Some countries have started to put in place trade facilitation measures targeted at SMEs, the agricultural sector or at women traders. Implementation of trade facilitation measures should take into account the varying needs and circumstances of these groups of people and sectors to deliver inclusive benefits. So far, however, implementation of these 'sustainable trade facilitation' measures, as included in the UN global survey on trade facilitation, remain very low.[21]

Examples of such measures include reduced fees and charges for SMEs,[22] or the establishment of a gender balance requirement in national trade facilitation committees. Mainstreaming these measures through the WTO TFA process may go a long way in accelerating implementation, while providing concrete evidence of the WTO's potential

20 This paperless trade framework is the most recent UN treaty in the area of trade and development, adopted at ESCAP and deposited with the UN Secretary General in New York in 2016. Work on the treaty was initiated by the Republic of Korea; see https://www.unescap.org/resources/framework-agreement-facilitation-cross-border-paperless-trade-asia-and-pacific
21 See United Nations (2019) and http://untfsurvey.org
22 See other measures for SMEs in United Nations (2016).

in building back better after the pandemic. In this context, the impact of trade facilitation measures on climate change and the environment may also be considered in agreeing on new measures.

4. Strengthened implementation monitoring mechanism

The fourth recommended element of a WTO work programme on trade facilitation would be a strengthening of the implementation monitoring mechanism for trade facilitation measures. As mentioned, the extent to which a measure has been implemented is not always clear, even after it has been notified to the WTO. There are many ways in which a given measure may be implemented, and developing better standards or benchmarks may be needed. Importantly, strengthened implementation monitoring should apply to developed countries as well, rebalancing the relatively awkward current situation whereby developing countries' progress is being tracked while developed countries are essentially assumed to have already implemented everything.

The OECD did some pioneering work in this area, breaking down many of the TFA provisions into subsets of measures included in their trade facilitation implementation survey that underpins its Trade Facilitation Indicators;[23] The UN Global Survey on Digital and Sustainable Trade Facilitation extended that approach to digital and other measures not explicitly included in the TFA. However, a limitation of these 'implementation' surveys is that they lack sufficient details and provide no direct evidence of the quality of the implementation of a measure in terms of reducing trade costs or increasing SME participation in trade.[24] Establishing a peer review mechanism, strengthening implementation monitoring through national trade facilitation committees (NTFCs)[25] and/or emphasising trade facilitation in the WTO trade policy reviews may all be considered, noting the importance of private sector input in any detailed assessment of trade facilitation performance.

5. Enhanced collaboration of WTO with regional and global trade facilitation organisations

The fifth recommended element of a future WTO work programme on trade facilitation is to further enhance collaboration with the wide range of organisations working on trade facilitation, ensuring collaboration is inclusive and synergistic. The WTO Secretariat has made significant efforts to develop collaboration,[26] but it is members who ultimately decide

23 See www.oecd.org/regreform/facilitation/indicators.htm
24 The TFA specifies that countries should conduct time release studies and publish results, but these measures remain among the least implemented.
25 ADB and ESCAP have pilot tested establishment of national trade and transport facilitation monitoring mechanisms under NTFCs in South Asia.
26 The online repository of TF initiatives in response to COVID-19 (https://www.tfafacility.org/covid19-trade-facilitation) is one recent example.

on the extent to which WTO work can be integrated with that of other organisations.[27] As mentioned earlier, the UN and many other international organisations have long-standing regional or global programmes in this area, in many cases either extending beyond the relatively narrow scope of trade facilitation in the TFA[28] or with a very sharp and deep focus.[29] As such, while new measures may be promoted as part of an updated WTO trade facilitation work programme, this may be done to the extent possible by direct reference to existing international standards, recommendations or agreements rather than by (seemingly) redeveloping them from scratch. Similarly, while the focus on capacity building in the TFA is welcome, the WTO itself may refrain from expanding its aid and capacity-building activities, leaving them to partner organisations to focus on establishing and enforcing rules on trade facilitation.

Going forward, the WTO may harness digital communication technologies to bring a wider range of public and private stakeholder organisations into WTO discussions on trade facilitation, rather than those with a presence in Geneva. Future work on trade facilitation needs to be as inclusive as possible, as expertise and innovation in what remains a rather technical area typically lies outside the WTO or commerce ministries. New technologies, such as blockchain and artificial intelligence, hold tremendous promise for making trade more transparent, but effective deployment will necessarily involve closer public-private partnerships. Many of the discussions have already moved online due to COVID-19, potentially making the discussions more inclusive.[30] Both on trade facilitation and in other areas, the WTO may therefore seek to democratise participation by proactively redesigning its schedule of meetings to enable effective online participation of expert member representatives and organisations across different time zones.[31]

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27 Reference is made here to TFA Art 23.1.5 "The Committee shall maintain close contact with other international organizations in the field of trade facilitation…", as well as TFA Art 22.5, which refers to "the International Monetary Fund, the OECD, the United Nations Conference on Trade and Development, the WCO, United Nations Regional Commissions, the World Bank, or their subsidiary bodies, and regional development banks".

28 For example, the ASEAN trade facilitation programme, as well as the TF capacity building programmes of most development banks.

29 For example, the specialised UN and other agencies and related bodies such as the International Maritime Organization or the World Customs Organization.

30 It is very costly for smaller developing countries and organisations to maintain a presence in Geneva, such that many are able to afford at best one 'generalist' staff member to cover all subject matters.

31 Learning from the redesign of the ESCAP meetings and workshops to online events, this would likely mean shorter meetings of a few hours instead of full day meetings, with all presentations recorded in advance and made available 24 hours before the meetings, and supplemented by dedicated secure online chat rooms.

Kim, S and Y Duval (2020), "In the World's poorest countries, the move to digitalize trade procedures is needed now more than ever", Op-Ed, Trade for Development News, Enhanced Integrated Framework, 4 May.

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ABOUT THE AUTHOR

Yann Duval is Chief of the Trade Policy and Facilitation Section at United Nations Economic and Social Commission for Asia and the Pacific (UN ESCAP).

CHAPTER 10

Lessons from the pandemic for trade cooperation on cross-border supply chains[1]

Sébastien Miroudot
OECD

The COVID-19 pandemic has drastically changed the business environment for all firms in the world. Whether they export or not, source locally or import goods from distant countries, most companies have had to change the way they operate to cope with new health, safety and lockdown measures. For firms involved in international trade and sourcing, the pandemic has additionally brought delays at the border, frictions in international transport networks, export restrictions (e.g. on medical supplies) and high constraints related to the movement of people.

While the pandemic does not discriminate between tradable and non-tradable activities, the policy debate quickly focused on the role of international supply chains for three reasons. First, the pandemic started in China, a central hub for all manufacturing global value chains (GVCs). Second, as the pandemic spread to other countries, there was a shortage in face masks, which happened to be manufactured mostly in China. Third, there was already an ongoing debate about risks related to US-China trade tensions. It explains why several authors quickly emphasised the risks associated with multinational production and international sourcing, as well as the need to build more resilient supply chains (Gertz 2020, Javorcik 2020, Lin and Lanng 2020, Linton and Vakil 2020, O'Neil 2020). Some of the main policy proposals are to shorten supply chains, to make them more domestic and to introduce more redundancy in GVCs.

The objective of this chapter is to address the prospects for trade cooperation on cross-border supply chains rather than their hypothetical redesign by governments. The chapter first provides some evidence on the role of international sourcing and discusses what went wrong during COVID-19. It then asks what governments can do and goes through a menu of options for policymakers.

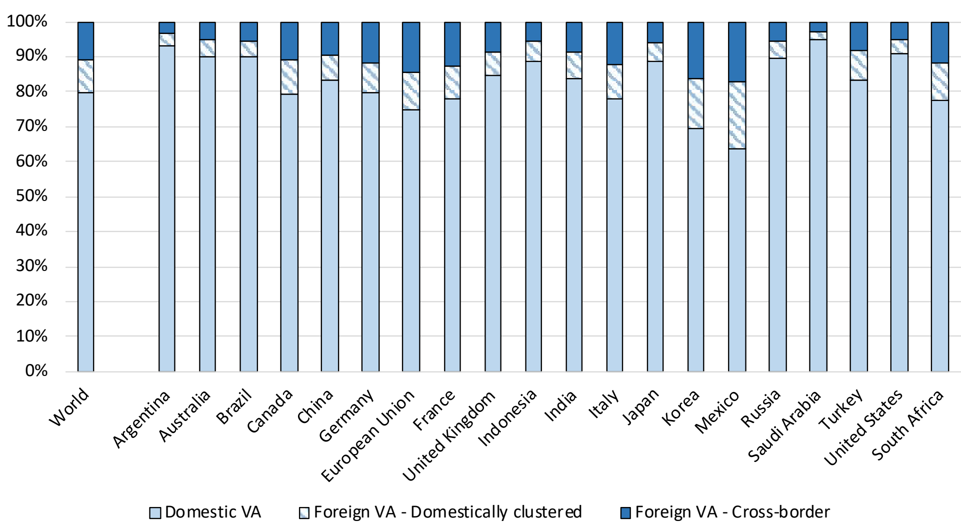
1 The author is writing in a personal capacity. The views expressed are those of the author and do not necessarily reflect those of the OECD Secretariat or the member countries of the OECD.

INTERNATIONAL SOURCING: HOW IMPORTANT IS IT? ARE ALL COUNTRIES DEPENDENT ON CHINA?

In the debate on COVID-19 and trade, the role played by international sourcing and GVCs seems to be overstated. Figure 1 shows a value-added decomposition of gross exports for G20 economies. On average (for the world), 80% of the value added in gross exports is sourced domestically. Domestic sourcing is the norm. Only one-fifth of value added in trade is from foreign origin. Moreover, a bit less than half of this foreign value added corresponds to domestic transactions in foreign economies, i.e. inputs that circulated in domestic value chains in partner countries before being embodied in exports (the part labelled as 'domestically clustered'). At the end, the cross-border value-added share of gross exports is only 11%.

This average hides some heterogeneity across products, with some depending more than others on international sourcing. One could also argue that the value chain is as resilient as its weakest link and that even a small share of value added upstream can translate into severe disruptions downstream. But from a macroeconomic perspective, Figure 1 suggests that building resilience in trade is a broader issue than just looking at international sourcing.

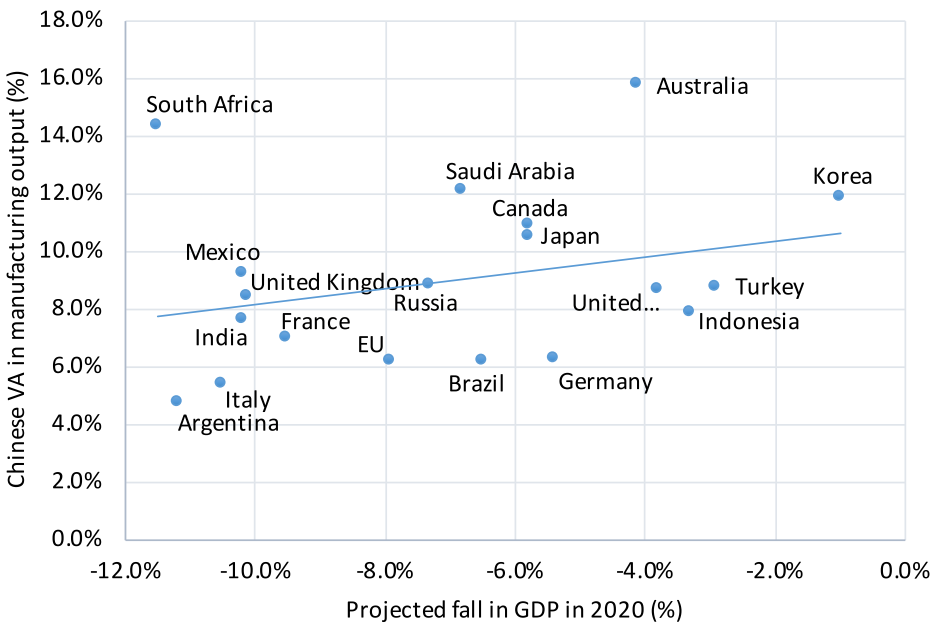
FIGURE 1 VALUE-ADDED DECOMPOSITION OF GROSS EXPORTS: DOMESTIC, DOMESTICALLY CLUSTERED FOREIGN AND CROSS-BORDER (FOREIGN) VALUE ADDED FOR THE WORLD AND G20 ECONOMIES, 2016



Source: OECD TiVA database.

When it comes to the dependence on China, there might also be some discrepancy between the terms of the debate and what data suggest (Evenett 2020a). Figure 2 provides a scatter plot comparing the share of Chinese value added in manufacturing final output of G20 economies and the projected fall in their GDP for 2020 (based on the latest OECD Economic Outlook). Unlike the previous figure, the analysis is not limited to exports. The country with the highest share of Chinese value added in its manufacturing final output is Australia (15.7%). This figure is in line with the share of China in world GDP (also about 15% in 2015). Other countries have much lower shares of Chinese value added. Moreover, we do not observe a relationship where the more a country is dependent on Chinese inputs, the higher the impact of COVID-19. It is actually the opposite. Countries sourcing more from China have a lower fall in their GDP. We do not conclude from this simple chart that there is any causal link. But the narrative suggesting that COVID-19 has highlighted the vulnerability of economies to foreign sourcing and the dependence on China is not found in the data.

FIGURE 2 CHINESE VALUE ADDED IN MANUFACTURING FINAL OUTPUT (2015) AND PROJECTED FALL IN GDP IN 2020, G20 ECONOMIES



Source: OECD TiVA database and Economic Outlook (September 2020). Data for the EU are for the euro area only.

WHAT WAS WRONG WITH GLOBAL VALUE CHAINS DURING THE PANDEMIC?

Like in previous crises, GVCs have been rather resilient during COVID-19 (OECD 2020a). It is important to understand what resilience means (Miroudot 2020a). Resilience is the capacity to return to normal production once disruptions have happened. COVID-19 and the measures put in place by governments to prevent the spread of the virus have created many disruptions. But the level of disruptions (which was definitely high) is not a measure of resilience. The resilience can be observed in the fact that, despite these disruptions, companies relying on international sourcing managed either to continue to produce during the crisis (e.g. for essential goods such as food products or pharmaceuticals, as well as for countries without any type of lockdown) or to quickly resume production once the lockdowns were lifted.

Yet, it is important to identify the concrete issues related to cross-border supply chains during COVID-19 in order to draw some lessons from the crisis and to make policy recommendations. There are four different issues that may receive a different policy answer.

1. International supply chain risks

A variety of risks can affect the smooth functioning of supply chains and result in inputs not being delivered (or other types of disturbances). Disruptions can be very localised (e.g. a fire in a factory) or can affect a large area (e.g. a major natural disaster). International supply chain risks refer to disruptions taking place in foreign countries and affecting the supply of inputs to the domestic economy. The main international supply chain risk during COVID-19 was the lockdown of the Chinese economy in January 2020, with many GVCs depending on China for their inputs (Baldwin and Freeman 2020). There is some anecdotal evidence of factories that had to stop producing because of Chinese inputs no longer delivered, but there is no convincing assessment at this stage of how serious the problem was. First, most of the rest of the world entered into a lockdown a few weeks later (with inventories, buffer stocks and risk-management strategies mitigating the impact of the disruption in the meantime). Second, it is difficult to disentangle the supply chain risk from the macroeconomic demand and supply shocks triggered by COVID-19. Note that supply chain risks are also prevalent in domestic value chains and the geographic concentration of production in the domestic economy can increase the exposure to risk (Craighead et al. 2007).

2. Transmission of macroeconomic shocks through GVCs

The supply chain risk is an example of supply shock transmitted along the value chain. But other shocks can be transmitted, particularly those not originating in the supply chain itself but affecting the economy where inputs are manufactured. For example, falling demand for final products can reduce demand for all inputs upstream with a bullwhip effect (Zavacka 2012). Due to contagion effects, GVCs tend to synchronise economies, as observed during the Great Financial Crisis (IMF 2013). But without GVCs, economic shocks are also transmitted across countries through trade in final products and GVCs actually offer more adjustment channels to reduce the volatility of output (Bonadio et al. 2020, OECD 2020b). In the recovery phase, GVCs accelerate growth (the same way they accelerate the fall in demand during the crisis). There is no reason to reorganise or to dismantle GVCs because of recessions.

3. Disruptions in international transport networks

Under this category, there are two types of disruptions in relation to COVID-19. First, transport companies have been affected in their operations by health measures and in particular by travel restrictions (Benz et al. 2020). The reduction in passenger air transportation had an important side effect on air freight because half of air cargo was relying on passenger flights (WTO 2020). Second, companies involved in trade have faced disruptions that are specific to the international nature of their operations in relation to border controls, customs procedures and specific health measures for transport crews. International trade did not come to a halt, but longer delays and higher freight rates were observed. The policy lessons are clearer in this area as border measures and regulations for transport services are directly under the responsibility of governments.

4. Surge in demand for essential goods

Last but not least, the most obvious issue with GVCs during COVID-19 was the shortage in some essential goods used in the fight against the coronavirus, such as protective personal equipment (PPE). It was analysed as an international supply chain issue because some countries have specialised in the production of PPE and offshoring is common in this industry. However, the exact nature of the problem was a surge in demand, with demand increasing by about 50 times in the case of face masks (OECD 2020c, Gereffi 2020). The shortage would not have been avoided through domestic production. This is why specific policies may be needed to deal with essential goods, such as stockpiling strategies and contingency plans.

WHAT CAN GOVERNMENTS DO?

Some companies might decide to organise their supply chains differently after COVID-19. Some others will not change their current organisation.[2] But these are the lessons of the crisis for companies, not for governments. While many papers discuss reshoring, shorter supply chains or redundancy, these might not be at all the solutions favoured by companies because the business literature does not point to such answers (Miroudot

2 For example, the conclusions of Samsung's COVID-19 task force are that disruptions were very limited and that there is no need to reorganise the supply chains (*Financial Times* 2020).

2020b). And if companies do go for reshoring, shorter supply chains or redundancy, this is fine as long as it is not the result of economic distortions created by governments to force companies to adopt such strategies.

From the supply chain issues identified in the previous section, we can discuss four areas of action for governments that can bring concrete answers and require some form of cooperation.

1. Supply chain risks: Exploring new ways for firms and governments to cooperate

The way firms address supply chain risks is by developing risk-management strategies and capabilities (such as visibility, agility, flexibility and cooperation) that will allow them to recover quickly from disruptions (Christopher and Peck 2004, Sheffi 2005). There is a limited role for governments there as it is really at the firm level that resilience is built. Still, governments can contribute to reduce supply chain risks or mitigate their impact through international cooperation.

First, if governments have strong views on how GVCs should be reorganised or want to make sure that companies take the necessary steps to reinforce their risk management strategies, the best way to proceed would be to organise a dialogue with the private sector. For example, Hoekman (2014) made the proposal of deliberative mechanisms and the creation of knowledge platforms to exchange information with businesses. One of his proposals was to establish 'supply chain councils' at the WTO to address trade barriers and regulatory constraints with the companies involved in the value chain. Such platforms or councils could focus on the issue of resilience and allow firms and governments to inform each other on their respective efforts to be prepared for crises.

A similar approach but less deliberative and giving stronger incentives to firms would be to develop stress tests for specific GVCs, such as those producing essential goods (Simchi-Levi and Simchi-Levi 2020). For example, a scenario could be developed where there is a surge in demand for PPE and some disruption in the value chain and companies would have to explain how they can increase production, how long it would take them to overcome the disruption, and so on. Such initiative would not only encourage firms to improve their resilience strategies but would also give useful information to governments (such as the right level of stockpiling for essential goods). Governments need to know the kind of shocks that can be absorbed by private companies and where additional public action is needed for large scale emergencies and exceptional fluctuations in demand.

Lastly, governments can also support efforts by firms to develop the capabilities that allow them to mitigate risks. For example, the visibility in the supply chain requires information on suppliers, the suppliers of suppliers, and so on. Small firms might not be able to get all this information and there might be some asymmetry of information. Governments and international organisations can collect information on the concentration of production, on the level of risk and provide an overview of resilience at the industry or GVC level that could support the individual assessment of risks by firms. This is also the kind of exchange of information to be further considered in a public-private dialogue. It requires international cooperation as data on all parts of the value chain need to be collected.

2. Policy risks: Reducing global uncertainties on trade and investment

One of the main risks faced by firms is the policy risk and global production networks are also organised to address such risk (Kogut and Kulatilaka 1994). Uncertainties related to trade and investment policy have a high impact on decisions of firms. They can decide to postpone their investments or to not produce in some locations if there is a risk of policy reversal (e.g. risk of new tariffs). Rising trade tensions were already weakening growth before COVID-19 (Bobasu et al. 2020). The risk is now for the recovery to be slower and weaker in the context of further trade and investment uncertainties. Political pressures for the reshoring of GVCs, the multiplication of investment screening mechanisms (OECD 2020d) and sanctions targeting foreign firms suggest that international business decisions will be increasingly affected by geopolitics and interventionist policies.

Not all risks can be avoided, but through international cooperation governments can mitigate policy risks. In particular, there is a need to re-establish some trust in the multilateral trading system and the expectation that it will continue to be a rules-based system. While limited in their scope, discussions on the creation of a new multilateral framework on investment facilitation at the WTO can also contribute to increase transparency and predictability for investment measures, thus reducing uncertainties.

3. Keeping trade flowing: The role of trade facilitation

The most common disruptions reported by firms during COVID-19 were not so much related to their suppliers as to difficulties at the border when exporting or importing goods. This is what trade facilitation policies deal with and the area where the WTO was successful in concluding negotiations with the Trade Facilitation Agreement (TFA) that entered into force in 2017.

The TFA already includes measures that, if fully implemented, can significantly reduce some of the disruptions observed during COVID-19 (OECD 2020e). In particular, the agreement requires transparent, simplified and streamlined procedures, and this also applies during a crisis. The TFA then promotes the use of digital technologies that not only accelerate the clearance of goods but also minimise face-to-face contacts.

In addition, several countries have put in place 'green lanes' or 'corridors' for the fast clearance of essential goods during COVID-19. There are different ways of setting such mechanisms. But one interesting approach is what the US has done for risks related to terrorism. Created in 2001, the Customs-Trade Partnership Against Terrorism (C-TPAT) is a voluntary supply chain security programme that involves 11,400 firms, called 'partners'. These companies take some commitments to ensure the safety of their shipments to the US and in exchange they have access to fast-track lanes at the border, simplified procedures, as well as a priority following a natural disaster or terrorist attack. Mutual recognition agreements with a series of foreign customs administrations also ensure the exchange of information and the validation of security procedures that take place in partner countries. More than half of imports of goods in the US are covered by the programme. A similar approach could be used to address other risks beyond terrorism and the case of a persistent health crisis.

4. Essential goods: How to address transparency and promote security of supply

COVID-19 has been described as a wake-up call for supply chain risks but it is also a wake-up call for governments when it comes to their own risk-management strategies. What happened with face masks and other essential COVID-19 goods suggests drawing lessons in terms of stockpiling strategies and contingency plans for the supply of essential goods. Like companies, governments need to assess risks, evaluate the resources they need and be in a position to manage and establish an emergency supply chain (Dasaklis et al. 2012).

At this stage, little is known on trade in products such as face masks, ventilators or COVID-19 test kits. Confusing figures are produced using the Harmonised System (HS) classification at the 6-digit level, while data at the 8-digit or 10-digit level are often not specific enough to identify these goods. Many export restrictions have been implemented at the beginning of the crisis in a non-transparent manner (Evenett 2020b). Monitoring trade flows and barriers to goods that are essential in a pandemic (or a broader category of goods that could matter for natural disasters and other types of international crises) could be useful both to anticipate shortages and to prevent policy decisions that affect supply.

In the case of agriculture and food products, the Agriculture Market Information System (AMIS) launched by the G20 in 2011 was successful (including during COVID-19) in preventing price hikes and in strengthening global food security (OECD 2020f). AMIS provides a platform where information on food supplies is collected and a forum where governments can coordinate policy action. International cooperation and international organisations could pursue a similar platform to improve transparency for essential COVID-19 goods and help to address issues of security of supply (Evenett 2020a).

Deeper cooperation among countries on essential goods could also involve an agreement on the elimination of tariffs for such goods and a commitment to not resort to trade restrictions in the middle of a crisis. The commitments made in a joint ministerial statement by Australia, Brunei Darussalam, Canada, Chile, Myanmar, New Zealand, and Singapore on 14 April 2020 are a good example of what such commitments could be.

A GVC angle could be introduced in this discussion by including key intermediate inputs in the list of essential goods (such as meltblown polypropylene for the fabrication of face masks). Some of the public-private consultations on GVCs previously mentioned could also be associated to such programme of work with a focus on companies involved in the manufacturing of essential goods.

MORE INTERNATIONAL COOPERATION IS NEEDED ON CROSS-BORDER SUPPLY CHAINS

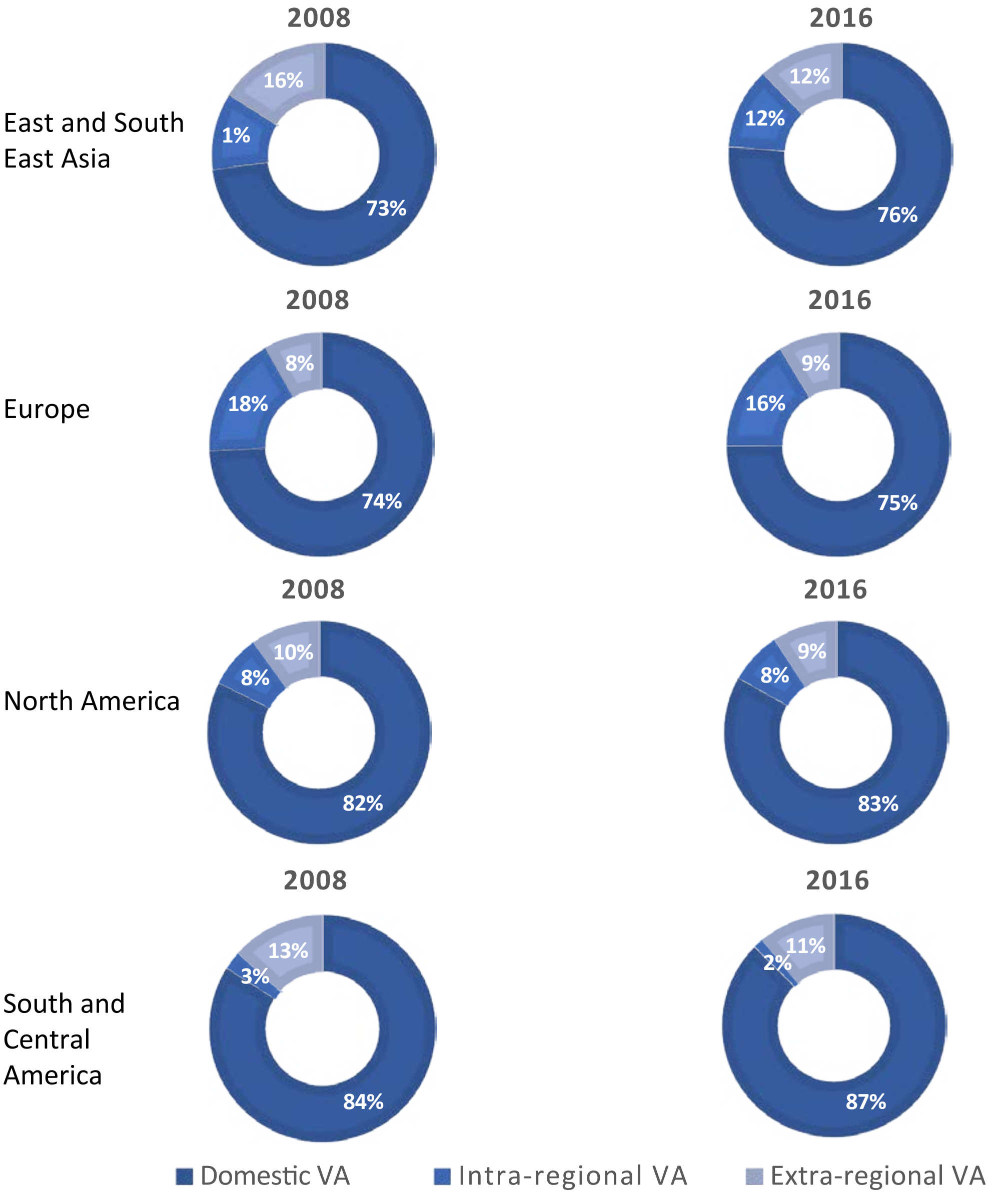
As GVCs are global, policy answers and cooperation should involve all countries participating in the value chain. This is particularly the case when addressing resilience or supply chain risks. For example, diversification of first-tier suppliers can give the impression that the value chain is more resilient, but all these suppliers may have suppliers upstream that ultimately rely on the same supplier at the beginning of the value chain. There are several examples of such supply chains having a 'diamond' shape (Sheffi 2015). Scenarios of reshoring are also leading to this type of value chain where first-tier suppliers are in the domestic economy but where disruptions related to international supply are just pushed further upstream.

Supply chains are truly global. As illustrated with Figure 3 (a decomposition of gross exports highlighting the domestic, intra-regional and extra-regional value added), the idea that supply chains are mostly regional is not supported by the data (except in Europe) and may again come from a focus on first-tier suppliers (that are more likely to be within the region). Over time, the trend is towards domestic value added in trade and not regional value added.

Generally speaking, dealing with supply chain trade is more complicated at the multilateral or plurilateral level because of the nature of disciplines that are relevant for GVCs (such as investment or rules on the movement of people) and because of the traditional political economy of market access negotiations (Baldwin 2014). But some of the policy options previously discussed do not involve going into sensitive areas of regulations and can be disconnected from trade negotiations. At the same time, more involvement of the private sector in multilateral or plurilateral trade negotiations and more discussions on supply chains could also contribute positively to the rule-making agenda and create more confidence to deal with policy areas relevant for GVCs.

The topic of resilience of supply chains can also be seen as part of a progressive agenda where countries try to build a trade system closer to the aspirations of their constituencies in a post-COVID world. However, one should be cautious as the concept of resilience is also currently being used to push a different policy agenda leaning towards economic nationalism and protectionism. If several developed countries start to pursue reshoring strategies, it might quickly become a more controversial topic with developing countries who are now benefitting from offshoring. This is why it is important to focus on solutions and proposals that can mitigate risks and increase the security of supply for all countries.

FIGURE 3 DOMESTIC, INTRA-REGIONAL AND EXTRA-REGIONAL VALUE ADDED IN EXPORTS BY REGION, 2008 AND 2016



Source: OECD TiVA database.

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ABOUT THE AUTHOR

Sébastien Miroudot is Senior Trade Policy Analyst at the OECD Trade and Agriculture Directorate.

CHAPTER 11

Three steps to facilitate global distribution of a COVID-19 vaccine

Caroline Freund and Christine McDaniel[1]
World Bank; George Mason University

Once a COVID-19 vaccine becomes available, its efficacy will require wide and rapid distribution. There are reasons to be worried about the success of global distribution, given past experiences with vaccine hoarding and recent shortages of personal protective equipment and ventilators. To preserve domestic supplies, 90 economies implemented nearly 200 export restrictions[2] on essential medical goods as of August 2020. During the H1N1 epidemic, advanced orders for vaccines from advanced economies left virtually no supply for developing countries (Fidler 2010). By September, high-income countries representing just 13% of the world's population had their order placed orders for more than half of the future doses of the top COVID-19 vaccine candidates,[3] bidding up prices and potentially leaving citizens of poorer developing countries to go without.

Unless COVID-19 disappears of its own accord, ample vaccine production and distribution is in everyone's interest. Vaccination will protect essential workers, prevent clusters of infection from re-emerging and help to eliminate the virus. Northeastern University's Mobs Lab demonstrates how vaccine hoarding among wealthy countries will lead to more deaths and a longer, drawn-out pandemic (Chinazzi et al. 2020).

A global vaccine-sharing agreement can help facilitate developing countries' access and multilateral development banks can help finance purchases, but that will not be enough. There are existing trade-related mechanisms that policymakers should leverage to help meet COVID-19 needs. We propose three additional steps the WTO and the international trade community can take to facilitate global vaccine distribution.

1. **Let the data flow**. Create a mechanism similar to what exists for the sharing of data and information on strains of the flu virus, pharma supplies, and regulatory processes. Information flows will reduce uncertainty and incentives to protect markets and hoard supplies, all of which tend to compound market failure.

1 We are grateful to Chad Bown, Andrea Durkin, Simon Evenett, William Gain, Ayelet Haran, Niels Jacobsen, and Keith Maskus for comments and discussions. The findings, interpretations, and conclusions expressed in this chapter are entirely those of the authors. They do not necessarily represent the views of the International Bank for Reconstruction and Development/World Bank and its affiliated organizations, or those of the Executive Directors of the World Bank or the governments they represent.
2 https://www.worldbank.org/en/topic/trade/brief/coronavirus-covid-19-trade-policy-database-food-and-medical-products
3 https://www.oxfam.org/en/press-releases/small-group-rich-nations-have-bought-more-half-future-supply-leading-covid-19

2. **Leverage the Trade Facilitation Agreement (TFA) and its powerful network**. Once a vaccine is developed, it will need to be delivered around the globe, but vaccine storage, handling and transport is complex. Suppliers, logistics networks and the medical community will need to prepare for the distribution of millions of refrigerated glass vials from production sites to remote destinations. The 164-member TFA includes provisions on expedited trade and perishable goods can help.

3. **Ensure TRIPS provisions function to support production and exports**. The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) allows production and exporting of patented critical medicines to developing countries in health emergencies. Streamlining paperwork requirements and facilitating agreements with groups of developing countries can promote more effective functioning of the existing mechanisms and exploit scale economies going forward.

THE CHALLENGES OF VACCINE DISTRIBUTION AND SOLUTIONS UNDERWAY

Vaccine design, production and distribution have historically been concentrated in wealthy countries because developing country markets are less profitable, and their populations are harder to reach. Decades-long lags exist between advanced and developing countries in broad-based inoculation programmes for contagious diseases like measles and smallpox.[4] The high costs of reaching children in remote areas have meant that one in ten children globally do not receive any vaccines, nearly all in developing countries.[5]

To support access in developing countries, the vaccine alliance Gavi is ready to help fund and distribute COVID-19 vaccines through the joint COVID-19 Vaccines Global Access (COVAX) Facility. To date, Gavi has aided the routine inoculation of more than 750 million children through price negotiation, purchase and supply chain support, primarily in Africa and South Asia. COVAX is an alliance of countries to pool resources and share effective COVID-19 vaccines, with developing countries receiving a discount. It functions like an insurance policy for advanced countries by providing improved access to vaccines from other signatories if theirs are proven effective first or are more effective, while granting better access for poor countries through bulk purchases and donations. Supporting the elimination of contagious diseases globally through such an alliance is in the interest of all nations. This vaccine-sharing agreement is a critical part of any solution and will help developing countries gain early and better access to a range of vaccines.

4 https://ww2.gatesfoundation.org/ideas/articles/coronavirus-gavi
5 www.who.int/mediacentre/news/releases/2017/infants-worldwide-vaccinations/en/

COVAX alone, however, does not guarantee wide and rapid vaccine distribution or elimination of the risks of vaccine nationalism. The alliance has not prevented rich countries from placing direct advanced orders with manufacturers,[6] absorbing the bulk of capacity and pushing prices up. Nor does it prevent against export restraints, like those that affected protective personal equipment (PPE). Once a successful vaccine is created, there would be no mechanism to ensure vaccine-producing countries share the scarce early doses. Adding to the tensions, some countries are bearing a greater burden in development costs and the requirements for essential workers even in one country can be large. For example, there are 55 million essential workers in the US alone,[7] including workers in healthcare, food, energy and the production and distribution of other necessities (but excluding teachers). Initial production of any successful vaccine is unlikely to cover more than 50 million people, as it will likely require two doses to be effective. With these and other concerns in mind, some major pharma-producing countries have thus far not signed up.[8]

In principle, lessons from trade treaties, with reciprocity and retaliation could help strengthen commitment. Some observers have proposed a COVID-19 vaccine trade and investment agreement that would do just that (Bollyky and Bown 2020). While theoretically appealing, a trade treaty will be difficult to achieve in the limited time frame. Treaties take a long time to negotiate. The most recent global trade treaty, the Trade Facilitation Agreement, took 20 years to negotiate; negotiations on fish subsidies (which suffer a similar 'tragedy of the commons' problem) are in their 19th year. Further calling into question the wisdom of pursuing a trade treaty now is the current environment for multilateral cooperation at the WTO, which is decisively low. Precisely because public safety is the priority of any government, there have always been carve-outs for health and national security in trade agreements. Even the best example of deep trade integration, the EU, could not prevent national export restrictions on PPE at the onset of the crisis.

In the absence of a binding global treaty, there are some practical and market-oriented steps to support the rapid and widespread distribution of a new vaccine. We propose three mechanisms below.

THREE STEPS TO SUPPORT COVID-19 VACCINE DISTRIBUTION

First, let the data flow. Unfettered data flows on critical medical and pharmaceutical goods, as well as regulatory practices, can make markets more efficient through reduced uncertainty and better information, as well as facilitate distribution. As soon as successful vaccines exist, information on volumes of supplies and key ingredients, as well regulatory processes, will be critical. The information-sharing agreement could be extended to other key pharma products over time, easing concerns about scarce medical supplies.

6 www.channelnewsasia.com/news/commentary/vaccine-politics-covid-19-us-trump-russia-china-covax-13094540
7 www.epi.org/blog/who-are-essential-workers-a-comprehensive-look-at-their-wages-demographics-and-unionization-rates/
8 www.ft.com/content/502df709-25ac-48f6-aee1-aec7ac03c759

A lesson from the food price spike after the 2007/08 financial crisis was that the absence of information and resulting uncertainty exacerbates fear and domestic protection and hoarding. The G20 created the Agriculture Markets Information System (AMIS) in 2001 to ensure that crop information is shared. The initiative helps to maintain stability in global food markets "by enhancing food market transparency and by promoting policy dialogue and coordination". Earlier this year when Ukraine, Russia and Vietnam imposed export restrictions on grains and rice, the ample supplies recorded in AMIS reassured markets; the restrictions were calibrated, and others did not follow.

It is difficult to find reliable data on necessary medicine production. For example, in recent testimony to Congress,[9] US FDA officials report that China accounts for 15% of facilities for active pharmaceutical ingredient (API) production for 370 essential drugs. Similarly, a 2017 EU report on China's pharmaceutical industry states that China accounts for 20% of the global production of APIs (European Commission and WHO 2017), while a UK government industry report from the same year notes that China accounts for 40% of these critical ingredients (MHRA 2017). Knowing what essential goods are produced and by whom can reduce uncertainty, reduce price volatility, and prevent hoarding – all of which will facilitate distribution.

The annual development of the flu vaccine shows that international cooperation on vaccines is feasible.[10] National labs routinely cooperate on surveillance and information sharing and meet regularly to ensure that the most common and severe strains are included in the national flu vaccines through WHO's Global Influenza Surveillance and Response System (GISRS). In addition, the Pandemic Influenza Preparedness Framework (PIP) allows countries to share virus strains to develop vaccines in exchange for helping to supply developing countries. These facilities can be leveraged for information sharing on COVID-19 vaccines and related materials, with resources devoted to supporting developing countries.

Given the predominance of China, the EU, and the US in vaccine development (all but one of the drugs in phase 3 trials are from these three markets),[11] better sharing of regulatory procedures and data across these countries alone would provide for quicker approvals. One detailed study of vaccine approvals across ten countries finds "a high degree of divergence in numbering structure and content requirements" of application forms (Dellepiane et al. 2018). The study concludes that the divergence leads to delays in vaccine access. Rather than duplicate regulatory procedures, if all or some of the process can be accepted from foreign countries, this would speed up access. Going further, a move towards mutual recognition or convergence in standards could yield even better health outcomes. For example, since May 2014, a Mutual Recognition Agreement[12] between the US and the EU has allowed drug inspections conducted by capable foreign authorities

9 www.fda.gov/news-events/congressional-testimony/safeguarding-pharmaceutical-supply-chains-global-economy-10302019
10 https://tradevistas.org/global-flu-covid-19-vaccine/
11 https://www.nytimes.com/interactive/2020/science/coronavirus-vaccine-tracker.html
12 https://www.fda.gov/international-programs/international-arrangements/mutual-recognition-agreement-mra

to be recognised, preventing costly duplication and a better allocation of resources. For countries without pharma production capabilities, unilaterally accepting regulatory approvals from key producing countries, such as the US or the EU, in advance could speed up access to COVID-19 vaccines.

Second, put the world's supply chain on alert. Distribution will require careful storage and handling, These are not t-shirts. An unprecedented number of fragile vials of medicine will require refrigeration – most of the vaccine candidates will need to be stored in cold temperatures, and some, like ice cream, at temperatures as low as -80° Celsius.[13] The world's supply chain will need to get into high gear to successfully maintain and carry out a 'vaccine cold chain' capable of getting vials to billions of people, in urban and remote areas. The CDC recently updated its vaccine storage and handling guidelines[14] in July to describe a vaccine cold chain – a temperature-controlled supply chain that includes all vaccine-related equipment and procedures. Strengthening the supply chain will also help ensure that the needed inputs can get to the manufacturers.

The world's supply chain deals with the flu vaccine each year, but on a rolling basis across seasons. There are six months between the flu seasons in the Northern and Southern Hemispheres. In contrast, once a vaccine is found, the demand will be instantaneous and global. Even in the US alone, the 169 million doses of flu vaccine were administered across several months, according to CDC data. WHO estimates that of the nearly 20 million children around the world who failed to receive routine immunisation, most were in rural areas with weak medical supply chains.[15]

The good news is that the world has existing and powerful mechanisms to help meet COVID-19 distribution needs, at least at the border. The WTO's Trade Facilitation Agreement (TFA)[16] went into effect in 2017 and aims to reduce border costs and delays. The key provisions of the TFA are on expedited shipments and perishable goods which reduce paperwork, ensure quick release of goods, provide for proper storage facilities and ensure facilities can be operated outside of normal hours. The Agreement also allows for technical assistance and capacity building and spawned the WTO's Trade Facilitation Agreement Facility, which assists developing and least developed countries in implementation. Leveraging this assistance, with special attention to medical shipments, can help countries ensure essential supply chains flow seamlessly through the border.

Once through borders, vaccines will also need to be transported across the country, requiring the cold chain to continue. Investing in cold supply chains now will help ensure a more rapid spread of vaccines.

13 www.wsj.com/articles/covid-19-vaccine-race-turns-deep-freezers-into-a-hot-commodity-11599217201?mod=hp_lead_pos6
14 www.cdc.gov/vaccines/pubs/pinkbook/vac-storage.html
15 www.who.int/news-room/fact-sheets/detail/immunization-coverage
16 www.wto.org/english/tratop_e/tradfa_e/tradfatheagreement_e.htm

Third, streamline key provisions in the TRIPS Agreement. While the immediate challenge for a viable vaccine will be manufacturing capacity and distribution, over time continued and affordable access could be hindered by overly complex rules on intellectual property.

In general, the TRIPS agreement allots a minimum of 20 years of protection to patent holders in WTO member countries. While patents promote innovation by raising returns, new treatments and vaccines are often too expensive for many of the world's poor. A few key provisions in the agreement exist to ensure the world's poor have access to life-saving medicines and vaccines. Article 31f of the Agreement allows for compulsory licensing for domestic use and was designed to solve the access problem in poor countries. This flexibility however does not necessarily address access problems for countries with no productive capacity. For example, a pharma-producing country like India can use 31f to produce its own critical medicines; but for Mali, the Article is of no practical use because the country lacks production facilities.

To provide access for non-producing developing countries, a 2003 provision (ratified in 2017 as Article 31bis) allows manufacturers authorised by a compulsory license issued by governments in their countries to export generic pharmaceutical products to eligible importing members for public health problems. To protect the intellectual property of pharma innovators, the provision contains specific requirements to prevent re-exporting. As a result of trying to achieve these two contradictory goals – easy access for developing countries to meet health needs but in *limited* quantities to prevent re-exporting – the provision has become overly complex and ineffective.

Both the importing and exporting members are required to submit extensive documentation, and the exporter is required to run a special production line, using a different colour to protect against transhipment. The importing country market alone is often too small to justify production and there is no simple mechanism for importers to band together to allow for scale economies. For the importer, implementation requires technical expertise, intergovernmental coordination and legal sophistication (Halajian 2013), which are often lacking in precisely those developing countries in the greatest need of lifesaving drugs that they cannot produce domestically. There is also fear of retaliation from powerful advanced countries and large pharma companies. Evidence of the provision's weakness is that the 17 year-old mechanism has been used exactly once, by Rwanda to import HIV/AIDS drugs from Canada, and resulted in a higher price than what would have been feasible from India (Hestermeyer 2017).

A balancing act

The rationale for patent protection is to provide incentive for research and development. Governments strive to balance such incentives with technological dissemination. The balance is a hard one to strike and well-informed academics and observers often come to different conclusions on where the needle lies. Patent protection also pits developing countries, favouring widespread dissemination, against advanced countries, seeking to protect their innovators. TRIPS was a sticking point on the original agreement establishing the WTO. Only when developing countries secured a ten-year implementation period did they reach agreement. Later the implementation periods were extended further (see Table 1 in WHO 2017).

TRIPS Article 31bis provides a key mechanism to facilitate better access to life-saving drugs in poor countries. But it must be simple enough to function well in practice. Streamlining requirements for compulsory licensing and exporting and providing a simple mechanism for developing countries to come together as a group could facilitate access to life-saving drugs and vaccines over the medium run. The strong financial performance of the global pharma industry in the decades since TRIPS (characterised by excess market returns, increasing concentration,[17] and evidence of monopoly pricing[18]) suggests the risk to the pharma industry of these simplifications would be minimal.

Some pharma companies have stated they will sell COVID-19 vaccines at cost[19] and there is a reputational risk of reneging. The proposed simplification of the licensing agreement could serve as a guarantee that they follow through on their commitments. For example, Brazil, which has extensive pharma capacity, has used the threat of compulsory licensing (through Article 31f) on other drugs to negotiate better prices (Wong 2020). While compulsory licensing works for countries with manufacturing capacity, the importing countries without pharma capacity are left out. Easing the use of the export provision (Article 31bis) would give these countries some leverage to negotiate prices. This provision will become more pertinent for vaccine distribution over the medium run as manufacturing capacity is limited in the short run and highly concentrated in a handful of countries.[20] Also, the provision could be more critical for pharmaceutical treatments that are likely to be easier to produce as generics.

CONCLUSION

Scores of vaccine candidates are at different stages of development around the world and it could be a few years until production capacity meets global demand. The COVAX alliance will help facilitate vaccine sharing with frontline health and essential workers around the world. Multilateral Development Banks are stepping up to support vaccine purchases and distribution as well.

But that will not be enough. The trade community will also need to support better access to vaccines, and by doing so help prepare for future health emergencies. The WTO Secretariat and other international institutions can work to put forth recommendations

17 www.pharmaceutical-technology.com/features/top-pharmaceutical-companies/
18 www.bloomberg.com/news/articles/2020-08-25/big-pharma-needs-a-covid-19-vaccine-to-redeem-its-reeling-reputation?srnd=premium
19 www.wsj.com/articles/pharma-companies-split-on-coronavirus-vaccine-pricing-plans-11595367562#:~:text=Officials%20from%20AstraZeneca%20and%20Johnson,prices%20exceeding%20their%20manufacturing%20costs.
20 https://cepi.net/news_cepi/cepi-survey-assesses-potential-covid-19-vaccine-manufacturing-capacity/

on transparency and information sharing on key pharmaceutical products, starting with vaccines and regulatory processes. WTO members should continue to leverage the existing TFA and implementation assistance to ensure that vaccines and other medical goods move seamlessly and quickly through borders. Finally, the WTO Secretariat should find ways to simplify TRIPS Article 31bis to facilitate drug and vaccine provision for poor countries, at least for COVID-related medical treatments. Members themselves should take similar steps towards transparency and information sharing and prepare their respective supply and logistics networks for the required vaccine distribution procedures.

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ABOUT THE AUTHORS

Caroline Freund is Global Director for Trade, Investment and Competitiveness at the World Bank.

Christine McDaniel is a Senior Research Fellow at the Mercatus Center, George Mason University.

CHAPTER 12

Lessons from the pandemic for FDI screening practices

Xinquan Tu and Siqi Li

University of International Business and Economics

In recent years, there has been an expansion of FDI regulatory regimes in host countries, with various policy instruments at their disposal to exercise sovereign rights to regulate the entry and establishment of FDI on their territory, including business registration and approval requirements, as well as the full or partial prohibition of FDI in certain sectors of the economy. Among these instruments, countries mainly manage the sensitivity surrounding certain types of FDI through some form of investment screening process. This process would usually be triggered when a foreign acquisition involves certain strategic sectors, critical infrastructure or technologies. An investment may require prior notification and a government screening process that might consider the nature of transaction and its impact. The outcome might be a block on the transaction or the implementation of mitigating measures, such as compulsory supply commitments.

More and more economies have tightened their FDI screening mechanisms to allow the government more leeway to review FDI transactions. According to UNCTAD, at least 29 countries have a specific FDI screening mechanism in place, and a number of countries that have traditionally been seen as open to FDI have moved towards stricter FDI scrutiny. For example, the US recently enacted the Foreign Investment Risk Review Modernization Act (FIRRMA), designed to address evolving national security concerns. Canada, Australia and Germany have accelerated the process in tightening FDI regulations, while the EU recently introduced a new framework for the FDI screening at the EU level. Meanwhile, the UK and Switzerland intended to introduce standalone FDI screening mechanisms for the first time.

In the above context, this chapter specifically focuses on the latest FDI screening policy changes taken by governments during the COVID-19 pandemic, aiming to putting forward policy responses that should be considered under the WTO framework. The rest of the chapter is organised as follows: first it offers an overview of the strengthened FDI screening worldwide during the COVID-19 pandemic; this is followed by policy considerations specifically for establishing a work programme on investment screening in the WTO.

STRENGTHENED FDI SCREENING DURING THE COVID-19 PANDEMIC

The COVID-19 pandemic has accelerated the trend towards increased FDI screening, placing further constraints on already depressed global FDI.[1] The rationale for implementing stricter FDI screening during the pandemic is threefold. First, there is rising concern that the economic slowdown during the COVID-19 pandemic has increased the risk of attempts by foreign investors to acquire critical capacities (e.g. healthcare capacities) or related industries such as research establishments (e.g. vaccine development) via 'opportunistic' or 'predatory'acquisitions .

Second, the economic turmoil has not only brought businesses that are critical to combatting the pandemic into the focus of FDI, it has also weakened other businesses with strategic importance and made them easy targets for foreign takeovers. Third, the inability to produce sufficient quantities of critical supplies and global supply chain disruptions left many countries unprepared for this pandemic. Experiencing first-hand what was previously viewed by many as a hypothetical threat to society's welfare at large has led governments worldwide to propose more prudent FDI policy on the grounds of national security and public order. Based on these considerations, countries have intensified FDI screening by strengthening their current legal frameworks or introducing new ones. It now appears that some countries have tended to adopt a much broader 'national security and public order' concept with wider economic and social concerns triggered by COVID-19, especially in relation to medical devices, pharmaceuticals, personal protective equipment, critical food supplies and advanced technologies.

In the above context, many countries have made changes to their FDI screening regulations during the pandemic. Some have made temporary amendments to screening mechanisms to directly respond to the pandemic (e.g. France, Italy, Poland, Hungary, Australia, Canada, the US and New Zealand); some have made permanent changes to screening mechanisms in relation to the new situation (e.g. Germany, Spain, Austria, Japan, New Zealand); and some have accelerated reforms of FDI regimes that were already underway before the pandemic hit (e.g. Germany, the Netherlands, the UK). At the regional level, the European Commission issued a "Guidance to Member States" urging them to "make full use" of existing FDI screening mechanisms "to take fully into account the risks to critical health infrastructures, supply of critical inputs, and other critical sectors" or "to set up a full-fledged screening mechanism"if a member state does not have one in place.

Although amendments to FDI screening mechanisms vary by country and considerable country-specific differences continue to exist and impact the degree to which FDI is subject to screening, the changes concerning these distinct FDI screening mechanisms tend to share several features:

1 According to the OECD (2020), even if economies begin recovering in the second half of 2020, FDI flows are expected to fall more than 30% from 2019 levels.

- The tightened FDI screening generally covers a wide range of strategic sectors that go well beyond the traditional military and defence sectors. Economies tend to increase scrutiny of much wider strategic areas, especially sectors that are crucial to fighting the pandemic (e.g. health-related sectors and associated supply chains), as well as strategic industries and critical infrastructure that may suffer from temporary financial stress and value distortions due to the economic downturn associated with the pandemic (e.g. energy, water, transportation, telecommunication, mineral resources, media). In addition, security-related FDI screening has been considered to control the access of foreign investors to advanced technologies (e.g. artificial intelligence, robotics, semiconductors, cloud computing, 5G, quantum technology, computing hardware, nanotechnologies, biotechnologies or satellites and aerospace) and domestic citizens'sensitive data. For example, Italy expanded the scope of FDI screening to the financial, credit and insurance sector and also temporarily applied it to foreign acquisitions from within the EU.

- Tightened FDI screening generally lowers the thresholds for scrutiny or broadens the definition of FDI subject to scrutiny, increasing the risk of regulatory review in a wide range of sectors or activities. For example, Australia temporarily lowered the monetary screening threshold to zero for all foreign investments to "protect Australia's national interest". France temporarily lowered the screening threshold for acquisitions from the previous 25% to 10% of voting rights. Canada enhanced the scrutiny of FDI of any value, controlling or non-controlling, in Canadian businesses that are related to public health or involved in the supply of critical goods and services to Canadians or to the government. New Zealand applied the national interest test to any foreign investment, regardless of value, that results in more than a 25% ownership interest or that increases an existing interest to (or beyond) 50%, 75% or 100% of a New Zealand business. In addition, certain types of foreign investors may suffer stricter scrutiny due to their nationality or state-ownership. For example, the FDI regimes of certain EU member states (e.g. France, Germany and Spain) contain stricter rules for non-EU/EFTA investors. Also, certain foreign acquirers (e.g. state-owned or state-controlled companies) are more likely to trigger FDI screening and face higher substantive risks due to the concerns that their explicit or implicit state backing may give them non-commercial motives to acquire assets with essential strategic importance. For example, Canada explicitly stated that the scrutiny of FDI from state-owned enterprises or from private investors assessed as being closely tied to, or subject to direction from, a foreign government will be enhanced. France and Spain stated that the FDI review should take into account whether an acquirer is directly or indirectly controlled by a third-country government.

- Tightened FDI screening generally triggers a longer review period and onerous disclosure obligations. Given the increased sensitivity of government authorities to foreign investment, the FDI transactions may be significantly prolonged due to extended review timelines. For example, the review process usually takes between four and six months in France, Germany and India. As a result of the COVID-19 crisis, some economies decided temporarily not to accept new notifications or to extend their statutory review period (e.g. Australia extended the time frame for the screening procedures from 30 days to six months). Meanwhile, the FDI screening generally requires relevant parties to provide an extensive amount of information to government authorities. In certain economies (e.g. Italy), the transaction process could be stopped until the requested information is properly provided and reviewed.

- The tightened FDI screening rules are often drafted very broadly in a way that leaves discretion to government authorities, who are able to pick and review transactions according to their policy interest. For instance, many economies do not clearly define key concepts (such as "national defence", "key infrastructures", "media", etc.) and/or have open-ended provisions. As a result, the outcomes of FDI screening are more unpredictable than merger control reviews, with broader discretionary governmental powers and less transparency in procedures and decisions.

- Tightened FDI screening generally introduces stricter sanctions. New administrative, civil or criminal penalties for not fulfilling or circumventing notification and screening obligations have been introduced, including heavy fines, prohibiting deals and/or criminal sanctions. For example, under the Australian FDI screening mechanism, individuals may be imprisoned for up to three years; under the new Spanish FDI screening mechanism, the sanctions include the imposition of a fine of up to the value of the transaction.

Looking ahead, the COVID-19 pandemic is likely to have lasting effects on FDI policies worldwide, giving rise to a conflict between the need to protect the most vulnerable sectors of the economy from opportunistic and predatory acquisitions on the one hand, and the need to continue welcoming FDI to contribute to economic growth on the other. However, the trend for countries to strengthen FDI screening has proved to be stronger in the current pandemic period. As illustrated above, economies with large inward FDI have strengthened their current regimes or introduced new ones to prevent potential acquisitions of sensitive assets that are currently critical for combatting the pandemic or that are exposed due to pandemic-related devaluation. Some of these FDI screening measures are the result of long-planned reforms, independent of the COVID-19 pandemic, while others are in direct response to the pandemic.

A WORK PROGRAMME ON INVESTMENT SCREENING

It appears that the global FDI landscape is being affected against a backdrop of amplified FDI screening measures worldwide, making international coordination more important. Cooperation in the WTO and dialogues within global governance forums, such as the G20, are much more promising than simply building new hurdles to investment, since consistent international principles and standards are vital to underpin the efficient flow of capital to investment opportunities. In this regard, it is essential to launch a work programme on investment screening in the WTO that complements existing investment facilitation discussions, making efforts to initiate constructive dialogues and facilitating consensus on a baseline set of principles and rules to ensure the predictability, transparency, simplicity and equity of the legal and administrative requirements on FDI.

- First, the aim of a work programme on investment screening, which is to develop a framework of rules coordinating the legal standards and administrative procedures related to countries' FDI approval processes, should be well defined. In this regard, it is critical to facilitate understanding and consensus on the purpose of and criteria for FDI screening. An overly broad interpretation of the purpose of FDI-related screening would significantly broaden the possibilities of such screening, thus creating new investment barriers. Currently, the widely used screening purpose of 'security or public order' covers a broader and more economic notion of security, comprising industrial policy as well as geopolitical and economic considerations. It is important to facilitate discussions on the definition and limitation of the scope of such wide 'security or public order' interests through the launching of a work programme.
- Second, the operation of a work programme on investment screening requires more systemic information management. One of the challenges is how to collect, organise and disseminate the wealth of available information. The WTO should serve as a key information hub on FDI regulatory matters, based on its existing experience as a venue where notifications are collected and trade policy reviews are conducted. Existing attempts, such as the WTO Secretariat compiling trade and trade-related measures during the COVID-19 pandemic complementary to WTO members' notifications, is a step in the right direction, but needs to be more systematic and with more focus on investment policies. The WTO could also cooperate with external sources (e.g. the Global Trade Alert) to enrich and improve the policy database. Transparency would be improved through more surveillance of new developments in foreign investment policies of WTO members by devoting more efforts to information compilation and management, and best practices would be identified through more information sharing.

- Third, the effectiveness of a work programme on investment screening would be dependent on strengthening the role and impact of the work of the WTO Committees. A special Working Group in the WTO could be established with a specific focus on FDI screening issues and incorporated into the existing investment facilitation work programme or created as a separate agenda. The chair of this special Working Group should receive sufficient support from the WTO Secretariat and the relevant Committees to gain political momentum to proceed with its work. In addition, external expert workshops, attended by delegates, business groups, academic scholars and representatives of international organisations, could be organised regularly to inspire open and frank discussions outside the formal negotiation setting.

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ABOUT THE AUTHORS

Xinquan Tu is Professor and Dean of the China Institute for WTO Studies, University of International Business and Economics, Beijing.

Siqi Li is Associate Professor at the China Institute for WTO Studies, University of International Business and Economics, Beijing.

CHAPTER 13

Feminising WTO 2.0[1]

Mia Mikic and Vanika Sharma
United Nations Economic and Social Commission for Asia and the Pacific (UN ESCAP)

INTRODUCTION

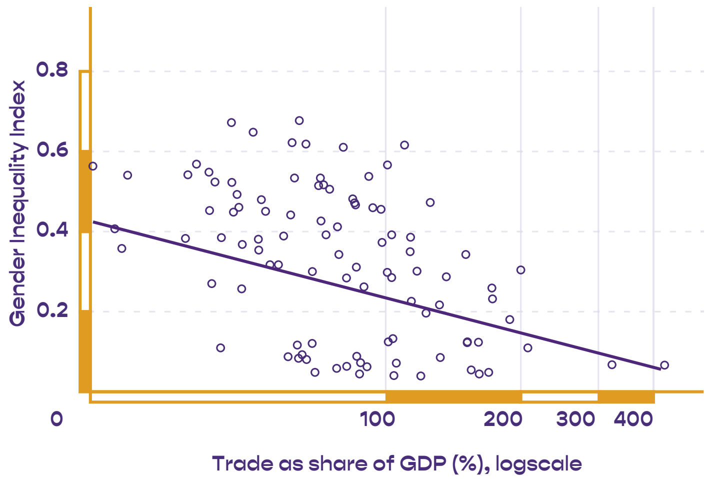
This could have been an essay about 2020 being the right year to select a woman at the helm of the WTO Secretariat. After all, the WTO – one of the youngest international organisations – has never had a woman as its Director-General (DG), and it appears that even at the deputy level, all but one were men. With the process of selecting a new DG now in full swing, and with all three women candidates still in the running,[2] there is now more than a 50:50 chance for the WTO to establish a 'new normal' in 2020 with a woman leader at its helm. Why does this matter? Apart from the obvious reason (because it is time), existing literature on management and leadership and anecdotal evidence collected since the onset of the COVID-19 pandemic indicate that women are more effective leaders[3] and managers in times of challenge. With much already written about the attributes and features (Crosby 2020) to be embodied by the next WTO DG, the Tradeexperettes have written an excellent commentary summing up the reasons in favour of selecting a woman for this job (Sokolova et al. 2020).[4]

In this chapter we ask not what women can do for the WTO, but primarily what the WTO can do for women (admittedly these two processes might be co-dependent and definitely reinforce each other). There is vast evidence that trade, and in particular opening up to trade, has contributed immensely to the economic empowerment of women, and to their (and their children's/families') improved quality of living, education, health, and so on, as summed up in the negative relationship between trade as a share of GDP and gender inequality (Figure 1). However, there is also substantial evidence that much more needs to be done.[5]

1 The views expressed by the authors of this chapter are their own and may not be interpreted as being those of ESCAP or the United Nations.
2 At the time of writing!
3 See more in Garikipati and Kambhampati (2020)
4 Apart from the need to close the gender gap in leadership positions in the international organizations, this blog also states that in times of difficulties and challenges, it is more likely that a woman is given the helm (perhaps fewer men are willing to take the job?). Lastly, it is argued that it should simply be a necessary sign of being aligned with changes happening around the world.
5 See the details in World Bank and WTO (2020)

The purpose of this chapter is to identify specific areas where the current WTO 1.0 working programme on women and trade can be upgraded in order to make it fit to deliver women's economic empowerment by explicitly adopting gender equality in the WTO and its trade agreements.

FIGURE 1 ECONOMIES RELYING ON MORE TRADE EXHIBIT LOWER GENDER INEQUALITY



Source: Figure 0.4 in World Bank and WTO (2020).

THE SCOPE OF THE WTO1.0: WHAT IS THERE FOR WOMEN?

The Marrakesh Agreement[6] of 1994 stipulates that the WTO "shall provide the common institutional framework for the conduct of trade relations among its members in matters related to the agreements and associated legal instruments included in the Annexes to [Marrakesh] Agreement", referring to the agreements on trade in goods, services, trade-related aspects of IPRs, dispute settlement, trade policy review, and the four plurilateral agreements that existed at the time. Since then, the scope has enhanced to include the Trade Facilitation Agreement. Over the period of 25 years of WTO operations, members have been able to add – mostly through the Ministerial Conference decisions – additional topics to the work programme in the special committees or working groups, such as cross-cutting and new, but often deemed as 'non-trade', issues that are not necessarily seen as leading to negotiations. These include regional trade agreements, the environment, e-commerce, investment facilitation, competition policy, government procurement, small business and trade, trade finance and *women and trade*. It has to be noted that several of these were added through Ministerial decisions on new initiatives at the closing of the 11th Ministerial Conference in 2017.

6 Read the full text at https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm

Specifically, the 11th Ministerial Conference introduced the initiatives[7] on e-commerce (in addition to the already existing work programme), investment facilitation and MSMEs (with the first two now progressing in negotiation form), as well as the Buenos Aires Declaration on Trade and Women's Economic Empowerment.[8] This was the first time that members issued a declaration calling for greater inclusion of women in trade. So far, 127 members and observers have agreed to support the Buenos Aires Declaration, which seeks to remove barriers to, and foster, women's economic empowerment.[9] While the initiatives on e-commerce or investment facilitation have been converted from structural discussion to negotiations, members have been very inactive with respect to the Buenos Aires Declaration. Only very recently (23 September 2020) was an Informal Working Group (IWG) on trade and gender formed, following a proposal from Iceland and Botswana. The first meeting of this IWG is planned for the second half of 2020, with the expectation that this meeting will also establish a schedule of activities and themes for the discussion before the 12th Ministerial Conference (in 2021). In the meantime, the IWG will support the objectives set in the Declaration focusing on:[10]

- Sharing best practices and information, and exchanging views on removing trade-related barriers for women to increase their participation in trade
- Clarifying what a 'gender lens' as a concept applied to international trade would entail and how it could usefully be applied to the work of the WTO, with the aim of presenting a concept and a work plan to the members at the 12th Ministerial Conference
- Reviewing and discussing gender-related analytical work produced by the WTO Secretariat and
- Exploring how best to support the delivery of the WTO Aid for Trade work programme.

Prior to this, the activities related to the Buenos Aires Declaration had included the WTO Secretariat's announcement in June 2017 that it had appointed the Gender and Trade Focal Point under which the Secretariat announced that it will frame and structure its actions based on four objectives:[11] (1) raising awareness on the link between trade and gender; (2) facilitating WTO members' action on trade and gender; (3) generating new data on the impact of trade on women; and (4) providing training to government officials and to women entrepreneurs.

7 The full details of the initiatives can be found at https://www.wto.org/english/news_e/news17_e/minis_13dec17_e.htm
8 Read the full text at https://www.wto.org/english/news_e/news17_e/mc11_12dec17_e.htm
9 According to https://genderchampions.com/impact/trade as cited in WTO (2020).
10 See the full text of the proposal in the WTO (2020).
11 This resulted in the development of a dedicated training module on trade and gender for government officials, which has been in use since 2019. Several papers were published providing more information on the linkage between trade and gender and these are referenced in this chapter.

The WTO Secretariat also issued a self-congratulatory[12] report on "Women in the WTO: Gender Statistics (1995-2016)", which shows huge gaps in the engagement of women in decision making and in roles potentially influencing the core functions of the WTO (that is, in chairing WTO bodies, panels and working groups). Notably, compared to only 18% of women at the director level within the Secretariat, 23% of the 169 heads of the delegations of the members were women. At the same time, the staff of the WTO came from a pool representing 35% of members, demonstrating that inclusivity based on geography is much stronger than that based on gender.

MAKING TRADE INCLUSIVE DOES NOT NECESSARILY MEAN MAKING IT GENDER-SENSITIVE

Many would think that with the introduction of the Sustainable Development Goals and even more so with the notion of 'inclusive trade', which is a cover-all term implying fairer distribution of benefits from (free) trade, there would be no further need to discuss concerns of gender equality and inclusion of women in trade separately.

However, given the clear gains from trade for women, but also the very unique set of challenges they face in trade and trade policymaking, it is important to analyse both concepts through a more specific gender lens, and not just through a lens of inclusivity. Although an 'inclusive trade' approach includes in its ambit gender equality, it also encompasses many other dimensions such as geographic inclusion, inclusion based on social grouping (race, ethnicity, people with disabilities), inclusion based on socioeconomic class, and so on. On the other hand, a gender-sensitive response is about looking at the differentiated impact that a policy, strategy, programme or action may have on men and women. It goes beyond just developing programmes targeted at women to look at how might a policy be designed so that it addresses the very specific challenges that women face in participating in international trade through the different roles they play (in contrast to men) and to ensure gender equality.

To further elaborate on the difference between inclusiveness and gender mainstreaming, one can look at how inclusiveness might be measured. The Annual Inclusiveness Index created by the Other & Belonging Institute at UC Berkley measures global inclusion and marginality (Other & Belonging Institute 2019). In order to do so, it looks at six domains: out-group violence, political representation, income inequality, antidiscrimination laws, rates of incarceration, and immigration or asylum policies. For each domain it selects indicators for measuring how different demographic subgroups (genders, LGBTQ

12 Despite having no women in the top three levels of management for the first two decades of its operations, and only five women in director posts (compared with 23 men), the report concluded that "the WTO has been making progress on improving gender balance in several areas. Notably, it has achieved a relatively good balance in the WTO Secretariat and the numbers of women in more senior grades is improving. While there still remains room for improving the participation of women in the WTO, this report stands testament to the significant contributions of women in strengthening the multilateral trading system" (see detailed statistics in WTO 2017). The Secretariat has been gathering data and statistics on gender parity in the WTO on an annual basis since 2018.

populations, racial and ethnic subgroups, etc.) fare. In looking at trade inclusivity the same way, we might for instance be able to define inclusiveness based on a composite index of indicators such as gender equality, racial and ethnic equality, socioeconomic (income) equality, and so on. Based on these, if trade policy was formulated, for instance, to be inclusive of race and ethnicity as well as socioeconomic status, but affected gender equality negatively, the inclusiveness index would still move in a positive direction, without specifically pointing out the negative impact on gender equality. Inclusivity thus is not a perfect reflection of a trade policy's effect on the inclusion of different subgroups, including genders. An illustration is provided in an ESCAP study on trade facilitation policies affecting different subgroups differently (ESCAP 2013). Although they can generally be expected to have a positive effect on the inclusiveness of trade by making it easier for small traders and firms to participate, in reality due to their confinement to a certain geographical or sectoral area, which might be inaccessible to women, they may not be beneficial for women.

Women's gains from trade can be maximised through relevant policy changes and accounting for the impact of a trade policy on both men and women. The significance of continuously pushing for gender-sensitive trade policies is also highlighted through instances of certain resource-rich countries reaching high-income status without involving women in the workforce. In this regard, it then comes down to the political will of the government to keep fighting for gender equality in the economy, which they can enforce through trade policies with a gender lens.

PROVISION IN TRADE AGREEMENTS RELEVANT FOR WOMEN [13]

The WTO multilateral trading system operates by setting trade rules. Thus, to understand the impact of these rules on women and for women, one has to go through the body of the WTO trade agreements. Fortunately, Acharya et al. (2019) undertook such an investigation relatively recently and for the purposes of this chapter, it suffices to refer to the results of their study. These are their conclusions:

1. The research finds that the WTO trade agreements are gender neutral[14] and that "they make a positive contribution to creating a level playing field and a fertile ground for women's economic activity".
2. Furthermore, the research finds that if the member states of the WTO wish to pursue policies to empower women through trade, the WTO trade agreements do not stand in their way. Specifically, there are three main channels to achieve that:

13 This section is based on the review of literature, in particular on gender-related provisions in WTO trade agreements provided in Acharya et al. (2019) and in regional trade agreements provided in Monteiro (2018) and ITC (2020).

14 According to the Cambridge Dictionary, 'gender neutral' is defined as something relating to people and not especially to men or to women. However, as if not known from before, the COVID-19 pandemic's clearly differentiated impacts by gender (at the expense of women) bring into doubt how useful this 'gender neutral' approach is (WTO 2020). Likewise, Scott (2020) debunks the 'gender neutral' plans of businesses in the trade sector as not working.

a. Governments can use the ample policy space negotiated by members in the WTO agreements. As examples of such *policy space*, authors point to members being able to use different measures such as "training and teaching activities targeted at empowering women without coming under the purview of specific WTO rules."
b. Governments can use provisions pertaining to transparency and related areas in order to *assist* businesses identified as women-led.
c. Governments can also *explore* using non-discriminative but still substantive measures with the impact of enhancing market access for women.

The most important finding of this research[15] is that the WTO trade rules framework is such that it allows its members (*if they so wish*) to pursue their policies of women empowerment through trade without breaching their WTO obligations.

In fact, der Boghossian (2019a) reports that between 2014 and 2018, about 70% of the 111 members who submitted the Trade Policy Reviews had used at least one trade policy targeting women's economic empowerment.[16] In addition to a majority of the members incorporating women's empowerment in their trade strategies, the most frequent 'landing zones' for the measures and policies in support of women's empowerment come under financial and non-financial incentives to the private sector and women-owned/led MSMEs; agriculture and fisheries and government procurement.

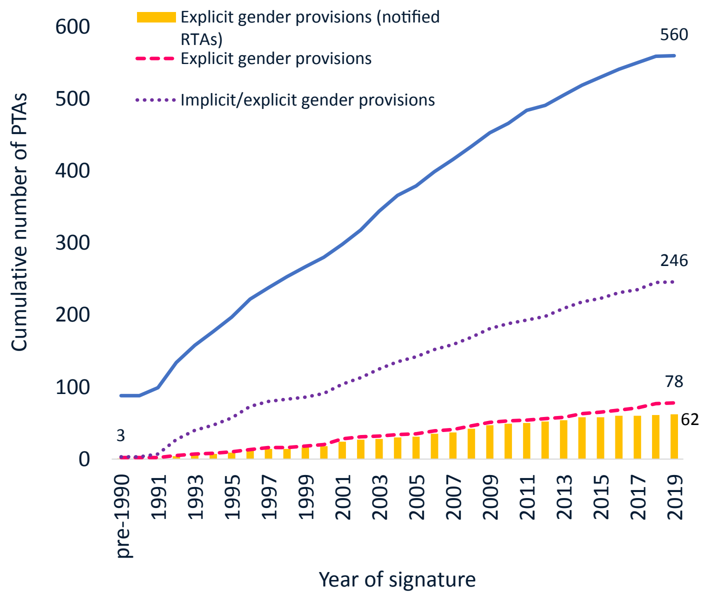
Another set of trade agreements that influence women's empowerment through trade are regional trade agreements (RTAs), which are monitored by the WTO through the Transparency Mechanism and the Trade Policy Reviews Mechanism. Fortunately, another excellent study recently published on the extent and type of provisions in RTAs possibly impacting women is also available, as summarised below (Monteiro 2018, 2019, ITC 2020).

In contrast to the developments in rule making in the multilateral trading system after the establishment of the WTO, the number of RTAs not only increased exponentially and expanded from regional to inter-continental membership, but more importantly evolved in terms of their substantive cover and depth of liberalisation. Some analysts have suggested that as the WTO was increasingly seen as not 'fit for purpose' to meet the demands of members with respect to the depth and speed of liberalisation, and the inclusion of some important areas such as competition, members increasingly turned to RTAs instead. According to Monteiro (2018, 2019), the same is true for the instruments used to cover gender-related provisions in trade, as several can be found in the RTAs, especially in the last few years (coinciding with the introduction of the Sustainable Development Goals), as seen in Figure 2.

15 The authors also point to some limitations, especially to the need to include the impact of practices such as anti-dumping, import licensing, or customs valuation as well as the effects of domestic implementation of multilateral trading rules on women in trade and business.

16 Without interpretation of whether those policies are in conformity with WTO rules.

FIGURE 2 INCREASE IN RTAS WITH GENDER PROVISIONS



Source: Monteiro (2019).

According to Monteiro (2019), as of 2018, there were 78 RTAs with at least one gender-related provision (see Figure A1 in the annex for the list of all possible provisions), and the trend has intensified in the last three years with more and more RTAs adding detailed gender-related provisions or even specific chapters. Similarly, ITC (2020) analysed 73 agreements by 25 Commonwealth countries and found that about 60% have some gender-implicit provision (only 35% included gender-explicit language), leaving 40% without any reference to gender.

It is interesting to note that RTAs follow rather individual paths in setting these provisions, forming what has been dubbed a laboratory ground for growth of gender-specific provisions for trade agreements. As a result, we have a wide range of different approaches to the structure, placement, language and scope of these provisions. Still, it appears that the most favoured approach is to phrase the gender provisions in the context of cooperation, frequently also in the chapter dealing with development concerns. The remaining types of gender-related provisions, found in a fewer number of RTAs, cover issues "ranging from gender-related principles and international agreements to domestic policies, corporate social responsibility, transparency, and institutional arrangements".

BOX 1 HOW WOMEN WERE LEFT OUT IN THE POLICY RESPONSES TO COVID-19

The COVID-19 economic policy responses in Asia-Pacific so far have seen a strong focus on re-invigorating and providing fiscal stimulus to small and medium-sized enterprises (SMEs). This support has come in the form of subsidised loans with concessional interest rates, recovery grants, loan restructuring funds, credit guarantees, soft loans, and temporary tax exemptions. In Pakistan, several SMEs are also being offered deferment of their power/ electricity bills.

In terms of trade liberalisation policies, the COVID-19 responses have so far been modest. In Australia, for instance, the government is providing a credit facility to support exporters affected by the pandemic. China has increased tax rebates on exports, while the Reserve Bank of Fiji increased its Import Substitution and Export Finance Facility by FJ$100 million (US$47 million) to provide credit at concessional rates to exporters, large-scale commercial agricultural farmers, public transportation and renewable energy businesses. In Kazakhstan, the value added tax rate has been reduced from 12% to 8% until 1 October 2020 for the sector of trade entities, and tax incentives have been provided to support large trade and public facilities. In Myanmar, exemption for the 2% advance income tax on exports to the end of the fiscal year has been announced, while Pakistan has announced and distributed accelerated tax refunds to the export industry. The government in Republic of Korea announced a US$29.4 billion financial support for exporters and an extension of export insurance and guarantees (30 trillion won) (US$25 billion). A pre-emptive trade finance support of 5 trillion won (US$4 billion) was also undertaken. EXIM Thailand has measures in place to suspend debt repayment and reduce exporting burdens by increasing export value interest rates for the first two years by 2% per year and allowing exporters to use long- or short-term loans to increase business liquidity.

Apart from these examples, most countries in the Asia-Pacific have not outlined specific policies on trade liberalisation/support. From the list of these responses, it is obvious that none took notice of the need for a specific gender-differentiated response. The focus on SMEs could be treated as having a potentially positive impact on women since available evidence suggests that women tend to be concentrated in this sector. Moreover, for certain countries (for instance, Bangladesh), sector-specific data show a concentration of women in the garment manufacturing sector. One COVID-19 policy response in Bangladesh has been the allocation of a fund worth about US$590 million for the country's export-oriented garment industries. It is clear that a gender mainstreaming focus is missing from the policy responses so far.

Sources: The box is a summary of the data collected from various policy trackers to assess the economic and trade policy responses to the COVID-19 pandemic: OECD Policy Tracker; World Bank Investment Climate Policy Tracker; World Bank State Aid Policy Tracker; IMF Policy Tracker; GTA Policy Tracker; ESCAP Policy Tracker.

Several countries and regions, including the EU, New Zealand and the Pacific Alliance, are currently negotiating the possibility of including a trade and gender chapter in their RTAs, implying that the number of RTAs with a chapter dedicated to gender could increase. If the new types of gender-related provisions currently being proposed by the EU in the context of the modernisation of its RTA with Chile are any indication, the language and structure of gender-related provisions in RTAs are also likely to keep evolving and becoming more comprehensive and specific, as well as subject to dispute settlement. On the other hand, a few agreements (Canada–Chile, Canada–Israel and Uruguay–Chile) have already included trade and gender issues as specific chapters, covering issues such as gender-related standards, the harmonisation of gender-related legislation between parties, gender-related capacity building, technical cooperation on gender issues and potential impacts of the agreements on women (UNCTAD 2017). These can provide examples of how the WTO might incorporate gender issues into its agreements.

What we have learnt from the comprehensive research on women-related provisions in trade agreements allows us to offer some recommendations for moving forward in this area, not least to try to recover some of the ground lost due to the disproportionately negative impact of the COVID-19 pandemic on the economic and social status of women.

FEMINISING WTO 2.0: FIVE STEPS TO ADVANCE WOMEN'S INTERESTS IN THE WORLD TRADING SYSTEM

The answer to what the WTO can do for women depends on many factors currently at play in the global economy, and the outcome will not hang only on whether or not the new DG is a woman. After all, the WTO is a multilateral organisation, and as such it can only be as effective as its shareholders (i.e. its members) allow.

With the International Working Group on Trade and Gender only recently established in the WTO, making recommendations for how to improve the work on women in trade at the WTO could be considered naïve and premature. However, we think it would be irresponsible of us not to use this space to push this issue to the forefront in order to get it the recognition and action it requires and deserves.

As mentioned before, the Buenos Aires Declaration did not chart the ways in which women's issues can be captured in the WTO discussions or negotiations. From the literature review, it seems that the multilateral rules are flexible enough to allow members to pursue gender-related goals without getting caught in dispute settlement, although this has not been tested as yet – mostly because the measures used so far have not warranted it. However, to achieve real progress, this wide policy space now left to each country needs to be carved out using a more synchronised policy direction, supported by language which is explicit and binding.

For this purpose, these are five steps that the WTO and its membership should take. Table 1 shows how the first four of these steps correspond to the four objectives already highlighted by the WTO Secretariat. The fifth is related to the gender mainstreaming within the WTO Secretariat.

TABLE 1 FROM THE WTO 'TRADE AND GENDER' WORK AREAS TO FEMINISATION OF THE WTO

WTO 1.0	WTO 2.0
Raising awareness on links between trade and women	Full cognisance and acceptance of this new area of work through WTO IWG on Women and Trade (and working towards implementing the declaration)
Facilitating WTO members' actions on trade and women	Binding and enforceable language in RTAs and WTO agreements. Targeted trade assistance programmes and aid for trade.
Generating new data on trade and women	Mandatory impact assessment and differentiated data collection
Providing trainings to government officials and women entrepreneurs	Provisions on technical assistance specifically on enhancing women's role in trade, trade negotiations and policymaking

1. Information sharing for the purposes of impact assessment

Impact assessment has been an accepted part of the approval/ ratification process of new RTAs by many countries. For example, for the purposes of environmental protection or labour rights protection, some countries (most notably, the EU)[17] require mandatory ex-ante and/or ex-post impact assessments of proposed agreements (or other trade policy changes, including granting unilateral preferential treatment). Borrowing from this, an efficient strategy for the inclusion of a gender lens approach in trade agreements could be the inclusion of a mandatory impact assessment of proposed agreements wherein if an agreement does not contribute to women's economic empowerment, it would not pass the 'RTA transparency mechanism' review.[18]

In order to enable the conduct of impact assessments as well as to improve the capacity of countries to formulate provisions with positive impact on women's empowerment, the WTO should encourage (as envisaged by the Declaration) both the collection of gender-differentiated data and the sharing of information on best practices. This could be done as part of the Trade Policy Review process.

17 The impact assessments also contain a clause on general human rights such that the agreement should not have a negative impact on human and implicitly on women's rights (see https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/633163/EPRS_ATA(2019)633163_EN.pdf).

18 In the spirit of the GATT Art. XXIV, under which trade agreements resulting in harm to third countries should be assessed as not compliant with the rules, agreements which harm, or do not contribute positively to, women's economic empowerment, should be declared as not in keeping with the spirit (if not letter) of the WTO agreements.

2. Making provisions enforceable

The incorporation of women's empowerment (and advancement of gender equality) goals into the language of the provisions in many regional trade agreements and bilateral investment treaties (and, increasingly, IIAs) clearly shows the acceptance on the part of governments of the idea that there is no sustainable development without gender equality. However, to make trade an effective means towards this goal, these gender provisions need to be made enforceable and binding parts of the agreements. For instance, in the agreement which creates the East African Community, the economic empowerment of women takes the form of parties pledging to increase the participation of women in decision making, eliminate regulations and customs that discriminate against businesswomen and their access to resources, promote their education and awareness, and adopt technology to help women progress professionally (Articles 154 and 155). In Articles 155 and 174, the parties then create various legislative, procedural and institutional tools to carry out these commitments. The language used in these provisions is largely binding and obligatory. Similarly, newer EU bilateral trade agreements include trade and sustainable development chapters that oblige the parties to comply with international standards on labour rights, including some relevant for women, such as the International Labour Organization's fundamental conventions on equal remuneration and discrimination.

Another option is to choose a WTO plurilateral agreement route, which could prompt like-minded members to agree on making the elimination of discrimination against women in trade[19] binding. CIGI (2020) suggests that such an agreement could eliminate domestic laws that perpetuate discrimination against women and ensure compliance with the principles of equal access and opportunity for trade, and thus should be given serious consideration.

We hold that given the lack of attention to gender equality so far, it would be more effective to add women's economic empowerment provisions into the WTO agreements as separate chapters, rather than negotiating a stand-alone plurilateral agreement. One has to be aware, though, that there might be a strong opposition to this proposal to the extent that these gender-sensitive provisions may be considered a new form of protectionism – one reaching 'behind the border'. That, however, would amount to burying one's head in the sand, afraid to change the current order of the world.

3. Trade adjustment assistance and Aid for Trade

Trade adjustment programmes incorporated in some RTAs and in trade reforms should be much more specific in terms of assistance for women who suffer an adverse impact from trade policy changes. More specific and detailed terms can also help further elaborate on the various ways trade may affect women, raising awareness on trade and women.

19 For a summary of discriminative practices and reasons for their existence, see Scott (2020).

Likewise, while many Aid for Trade projects already incorporate gender-sensitive language (der Boghossian 2019b), a priority should be given, in terms of selection, to projects that further the position of women in trade. This can also encourage the development of more projects that include a gender mainstreaming component, since they would be given priority.

4. Technical assistance provisions to enhance women's skill and knowledge in trade

Capacity for women to trade needs to be built, both in terms of trade across borders (customs, rules of origin, standards, etc.) and in terms of negotiations, policymaking and policy influencing. To deliver on this objective, it is necessary for the RTAs and WTO agreement texts to include provisions on developing national capacity for implementing said agreement provisions (for example, in the Trade Facilitation Agreement), but enhanced to incorporate specific capacity building aimed at closing the knowledge gap for women. Likewise, future discussions on reforms of the Special and Differential Treatment (also in connection with LDC graduation) should include provisions for women's capacity building in trade (possibly by giving preferential treatment to agreements with better performance on gender equality in addition to a general human rights scale).

For the purpose of helping women become more successful in import and export activities, capacity-building programmes need to focus on areas such as trade finance, trade facilitation (cooperation between customs and other authorities), and trade-related development decisions such as duty-free and quota-free market access for products originating in LDCs and preferential rules of origin, which aim to make it easier for exports from LDCs to qualify for preferential market access. Initiatives such as the Global Trade Professionals Alliance and many others are working very successfully on increasing women's participation in exports, imports, global value chains, and trade business in general.

In terms of increasing the role of women in trade negotiations and policymaking, while the world is waiting for a change in mindset, it is necessary to invest in developing the capacity of women to take an equal place at the table (Bandele 2016). There are several initiatives, such as ARTNeT, through which increasing efforts are being made to dedicate resources to training future women policymakers in trade.

5. Feminisation of the WTO Secretariat

Based on the dismal human resource management record of the WTO Secretariat, much more needs to be done in terms of breaking the glass ceiling within the organisation and its bodies. The participations of women in the Secretariat should be promoted and members should also be encouraged to improve the engagement of women in their own representative and decision-making bodies. Moreover, research shows that when women are involved in decision-making and policymaking positions, policies have better social content and are more forward looking with a longer-term horizon compared to when women are not involved.

CONCLUDING REMARKS

The COVID-19 pandemic has exposed many fault lines in our economies and societies; the position of women is among the top of these. Across the globe, women are bearing a disproportionate burden of the triple crisis (health, supply and demand). This is caused not just by the COVID-19 crisis, but also by existing socio-cultural dynamics whereby women have automatically been disadvantaged on the basis of their gender.

The WTO 1.0 has been shown unfit not only in terms of lacking the necessary rules for digital economies or new types of competition in markets, but also without a doubt with respect to women in trade.

This weakness of the WTO 1.0 was recognised in 2017 through the Buenos Aires Declaration on Trade and Women's Economic Empowerment. However, it took until 23 September 2020 for the WTO membership to establish an Informal Working Group necessary to move forward with the implementation of the Declaration. In the meantime, the WTO Secretariat has established for itself a contour for its work through four areas broadly fitting the objectives of the Declaration. In this chapter, we have proposed to upgrade this work programme by adding the following:

1. Mandatory impact assessments of changes in trade policy, including through trade agreements
2. Enforceable provisions towards women's economic empowerment
3. Trade assistance programmes and Aid for Trade tailored to redress the position of women in trade
4. Technical assistance biased towards enhancing the skills and knowledge of women as traders, negotiators and policymakers and
5. Increasing the participation of women in the WTO Secretariat and positions of leadership.

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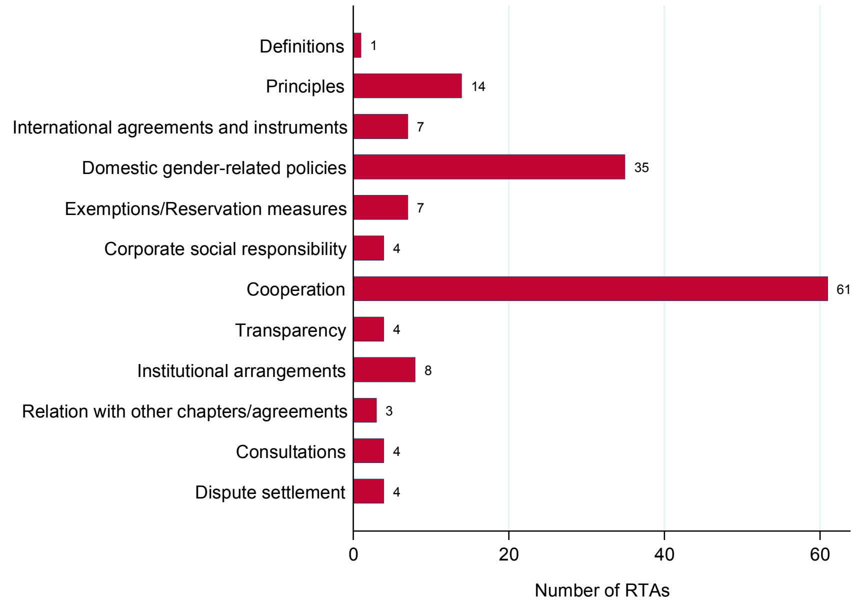
ANNEX

FIGURE A1 MAIN BROAD TYPES OF GENDER-RELATED PROVISIONS IN RTAS



Source: Monteiro (2019).

ABOUT THE AUTHORS

Mia Mikic is Director of the Trade, Investment and Innovation Division, UN ESCAP.

Vanika Sharma is Research Assistant in the Trade, Investment and Innovation Division, UN ESCAP.

Section 3

Revamping the WTO rule book in light of the pandemic

CHAPTER 14

A pandemic trade deal: Trade and policy cooperation on medical goods[1]

Alvaro Espitia, Nadia Rocha and Michele Ruta
World Bank

Since the beginning of the COVID-19 pandemic in early 2020, global markets for medical goods have been at the centre of many policy debates as countries scrambled to obtain necessary medical supplies, often through non-cooperative trade policies (Baldwin and Evenett 2020, Espitia et al. 2020a). The result has been a growing mistrust that the trade system can deliver efficient and equitable outcomes and frequent calls to rely more on domestic production of essential products. How WTO Members cooperate on trade policy on medical goods will therefore not only shape the collective ability to respond to the current health crisis, but will also be a testing ground for longer-term trade cooperation.

The purpose of this chapter is to review recent trade and trade policy developments in the market for medical goods and to sketch a proposal for policy cooperation to address the current health crisis and prepare for a second wave of COVID-19 or future pandemics. Using new data on trade and trade policy in COVID-19 relevant products, the chapter describes the salient characteristics of world markets for medical goods and illustrates the evolution of international trade and trade policies during the first phase of the pandemic. Based on this analysis, the chapter outlines the logic of a bargain between exporters and importers that can improve upon the current trade policy environment and proposes five actions that WTO Members can take to implement this deal.[2]

TRADE IN MEDICAL GOODS

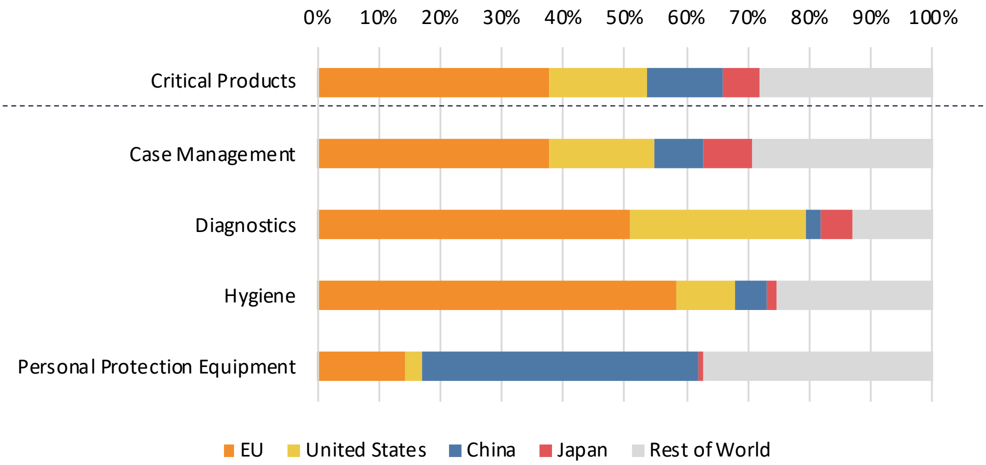
A highly concentrated market to start with

The World Health Organization COVID-19 Disease Community Package (DCP) contains 17 medical products that are considered key to deal with the current pandemic. They consist of essential items for diagnosis and treatment processes such as enzymes, hygiene products such as liquid soap and hand sanitizers, personal protection equipment (PPE) including gloves and medical masks, and case management products such as oxygen concentrators and respirators.

2 The focus here is on trade in medical goods. The related issue of cooperation to develop and distribute a COVID-19 vaccine is addressed by Caroline Freund and Christine McDaniel in their chapter in this eBook, while in her chapter, Anabel Gonzalez looks at proposals for broader trade policy cooperation to respond to the current health and economics crisis.

The world markets for these crucial COVID-19 products are highly concentrated (Espitia et al. 2020a). Using data before the pandemic, four countries account for more than 70% of world exports. The EU is the largest exporter of these products, with an export share of 37.8%, followed by the US, China and Japan, with export shares of 15.7%, 12.3% and 5.9%, respectively. Among the different categories of medical products, export shares from top-four exporters are close to 90% for diagnostic products. The export concentration of personal protection equipment is somewhat lower, but still above 60% (Figure 1). Top-four exporters of medical products are also large importers of such products, representing approximately 66% of world demand.[3]

FIGURE 1 MAIN SOURCES OF CRITICAL COVID-19 MEDICAL PRODUCTS BEFORE THE PANDEMIC



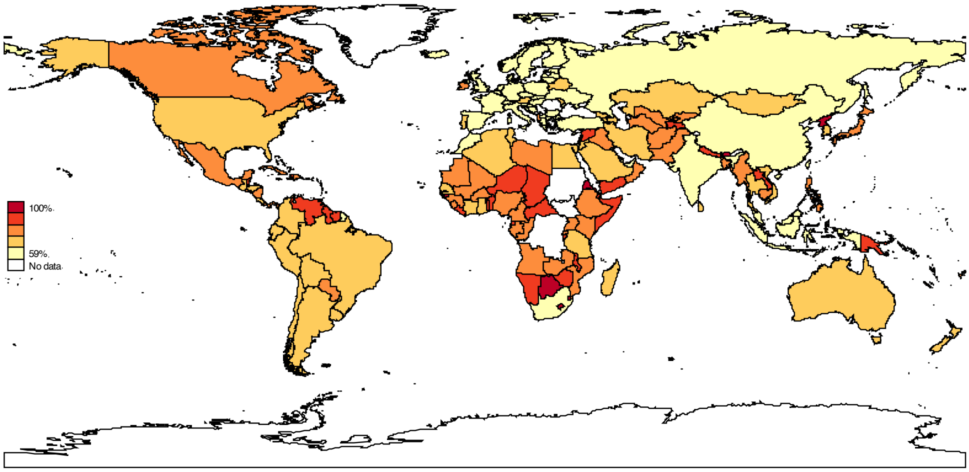
Note: Total imports calculated as the average for 2017, 2018, and 2019 (in case data is available). For countries without direct trade data, mirror data are used.

Source: Espitia et al. (2020a).

A high concentration of exports of critical medical products makes importers, particularly developing countries, vulnerable to potential shortages in supplies from top producer countries. On average, almost 80% of imports from developing countries in Africa and the Middle East come from top-three exporters, with countries such as Lesotho, Swaziland and Botswana having more than 94% of their imports coming from three exporters (Figure 2). Import concentration is also high in Southeast Asia and Latin America, with top-three exporters representing more than 85% of imports in countries such as Bhutan, Nepal and Mexico. For developed countries such as Canada, the Republic of Korea, Japan and Australia concentration of imports from top-three exporters are above 74% on average.

3 Between 2017 and 2019, the share of world imports for the EU, the US, China and Japan were 36%, 19%, 7% and 4%, respectively.

FIGURE 2 AVERAGE VULNERABILITY IN TERMS OF CONCENTRATION OF IMPORTS OF COVID-19 MEDICAL PRODUCTS, BY COUNTRY



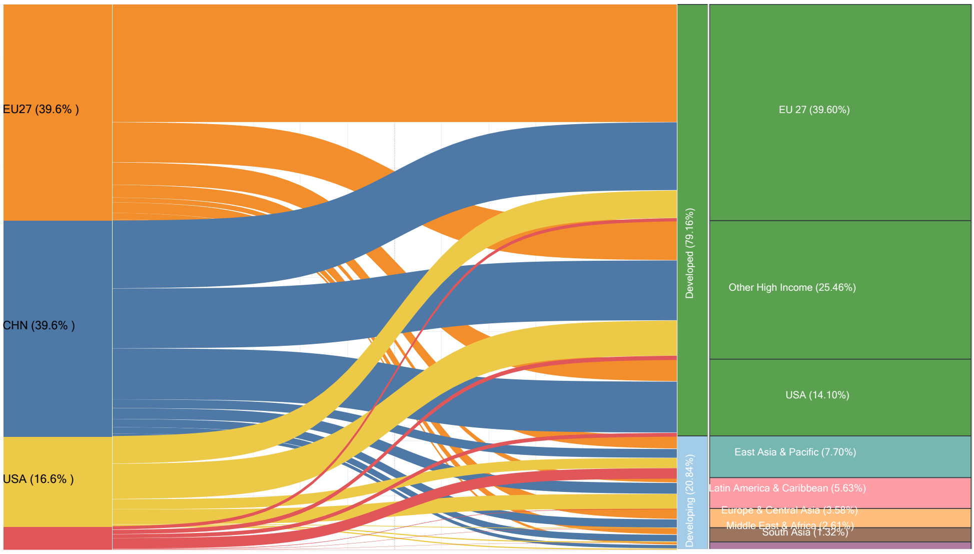
Note: The concentration of imports is calculated as the average, across all COVID-19 products, of the sum of the import shares from top-three exporters. $Imp\ concentration_i = 100 * (\sum_{n=1}^{N} \sum_{k=1}^{K=3} imp_{ijn}/Tot\ imp_{in})/N$, where ***i***, ***j***, ***k***, and ***n*** are, respectively, importer, exporter, exporter rank and product.

Source: Espitia et al. (2020a).

Evolution of trade during COVID-19

Despite a flourishing of trade policy interventions (see below), trade in medical products has been sustained during the pandemic. Countries such as China have significantly increased their exports in medical products during the pandemic, matching the EU as the top exporter. Today, Chinese and EU exports represent each 39.6% of the supply of the top exporters. More than three quarters of exports from China, the EU, the US and Japan have been directed to high-income economies such as the US and countries in Europe, reflecting both the geography of the pandemic over this period and the greater resources to attract these trade flows. Exports to developing countries in East Asia and Pacific, Latin America, and Europe and Central Asia regions, represented respectively 7.7%, 5.6% and 3.6% of the exports from top producers (Figure 3).

FIGURE 3 SHARE OF EXPORTS OF COVID-19 MEDICAL PRODUCTS BETWEEN JANUARY AND JUNE 2020, BY EXPORTER AND DESTINATION



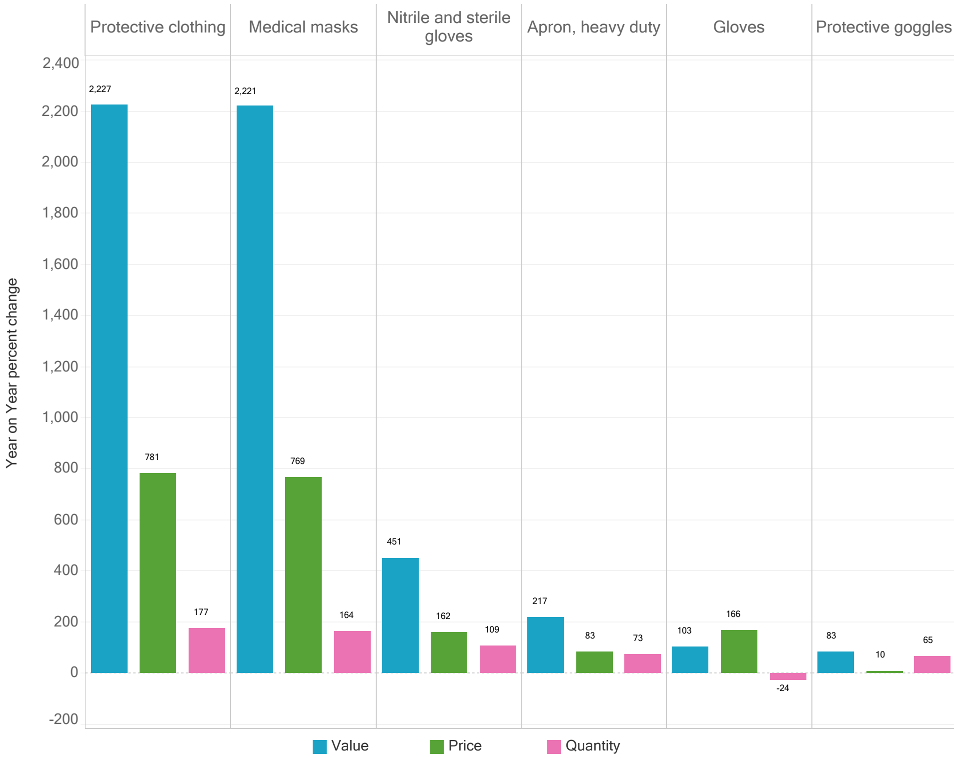
Source: Authors estimates using official data from China, Eurostat, Japan, and the US.

Trade has also been a shock absorber during the current health crisis. Year-on-year changes in exports from top-four exporter countries during the first semester of 2020 suggest that trade in critical medical products contracted during the months where they were experiencing a pick of the pandemic at home and then rebounded once infection rates decreased and lockdown measures eased. During the month of June, the EU, Japan and the US experienced significant increases in the value of exports of diagnostic products (15.5%), hygiene product (32.4%) and PPE (43.7%), respectively.[4] China's export values of diagnostic products and PPE surged more than 600% compared to the same month in 2019.

Increases in trade values, however, do not only reflect larger quantities of medical products crossing borders to meet a sudden growth in foreign demand; they are also driven by price surges in these products due to a significant and growing mismatch between world supply and demand. This fact appears most clearly in the large increases in the export values of medical goods from China.[5] Indeed, a more detailed analysis on the year-on-year changes in prices and quantities for selected products exported by China shows that for PPE such as protective clothing and medical masks, year-on-year prices (unit values) increased on average by 781 and 761%, compared to a 177 and 164% increase in quantities (Figure 4).

4 See Table A1 in the Appendix.
5 World Bank (2020a) and World Bank (2020b).

FIGURE 4 **CHINA: EXPORT VALUES, UNIT VALUES AND QUANTITIES OF PPE PRODUCTS IN MAY-JUNE 2020, YEAR-ON-YEAR GROWTH (%)**



Note: Percentage changes are based on trade values in current US dollars and quantities in kilogrammes or number of items, depending on the product.

Source: Authors estimates using official data from China, Eurostat, Japan, and the US.

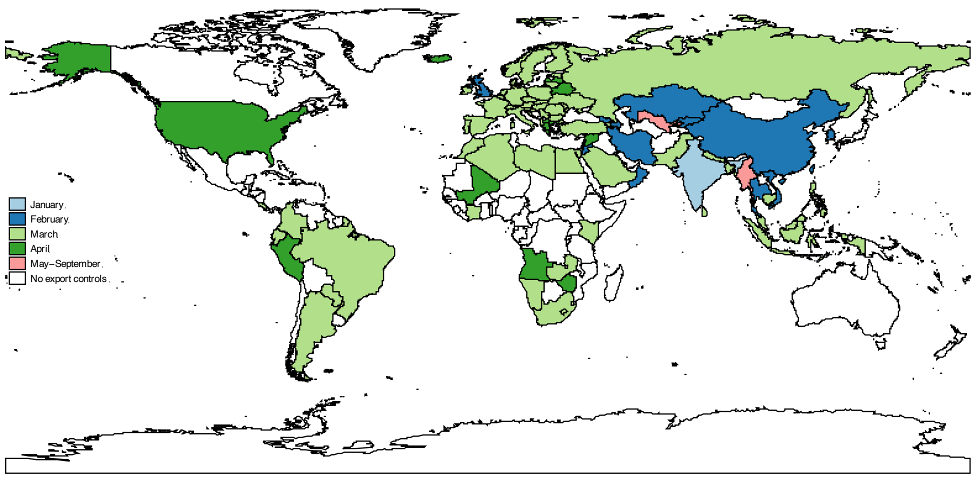
PANDEMIC TRADE POLICY

Exporters' restrictions and importers' liberalisations

Pandemic trade in medical goods is characterised by the combination of high concentration of exports and imports and the sudden change in market conditions brought about by the spread of the disease. As the number of cases rises and demand for critical medical goods increases, governments may choose to use trade policy to ensure sufficient supplies and stabilize prices of essential medical goods in the domestic market.

Exporters may resort to various forms of export curbs to address scarcity problems during the pandemic. Instruments can include export taxes, bans, quotas, controls such as export authorisations, non-automatic export licensing requirements, state requisitions or exhortation not to export. While these measures differ in several respects, they all lead to an expansion of the domestic supply of the good on which they are imposed and a reduction of the local price relative to the world price. In the domestic market, this offers relief in a situation of scarcity and an implicit transfer from producers to consumers. These measures also create the usual distortions in the domestic economy as they disincentivize production and investment, which makes them a second-best policy intervention. Nevertheless, they have been widely used in the current health crisis. Figure 5 shows that between January and mid-September 2020, 91 countries have imposed 202 export controls on medical products. Most countries intervened in the first phase of the pandemic.

FIGURE 5 EXPORT CONTROLS ON COVID-19 MEDICAL PRODUCTS REPORTED SINCE THE BEGINNING OF 2020

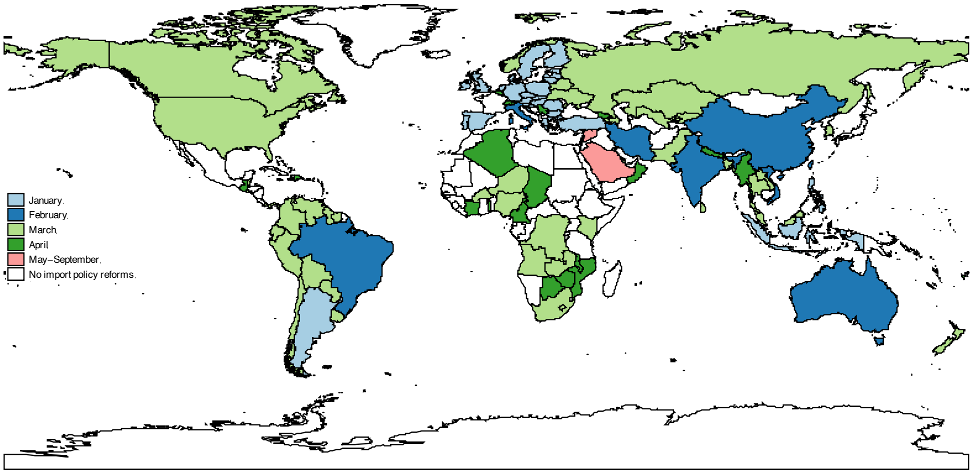


Note: Policy changes identified by official decrees, regulations, and announcements and from media reports. Details on the methodology can be found at https://www.worldbank.org/en/topic/trade/brief/coronavirus-covid-19-trade-policy-database-food-and-medical-products.

Source: EUI, GTA, World Bank (2020).

Applied tariffs of key COVID-19 products are, on average, 4.6% globally and 6.4% for developing countries. For some medical goods such as hygiene and PPE, average tariffs are 10% or higher (see Table A2 in the Appendix). Countries with these restrictions may choose to liberalise their import regimes during a pandemic outbreak. Policy instruments on the import side include the removal or reduction of import bans, quotas, tariffs and tariff rate quotas, customs-related trade facilitation measures, the simplification of import licensing and monitoring regimes. These measures allow countries to expand imports and hence the supply of medical goods in the domestic market. Pandemic import measures lower distortions in the domestic market as pre-existing tariffs inefficiently restricted trade in medical goods. Figure 6 shows that since the start of the pandemic, 106 countries have implemented 229 import reforms for COVID-19 medical products up to mid-September 2020.

FIGURE 6 IMPORTS POLICY REFORMS ON COVID-19 MEDICAL PRODUCTS REPORTED SINCE THE BEGINNING OF 2020



Note: Policy changes identified by official decrees, regulations, and announcements and from media reports. Details on the methodology can be found at https://www.worldbank.org/en/topic/trade/brief/coronavirus-covid-19-trade-policy-database-food-and-medical-products.

Source: EUI, GTA, World Bank (2020).

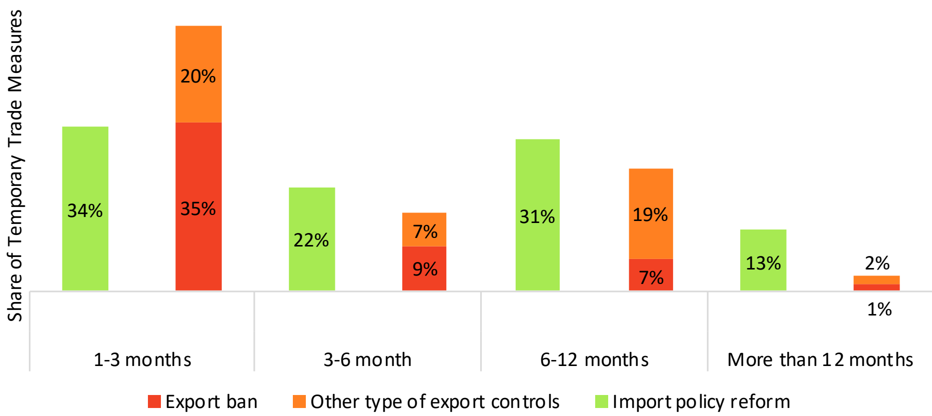
An inefficient policy equilibrium

Whatever the domestic rationale for pandemic trade measures, these policies have consequences for global markets in medical goods, which leads to an inefficient policy equilibrium. Because exporters and importers face similar motives and act roughly at the same time (indeed, most measures were imposed in March and April 2020), the world export supply shifts in and the import demand shifts out, thus widening the gap between global demand and supply and pushing up prices. This induces further trade policy utilisation as governments strive to maintain enough supplies and stable domestic prices. Thus, pandemic trade policies are only in part driven by fundamentals – they are also a reaction to the measures imposed by other governments, in a tit-for-tat that is commonly referred to as a 'multiplier effect' (Giordani et al. 2016). All countries, and particularly vulnerable importers, stand to lose.

In addition to the immediate effects, pandemic trade policies have longer-term consequences. If, during a health crisis, a country is subject to the export-restricting actions of producing countries, trade will be seen as an unreliable way of maintaining access to essential products (Mattoo and Ruta 2020). In other words, the use of import restrictions in non-crisis situations can be motivated by the need to move towards more self-reliance as insurance against export restrictions during a health crisis. The current policy equilibrium characterised by an escalation of pandemic measures undermines trust in the system and puts at risk global efficiency in production of medical goods.

A distinctive feature of pandemic trade policy is its temporary nature. The average duration of the trade policy instruments used during the pandemic is roughly similar: 7.4 months for import policy reforms and 4.7 months for export controls (Figure 7). This similarity is problematic for two reasons. First, the temporary nature of pandemic trade measures is efficient for export restrictions and inefficient for import liberalisation. In the case of exporters, restrictions should be in place only as long as the extreme conditions in the domestic market persist. This is not the case for importers, as import liberalisations lower a pre-existing distortion that rendered the level of imports of medical goods inefficiently low. Second, during the last quarter of 2020, 24% of export restrictions that were imposed during the pandemic will still be in place. These might have a negative impact on supply of key medical products during a second wave of the virus. One fifth of import policy reforms will be in place during the last quarter of 2020, suggesting that countries are going back to their levels of import protection pre-pandemic.

FIGURE 7 SHARE OF TEMPORARY TRADE MEASURES, BY DURATION



Note: Policy changes identified by official decrees, regulations, and announcements and from media reports. Details on the methodology can be found at https://www.worldbank.org/en/topic/trade/brief/coronavirus-covid-19-trade-policy-database-food-and-medical-products. Figure only considers observations with information on removal date.

Source: EUI, GTA, World Bank (2020).

POLICY REFORM

A deal between exporters and importers

The previous sections describe the inefficiency that characterises the current pandemic trade policy equilibrium. We suggested that both importers and exporters have instruments that they can use to manipulate trade flows and prices in order to meet domestic objectives. And they have a clear motive to use them: achieving larger domestic supply of goods at a time of global scarcity. These measures – which are legal from a WTO perspective[6] – exacerbate scarcity problems and increase price volatility in global markets for medical goods in the short term and can lead to global production inefficiencies in the long term. The timing of these policies may also make the global economy ill-equipped to deal with subsequent waves of the pandemic.

In recent months, a rich debate has emerged on policy reforms that can improve upon the status quo and can allow countries to collectively deal with a potential second wave of COVID-19. Some of these reforms have been proposed by WTO members (e.g. the initiative by the governments of New Zealand and Singapore) or by the WTO secretariat (e.g. Wolff 2020), or have emerged from the academic debate (e.g. Evenett and Winters 2020). Here, in line with the evidence of the previous sections, we sketch the economic logic of a possible bargain. The next section describes a consistent set of policy actions that WTO members can take to implement it.

Reforms to improve cooperation on trade policy in medical goods have essentially three goals: first, to defuse the sudden escalation in export restrictions and tariff liberalisations created by the multiplier effect; second, to increase predictability in export supplies and market access for medical goods; and third, to ensure that goods can smoothly flow across borders during the pandemic as well as in normal times.

The three goals complement and support each other. The essential element of these policy proposals is to strike a balance between exporters' and importers' needs. Importers are hurt by export restrictions imposed by producing countries of medical goods during a pandemic. Exporters are hurt by the restrictions to market access in importing countries during good times. Both sides lose from the policy escalation ignited by the mechanism of the multiplier effect. And both sides gain when markets are predictable and trade can flow smoothly across borders.

As suggested by Evenett and Winters (2020), a bargain could be struck where importers agree to preserve the lower import restrictions that have been implemented since the outbreak of the pandemic in exchange for assurances that their supplies of critical medical goods will not be arbitrarily cut off. Exporters would limit their rights to introduce temporary export controls in exchange for better market access in the importers' markets. This is not a deal of reciprocal market opening (the standard practice in trade agreements), but a promise to limit disruptions to supply during a health crisis in exchange for a promise to retain open markets in non-crisis situations.

How wide should this bargain be? A clear trade-off emerges in terms of membership and coverage of medical products. A broader membership would reduce opportunities for free riding; expanding the coverage of medical goods (including essential inputs) would ensure

6 WTO members face no constraints in terms of reductions, temporary or not, of import restrictions. Article XI of the GATT specifies that exports should not be subject to quantitative restrictions, but exceptions are allowed for temporary restrictions under Articles XI:2(a), XX(b) and XX(j) of the GATT to relieve critical shortages of essential products, to protect human life, or for products in general or local short supply.

that critical products in the next pandemic would not be the target of non-cooperative trade policies. A narrower scope of the deal may allow for a more flexible – even if more limited – approach. Starting from the list of COVID-19 medical goods and the set of large exporters/importers for these products may provide insurance for a second wave and offer a blueprint for trade policy cooperation in case of future pandemics.

Five actions that WTO members can take

The past months since the beginning of the COVID-19 pandemic have shown that trade in medical goods is crucial to address the health crisis and that the lack of trade policy cooperation disrupts markets and distorts trade flows. This chapter shows that, differently from traditional trade policy conflicts where countries raise protection on each other, here the confrontation is between countries that are scrambling for scarce supplies. Cooperation is need between exporters and importers.

But what specific actions could WTO members take? Here is a list of five sets of commitments for discussion:

1. A commitment to limit trade policy discretion on medical goods during a pandemic.
   a. A commitment by importers to retain policy reforms on medical goods enacted during a pandemic for a period of three years.
   b. A commitment by exporters that any export restriction would not exceed a period of three months and would not lower exports to partners by more than 50% of the average of the past two years.
   c. A commitment by both exporters and importers that proposed measures would take into account the impact on others –a requirement that already exists for export controls on agricultural products.
2. Actions to ease the flows of medical products across borders, such as commitments to abide to best trade facilitation practices for medical goods or adopt international standards for the critical medical goods for a period of three years.
3. A commitment to improve transparency on policies and production of medical goods
   a. A commitment to improve notifications (e.g. by making information on new measures quickly available online).
   b. Strengthening the WTO monitoring function during a pandemic, including expanding its analysis of trade effects of policy actions.
   c. Creating a platform for medical products like the Agricultural Market Information System (AMIS) for agricultural commodities to monitor underlying market conditions and identify potential vulnerabilities.
4. A commitment to basic principles for dispute resolution (for instance, partners' responses need to be proportional and time-bound in case a party walks away from its commitments to restrain export policy or retain import policy reforms).

5. A commitment to create a consultation mechanism. This could provide a forum to discuss common and country-specific problems including the emergence of new critical areas such as the shortages of medical goods or inputs not covered by the deal or the trade effects of policy changes by one party on other members. This consultation mechanism could be informed by the analysis and enhanced monitoring of policies by the WTO Secretariat.

While this is admittedly only a sketch, an understanding between exporters and importers to limit policy discretion, expand the use of best practices, enhance consultation and improve transparency, surveillance and policy analysis would allow countries to preserve open and stable markets for medical goods and collectively deal with a second wave of COVID-19 and with future pandemics.

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APPENDIX

TABLE A1 CHANGE IN EXPORTS FROM MAIN PARTNERS TO DEVELOPING COUNTRIES, (YEAR-ON-YEAR)

<table>
<tr><th>Change in exports (year-on-year)</th><th>January</th><th>February</th><th>March</th><th>April</th><th>May</th><th>June</th></tr>
<tr><td>China</td><td></td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>Case Management</td><td colspan="2">2.1%</td><td>2.5%</td><td>65.5%</td><td>90.4%</td><td>113.8%</td></tr>
<tr><td>Diagnostics</td><td colspan="2">56.0%</td><td>611.5%</td><td>877.9%</td><td>1,223.3%</td><td>684.6%</td></tr>
<tr><td>Hygiene</td><td colspan="2">-13.5%</td><td>14.3%</td><td>44.5%</td><td>-2.7%</td><td>17.1%</td></tr>
<tr><td>Personal protective equipment</td><td colspan="2">-9.8%</td><td>120.2%</td><td>974.9%</td><td>1,254.6%</td><td>693.0%</td></tr>
<tr><td>European Union</td><td></td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>Case Management</td><td>-2.4%</td><td>-4.2%</td><td>-9.1%</td><td>-21.1%</td><td>-22.8%</td><td>-11.8%</td></tr>
<tr><td>Diagnostics</td><td>4.5%</td><td>18.3%</td><td>5.8%</td><td>30.3%</td><td>11.8%</td><td>15.5%</td></tr>
<tr><td>Hygiene</td><td>13.1%</td><td>9.2%</td><td>16.9%</td><td>16.6%</td><td>-5.2%</td><td>-22.5%</td></tr>
<tr><td>Personal protective equipment</td><td>21.1%</td><td>236.5%</td><td>-3.8%</td><td>-23.5%</td><td>8.3%</td><td>-10.9%</td></tr>
<tr><td>Japan</td><td></td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>Case Management</td><td>-21.0%</td><td>1.7%</td><td>-10.5%</td><td>-23.8%</td><td>2.3%</td><td>-9.5%</td></tr>
<tr><td>Diagnostics</td><td>-41.8%</td><td>33.4%</td><td>-27.2%</td><td>4.7%</td><td>3.4%</td><td>-10.6%</td></tr>
<tr><td>Hygiene</td><td>25.3%</td><td>23.9%</td><td>-9.8%</td><td>9.7%</td><td>34.3%</td><td>32.4%</td></tr>
<tr><td>Personal protective equipment</td><td>108.9%</td><td>578.3%</td><td>27.9%</td><td>-0.8%</td><td>7.5%</td><td>14.8%</td></tr>
<tr><td>United States</td><td></td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>Case Management</td><td>2.4%</td><td>1.9%</td><td>-6.0%</td><td>-10.8%</td><td>-27.7%</td><td>-8.7%</td></tr>
<tr><td>Diagnostics</td><td>13.6%</td><td>52.1%</td><td>3.9%</td><td>17.9%</td><td>9.8%</td><td>5.2%</td></tr>
<tr><td>Hygiene</td><td>-8.5%</td><td>-12.1%</td><td>-2.7%</td><td>-13.3%</td><td>-5.2%</td><td>-23.1%</td></tr>
<tr><td>Personal Protection Equipment</td><td>9.2%</td><td>89.3%</td><td>37.5%</td><td>-18.4%</td><td>37.4%</td><td>43.7%</td></tr>
</table>

Source: Authors estimates using official data from China, Eurostat, Japan, and the United States.

TABLE A2 APPLIED IMPORT TARIFF RATES (%)

	Case management	Diagnostics	Hygiene	Personal protective equipment
World				
Simple Average	2.1	2.0	8.3	6.8
Trade Weighted	1.0	1.1	2.7	4.1
Developed Countries				
Simple Average	1.1	0.7	2.6	2.8
Trade Weighted	0.4	0.1	0.9	3.2
Developing Countries				
Simple Average	2.8	2.7	11.9	9.8
Trade Weighted	2.3	3.4	5.1	8.9

Note: Simple Average and trade weighted means of the applied import tariff rate (last year available).
Source: Espitia et al. (2020a).

ABOUT THE AUTHORS

Alvaro Espitia is a consultant in the Macroeconomics, Trade & Investment Global Practice at the World Bank.

Nadia Rocha is a Senior Economist in the Macroeconomics, Trade and Investment Global Practice at the World Bank.

Michele Ruta is Lead Economist in the Macroeconomics, Trade & Investment Global Practice of the World Bank Group.

CHAPTER 15

Lessons from the pandemic for future WTO subsidy rules

Dessie Ambaw, Peter Draper and Henry Gao
University of Adelaide; University of Adelaide; Singapore Management University

Governments worldwide are implementing a range of policy measures to tackle the devastating human and economic impacts of the coronavirus outbreak. Given the precipitous declines of business activity, much attention is focused on supporting the private sector. Accordingly, one set of measures being widely utilised is the provision of subsidies to the private sector, in various forms.

While targeted, timely, temporary and transparent subsidy measures are imperative to tackle catastrophic economic collapses, poorly designed subsidies may distort global markets, raising international trade tensions. Such tensions were already increasing owing to the sharp reversal of US trade policy since President Trump was elected, unleashing the 'trade wars' — with China in particular.

Within this, industrial subsides have recently become a particular focus for the US, the EU, and Japan through their Trilateral Initiative that targets reforms to subsidies disciplines contained in the WTO's Agreement on Subsidies and Countervailing Measures (ASCM). Agricultural subsidies have long been controversial in the WTO, whereas subsidies to services firms are outside of the ASCM's ambit and have proved impervious to WTO disciplines so far.

With a new WTO Director-General set to be appointed in the coming months, there is an opportunity to explore fresh approaches to settling intractable issues, including subsidies reform. Moreover, the COVID-19 pandemic enjoins members to collaborate to solve global problems to contain the negative economic effects of the unfolding breakdown in international trade cooperation and restore the world to a positive growth path.

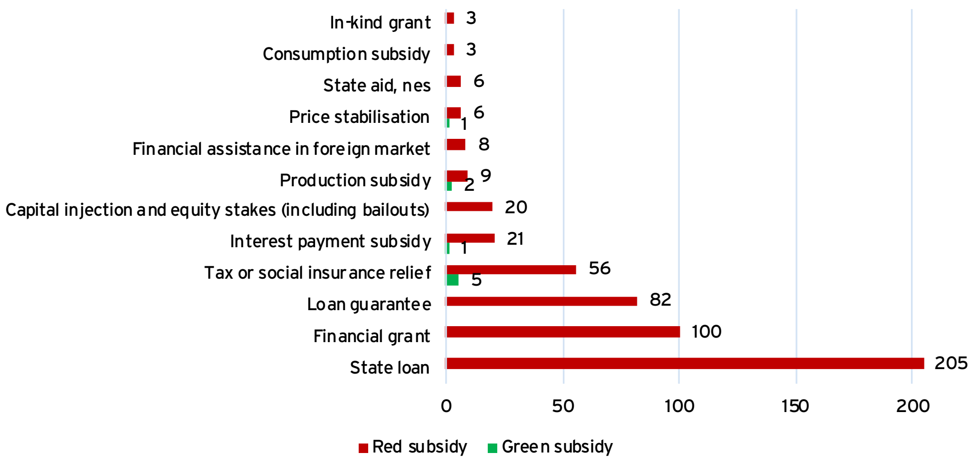
Consequently, this chapter explores the dynamics pertaining to the rapidly rising incidence of pandemic-driven subsidies across the WTO's membership. After reviewing the data, it offers concrete recommendations for members' consideration.

COVID-19 AND THE SHIFTING PATTERNS OF SUBSIDISATION

Both the OECD and IMF are well-placed to track the growth of subsidies measures. They show that most subsidy measures taken this year, largely in response to COVID-19, provide emergency liquidity and broad-based fiscal measures such as tax concessions, loans and loan guarantees (OECD 2020). Both organisations understandably support the use of such measures on a temporary, non-discriminatory basis. However, so far as I can tell they do not analyse how these subsidies may impact on trading partners. Given that subsidies are seldom temporary, this is a very consequential lacuna.

The Global Trade Alert (GTA) database organises and provides the latest state acts and subsidy intervention measures by different governments covering a variety of subsidy instruments. These are further divided into 'green' (likely not harmful to trading partners), 'amber' (likely harmful) and 'red' (almost certainly harmful). Using GTA data extracted on 13 September 2020,[1] I briefly discuss four major subsidy instruments categories that governments employ to support import-competing domestic firms, which potentially undercut foreign firms.

FIGURE 1 SUBSIDY INTERVENTIONS SINCE JANUARY 2020



Source: Authors' compilation using GTA database.

The first is credit subsidies and government guarantees. According to the Figure 1, governments imposed 309 subsidy interventions in this category, including state loans (205), loan guarantees (82) and interest payment subsidies (22). Credit subsidies assume default risk and provide loans at extremely favourable conditions for the creditor during risky circumstances such as the COVID-19 outbreak. Except one for green subsidy intervention by the Chinese government, the remaining subsidy interventions under this category are considered as harmful by the GTA. Denmark, for example, has implemented state loan subsidy interventions through the Nordic Investment Bank (NIB). NIB provided an $835.3 million loan to Novozymes A/S to support the company's R&D activities in the

1 Further subsidy measures have since been added to the database; the latest information on subsidies given since 1 January 2020 can be obtained from https://www.globaltradealert.org/latest/state-acts/mast-chapter_8/announcement-from_20200101/period-from_empty/period-to_empty

area of enzyme production, presumably related to medicines. The GTA database assessed this state investment act as discriminatory since the subsidy is targeted at a domestic firm and affects foreign commercial interests.

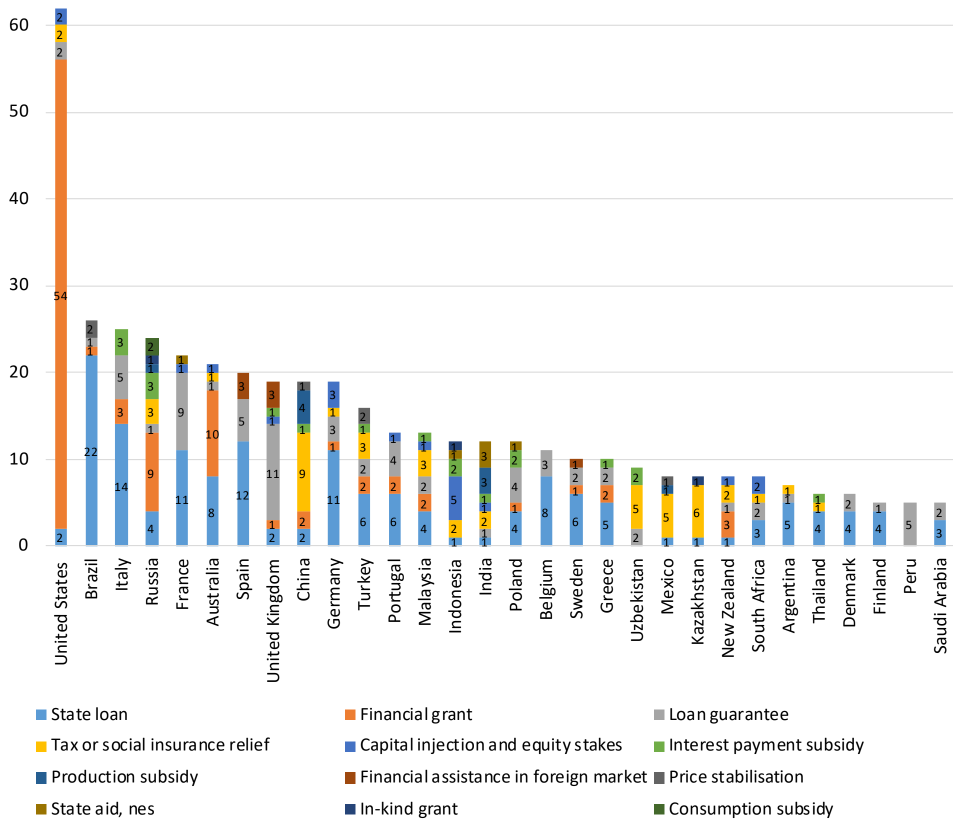
The second major coronavirus-related subsidy intervention is financial grants, capital injections, and equity stakes (including bailouts). This year, 120 interventions are recorded after the COVID-19 outbreak, and all are classified as trade-distorting. Such government supports are provided to support large and strategic firms that face the risk of financial insolvency (IMF 2020). Among others, Italy and Turkey provided large financial grant support to projects that are related to the production of COVID-19 medical devices and personal protective equipment (PPE). For instance, the EU approved $53.8 million to Italian companies that manufacture ventilators, masks, safety suits, goggles, gowns, and shoes used as personal protective equipment. Furthermore, the GTA reported that German state banks provided $2.6 billion in production subsidies to Adidas on 14 April 2020. This apparently discriminatory state aid will potentially affect the commercial interest of around 77 countries.[2]

The third form of subsidy instrument is 'tax or social insurance relief'. Tax relief measures include tax reductions, tax waivers, and delays in tax payment deadlines. Social insurance relief refers to deferral of social security contributions to support companies. According to the GTA, while many of the COVID-19-related interventions (56) are harmful, only five subsidy measures are beneficial in this category. For example, Figure 2 shows that Russia implemented two tax or social insurance relief measures following the outbreak of the pandemic. Initially, the Eurasian Economic Union waived the import tariff (tax) on some goods (such as thermal bags, film for hermetic sealing of bottles and medical refrigerators) used to produce medicaments and medical items essential to control Covid-19. In addition, on 21 May, the government of Russia provided a corporate tax base reduction for producers, suppliers and service companies that produce medical goods critical to fighting the COVID-19 crisis. Both interventions are regarded as harmful as they favour domestic companies at the expense of foreign commercial interests. Conversely, Angola removed value added tax (VAT) for donated imported products used to battle the COVID-19 pandemic, which is regarded as a green subsidy intervention.

The fourth category is production subsidies. Governments provide production subsidies to encourage companies to increase the output of a particular good. The production subsidy payment is offered regardless of where the products are sold. As shown in Figure 1, countries have provided 11 production subsidies (two green and nine harmful) so far. For example, India has announced a $453 million production-linked incentive scheme for 25-30 firms that manufacture anaesthetics and cardio-respiratory medical devices (this discriminatory scheme will be valid until 2024-25).

2 See https://www.globaltradealert.org/intervention/79361

FIGURE 2 STATES THAT IMPOSED FIVE AND MORE SUBSIDY INTERVENTIONS IN 2020

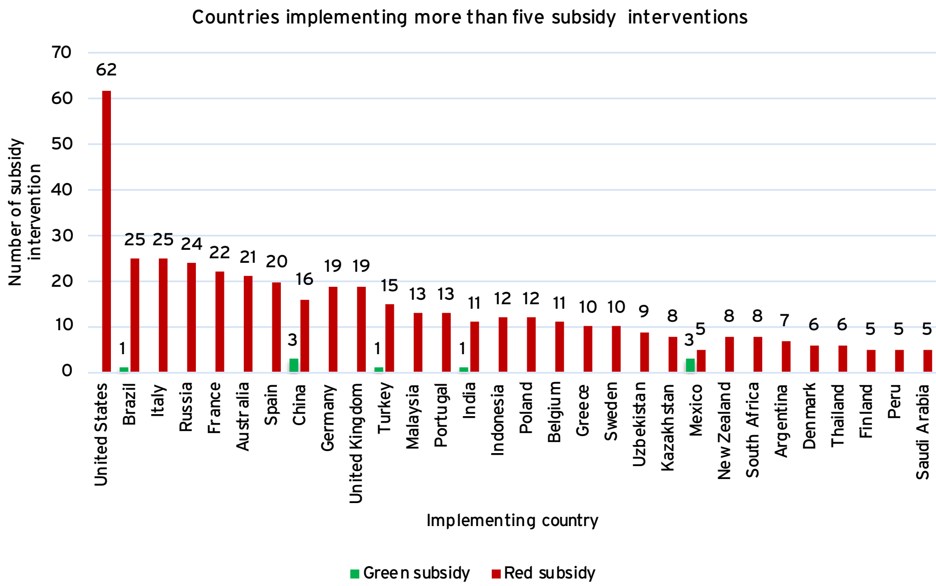


Source: Authors' compilation using GTA database.

Governments have also implemented eight financial assistance measures 'in foreign markets', seven price-stabilisation measures, six state aid, three in-kind and three consumption subsidies. Except for one green price stabilisation by the government of Brazil, all the other subsidy measures are categorised as harmful, implying a considerable increase in discriminatory state support intervention since the onset of the COVID-19 pandemic.

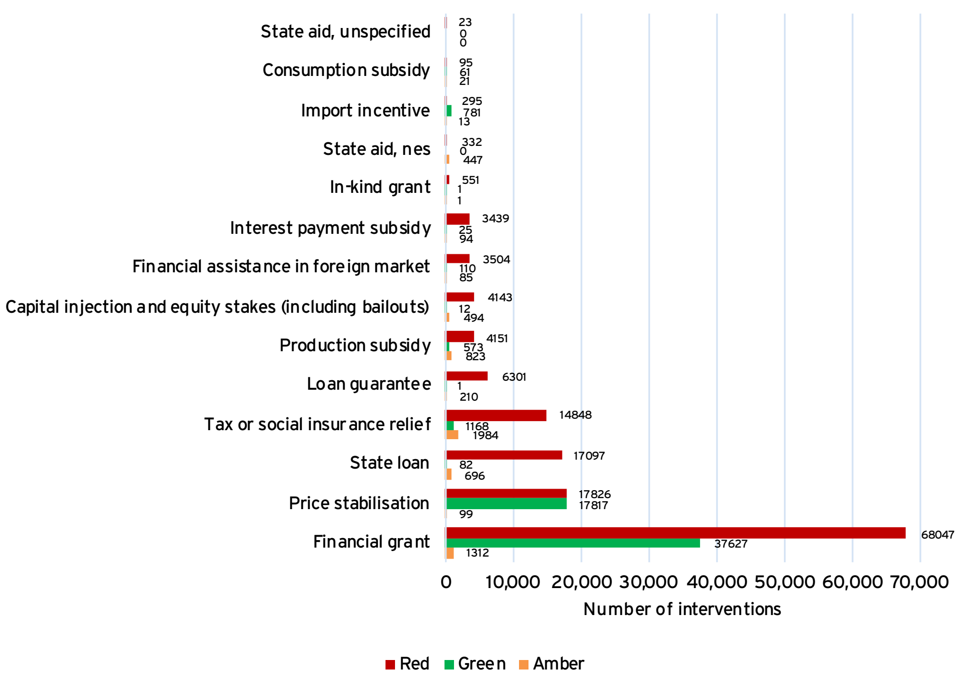
Figure 2 shows those states that have implemented five or more subsidy support interventions in 2020. The US has imposed the largest number of interventions (62) followed by Brazil (26), Italy (25), Rusia (24), France (22), and Australia (21). The distribution of these subsidy instruments across countries is diverse – while the US, Rusia and Australia have mainly used financial grants, China, Kazakhstan, Mexico and Uzbekistan have used tax concessions and social insurance relief. However, a large numer of countries used state loans as the primary government support to tackle the COVID-19 crisis. As shown in Figure 3, China and Mexico have each implemented three green subsidies; Turkey and India one green subsidy each.

FIGURE 3 HARMFUL AND LIBERALISING SUBSIDY INTERVENTIONS IN 2020



Source: Authors' compilation using GTA database.

FIGURE 4 SUBSIDY INTERVENTIONS BEFORE COVID-19 PANDEMIC, 2009-2019



Source: Authors' compilation using GTA database.

Figure 4 shows the number of subsidy interventions before the COVID-19 outbreak, by category. Financial grants were the major form of subsidy instrument followed by price stabilisation, state loans, tax or social insurance relief, and loan guarantees.

Contrarily, as shown in Figure 1, since the COVID-19 pandemic outbreak countries have mainly used state loan subsidies. In keeping with pre-COVID patterns, the other major subsidy instruments used to fight the devastating impact of the Covid-19 pandemic are financial grants, loan guarantees and tax or social insurance relief. While countries implemented many green and amber subsidy interventions before the COVID-19 virus outbreak, notably in the financial grant and price stabilisation categories, these forms of subsidies have all but evaporated since COVID-19, suggesting an increasing use of subsidy tools that distort the level playing field.

The data available so far provide many interesting insights, which can help to steer the development of a work programme on subsidies rules. My suggestions follow.

WHAT NEEDS TO BE DONE IN AND OUTSIDE THE WTO?

First, as shown above, financial grants were the preferred form of subsidy in the decade before the pandemic. Since the onset of the pandemic, however, state loans have become the favourite form of intervention. This is probably due to the devastating effects the pandemic has had on certain industries such as air transportation, tourism and restaurants, as people stay in their own homes during lockdowns and try to minimise interactions with others. Thus, the policy response has also changed: previously, financial grants were provided by governments to help firms expand their capacities, acquire new technologies and equipment, and gain market share at the expense of their foreign competitors. Now, however, the priority is simply to keep as many firms afloat as possible to help maintain employment and soften the impact on the whole economy.

Thus, in terms of the priority areas for negotiation, WTO members should include in their consideration the effects of various stimulus packages such as loans, in addition to an over-emphasis on over-capacity as before. In their deliberations, members should consider the following key questions:

1. What terms have been granted to the recipients?
2. How likely it is that these loans will be rolled over, raising the prospect of medium-term subsidisation?
3. To what extent do these loans favour certain producers, particularly domestic companies over foreign?
4. Which sectors and product areas have these loans been concentrated in? Related to this, do they transcend health-related concerns, and if so, why?
5. Do these loans violate international trade agreements, particularly the ASCM?

These questions and more are amenable to further, detailed research. Such research is probably best handled by a multilateral organisation with requisite capacity in economic analysis, or more likely a combination of multilateral organisations. In particular, the IMF, the World Bank, the OECD, and the Economic Research and Statistics Division of the WTO could be tasked with this exercise, with the division of labour between them to be worked out through an appropriate inter-agency process.

Second, the growing popularity of capital injections and equity infusions raises an interesting issue regarding the definition of state-owned enterprises (SOEs). Does government equity infusion make these firms state owned, and more importantly, 'public bodies' as under the ASCM? So far, the US and the EU have been arguing that the determination of 'public bodies' shall be based primarily on governmental ownership instead of the exercise of governmental functions. As the pandemic has made more and more firms in the West rely on government equity infusions, the ownership-based argument has become less relevant in the policy debate.

Instead, members need to find ways to differentiate among firms based on what they do and the effects of such actions on the market, rather than on who contributes the capital. This matter has major systemic implications beyond the narrow confines of the ASCM and thus should be taken up by the Council for Trade in Goods or even the General Council.

Third, the COVID-19 pandemic has upended entire markets at a speed and scale that is historically unprecedented. This raises difficult issues relating to ascertaining the market benchmark, which is a key issue in the determination of 'benefit' – the third component of the ASCM's subsidy definition. In a way, we have seen such problems before in the so-called non-market economies, where the whole market is distorted and does not provide reliable benchmarks. This problem has traditionally been solved with the use of alternative benchmarks from surrogate countries, but now, with the pandemic sweeping the whole globe, it is extremely hard – if not impossible – to find such surrogate countries that could provide the necessary benchmarks.

Flowing from this, it is imperative that WTO members agree on roadmaps for transitioning back towards a 'new normal', in other words, roadmaps for recovery in which massive state subsidisation is rolled back. While that discussion is best located in the IMF, the implications for subsidies disciplines in relation to determination of 'benefit' is best located in the WTO's General Council, drawing from inputs on technical issues from the Committee on Subsidies and Countervailing Measures.

Fourth, the pandemic also provides the perfect opportunity for reviving non-actionable subsidies, which was provided for under the original ASCM but lapsed at the turn of the century due to the lack of consensus for its renewal among WTO members. Many countries are subsidising research on, and development of, COVID-19 vaccines, and many more countries will probably justify the various COVID-19 subsidy schemes they have introduced as necessary for protecting human life or health, or to avoid devastating effects on the economy. However, the existing WTO framework does not provide sufficient policy space to shield these subsidies from WTO challenges.

Accordingly, WTO members should discuss the reintroduction of such flexibilities into the ASCM as part of a broader discussion on 'good' subsidies, such as those promoting uptake of carbon-reduction technologies and development of vaccines for pandemics. This would most appropriately be addressed to the Committee on Subsidies and Countervailing Measures.

Last, most of the subsidy interventions have been provided by the US and by EU member states; China, the country deemed by many to be the worst offender on subsidies before the pandemic, has not been a major subsidy provider this time. This is probably due to the fact that, despite it being the first country hit by COVID-19, China was able to control the pandemic rather quickly while most of the West are still fighting it. This could turn the tables on subsidy discussions and usher in a new set of negotiating dynamics, as the US and EU now find themselves more on the defensive side. With everyone now a sinner, it could be easier to negotiate subsidies disciplines, especially if WTO members could agree on the types of subsidies which are necessary to combat the pandemic and aid the recovery.

NEVER LET A CRISIS GO TO WASTE: PREPARING THE NEXT CHAPTER ON WTO SUBSIDY REFORM

Looking forward, I would suggest the discussions on subsidy reform proceed as follows:

- First, task the various institutions identified above with collecting the information on existing subsidies. I understand this will be an ongoing exercise given that the pandemic is not over yet, but I do expect the institutions to be able to produce some preliminary results on the types of subsidies, their scale and their impacts on markets by mid-2021, which could then feed into the negotiation discussions. More importantly, this would be in time for the mooted Ministerial meeting.
- Second, by the end of 2021, WTO members should agree on a basic work programme on the subsidy negotiations, which would identify the main issues to be addressed, the modalities of the negotiation, the membership of the negotiating group, and a timetable for negotiations. I understand that some members might have reservations about the proposed negotiations, but it would be crucial to have the main players – i.e. the main members represented in the Green Room process – take part. However, the issue should still be introduced in the General Council and could be referred to the Committee on Subsidies and Countervailing duties for technical clarifications and preparation of discussion topics. In terms of the issues to be discussed, I hope

that members would confine themselves to those suggested above in order to ensure a speedy outcome, but I recognise that the addition of other issues which are relevant to the subsidies provided during the pandemic may be required.

- Third, once the work programme is established, members should aim for an early harvest at least within a year (i.e. by the end of 2022). This would not only address the most urgent subsidies issues arising from the pandemic, but also show solidarity to the world, which is much needed in view of the devasting effects of the pandemic.

Of course, I recognise that, given the systemic importance of these issues, it might be difficult to achieve concrete results on these issues any time soon. Nonetheless, it would be wasting the crisis if the impetus generated by the pandemic were not properly harnessed. The sooner WTO members are able to achieve meaningful results on the issues outlined here, the better equipped the world will be with the tools necessary to combat the pandemic and embark on the road to recovery.

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ABOUT THE AUTHORS

Dessie Ambaw is a Postdoctoral Researcher at the Institute for International Trade, University of Adelaide.

Peter Draper is Executive Director of the Institute for International Trade in the Faculty of the Professions, University of Adelaide.

Henry Gao is an Associate Professor of Law at Singapore Management University.

CHAPTER 16

State ownership stakes before and during the COVID-19 corporate support measures: Implications for future international cooperation

Przemyslaw Kowalski[1]
OECD

State ownership and other forms of state support had already been a source of increasing international concerns before the COVID-19 pandemic. During the pandemic, the realm of the state has expanded again, and the extent of this expansion seems significant. The corporate support measures introduced thus far aimed at preventing a collapse of otherwise viable businesses and they will continue to play an important role as the economic fallout from the pandemic continues to materialise. However, productivity-enhancing policies enabling an exit from the economic crisis may eventually gain rank. Addressing any potential state-induced distortions to both domestic and international competition stemming from these support measures will be an important element of crisis exit strategies and may help prevent a new wave of measures restricting international trade and investment in the post-COVID-19 era. Although state ownership-related measures have featured visibly in COVID-19 rescue packages, they were only one element of a wider spectrum of corporate support measures, and their effects on international competition need to be considered in this broader context.

State-induced market distortions have long been a central issue of international commercial co-operation, as demonstrated by provisions of existing international trade agreements, which aim at limiting them. However, the views on the role of the government in the economy as well as the nature of market competition have evolved considerably over the past decades, as revealed by the increased competition between state-owned or state-supported enterprises and private enterprises in international markets and by the expansion of intricate production and ownership relationships in global value chains (GVCs). The existing rules may need updating and the challenges associated with the management of governments' increased involvement in a progressively more complex global economy which is suffering from another systemic crisis may provide a good incentive to do so.

1 This chapter has been written in author's personal capacity; views expressed in it are solely those of the author and do not by any means implicate the OECD or its member countries.

This chapter argues that the discussions on these issues already held prior to the COVID-19 pandemic suggest key areas were progress could be made.

- First, given the emerging evidence on the increased presence of state-owned and otherwise state-controlled enterprises (henceforth, SOEs), it would seem prudent to agree that state ownership, and other visible forms of state control of enterprises, can be operationalised as useful criteria for documenting and addressing trade-distorting state support (but without equating them automatically with such support).
- Second, in order to enable meaningful discussions on which forms of state support need to be better disciplined at the international level, the international community needs to have a methodology for collecting and assessing information on such support.
- Third, insights from this data collection exercise could help inform discussions on the best ways of enhancing the provisions on subsidies and other state-induced trade distortions in existing international agreements (the WTO in particular, but also the existing preferential trade agreements, or PTAs).

The remainder of this chapter first briefly reviews the debate on state ownership and other forms of state support. It then discusses the rationale for corporate support measures introduced during the COVID-19 pandemic and their potential impact on competition. Measures involving state ownership are discussed in this larger context while using the airlines industry as example. The chapter concludes by elaborating on priority areas for future international co-operation in this area.

STATE OWNERSHIP AND OTHER FORMS OF STATE SUPPORT WERE ALREADY DEBATED INTENSELY BEFORE THE COVID-19 PANDEMIC

International commercial tensions over state ownership and other forms of state-induced market distortions had been intensifying long before the COVID-19 pandemic. Particularly since the 2008-09 financial and economic crisis, SOEs have been found to be competing increasingly with private firms in international markets (OECD 2016, IMF 2020a). In some cases, SOEs were found to have benefited from government support that was unavailable to their private peers, to have channelled such support to other companies or pursued non-commercial government-set objectives (Kowalski and Perepechay 2015). A number of international legal disputes involving SOEs – including at the WTO – as well as the negotiations of new PTAs and changes in national inward FDI regimes that took place in the 2010s have triggered a debate about the need for new international trade and investment policy initiatives focused on better disciplining SOEs (Kowalski and Rabaioli 2017).

This debate has revealed that state ownership may sometimes make it easier for governments to influence enterprises' operations and pursue non-commercial goals, and thus create distortions in international markets. However, ownership is not necessary for governments to exercise such influence, nor does it inevitably entail it (Kowalski and Rabaioli 2017). Recent detailed studies by the OECD of industries deemed to be particularly affected by state-induced market distortions, such as aluminium and semiconductors, have shown that distortions are not necessarily related to state ownership (OECD 2019a, 2019b).[2] The main implication is that state ownership status of firms may be a useful auxiliary criterion for detecting market-distorting state support,[3] but government grants, tax incentives, subsidised loans, state guarantees and subsidised inputs granted to privately owned enterprises can also have detrimental effects on competition, and should not be overlooked.

DURING THE PANDEMIC, THE REALM OF THE STATE HAS EXPANDED AGAIN, WITH IMPLICATIONS FOR INTERNATIONAL COMPETITION AND COORDINATION

The severe disruptions of economic activity resulting from the COVID-19 pandemic have led most governments to extend a range of new support measures to firms facing financial difficulties. Awaited by the public and the business sector, these measures aimed at preventing unwarranted bankruptcies and employment losses in the short term and at ensuring that normal economic activity could resume when the medical emergency and the lockdowns were over (e.g. IMF 2020b).

Somewhat differently from the 2008-09 financial and economic crisis, when the policy responses consisted mainly of measures supporting ailing financial and banking institutions as well as fiscal and monetary policy measures aimed at boosting aggregate demand, the COVID-19 policy responses have focused visibly on corporate support measures to services and manufacturing industry sectors affected most severely by the containment measures (OECD 2020a, 2020b). The latter include some manufacturing industries, such as the car industry,[4] and services industries, such as hotels and restaurants, arts, recreation and personal services and transport, where, depending on the country, output has been estimated to decline by between 20% and 90% between February and June 2020 (OECD 2020c). The corporate support measures typically involved a mixture of tax and social security contribution reliefs, employment subsidies,

2 These studies feature a detailed discussion of government support, including below-market loans and below-market equity. Further information is available from the OECD team working on these issues under Jehan Sauvage.

3 This is because these studies found that not only does support go to SOEs, but SOEs can also channel such support to other firms.

4 The car industry was however also a major beneficiary of bailouts during the 2008-09 financial and economic crisis.

grants, loans and loan guarantees, as well as measures increasing – or potentially increasing – state ownership in the economy, such as equity injections and loans and loan guarantees convertible to equity.[5]

Preserving competition was naturally not the main objective of the COVID-19 containment measures. But the resulting demand and supply impediments stemming from these measures – and thus the ensuing liquidity and solvency problems – are not only highly sector- and country-specific (e.g. Gros 2020) but, due to a varying preparedness to meet the new social distancing and sanitary regulations at the firm level, may be even firm-specific. It may be too early to see the results in economic data, but these measures in themselves are likely to have changed the market structure and competitive conditions in many sectors.

The unprecedented nature of the crisis, the dynamically evolving public health situation and the considerable uncertainty faced by governments with respect to both which measures work and what their associated effects on markets are have not helped governments in coordinating, designing and clearly communicating the policy responses even within their own jurisdictions. It is thus perhaps not surprising that some national governments have 'turned inward' and, particularly at the beginning of the pandemic, there was little international coordination of policy responses.[6]

Whether governments are taking into account domestic and international competition when supporting or bailing out the ailing firms and industries is also unclear. According to the OECD, to minimise trade distortions aid should ideally be transparent, time-limited, proportionate and non-discriminatory (OECD 2020d), but it is not clear how easy it is to meet all these criteria during the COVID-19 pandemic. Only in some cases – in particular, where appropriate policy frameworks had already been in place prior to the pandemic – have international competition impacts been stated explicitly as guiding principles of rescue programmes.[7] The urgency with which support measures had to be rolled out during the pandemic may have also weighed on their transparency.

5 A detailed list of measures used by more than one hundred countries can be found in the OECD's Country Policy Tracker at https://www.oecd.org/coronavirus/country-policy-tracker/

6 Unilaterally imposed controls of exports of medical supplies or food, stricter criteria for screening and approving foreign investments, new border controls and announcements of policies incentivising 'reshoring' of international supply chains which intensified during the COVID-19 pandemic, are some of the measures that were a subject of controversy. These measures bring about real and unequal economic impacts, particularly as far as businesses operating across borders are concerned, but it is not always clear how they were supposed to help addressing the sanitary situation and, as has been documented, in some cases they can have counterproductive effects. Many of the initial policy responses have been documented and analysed in Baldwin and Evenett (2020).

7 The EU rules on competition, state aid, transparency and government procurement rules, make up some of the most advanced international rules on state support (e.g. Kowalski and Perepachay 2015). In a series of communications issued in the period March to June 2020, the European Commission called on the EU member states to extend the needed state support to the corporate sector and, among others, relaxed the EU state aid rules and accelerated the state aid approval procedures. In the second amendment of the 'Temporary Framework' for EU's state aid in particular, the Commission allowed the Member States to provide recapitalisation aid to companies – as a last resort – in return for equity. Already in March 2020, the Commission pointed out that a level playing field and avoidance of subsidy races in the Internal Market are key and would support a faster future recovery. Later, the Commission also announced several guidelines for granting support, such, for example, conditions on the necessity, appropriateness and size of intervention, conditions on the member state's entry in the capital of the company and remuneration, and conditions regarding the exit (including time limits) of the member state from the capital of the company. For a chronological list of EU state aid-related decisions see: https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html .

While many of the rescue programmes were broad-based in design, the eligibility criteria may not always have been clear and in some cases entitlement to such aid was being decided by authorities on a case-by-case basis, while the associated background financial information as well as the details of the support granted were not being publicly disclosed. Reasonable concerns have also been voiced about unequal financial abilities of different countries to rescue their corporate sectors and the competitive distortions this may create.[8] The business sector has generally welcomed government efforts to help the ailing firms but voices of discontent about incoherently designed support policies were also heard.[9]

While the full scale of the COVID-19-related corporate support measures and their sectoral distribution remains unknown, some estimates suggest that it has been significant. Data presented in OECD (2020c), for example, suggest that COVID-19-related support to the corporate sector announced up until now may have exceeded 20% of 2019 GDP in some countries.[10]

STATE OWNERSHIP-RELATED MEASURES FEATURED VISIBLY IN COVID-19 RESCUE PACKAGES…

Nationalisations of previously privately owned companies, recapitalisations of existing SOEs, injections of equity resulting in minority state ownership, as well as state loans and guarantees convertible to equity in an event of a default were some of the measures which featured among the COVID-19-related support measures. Although this does not by any means alleviate the concerns about the potential impact of these measures on competition and productivity, certain circumstances specific to this crisis may have made taking equity stakes in companies a useful crisis management tool.

First, during the pandemic, some companies deemed by governments as 'systemically important' or 'too important to fail' found themselves insolvent as a direct result of the pandemic or the containment measures. This may have motivated some nationalisations

8 In the EU, for example, the relative sizes of bailouts that were being offered within the EU Single Market by Germany and France were being contrasted with what could be offered by Italy and Spain which are facing tighter budgetary constraints (e.g. https://www.economist.com/leaders/2020/05/28/government-handouts-threaten-europes-single-market).

9 Some businesses have gone as far challenging certain COVID-19-related support measures legally. In the airlines industry, for example, Rynair has asked the European Court of Justice to cancel the European Commission's approval of the Swedish government's €455 million loan guarantee for airlines, claiming it violated the EU's state aid rules making the eligibility for this form of support conditional on holding a Swedish commercial aviation licence on the 1 January 2020 (https://simpleflying.com/ryanair-sweden-legal-action/).

10 This estimate is based on OECD (2020c), which used official estimates of fiscal support (i.e. support having fiscal implications) and allocated it to categories such as 'direct support for workers, firms and healthcare', 'guarantees and loans' and 'tax deferrals' for Japan, Italy, Germany, Australia, Canada, France, UK, the US and Korea. The data show that, in five out the nine OECD economies for which such inventory was possible, the state support to the corporate sector announced up until now exceeded 20% of 2019 GDP. As noted in the original sources, these estimates are highly uncertain due to an unknown duration of the crisis and take-up of various programmes by the private sector, and may not be fully comparable across countries due to classification difficulties. Also, the category 'direct support for workers, firms and healthcare' does not make a distinction between support directed to capital owners from that directed to workers while the reference to support exceeding 20% of GDP in five countries makes the simplifying assumption that most of support in this category would benefit the corporate sector. Finally, this support will likely be rolled out over periods longer than one year, while the GDPs, against which it is benchmarked, are computed on an annual basis.

or state equity injections. The OECD (2020b) contends, for example, that taking an equity stake in an ailing company during an economic crisis can be justified if an informed decision has been made that the company in question is insolvent as a direct result of the crisis and it is too important to fail. As discussed in the next section, it may be argued that some of the state interventions in the airline industry fall into that category. Note, however, that both systemic importance and insolvency are subjective criteria and they might also be used by governments to justify opportunistic or strategic nationalisations.

Second, measures involving state ownership may have had the advantage of not increasing further the already high indebtedness of the non-financial corporate sector (e.g. Çelik et al. 2020), while at the same time allowing the taxpayer to better control the effects of interventions and share their risks and future successes. Firms may in general prefer government grants to equity injections because they do not entail ceding control to the state, but both of these measures have direct budgetary implications and the taxpayer may prefer measures which offer better control of how public money is being spent. State-supported loans and guarantees, on the other hand, are potentially less costly for the taxpayer and may provide stronger incentives to the supported entities to perform. However, they encourage the already distressed firms to take on additional debt which must be repaid irrespective of financial successes or difficulties in the future. This may increase the number of 'zombie firms' and limit the private sector's internal resources available to finance new investment and employment when they are needed during the economic recovery from the pandemic. It may also undermine the health of the financial system at large. One option to address these concerns is to provide support in the form of public equity stakes (e.g. OECD 2020c), particularly if they are time-limited and come with concrete recovery plans. However, loans and guarantees convertible to equity, which combine debt with potential state ownership and were included in rescue packages in some countries, do not prevent indebtedness and they may create a situation in which governments and private capital owners will find themselves in the role of unintended joint company owners in the future (e.g. OECD 2020a).

… BUT THEY WERE A PART OF A LARGER MIXTURE OF SUPPORT MEASURES, AS ILLUSTRATED BY THE EXAMPLE OF COVID-19 BAILOUTS IN THE AIRLINES INDUSTRY

While they featured visibly in COVID-19 rescue packages, state ownership-related measures were only one element of a wider spectrum of corporate support measures, and their effects on international competition will have to be considered in this broader context. The variety of measures deployed during the pandemic by different governments to support the airlines industry is an illustrative example.

Deprived of revenues by the grounding of most of the international and domestic passenger flights between mid-March and end-May 2020 but still having to cover high fixed costs,[11] most airlines – including some of the best performing ones thus far – quickly encountered severe liquidity problems. Flights on some routes resumed gradually after the end of lockdowns in June/July 2020, but the social distancing regulations, unexpectedly evolving travel bans and reductions in demand for personal and professional travel continue to limit sales. It is not unconceivable that the demand for airline services will not reach its pre-pandemic levels still for many months to come.[12] What seemed like a short-term liquidity crisis may turn into a fully-fledged solvency one.

State support to this systemically important industry[13] has been a subject of long-standing debate.[14] Traditionally characterised by significant influence of the state through state ownership of flag carriers, airports and state support, the sector has seen significant deregulation, privatisation and easing of the restrictions on the foreign ownership of international carriers over the last three decades. Nevertheless, several airlines and airports remain majority state-owned and several others are minority state-owned. The international competition in the industry is also subject to special rules and agreements. The largest part of air transport services (i.e. traffic rights and services directly related to traffic) is excluded from the application of the WTO's General Agreement on Trade in Services (GATS) and, instead, most access to international markets in this area is governed by bilateral, regional and plurilateral agreements. As a service, air transport is also not covered by the WTO's Agreement on Subsidies and Countervailing Measures (ASCM).

The airline industry has received numerous bailouts during the COVID-19 pandemic. But not all ailing airlines were supported and not all the supported airlines were supported in the same way. Table 1 presents an illustrative and preliminary sample compilation of publicly available information on some €91 billion ($108 billion) worth of state bailouts estimated to have been extended to thirty-five airlines (or groups of airlines) by various national or regional governments. The table also includes information on broad types of state support given and the state ownership status of the concerned airlines prior to, and after, the COVID-19 bailouts.

11 These include leasing fees for aircrafts, parking fees and staff wages.

12 The OECD (2020c), for example, estimates that the international passenger traffic revenue in July 2020 was still over 90% lower than in 2019. It also estimates that global commercial flight numbers in August 2020 remained around 40% below their pre-pandemic level.

13 The importance of the airline industry extends much beyond the passenger transport as it provides a critically important infrastructure to most national economies and is a backbone of international goods and services trade. It has important upstream and downstream links with many other industries and is an important direct and indirect employer in many countries.

14 Proponents of state support are arguing that support to national flag carriers is justified by the positive externalities of connecting the economy to international markets. For example, this has been often argued in the case of the Gulf countries' state supported carriers. Critics argue that airline services can be delivered more efficiently by commercially oriented private airlines and that state presence in this highly internationally contestable sector creates costs for the taxpayer and customers, and has significant negative effects on international competition in the industry itself and beyond.

The information presented suggests the state ownership-related measures extended to the industry were a popular, but by no means the only, form of state support: four of the documented rescue packages (11% of all packages) involved grants; nine (26%) involved loan guarantees; thirteen (37%) involved nationalisations or state equity injections; and nineteen (54%) contained elements of state-supported[15] loans.

Also, the 15 airlines which were majority or minority state-owned prior to the COVID-19 bailouts accounted for 31% of the overall amount of support to the industry,[16] while the rest of the support was extended to private airlines. In addition, some state-owned airlines, such Air India and Thai Air, did not receive bailouts, and the latter has filed for bankruptcy and rehabilitation. This suggests that, overall, state support given to airlines was not unambiguously related to their state ownership status: privately owned as well minority and majority state-owned airlines received state support and, on average,[17] the state-owned operators did not seem to receive obviously higher levels of support than privately owned ones.

State equity injections were also not limited to previously state-owned airlines. Seven out of 15 previously state-owned airlines benefitted (solely or in combination with other forms of support) from a recapitalisation by the state, or from state loans or guarantees convertible to equity (these were SAS, Finnair, Air Baltic, Nordica, New Zealand Air, Singapore Airlines; see Table 1). In addition, six thus far fully privately owned airlines also benefitted from a state equity injection or financing that may result in future state ownership (Lufthansa AG, Swiss/Edelweiss, Austrian Airlines, Brussels Airlines,[18] Alitalia, and various US airlines as part of the US rescue package containing convertible loans). Only in the case of three airlines (Air Baltic, Nordica and Airitalia) was support extended primarily in the form of ownership stakes; in all other cases, equity stake injections were combined with other support instruments such as loans and loan guarantees.[19] The stocktaking of COVID-19-related airline bailouts also shows the potential cross-border spillovers of state support granted in an industry characterised by fierce international competition and a complex web of cross-border alliances and ownership linkages.

15 It is not clear to what extent these loans are provided below market interest rates. Azul, an private airline operating from Brazil, for example was reported to be hesitant to apply for the bailout extended to airlines by the Brazilian state-owned development bank (BNDES) as it claimed BNDES rescue loans were not provided at interest rates the company could not obtain on the market (https://airlinegeeks.com/2020/08/29/azul-still-not-sure-about-bailout-says-ceo/). In general, it is also often difficult to establish what a market rate in particular case should be.

16 Note that this share increases to 45% when the amounts of bailout given to Airitalia (nationalised by the Italian government as a part of the COVID-19 response) and Lufthansa (which was partially taken over by the German government) and its subsidiaries are accounted for.

17 This calculation is approximate. Descriptive statistics cannot be rigorously calculated because some bailouts in Table 1 cover more than one airline.

18 Swiss/Edelweiss, Austrian Airlines, Brussels Airlines received support in form of state equity through state equity injection into parent Lufthansa AG.

19 Here, again, we do not know whether these were provided below market rates.

TABLE 1 SELECTED BAILOUTS OF STATE AND PRIVATELY OWNED AIRLINES IN THE AFTERMATH OF THE COVID-19 PANDEMIC

Airline or group of airlines	Amount (€ mln)	State ownership status pre-COVID-19	Type of support (country giving support)	Increase in degree of state ownership due to bailout
Air France-KLM Group	7,000	minority (jointly owned by France and Netherlands)	loan and loan guarantee (France)	no
Lufthansa AG - Lufthansa	6,840	none	loan / partial takeover (Germany)	yes, partial nationalisation
Air France-KLM Group	3,400	minority (Netherlands)	loan and loan guarantee (Netherlands)	no
TUI Group	1,800	none	loan (Germany)	no
Lufthansa AG - SWISS / Edelweiss	1,420	none	loan (Switzerland)	yes, indirectly through partial nationalisation of Luftl
TAP	1,200	majority (Portugal)	loan (Portugal)	no
SAS	1,130	minority (jointly owned by Denmark, Norway and Sweden)	credit guarantee and recapitalisation (Denmark, Norway, Sweden)	yes, recapitalisation (Denmark and Sweden, but not I
Finnair	826	minority (Finland)	credit guarantee and recapitalisation (Finland)	yes, recapitalisation
IAG - Iberia	750	none	loan guarantee (Spain)	no
Easy Jet	670	none	loan (United Kingdom)	no
Ryanair	670	none	loan (United Kingdom)	no
Condor	550	none	loan (Germany)	potential nationalisation in the future
Lufthansa AG - Austrian Airlines	450	none	state aid and loan (Austria)	yes, indirectly through partial nationalisation of Luftl
Wizzair	344	none	loan (United Kingdom)	no
IAG - British Airways	343	none	loan (United Kingdom)	no
all airlines operating in Sweden	318	n.a.	loan guarantee (Sweden)	n.a.
Lufthansa AG - Brussels Airlines	290	none	loan and equity injection (profit-sharing certificates, equity non-convertible) (Belgium)	yes, indirectly through partial nationalisation of Luftl
Norwegian Air	277	none	loan guarantee (Norway)	no
IAG - Vueling	260	none	loan (Spain)	no
Air Baltic	250	majority (Latvia)	recapitalisation (Latvia)	yes, recapitalisation
SATA Air Açores	133	majority (Portuguese Autonomous Region of Azores)	loan (Portugal)	no
Wideroe and other Norwegian regional carriers	121	none	loan guarantee (Norway)	no
Blue Air	62	none	loan (Romania)	no
Nordica	30	majority (Estonia)	recapitalisation (Estonia)	yes, recapitalisation
Alitalia	3,000	none	takeover (Italy)	yes, nationalisation
New Zealand Air	508	majority (New Zealand)	loan convertible to equity (New Zealand)	potentially in the future through conversion to equit
Singapore Airlines	11,200	majority (Singapore)	equity injection and convertible debt issuance (Singapore)	yes, recapitalisation
Cathay Pacific	4,200	minority (China, through Air China)	equity injection and loan (Government of Hong Kong)	yes, acquisition of new stakes by Hong Kong
Thai Air	n.a.	majority (Thailand)	government-led filing for bankruptcy and rehabilitation (Thailand)	no
various US airlines	42,000	none	mix of grants, loans and warrants to buy stock (United States)	potentially in the future through conversion to equit
various Australian airlines	439	none	tax and fees relief (Australia)	no
various Chinese airlines	unknown	three biggest Chinese airlines are majority state-owned	financial assistance to airlines operating international flights to and out of China (China)	no
Air India	no bailout	majority (India)	n.a.	no
various Brazilian airlines	557	none	loan (Brazil)	no
South African Airways	169	majority (South Africa)	state aid (South Africa)	no
Total	91,207			

Note: This is an indicative inventory only; it does not cover the whole airline industry and it is based on sources of diverse reliability. Some of these measures are also still under discussion. Current exchange rates in the week of 7 September were used to convert values into euros.

Source: author's own compilation building on Bailout Tracker (https://www.transportenvironment.org/what-we-do/flying-and-climate-change/bailout-tracker) and various company, industry and press sources.

ADDRESSING CONCERNS ABOUT STATE OWNERSHIP AND OTHER STATE-INDUCED DISTORTIONS IN INTERNATIONAL MARKETS HAS NEVER BEEN MORE IMPORTANT

While the short-term support measures will continue to play an important role as the economic fallout from the pandemic continues to materialise, productivity-enhancing policies enabling exiting the economic crisis may eventually gain rank. Addressing any potential state-induced distortions to both domestic and international competition stemming from these support measures will be an important element of such crisis exit strategies.

Unilateral measures that governments can take to minimise the negative effects of equity stakes acquired during the COVID-19 pandemic include imposing strict recovery plans on recipient firms, setting clear timing of and conditions for exit from state ownership and, in the event state ownership is maintained, implementing good practices in the area of corporate governance of SOEs[20] (e.g. OECD 2020c, 2020d). However, these essentially voluntary initiatives may fall short of effectively addressing the concerns about state ownership raised in cross-border contexts, particularly those that relate to the possibility of governments using the state ownership stakes to pursue strategic economic and political objectives to the detriment of foreign partners. Addressing these concerns requires close international cooperation and is necessary to prevent a further rise in international commercial tensions.

Calls for new initiatives to address concerns related to state ownership and other state-induced market distortions at the multilateral level have been made on a number of occasions in the past.[21] Both the rise in protectionist sentiments in recent years and the emerging evidence on the increased realm of the state prior to and during the COVID-19 pandemic render these calls even more urgent. While the circumstances today are more challenging than they were a decade ago, it is inconceivable that international cooperation in the area of trade and investment can continue to drive economic growth without having better tools to systematically collect and assess information on the most important forms of state-induced trade distortions. This information gap prevents the key stakeholders from starting meaningful discussions on some of the issues that have been

20 The "OECD Guidelines on Corporate Governance of State-owned Enterprises" (OECD 2015) in particular elaborate on a number of principles which can help minimise negative effects of state ownership. These principles concern areas such as: legal and regulatory frameworks; principles of the state acting as an owner; equitable treatment of shareholders; behaviour in the marketplace; relations with stakeholders; transparency and disclosure; and the responsibilities of the boards of state-owned enterprises.

21 Back in 2014, I argued that the WTO could usefully strengthen its rules on state enterprises through: some extensions of the application of the GATT Article XVII on State Trading Enterprises (STEs) in order to improve transparency and to cover a wider range of discriminatory or anti-competitive behaviours; a clarification of the "public body" concept in the ASCM; and other more ambitious initiatives such as an agreement on subsidy disciplines in services or a resurrection of negotiations on competition and investment (Kowalski 2014). More recently, better capturing SOEs was singled out by the EU as one of the three key elements in the area of international trade rules in its 2018 concept proposal on how to improve the functioning of the WTO (EU 2018). Continuation of work on state enterprises as channels of state support and, specifically, work on the definition of the term "public body" in the WTO context, have also been listed as the agreed points of consensus in the Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union in January 2020 (Japan, US and EU, 2020).

increasingly dividing the international community in recent years. Only such evidence-based discussions could eventually lead to updating of international rules so that they are more effective in limiting state-induced distortions in a global economy characterised by increasingly complex models of production, ownership and governance and provide a solid assurance to countries that embrace openness to trade and investment as a key element of their economic development strategies.

1. Acknowledge state ownership and state control of enterprises as useful criteria for documenting and addressing trade-distorting state support

WTO law currently follows in principle an ownership-neutral approach, which focuses on disciplining market-distorting actions of states regarding any enterprise.[22] If discriminatory behaviour by a state-owned, or state-controlled, enterprise is suspected, WTO law emphasises the need to demonstrate formal links with the state. For example, benefits granted by SOEs to other SOEs or private firms can be considered as subsidies within the meaning of the ASCM if the granting SOEs can be considered "public bodies", which is further interpreted as "entities that possess, exercise or are vested with governmental authority". According to the WTO case law, ownership and control are relevant criteria in the determination of whether an entity is such a "public body", but they are not decisive factors. This lends this approach flexibility and allows it, in principle, to define as SOEs a wider range of enterprises. At the same time, for market participants it creates uncertainty with respect to which enterprises can be deemed extensions of governments and imposes a heavy and taxing burden of proof on complainants.

Given the evidence on the increased presence of commercially active SOEs in the global economy, it would seem prudent for the international community to first agree on a definition of SOEs[23] and, second, require that these SOEs be held to the same standards as governments themselves. The idea is not to systematically assume state support when SOEs are involved, but to focus surveillance more specifically on enterprises which are deemed more prone to either receive state advantages or to convey such advantages to other firms (OECD 2019a). This is indeed the approach that has been taken in some of the most recent PTAs (e.g. Kowalski and Rabaioli 2017).

Implementing this recommendation at the WTO, for example, would arguably require not much more than a members' agreement on the proposition that a certain degree of state-ownership or control are sufficient for an entity to qualify as a 'public body' for the purposes of WTO's subsidy rules. A willingness to move in this direction has recently already been suggested in joint statement by Japan, the US and the EU.[24]

22 Still, there are some departures from this rule, for example in WTO accession protocols of China and Russia (Kowalski and Rabaioli 2017).

23 This is not straightforward and different definitions have been used in different contexts (e.g. Kowalski and Rabaioli 2017) but should ideally include the notion of 'control'.

24 See the Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union from January 2020 (Japan, US and EU 2020).

2. Use a taxonomy of trade-distorting state support measures to guide the collection of comprehensive data on these measures

Improved transparency and disclosure requirements are dimensions that cut across all the different perspectives on state support discussed above. They are a primary area of interest for both policy makers responsible for state support measures and those concerned with their trade effects. In reality, many, if not all, policies and formal and informal institutions to a larger or a smaller extent influence costs and prices and thus the conditions of competition. These price-altering policies may range from tax codes, through various subsidies, labour and corporate regulations, through to public investments in specific types of infrastructure or even informal links between government and certain businesses. But documenting all the potentially trade-distorting policies may be impractical. The most trade-distorting measures should logically have priority but in practice it has been hard to tell which measures are more trade-distorting without having compiled all the necessary qualitative and quantitative data and without having empirically assessed the associated impacts on trade. Solving this 'chicken-and-egg' problem can be facilitated by first developing a relatively broad taxonomy of state support measures and, then, narrowing it down based on expert judgement to a shorter list of measures on which data should be collected, and which can then be assessed more rigorously.

A useful reference here can be the OECD's work on market distortions in several individual sectoral contexts, which has developed such a taxonomy of relevant government support measures. Building on insights from the OECD's longstanding work on measuring government support in agriculture, fisheries and fossil fuels, the taxonomy organises and groups government support measures according to a set of economics and policy-relevant characteristics, namely their transfer mechanism and formal incidence.[25] The taxonomy includes also support measures granted by state enterprises as well as governments. The OECD has collected data on some of the most important forms of support in industrial sectors such as the aluminium and semiconductors value chains (see e.g. OECD, 2019a and 2019b).

Given the revealed divisions on some of these issues within the international community as well as the need for an 'out-of-the-box' thinking and technical expertise, moving forward on SOEs and support would likely require a new initiative involving, to the extent possible, business, academia and expert international organisations. Ideally, such an initiative would be initiated at the multilateral level, at the WTO, where the wide country membership allows tackling this systemic issue in a meaningful manner but a plurilateral initiative could also be considered as a way of building a more widespread buy-in.

25 *Transfer mechanism* refers to how a transfer is generated (e.g. government revenue foregone, direct cash transfer). *Incidence* refers to whom or what the transfer is given, and this categorisation shadows the factors of production that normally enter production functions. This allows distinguishing, for example, the effects of output subsidies from those of input subsidies. For further information, see OECD (2019a) and OECD (2019b).

3. Start discussions on enhancing international rules on trade-distorting subsidies and measures

The WTO's ASCM prohibits or disciplines various forms of trade-distorting financial and in-kind support that can be granted to SOEs or private firms operating in goods sectors, and that can be demonstrated to confer a benefit on these enterprises. However, some of the existing subsidy rules would benefit from elaboration of common methodologies on relevant tests and some forms of support are not covered in the current WTO rulebook (e.g. non-financial support that does not take the form of subsidised inputs, or subsidies in services industries). The lack of coverage of services is particularly striking given that large parts of bailouts associated with both the 2008-09 crisis and the COVID-19 pandemic were channelled to services sectors and that various services are an increasingly important input into the production of goods. Related to the last point, the WTO rules on subsidies do not elaborate on the interpretation of trade-distorting subsidies in value chains. For example, as noted in the case of the aluminium value chain (OECD 2019a), state support to a firm in an upstream segment of a value chain may only cause trade distortions downstream and these may be more difficult to detect and document. For this reason, OECD work has argued that government support needs to be assessed looking across the entire value chain (OECD 2019a, OECD 2019b). In this context, and building on the transparency recommendation no. 2 above, the international community could usefully explore whether the current WTO subsidy disciplines adequately address all significant state-induced trade distortions by considering only partially currently covered, or not covered at all, forms of financial and non-financial support, support in the services sectors, and effects of state support across different segments of value chains.

Development of such new rules would require new – and likely difficult – negotiations, which would again be most effective if undertaken at the multilateral level. Work on subsidies in services, but also on trade-distorting domestic regulation, could logically build on progress made already in plurilateral negotiations such as, for example, the Trade in Services Agreement (TiSA).

CONCLUDING REMARKS

In less than 15 years we have had two systemic crises where the boundaries of the state have expanded. Now is a good time to have a fresh look at what state-business linkages currently exist in services as well as goods sectors, their implications for cross-border commerce, and how the international rule book can be revised to improve transparency and to ensure that temporary measures taken during crises and the like do not become permanent sources of discrimination and tensions within the world trading system.

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ABOUT THE AUTHOR

Przemyslaw Kowalski is a Senior Economist at the Organisation for Economic Co-operation and Development.

CHAPTER 17

COVID-19 as a catalyst for another bout of export mercantilism[1]

Simon J. Evenett
University of St. Gallen and CEPR

INTRODUCTION

Old fashioned mercantilists believe that exports are good and imports are bad. Modern day mercantilists have learned that imports are not bad – or at least have learned not to say that they are – but they happily declare that more exports are desirable. They are rarely challenged when they trumpet boosting exports. Moreover, policymakers have found all manner of means to support exporters, notwithstanding a ban on export subsidies on non-agricultural goods at the WTO.

Contemporary export support takes many forms. Direct payments to exporters are rare. More common are tax breaks for exporters, guarantees to pay if foreign customers default,[2] and cushy financing options – the lion's share of which are taken up by firms with adequate access to capital markets.[3] In most economies although small proportions of firms export, they are the beneficiaries of considerable state favouritism.

What could be wrong with that? In the absence of interstellar commerce, the reality is that the exports of each nation are mirrored in the imports of another nation. So when a government's export support helps it grab market share in foreign markets, import-competing rivals are likely to suffer. As are exporters from third parties competing against the favoured exporters.

In short, the cross-border harm done by export support is not confined to the firms located in the importing nation. It is not hard then to see how pervasive export support can become a systemic problem for the world trading system. Indeed, in a world where some governments have deeper pockets than others, export support is another source of inequity across WTO members that can undercut trade cooperation.

1 I thank Fabien Ruf for research support in preparing this chapter. I also thank the Global Trade Alert team for their assiduous monitoring of commercial policymaking this year, upon which the evidence in one part of this chapter is based.
2 Such guarantees are rarely offered to firms engaged in domestic B2B and B2C transactions.
3 The attractive public relations defense of such cushy financing deals – namely, they support small and medium-sized enterprises that have trouble access capital markets – is belied by the reports of the very government agencies that offer such deals. The overwhelming majority of such financing is awarded to large firms.

Sharp economic downturns – such as those witnessed in many nations since the onset of the COVID-19 pandemic – encourage policymakers to cast around for measures to boost national economies. A noble macroeconomic imperative can quickly descend into a less honourable grab for foreign market share by means of innocuous-sounding export support measures. This is not a hypothetical statement. In this chapter I point out those nations whose governments have already implemented export support measures and, using the finest grained international trade data available, report estimates of the national exports at risk from foreign export support measures. There are good reasons to believe these understate the true scale of the problem, nevertheless they serve to demonstrate that the problem exists.

To date, nothing is being done about this problem. The opportunity to do something will soon arise, however, as WTO members formulate their work programme for the coming years after the appointment of a new Director-General. The last section of this chapter offers some thoughts in this regard, making the case for a scoping exercise that could lay the groundwork for future trade cooperation.

SO WHAT? WHY EXPORT SUPPORT MATTERS

Crisis-induced support for exporters is not new. In fact, the years immediately after the Global Financial Crisis witnessed a massive expansion in the shares of world trade, where firms competed against foreign rivals that had benefited from state-provided export measures. As Evenett (2020) reported, based on Global Trade Alert (GTA) evidence on relevant public policy interventions, export incentives introduced between the first G20 Leaders' Summit in November 2008 and December 2009 implicated just under 30% of world trade by the end of 2009. By 2013 the spread of export support was such that over 50% of world trade was implicated – and this percentage has now risen to around 65%.

Export support measures – which are frequently under the radar screen of most trade ministries and for which no information on their scope is provided by the public sector international organisations – are the commercial policy intervention implicating the most goods trade in the modern era (see Figure 1 in Evenett 2020). Much has been made in recent years of the trade-distorting effect of subsidies to local firms. For reasons unknown, state largesse provided to exporting firms has not received that much scrutiny from policymakers, trade diplomats, and the WTO Secretariat.

In contrast, researchers have been busy estimating the impact of export support. A growing body of econometric evidence that crisis-era export incentives distorted global trade flows is being assembled. China has frequently resorted to export incentives. Studies by Chandra and Long (2013), Defever and Riano (2012), Gourdon et al. (2017), and Weinberger et al. (2017) found that more generous incentives increased Chinese exports. Having written this, Wang and Anwar (2017) found the opposite.

Evenett and Fritz (2015) considered other countries' export incentives too and found that the total value of bilateral exports of the least developed nations grew slower when they competed in third markets against a larger share of exports from other nations that were eligible for export incentives. In a subsequent study, Evenett and Fritz (2017) showed that the export growth of members of the EU to third markets, when compared with American, Chinese, and Japanese rivals, was slower when the former were more exposed to subsidised foreign rivals in those third markets than the latter. To summarise, the evidence that export support schemes affect the patterns of global goods trade is mounting up.

EXPORT SUPPORT MEASURES SINCE THE OUTBREAK OF COVID-19

In this section I draw upon three different sources of information on policy intervention to report on the frequency of government resort to export support measures. Moreover, I combine that information with data on global trade flows to indicate how much of each nation's exports are at risk from the export measures taken by other governments this year. The goal is to demonstrate that the export support intervention documented to date is neither localised in origin nor in terms of markets affected.

My first step was to assemble information on national export support schemes from the pandemic-era policy trackers of the IMF and the OECD.[4] In addition to identifying which governments have announced their intention to implement export support schemes, I also make a point of noting when the additional state funds involved exceeded $1 billion. Figure 1 summarises the findings of this exercise.

The first impression when examining Figure 1 is that there appears to be regional variation across the world in resort to export support measures, with European nations joined by Argentina, India, Indonesia, Russia and South Korea. In fact, if the OECD and IMF policy trackers are to be believed, the governments of 47 nations have announced export support measures since COVID-19 began to spread.

However, readers should not discount the possibility that some export support measures have not been recorded by the OECD and IMF. In this regard, it is worth noting that the Global Trade Alert database has identified initiatives this year to expand or ramp up export incentives offered by the governments of China and Kazakhstan, which are not identified in Figure 1.[5]

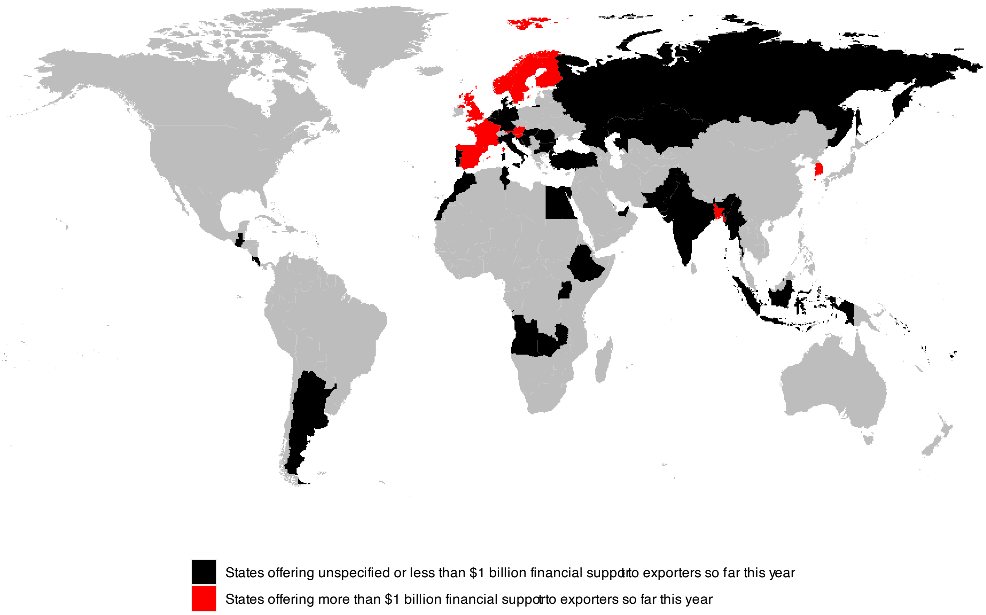
The OECD and IMF policy trackers also provide information on the scale of some of these export support measures. Evidently, certain governments like to brandish large headline figures relating to their generosity to exporters. Where such information existed and

4 The IMF's policy tracker can be found at https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19 and the OECD's policy track is available at this URL: https://www.oecd.org/coronavirus/country-policy-tracker/.

5 China expanded the export incentives on 1,500 goods in March 2020 (see http://www.globaltradealert.org/intervention/78940 for more details) and Kazakhstan enacted tax-based export incentives in March 2020 which will expire at the end of this year (see http://www.globaltradealert.org/intervention/78956 for details).

reveals billion dollar plus export support schemes, this is shown in Figure 1 by indicating a nation in red. It seems European nations and South Korea have form in this regard – but given the concerns about under-reporting mentioned earlier, they are probably not alone. In sum, the OECD and IMF evidence demonstrates that goosing exports has been part of the policy response of dozens of nations since the onset of COVID-19.

FIGURE 1 OF THE 47 GOVERNMENTS ANNOUNCING EXPORT SUPPORT MEASURES, EUROPEAN NATIONS AND SOUTH KOREA INTEND ON IMPLEMENTING SCHEMES OF $1 BILLION OR MORE



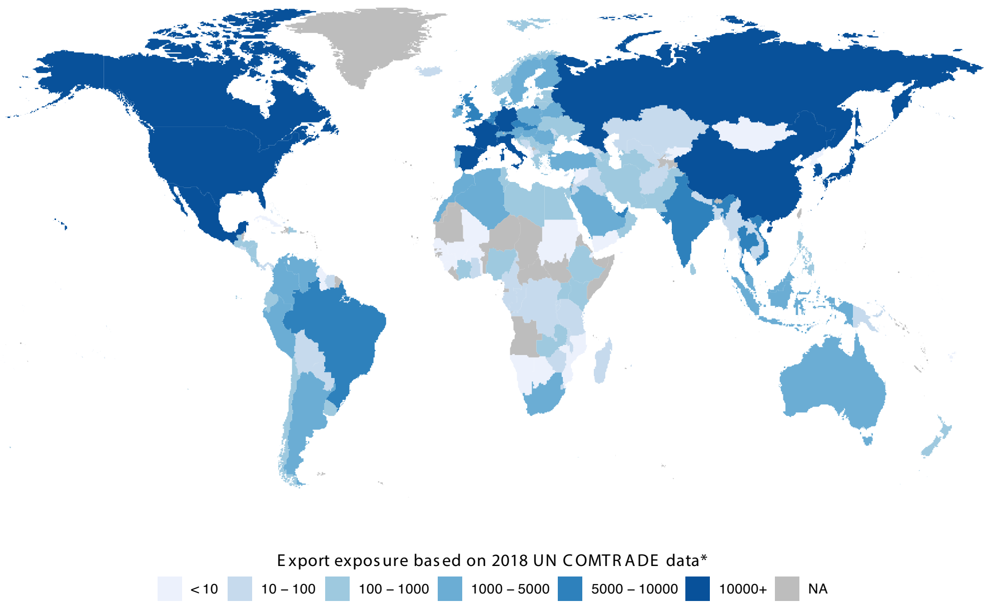
Source: Information assembled from the IMF and OECD COVID-19-related policy trackers on 9 October 2020.

But how much exports are at risk from such favouritism? Here the IMF and OECD policy trackers are of less help as they do not identify which products have benefited this year from state-provided export support. Consequently, I turned to the Global Trade Alert's reporting of export support measures.[6] Specifically, I extracted information on 2 October 2020 of the policy interventions implemented this year that incentivise exports. A total of 27 such interventions were identified.[7]

6 In the interests of transparency, I founded this commercial policy monitoring initiative in 2009.
7 Given the large number of other export support interventions documented by the GTA team that I know are in the reporting pipeline, then inevitably the total reported here (27) and the exports at risk estimates reported in Figure 2 are underestimates. Readers can contact me for updated totals.

For each such intervention, information on the goods implicated and the markets worldwide where they were sold in 2018 was used to calculate, for each nation, the total value of national exports at risk because they compete with a rival that has received export support this year (2020). Figure 2 summarises the findings, indicating in darker colours the nations where the greater amount of exports are at risk.

FIGURE 2 THE FALLOUT FROM THIS YEAR'S EXPORT SUPPORT MEASURES IS GLOBAL - 162 NATIONS HAVE EXPORTS AT RISK



Note: * Trace coverage estimate for 2020 (USD millions).

Source: Information on export support measures implemented this year was taken from the Global Trade Alert database and combined with the latest product level international trade data from the UN COMTRADE database.

The 27 export support measures documented so far this year by the Global Trade Alert implicate the commercial interests of 162 trading nations. For more than 48 nations, more than $1 billion of their exports are at risk;[8] for 11 trading nations, more than $10 billion of their exports at risk. Worldwide, I estimate that $417 billion are at risk from export support schemes implemented this year. Such findings make it difficult to dismiss the fallout from export support schemes as localised or unimportant. The question now turns to what WTO members can do about it.

8 To be clear, by exports at risk I mean the total value of exports exposed to subsidised rivals from third markets. By exports at risk I do not mean absolute loss of exports. Estimating the latter requires econometric analysis and could be fruitfully be the subject of subsequent analysis.

LAYING THE GROUNDWORK FOR FUTURE TRADE COOPERATION: A SCOPING EXERCISE ON EXPORT SUPPORT

The far-ranging reach of export support measures implemented this year calls for deliberation in bodies that have global membership. Traditionally, trade finance and related export support matters have been taken up at the OECD. However, this seems no longer appropriate given the growth of trade finance offerings outside of the OECD membership and the fact, as shown in Figure 2, that many developing countries' export interests are implicated as well.

The WTO is the natural home for addressing such a global trade concern, just as it was for agricultural export support in previous years. As a relatively new topic, however, before contemplating launching negotiations in this area, the first step should be to undertake a scoping exercise that informs WTO delegations and provides a common basis for subsequent discussion. High-quality information is a public good and unimpeded access to it builds confidence and trust, both of which are sorely needed among the WTO membership.

Step-by-step, this scoping exercise should collect and disseminate information on:

- A comprehensive list of policy interventions used to directly encourage exports.[9] Tax-related and trade finance-related policy interventions should be within scope. In principle, any type of policy intervention where the purpose is to specifically expand exports should be within scope. Selective – that is, sector-specific or firm-specific – export incentives should be included as well.
- The explicit and contingent fiscal cost of export support schemes. Here the expertise of the IMF may be valuable.
- The distribution of state-provided export support by size of firm. The extent to which small and medium sized firms actually benefit from export support would then be revealed.
- The availability of private sector provided trade finance and the factors affecting the quantum of private sector funds.
- The extent to which publicly provided export support crowds out privately supplied trade finance.
- The quantum of goods trade facing competition from subsidised rivals exporting from other countries. Here the broader notion of subsidies as state aid is intended.

9 So called horizontal policy interventions – such as improving educational performance, reducing barriers to entry, lowering taxes economy-wide – would be out of scope.

- The effects of export support in affected markets on prices, exports, and market shares. Here case studies as well as full blown econometric studies should be prepared.
- The effects of sudden changes in export support policies. For example, although dire claims were made at the time by some US businesses, what in fact happened to US exports when Congress effectively suspended the activities of the US Export Import Bank during the middle part of the past decade? Where perceptible differences in the conditions of competition in overseas markets detected?
- The effects of precedent cases where international trade disciplines have been used to phase out export support. Here the previous initiatives to limit, reduce, and then scrap agricultural export support would be relevant.

Although the scoping exercise should start by examining support for goods exports, later it could fruitfully be expanded to cover relevant state support for service sector exports.

As the information base on export support grows and is updated over time, WTO members could discuss the implications and identify where the biggest cross-border spillovers from export support measures are. Such discussions should be supported by information collection and analysis by the WTO Secretariat and other interested public sector international organisations, such as the OECD. Engagement with the Berne Union, an organisation with export support providers from the public and private sectors, would be desirable. As would engagement with representatives of the national, regional, and international business community, such as the International Chamber of Commerce. Analysis and information from other experts could feed into the scoping exercise as well.

While it made sense for WTO members to augment their traditional focus on the import restrictions limiting market access with a concern for pertinent behind-the-border regulations, other than the welcome progress taming agricultural export subsidies, the fallout from the pandemic has revealed deficiencies in the WTO's rule book on policies towards exports – not just export support, export restrictions as well. A new work programme for the WTO should lay the ground work for initiatives that pare back modern-day export-related mercantilism and the harm it induces.

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ABOUT THE AUTHOR

Simon J. Evenett is Professor of International Trade and Economic Development at the University of St. Gallen, a CEPR Research Fellow, and Coordinator of the Global Trade Alert.

CHAPTER 18

Lessons from the pandemic for trade cooperation in digital services[1]

Erik van der Marel

European Centre for International Political Economy (ECIPE) and Université Libre de Bruxelles (ULB)

INTRODUCTION

The future of global trade lies to a considerable extent in digital services. In large part, this is due to the current pandemic. The COVID-19 crisis has ushered the global economy into the use of more digital technologies, pushing trade to become based more on digital services.

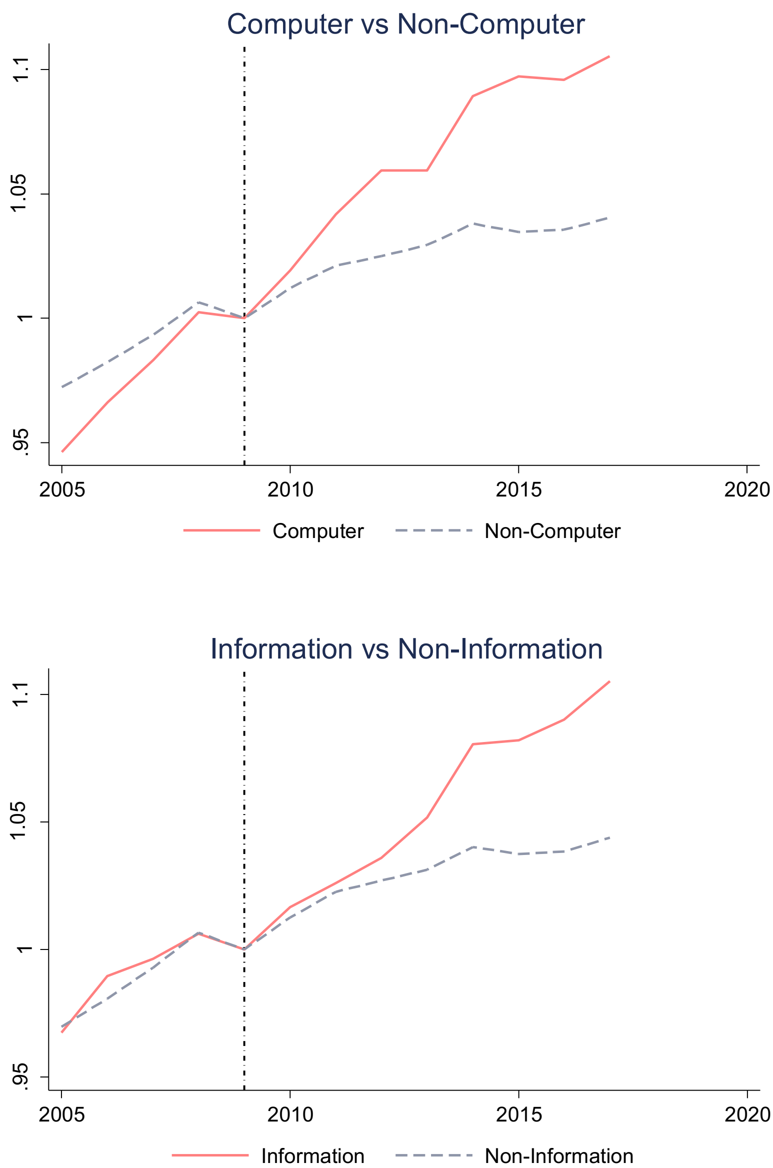
That opens the door for many countries to participate in digital services trade, including the poorer ones. A comparison with the Global Financial Crisis (GFC) of 2008-2009 reveals an important parallel. After the GFC, digital services flows grew much faster than many other types of services trade (Figure 1).[2] That provided trade opportunities not only for the richer part of this world, but also for developing countries. In fact, the increase of digital services trade post-GFC was faster for the latter group of countries lower down on the income ladder. They could profit again from the boost in digital outsourcing opportunities in trade after COVID-19.

However, not all countries are embracing the current development of increased digital services trade. There are also increasing frictions between countries over how to regulate new digital trade flows related to services. At a time of rapid global digital trade expansion, governments have been quick to implement many of these restrictions. This forms the main reason for countries to quickly deal with them, too.

1 I am grateful to Simon Evenett, Fredrik Erixon, Bernard Hoekman, Matthias Bauer, Hosuk Lee-Makiyama and Paola Conconi for comments and discussions on earlier drafts.

2 Previous empirical works already showed that services weathered the crisis a lot better than goods trade during the GFC (Borchert and Mattoo 2009) and that their specific nature and their continuous need in the economy services became crisis-proof during the GFC (Ariu 2019), in particularly business services, telecom and finance – all of which nowadays come into existence with the help of digital technologies and the internet.

FIGURE 1 EXPORTS OF DIGITAL SERVICES GROWING FASTER THAN OTHER SERVICES

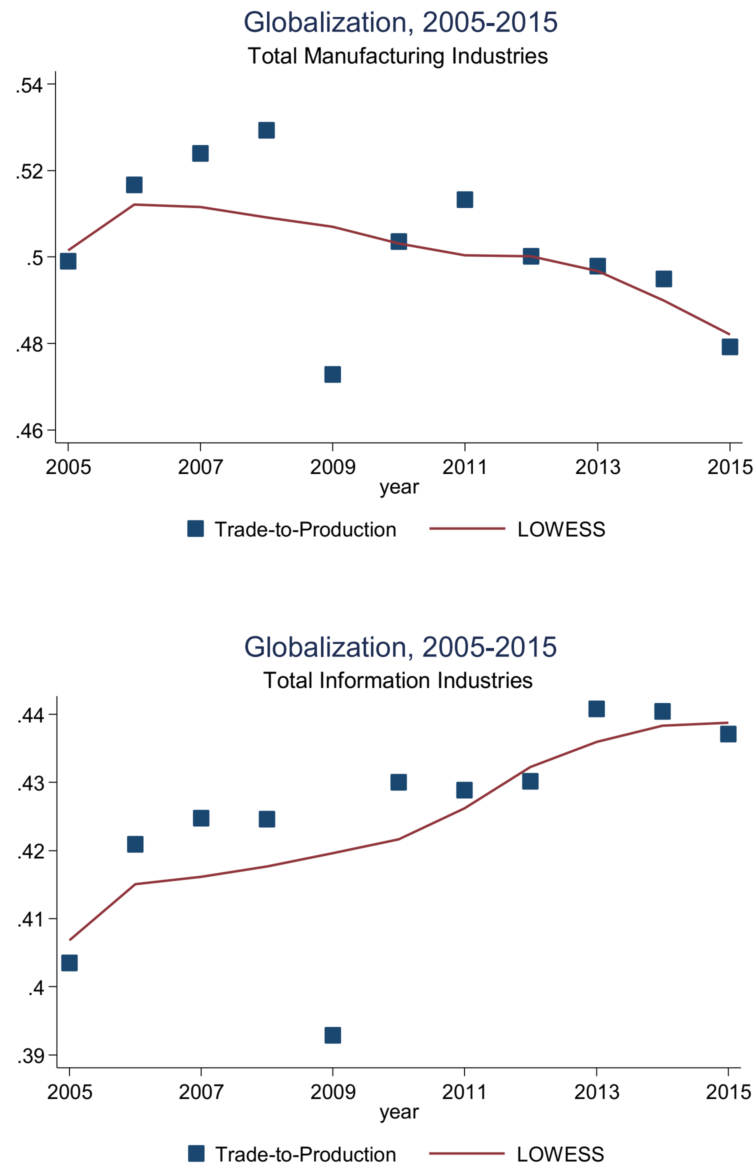


Source: Author's calculations using WTO-UNCTAD-ITC data.

DIGITAL-BASED GLOBALISATION

Even though the pandemic will drive global trade to more digital services, deeper analysis suggests that in fact the very nature of globalisation was already heading into that direction. Before COVID-19, trade in goods and digital services, including digital goods, showed diverging patterns. Figure 2 illustrates that as globalisation for manufacturing goods declined, globalisation based on digital information grew. Digital sectors, ranging from publishing and audio-visuals to telecom and IT, started to become more globalised. Trade elasticities, a technical indicator of the speed of globalisation, also reveal the different pathways of trade between goods and digital services (van der Marel 2020a).

FIGURE 2 CHANGING NATURE OF GLOBALISATION: OLD AND NEW (2005-2015)



Source: Author's calculations using OECD TiVA.

One may expect that digital globalisation would mainly benefit the richer parts of the world. Given their acquired digital technologies and knowhow, they are well-suited to take advantage of the shift towards digital services after COVID-19. However, research contradicts this belief, as trade cost reductions thanks to digital tools have been larger for poorer countries (e.g. Lendle at al. 2016). Costa Rica, Romania, Argentina and South Africa, for instance, all profited from the increase in digital services trade following the Global Financial Crisis (van der Marel 2020b). This suggests that this time too, both richer and poorer countries will be able to reap the benefits from digital services trade in the aftermath of the pandemic (e.g. Baldwin and Forslid 2020), provided they set their policies correctly.

DIGITAL TRADE POLICIES: THREE OUTSTANDING ISSUES

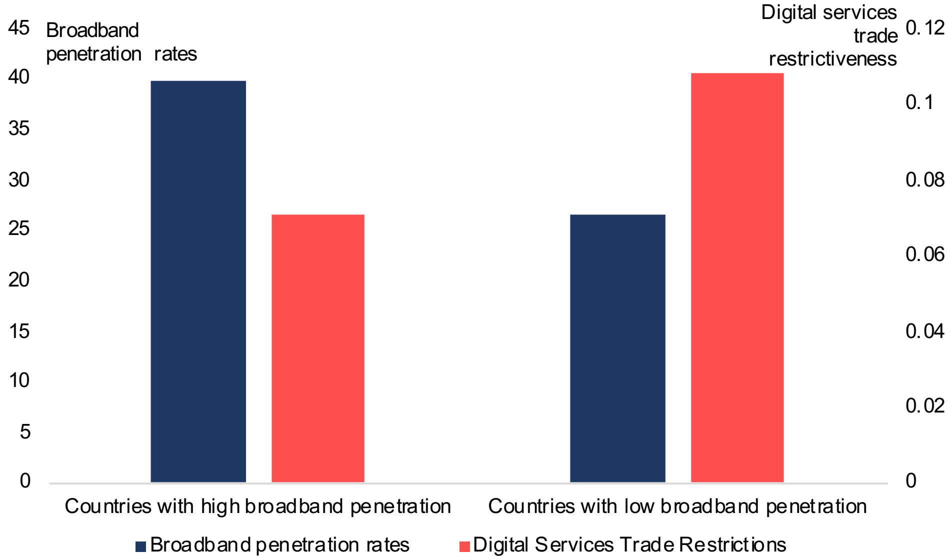
As digital globalisation progressively took shape before COVID-19, markets in digital services became increasingly restricted. The OECD's record of trade restrictions in digital services illustrates this broader picture. Since 2014, about 30% of the countries covered in the OECD data base have regressed in their digital services trade policies, and therefore digital opportunities to trade (OECD 2020). But there are more diverging policy trends in digital services trade among countries that need urgent attention. In some cases, these are new policy issues that have come to the surface along with the digital services trade expansion. Three issues come to mind.

Telecommunication services

First, countries should harness the benefits of the internet. Thankfully, broadband connections in most advanced countries have proved resilient during COVID-19. Even though fixed download speeds slowed for some countries, the spike in internet traffic was generally well-managed during the pandemic, particularly in countries with good broadband infrastructure. Given that demand for digital services will continue to grow rapidly post-COVID (think teleworking, videoconferencing, cloud computing, streaming services, online courses, and so on; e.g. Baldwin 2020), broadband connections will prove to become even more important for people and businesses.

Many parts of the world are still struggling to subscribe to broadband, however, due to a lack of basic infrastructure. This risks aggravating the digital divide after the pandemic. Trade policy can play its part in expanding the availability of broadband access. For instance, Figure 3 illustrates that OECD countries with greater trade restrictions in digital services also find themselves at the lower end of broadband connectivity. More formally, estimates show that countries with a one unit higher level of digital services trade restrictiveness exhibit, on average, lower fixed broadband penetration rates of around 30% (see the annex for a technical discussion). In many poor countries broadband prices remain too high, reflecting uncompetitive markets protected by high entry restrictions.

FIGURE 3 **COUNTRIES WITH HIGHER BROADBAND PENETRATION RATES HAVE LOWER DIGITAL SERVICES TRADE RESTRICTIONS (2019)**



Source: Author's calculations using OECD data. See Annex for technical details.

Restrictive measures picked up in the estimates cover burdensome rules related to digital services infrastructure and connectivity, as defined by the OECD. In particular, they cover restrictive telecom regulations related to interconnection prices and conditions, restrictions on the use of communication services, as well as localisation policies related to data. Some countries have also seen a setback in these restrictions in recent years, including Turkey, Saudi Arabia, India and Russia, in addition to other developed countries. As Figure 3 shows, reforming trade restrictions in these areas can play a significant role in ensuring that everybody profits from the likely shift into digital services.

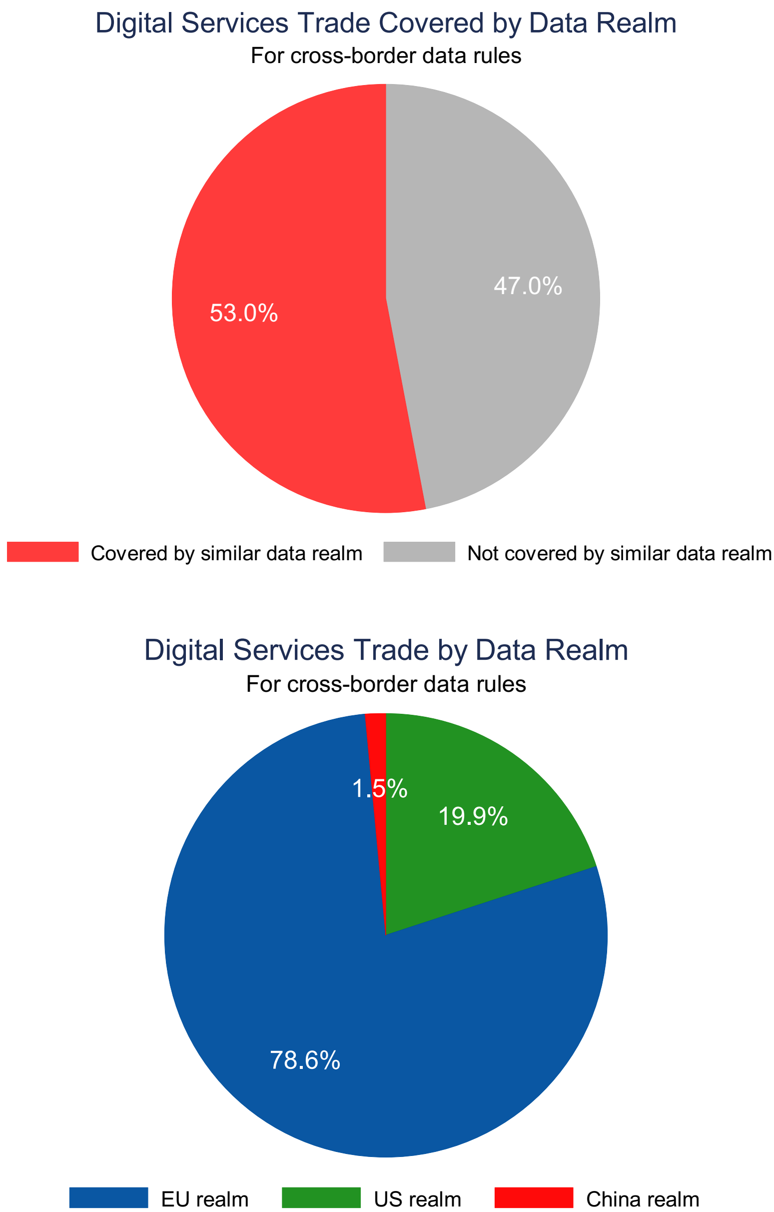
Cross-border data transfers

Diverging policy patterns between countries also point to restrictions in data. An increasing number of countries have applied limits on the free movement of personal data. Restrictive rules regulating data come in many forms, and need to be balanced with privacy, (cyber) security and consumer protection regulations. Some countries require certain personal data to be stored within their own territorial borders; other countries prohibit the transfer of personal data to another country altogether. Yet others apply strict conditions before any transfer of personal data can take place. Of late, a debate on how to handle non-personal data has also come about.

As a result, regulations for personal data diverge widely between countries. It is nonetheless possible to identify three models globally. Based on their distinctive features, each model belongs to one of the major global rule-makers in this area – the US, the EU and China.

These three data realms have become references for many other countries when defining their rules to govern the cross-border transfer of data. Obviously, this diversity of data rules has resulted in a fragmented landscape, with stricter regulations typically having a greater impact on trade in digital services and firm performance (Ferracane et al. 2020, Ferracane and van der Marel 2018).

FIGURE 4 SHARE OF DIGITAL SERVICES TRADE COVERED BY COUNTRIES SHARING SIMILAR DATA REALMS (2015)



Source: Authors' calculations using TiVA trade data. Note: Digital services trade covers ISIC Rev. 4 codes 45-82.

The upside, however, is that most digital services trade is governed by trading partners sharing a similar set of data rules. Of all existing country-pairs in the world that trade digital services, more than half have a common model of data rules in place (Figure 4). Trading partners overwhelmingly choose to opt for the data approaches developed by the EU and US. Both frameworks contain elements conducive to digital services trade. For instance, recent work shows that trading partners sharing the US model for cross-border data transfers usually exhibit greater digital services trade. Trade in digital services is also positively associated with country-pairs adopting the EU model for domestic data processing (Ferracane and van der Marel 2020).

This calls for the twin actions of introducing trade disciplines for cross-border data flows, but also promoting interoperability in privacy regulations. A coherent framework on data flows improves digital trade opportunities without necessarily compromising on non-trade-related public policy objectives. Additional complex rules on data privacy can complicate trade costs further, even though they have legitimate reason to exist. There is thus great value in using the WTO, possibly with another international organisation, to find common standards and approaches for regulatory cooperation in this area after COVID-19.

Taxing digital services

In recent years, disagreements between countries over taxing digital services have also mounted, creating further trade frictions. Some countries advocate applying a revenue tax on companies providing digital flows across borders, called a Digital Services Tax (DST). The idea was launched on the European side with the aim of dealing with its lack of big tech giants, and has since attracted a lot of attention. The Europeans are not alone; other countries have since joined the club of admirers of this idea. India and Turkey have now adopted a tax on digital services, including on advertising, social media, and digital interface services; Brazil is currently contemplating a similar levy.

Although the tax looks appealing given that many tech companies are basically 'footloose' in the global economy, and are therefore believed to be escaping taxes, it is far from clear how trade rules would apply in this area. DSTs have elements that potentially suggest de facto discrimination and are therefore likely to go against trade agreements. For instance, many countries put a high revenue threshold on applicability of the DST, so that the tax essentially falls on foreign (often US) companies. A second issue is that in some cases, countries carefully craft out their own successful business models in digital services eligible for the tax. In short, to the extent that the tax discriminates against foreign firms, it acts like an ad valorem tax (Hufbauer 2018).[3] However, more research is needed on the trade impact of such a services tax.

3 In a rare occasion – namely, India – rules prescribe an up-front distinction between resident and non-resident companies on which the tax is applied. Much will also depend on the extent to which countries have scheduled digital services commitments under the WTO's General Agreements on Trade in Services. The EU has broad market access and national treatment commitments in various digital services such as computer services, whereas India has made none in this area.

Another form of digital tax causing tensions between countries has also emerged. Since 1998, WTO members have agreed to maintain a 'moratorium', extended every two years, that imposes zero custom duties on electronic transmissions, including services such as software. However, some countries – such as India and South Africa – worry that the pace of digitalisation is rapidly eroding the chances for them to collect tariff revenue. Two recent studies illustrate, however, that imposing such a tax would be counter-productive; just like tariffs on goods, duties on digital transmissions causes the economic cost in the long run to likely overshadow the immediate gains from raising revenues (Lee-Makiyama and Narayanan 2019, Andrenelli and Lopez Gonzales 2019). Here, too, more research is needed.

TRADE COOPERATION IN THE DIGITAL ECONOMY

During the time of rapid global digital trade expansion, governments have been quick to implement restrictions affecting digital services trade, too. Many of these restrictions are new, have occurred outside the realm of trade policy, and have been imposed by countries in a unilateral manner. They are causing increasing frictions between countries in the global economy. A number of WTO members are currently discussing how to solve some of these issues, as part of the ongoing e-commerce negotiations. Some observers note that the prospect of reaching a high-level WTO deal might prove challenging (Hufbauer 2019).

More problematic, however, is that many developing countries are not part of these discussions. This makes no sense for them, as they are potentially able to profit from the ongoing shift into digital services after COVID-19. As these negotiations continue, the WTO should align with other development organisations such as the World Bank to deal with the reasons why these countries do not participate. Institutional channels should be set up to manage the likely negotiation outcomes. Together, they should provide inputs that are relevant to the needs of those countries that are not at the negotiating table. But there is more that the WTO and its members can do.

Provide transparency and analysis

For starters, WTO members should first sort out what exactly is defined by digital trade. The Work Programme on Electronic Commerce identifies e-commerce in a broad manner, but the position of new types of digital exchange remain unclear. For instance, the WTO's definition does not explicitly cover data flows. Similarly, WTO members disagree over what is covered by electronic transmissions over the internet. Defining digital trade would therefore be a major step forward – something that a group of trade experts also advised the G20 should be a first priority (Drake-Brockman et al. 2020).

Much unclarity also exists with respect to the trade impacts of regulations aimed at managing new digital flows. For instance, there is no good oversight yet of how exactly the various types of data restrictions inhibit digital services trade; nor of the best possible ways to safeguard privacy concerns. Neither is there a good understanding of how WTO members could appropriately apply taxes without taxing their own trade productivity. On these items too, the WTO Secretariat, together with other trade experts in the field, could provide more analytical work. Ministers during the next Ministerial Conference (MC12) could establish a Working Group to examine the policy-induced spillovers affecting digital services trade.

At the very least, people inside the WTO should track and report timely data in this field, ensure much greater transparency of national policies to inform deliberations, and issue monitoring reports in these new policy areas. Existing tools already offer a glimpse – such as those at the OECD, the WTO as well as ECIPE – but they need to keep up with the speed at which governments are applying new restrictions. Moreover, given what is at stake for poorer countries in digital services trade after COVID-19, these tools also need to be expanded with many more WTO members. Then, with up-to-date policy information, the WTO Secretariat – possibly together with the IMF, the World Bank and the OECD – should carry out more impact analysis of these new policies that potentially affect new digital flows.

Bring in the regulators

Ultimately, then, WTO members will have to negotiate on these matters, if proven to be trade discriminatory. That may turn out to be a difficult task for trade negotiations, not least because the digital technologies on which companies trade, and the overriding non-economic interests governments have, are complex (e.g. Mattoo and Meltzer 2018). Trade negotiators are unlikely to have good supervision of how certain trade-related aspects of privacy, cybersecurity and consumer protection can have a knock-on effect on countries' non-economic objectives. They may also have to shake off their traditional negotiating mindset in these difficult areas. It would therefore be valuable to bring these trade officials to the table together with their respective regulators.

A new Committee on Digital Services Trade could serve as a forum dedicated to dialogue between governments, figuring out the systemic implications of new regulatory policies affecting digital services trade. Together with regulators, the Committee could carry out discussions on issues related to countries' prevailing concerns, single out best practises, and eventually put forward proposals or recommendations for consideration by the Council. Similar to the Committee on Trade in Financial Services, it would provide the necessary get-together for technical discussions, as well as the needed examinations of the regulatory developments of digital technologies and regulations impacting digital services trade.

Meanwhile...

Meanwhile, WTO members could go forward with existing tools. For instance, only 80 countries have signed the Reference Paper that forms part of the GATS Agreement on Basic Telecommunications. Tellingly, some countries (such as India and Turkey) that are still imposing restrictions related to interconnection fees (as stated above) have only partially signed the Reference Paper – the purpose of which is to identify best practise in this area. That said, the GATS itself, an agreement that pre-dates the internet era, also creates much confusion over what is actually covered in a period after huge technological changes in telecom markets, and in which new services such as cloud computing have appeared. The WTO could set up a Working Party to consider how to update the current framework and provide their thoughts before MC12.

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ANNEX

Higher levels of digital services trade restrictions in countries are significantly associated with lower total fixed broadband penetration levels. To measure this negative correlation, equation (1) shows how this is estimated through simple regressions as correlations with fixed effects. More specifically, the following equation is estimated:

$$ln(\text{BB Pen})_{ct} = \Phi + \theta(DSTRI)_{ct} + Controls_{ct} + \delta_c + \gamma_t + \varepsilon_{ct} \tag{1}$$

where BB Pen refers to broadband penetration rates by country (*c*) and year (*t*), measured as the log of fixed broadband subscriptions per 100 inhabitants. Data are taken from the OECD. The term DSTRI denotes the OECD's Digital Services Trade Restrictiveness Index which covers restrictions in digital services trade. The DSTRI is composed of several sub-components. Here the component of Infrastructure and Connectivity is taken covering for the trade restrictions as described in the text (Ferencz 2019). The estimation also includes several control variables such as economic development (GDP per capita in constant US dollars) and the size of the country (population, total). Data to estimate equation (1) covers the years 2014 till 2019, the latest year available. Fixed effects are applied by country (δ_c) and year (γ_t). Finally, ε_{cj} is the residual term.

Table A1 reports the baseline results (columns 1-2), and also shows the result when a one-year lag is applied (columns 3-4). In all cases, the variable measuring fixed broadband penetration rates has a significant and negative coefficient result. This indicates that higher levels of digital trade restrictiveness related to digital infrastructure and connectivity is associated with lower levels of total fixed broadband penetration rates across countries. Given that the data are taken from the OECD, these countries cover mostly developed economies in addition to several bigger emerging economies. Note that data on the specific restrictions under the category of infrastructure and connectivity covered by the DGSTRI variable are much harder obtain for developing countries. Note as well that the results presented in Table A1 and the text can only be seen as associations, not causations, given the obvious endogeneity concerns.

TABLE A1 REGRESSION RESULTS FOLLOWING EQUATION (1)

	(1)	(2)	(3)	(4)
	BB Pen	BB Pen	BB Pen	BB Pen
			1-year lag	1-year lag
DSTRI Infrastructure and Connectivity	-0.404** (0.019)	-0.401** (0.018)	-0.290** (0.037)	-0.289** (0.034)
Controls	No	Yes	No	No
FE Country	Yes	Yes	Yes	Yes
FE Year	Yes	Yes	Yes	Yes
Observations	222	222	185	185
R2	0.988	0.988	0.991	0.991

Note: * p<0.10; ** p<0.05; *** p<0.01. Robust standard errors are clustered at the country-year level.

ABOUT THE AUTHOR

Erik van der Marel is a Senior Economist at the European Centre for International Political Economy (ECIPE) and Associate Professor at the Université Libre de Bruxelles (ULB).

CHAPTER 19

The temporary movement of natural persons (Mode 4): The need for a long view

L Alan Winters
University of Sussex and CEPR

Services have long been the poor relation to goods in discussions of international trade and trade policy, and Mode 4 – the temporary movement of natural persons – has been the poorest member of the services family. Resuscitating multilateral services negotiations, especially in the context of the leaps in digital trade and technology, should be a top priority for the incoming Director-General of the WTO.

Of the four modes of supply for services trade, Mode 4 is, by a large measure, the one that has the fewest liberalising commitments in the General Agreement on Trade in Services (GATS) and the smallest amount of trade (e.g. European Commission 2020). However, it arguably plays an important role in production and in other forms of trade because, for example, it facilitates the movement of highly skilled key workers for firms investing abroad, the building up of networks for the provision of cross-border services and the supply of unskilled temporary workers to sectors such as agriculture and food processing. Thus, restrictions on Mode 4 trade are likely to reduce incomes directly and from other trade flows.[1]

The COVID-19 pandemic has induced a good deal of policy activity impinging on the temporary movement of people, some liberalising and some the opposite. However, despite this and despite the importance of Mode 4 for realising the gains from trade, I would not make addressing Mode 4 pandemic restrictions a top priority for the new Director-General. It should go into the 'too hard to influence' box for the immediate future. Rather, it should become a subject for a long and careful negotiation, possibly best conducted among only willing parties in a revived Trade in Services Agreement negotiation.

This chapter reviews some of the relevant policy actions from the last eight months and then explains why they are not ripe for a short-term fix by a new WTO regime.

1 However, there is some evidence of substitution such that, in some sectors, when Mode 4 is more restricted, Mode 1 (cross-border) trade is higher (Borchert et al. 2020).

MODE 4 AND THE PANDEMIC

Governments have undertaken three principal classes of action on Mode 4 since the start of the pandemic.

1. Measures designed to increase the supply of doctors and other medical personnel by relaxing restrictions on qualifications, licensing and the renewal of visas.
2. Suspensions of visa regulations for some workers in some key sectors such as food supply and agriculture.
3. Widespread measures to restrict the access of residents of other countries to national territory.

Most of these have been announced as temporary and nearly all are probably best regarded as such.

In terms of medical personnel, several countries have relaxed qualification requirements. For example, on 23 March 2020, the State of New York allowed "graduates of foreign medical schools having at least one year of graduate medical education to provide patient care in hospitals" (subsequently rescinded).[2] Nationally, in May the US Immigration Service waived rules that imposed geographical restrictions on the small number of foreign-born doctors permitted to practice in the US immediately after graduating from there.[3] Over March-October 2020, the UK offered to extend the visas of foreign medical staff in the UK for one year,[4] helping to meet medical needs as well as recognising that it was, at least at first, completely impossible for them to return to their home countries to renew their visas (the usual practice).

For key workers, the relaxations were more limited. For example, in March 2020, Canada increased the maximum allowable employment duration for workers in the low-wage stream of the Temporary Foreign Worker Program from one to two years. This scheme mainly serves the food-processing sector.[5] The US announced a similar scheme for three years in May 2020. Meanwhile, the WTO (2020a) reports that a wide range of developed countries relaxed restrictions for seasonal agricultural workers. These relaxations were introduced less to boost the flow of workers above normal levels than to try to avoid their falling well below, although there were some reports of governments trying to compensate for missing domestic workers discouraged or prevented from working by the pandemic.

The third set of actions is by far the most extensive and draconian: there have been sweeping restrictions on the movement of people across borders. These were often blanket bans in the first months, but have been relaxed and refined somewhat since then.

2 https://www.globaltradealert.org/intervention/78978
3 https://www.globaltradealert.org/intervention/79581
4 https://www.gov.uk/coronavirus-health-worker-visa-extension
5 https://www.globaltradealert.org/intervention/79203

Nonetheless, many tight restrictions still exist.[6,7] Moreover, the restrictions are clearly having important effects on international trade and hence on production and incomes. Direct effects include the decimation of tourism and the huge decline in revenues for education services suppliers, but also the increase in the cost of trading services because those parts dependent on mobility are disrupted. In addition, of course, there are also indirect effects because personnel restrictions hinder logistics on goods trade (WTO 2020b).

Benz et al. (2020) quantify (approximately) the increases in the costs of trading services that have arisen through the disruption of mobility. The OECD's Services Trade Restrictiveness Index (STRI) is an index of the restrictions facing international trade in services disaggregated into 22 sectors. One component is restrictions on the temporary movement of natural persons (Mode 4), and the authors calculate how a menu of higher barriers facing international passengers would affect the STRI. (Bans are prohibitive barriers, but even where travel is permitted the costs of obtaining visas and so on has shot up.) In addition, they have estimates of the effects of the STRI on services trade from which they can back out the implied costs of services trade. (The assumption is that, absent these costs, trade would be proportional to trading partners' production and demand.) These two pieces of information allow them to estimate the effect of pandemic Mode 4 responses on trade costs.

Benz et al. estimate that, on average, their menu of barriers would increase the cost of services trade by 12% of the value of a services transaction. As would be expected, the worst hit sectors and countries are those which are most open to temporary mobility at present.

NOW IS NOT THE TIME TO INITIATE A MODE 4 NEGOTIATION

These impacts on trade are massive and need to be addressed as a matter of urgency. However, as I noted in the introduction, the answer is almost certainly not to initiate talks on an early agreement in the WTO to remove the pandemic-induced restrictions and bind liberalisations into permanent form. Other topics offer a far more likely return to the expenditure of scarce WTO negotiating capital. Unlike the case of critical medical goods, for which Evenett and Winters (2020) have recommended precisely that, restrictions on mobility will not lend themselves to this approach. The difference is that while medical goods have long been traded under the auspices of the General Agreement on Tariffs and Trade (GATT) rules and the 'authority' of the GATT is widely recognised (if

6 https://www.fragomen.com/about/news/immigration-update-coronavirus

7 The extensive restrictions in the US reflect not only health concerns, but also "the impact of foreign workers on the US labour market, particularly in an environment of high domestic unemployment and depressed demand for labour" (https://www.globaltradealert.org/intervention/79303).

not always respected), the mobility of people is essentially a matter of security, visa policy and possibly labour market policy. That trade is affected is accepted by governments, but it is, quite simply, not the locus of decision making or power.

Despite the drafters' clear intention that Mode 4 of the GATS should refer just to the temporary international mobility of workers to deliver services, it has been treated by governments as migration, the most sensitive of all aspects of globalisation. Thus, Mode 4 has always been subordinate to immigration and visa policy.

The GATS recognises the low status of Mode 4 among the major concerns of state. Articles 2 and 4 of the GATS Annex on the "Movement of Natural Persons Supplying Services Under the Agreement" concede that:

> 2. The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
>
> and
>
> 4. The Agreement shall not prevent a member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.[8]

And GATS Article XIV "General Exceptions" recognises measures "necessary to protect human health" as legitimate exceptions.

Trade specialists might regret the subordination of trade (one of the principal drivers of economic advance) to these other issues, but it accords with the sentiment of every government on the planet – even those that are generally pro-immigrant. Thus, the actions affecting the movement of natural persons that governments have taken during the COVID-19 crisis have neither been constrained by GATS commitments or even paid, at least until now, serious attention to their effects on international trade.

At a more detailed level, the liberalisations noted above are quite narrow and are related to very specific governmental fears. Despite the relatively high mobility of medical specialists around the world, major governments have felt no necessity to make significant Mode 4 bindings to cover them. For example, in the US, the entry of foreigners to practice medicine is recorded as 'unbound' – unconstrained in GATS-speak. The only relevant commitments are the US' general (tight) restrictions on the entry of skilled workers as laid out in the so-called horizontal commitments in its GATS schedule concerning things

8 The following footnote appears in the original: "The sole fact of requiring a visa for natural persons of certain Members and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment".

like quotas and lengths of stay. None of this has prevented the US from attracting huge numbers of medical migrants – 2.6 million in 2018, of whom 1.5 million work as doctors, registered nurses, and pharmacists (Batalova 2020). And the situation is not much different in the EU.

The abundant global supply of candidates for health work in rich countries and the deeply regulated nature of medicine, which encourages very close connections between the government and relevant professional bodies, has made commitments to potential immigrants both unnecessary and political unpalatable. This is unlikely to change post-pandemic.

The pandemic-induced relaxations for critical workers in low-paid jobs are slightly different. Here there are potential benefits to establishing a sound and transparent regime – as, for example, recognised in the New Zealand-Pacific Islands arrangements circa 2006-2019 (Winters 2016) – but the recent relaxations were not liberalising. Rather, they were pragmatic responses to the impossibility of operating the usual schemes and entailed little or no expansion of numbers beyond the norm. Add to this the current widespread political antipathy towards low-skilled migrants and the likely depressed labour market conditions for the next few years and it is, again, difficult to imagine any basis for a quick deal including major economies.

Finally, the blanket restrictions on mobility are deeply unpopular and are, with the possible exceptions of those by a few deeply xenophobic governments, going to come off anyway. Coordination may be able to speed up the process slightly but will not materially change the substance.

WHAT CAN THE WTO DO?

As early as 30 March, G20 trade ministers said "that emergency measures …., if deemed necessary, must be targeted, proportionate, transparent, and temporary, ….". [9] But what exactly does this mean? The WTO Council for Trade in Services should urgently establish a Working Group to define and operationalise the measurement of these concepts and then start collecting data on them. For example, when restrictions on mobility are introduced they must be justified as clearly addressing a specific need in fighting COVID-19 and be applied on objective grounds without any extraneous biases against, say, particular countries or social groups. Likewise, proportionality requires balancing trade distortion against other potential gains and calls for restraint in terms of geographical or occupational coverage.

9 G20 Trade and Investment Ministerial Statement, 30 March 2020 (https://g20.org/en/media/Documents/G20_Trade%20&%20Investment_Ministerial_Statement_EN.pdf).

The case for transparency and information exchange is overwhelming. It represents a constraint on over-weaning Executive Branches, saves resources for partners in discovering or tripping over the changes in regulations, allows the propagation of good regulations and provides food for discussion and the input into future analyses of what worked and what didn't. The Working Group should set up a real-time reporting system which considers not only policies that impinge on Mode 4 commitments (which would be part of members' WTO obligations) but also a wider range of mobility-related policies on the grounds that, quite independently of Mode 4, restrictions on travel and mobility impinge on both trade and human health.[10] The Working Group should publish the data and arrange a monthly discussion of them both as a whole and with questions on specific policies, along the lines of the Specific Trade Concerns processes in SPS and TBT.

There is a good case that the reporting of policies should be to a joint WTO/WHO initiative, so that health aspects could be investigated and proportionality better understood. However, given the complexities of inter-organisational cooperation (certainly at anything above officials level), I would not wait for the establishment of such a body; I should merely share data with it when it comes into being. Similarly, even within the trade community, if the Services Council is unable to establish a Working Group, I would turn to 'coalition of the willing' – perhaps among the partners to the TiSA negotiation plus other volunteers.

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10 The WTO Secretariat has come close to suggesting such a process in WTO (2020b).

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ABOUT THE AUTHOR

L Alan Winters is Professor of Economics at the University of Sussex, Founding Director of the UK Trade Policy Observatory and a CEPR Research Fellow.

CHAPTER 20

Lessons from the pandemic for WTO work on agricultural trade and support[1]

Peter Ungphakorn

Freelance, former Senior Information Officer at the WTO Secretariat

For once, this might be a good time to rethink how agriculture is handled in the WTO. The need to respond to the COVID-19 crisis is an opportunity to examine where the trade rules help or hinder sound policies. That also requires an understanding of what trade rules do and do not do.

For well over a decade, the WTO agriculture negotiations, which should be modernising the sector's trade rules, have largely been stuck in a repetitive rut (Ungphakorn 2020a).[2]

As members prepare for yet another ministerial conference with low ambition, perhaps in 2021, insiders suggest that the most likely outcome in agriculture is to devise a work programme — sometimes productive, but often a means of making indecision look like a decision, at best to keep the ball rolling.

Will COVID-19 convince governments of the need to cooperate for a change? Will the selection of a new WTO Director-General and new chair of the agriculture negotiations encourage members to turn over a new leaf? Or will old habits continue to die hard and divisions among the membership worsen?

Maybe they will. Maybe they won't. That is the subtext throughout this chapter.

Agriculture is generally exempted from lockdowns but is still indirectly squeezed. It has been more resilient than other sectors, experiencing a mixed impact, depending on the products, countries and regions (WTO 2020k).

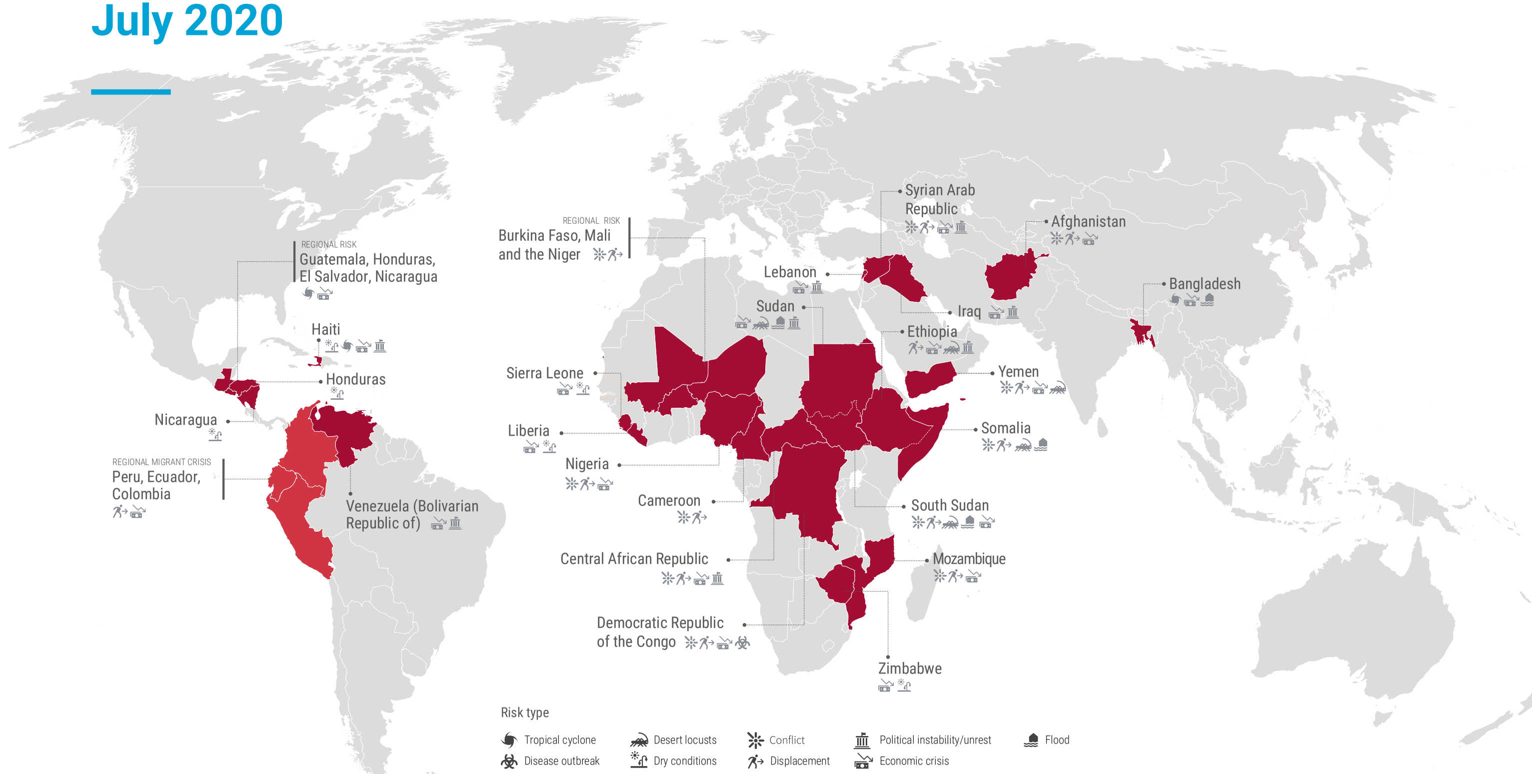
Nevertheless, the pandemic has highlighted the fragility of the food supply chain as governments strive to ensure their populations are fed, sometimes acting to disrupt food flows. The UN has warned of a worsening global food emergency with nearly 50 million more people pushed into extreme poverty, much of the vulnerability arising from existing poverty and conflict (UN 2020, FAO 2020b). This might spur countries into action.

1 Thanks to Robert Wolfe and Jonathan Hepburn for comments on an earlier draft.

2 Agreements have been reached on eliminating agricultural export subsidies (2015) and public stockholding for food security in developing countries (2013-14), but much of the original agenda remains unresolved.

FIGURE 1 FOOD INSECURITY HOTSPOTS

FAO-WFP early warning analysis of acute food insecurity hotspots
July 2020



Source: FAO, April 2020. Map conforms to UN World map, February 2020;

Source: FAO and WFP (2020)

COVID-19 might therefore have two impacts. One is for WTO members to discuss their agricultural trade policy reactions to it, most obviously by tackling export restrictions on food. This is already happening. The other is as a catalyst to encourage genuine progress in reforming agricultural trade rules more generally, so that in the future the sector is less susceptible to shocks caused by inappropriate policies. That is a much tougher ask.

Those unfamiliar with the WTO's negotiated rules often misunderstand their role. They are not generally about prescribing good practices. Rather, they set the boundaries for policy space, to avoid one country damaging the interests of others. How governments use the space – and even use it to damage their own interests – is up to them.

So, the pertinent questions are: What rules need changing and why? Where do they hinder suitable agricultural policy? Where are they too permissive in allowing countries to hurt each other through trade distortions? And where can discussion in the WTO help countries learn about what is needed?

Much of the focus in relation to the WTO has been on the 'great folly' of export restrictions and supply chain disruption (Baldwin and Evenett 2020: 7, Martin and Glauber 2020). Also discussed inside the WTO, but only in a limited circle outside, is trade-distorting domestic support for agriculture (WTO 2020d, 2020f, Hepburn et al. 2020).

WHAT'S HAPPENING OUTSIDE AND INSIDE THE WTO

Fears that the pandemic would lead to a flood of export restrictions and other disruptive policies have proved to be unfounded.[3] Trade measures taken in agriculture are few when compared with previous crises or the actions on medical products. Lockdowns and the general economic slump have more of an impact.

According to the WTO, measures on foodstuffs are less than half the number on medical gloves alone. Most of those affecting food have been short-lived. Generally, liberalising measures on food trade outnumber restricting measures.

Meanwhile groups of countries have declared political commitments to avoid disrupting supply chains.[4]

The Global Trade Alert[5] shows that food dominates the 'liberalising' side as governments try to counter supply disruptions caused by the pandemic, while restrictions on exports of food are fewer and more short-lived than on medical products.

3 Apart from travel restrictions and other measures aimed directly at preventing the disease from spreading.
4 FAO (2020a), G20 Agriculture Ministers (2020), G20 Trade and Investment Ministers (2020), WTO (2020c).
5 Others trackers include the WTO itself, WTO (2020h), and the International Food Policy Research Institute's food export restriction tracker. The latter shows that over 30 export restrictions were introduced between March and June 2020, almost all of them no longer active (Martin and Glauber 2020). Mysteriously, South Africa restricted exports of beer, spirits and wine.

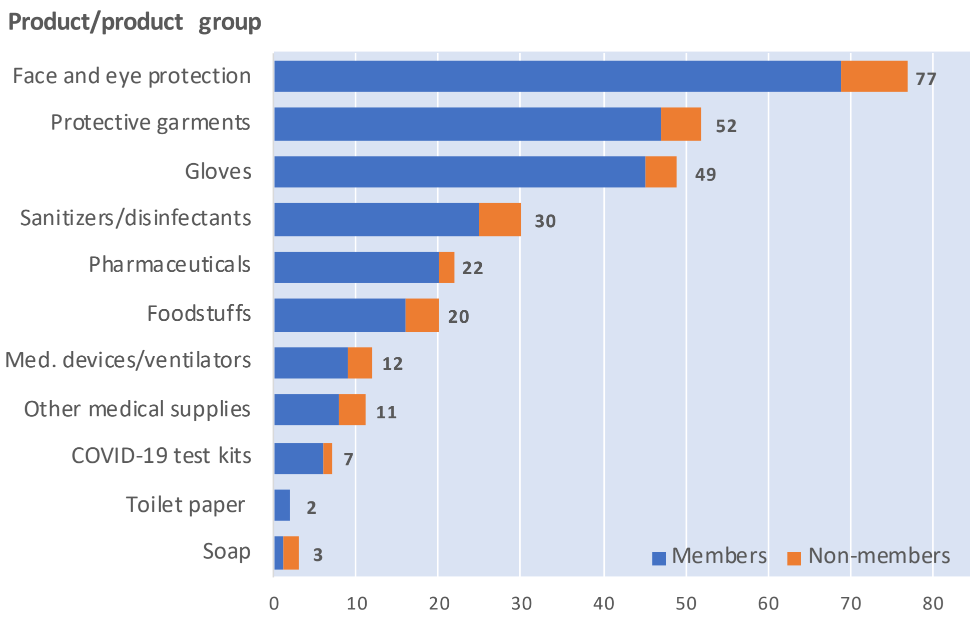
TABLE 1 FOOD DOMINATES THE LIBERALISING SIDE, NOT THE RESTRICTIONS GOODS EXPORT RESTRICTIONS, 2020 TO SEPTEMBER 15

SECTORS AFFECTED MOST OFTEN

LIBERALISING			HARMFUL		
CODE	SECTOR	INTERVENTIONS	CODE	SECTOR	INTERVENTIONS
012	Vegetables	6	352	Pharmaceutical products	72
216	Vegetable oils	5	271	Made-up textile articles	52
231	Grain mill products	4	481	Medical & surgical equipment & orthopaedic appliances	39
011	Cereals	3	282	Wearing apparel, except fur apparel	29
211	Meat & meat products	2	369	Other plastics products	19
333	Petroleum oils & oils of bituminous materials, other than crude	2	346	Fertilizers & pesticides	16
213	Prepared & preserved vegetables, pulses & potatoes	2	011	Cereals	16
335	Petroleum jelly, coke or bitumen; paraffin wax & similar products	2	241	Ethyl alcohol; spirits, liqueurs & spirits	16
341	Basic organic chemicals	2	354	Chemical products n.e.c.	16
014	Oilseeds & oleaginous fruits	2	231	Grain mill products	15
271	Made-up textile articles	2	341	Basic organic chemicals	15
Other		27	Other		269

Source: Global Trade Alert, Global Dynamics, filtered for 2020, goods, and export restrictions. Accessed September 15, 2020.

FIGURE 2 THE WTO RANKS 'FOODSTUFFS' SIXTH AMONG COVID-19 EXPORT RESTRICTIONS



Source: WTO document WT/TPR/OV/W/14 (WTO 2020e).

Global Trade Alert also looks beyond border measures (tariffs, export taxes and restrictions) and includes state loans, price stabilisation and other policies. But in 2020, the year of the pandemic, actions inside the border drop down the list.

FIGURE 3 TRADE MEASURES AFFECTING AGRICULTURE, 2020 TO 4 NOVEMBER

IMPLEMENTING COUNTRIES

LIBERALISING

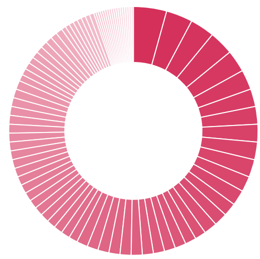
- Argentina
- Brazil
- Chile
- India
- United States of A...
- China
- Sri Lanka
- United Kingdom
- Morocco
- Pakistan
- Mexico
- Croatia
- Cyprus

1/7

HARMFUL

- Turkey
- Russia
- Argentina
- Italy
- Brazil
- India
- United States of A...
- Sri Lanka
- Greece
- Chile
- China
- South Africa
- Poland

1/7



AFFECTED COUNTRIES

LIBERALISING

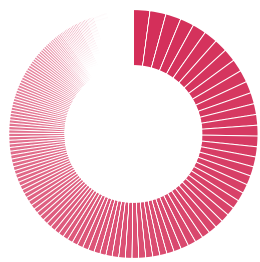
- United States of A...
- France
- Germany
- China
- Netherlands
- Italy
- Canada
- Malaysia
- India
- Spain
- Mexico
- Turkey
- Brazil

1/18

HARMFUL

- Germany
- France
- United States of A...
- Italy
- Netherlands
- China
- Brazil
- Poland
- Russia
- Spain
- Canada
- Belgium
- Turkey

1/17



INTERVENTION TYPES USED MOST OFTEN

LIBERALISING

POLICY INSTRUMENT	INTERVENTIONS
Import tariff	95
Import tariff quota	18
Internal taxation of imports	18
Export quota	9
Export tax	9

HARMFUL

POLICY INSTRUMENT	INTERVENTIONS
Import tariff	56
Export ban	37
State loan	21
Financial grant	14
Export licensing requirement	12

Source: Global Trade Alert, "agricultural goods" approximately WTO definition. Accessed 4 November 2020.

The changing agenda can already be seen inside the WTO, in its two bodies dealing directly with agriculture: the **negotiations** and the **regular committee**.[6]

Departing negotiations chair Ambassador John "Deep" Ford's final report of 24 June 2020 (WTO 2020d) covers in some detail the issues raised.[7] It is heavily influenced by policy responses to COVID-19, and how the negotiations might therefore proceed.

It spans the traditional three 'pillars' of the talks – **domestic support** (particularly if trade-distorting), **market access** and **export competition** (i.e. subsidies) – extending to **export restrictions, public stockholding**, a **special safeguard mechanism** for developing countries, **special treatment for developing countries, transparency** in the negotiations, and **cotton**. What COVID-19 has done is to give a much higher profile to export restrictions – previously ten brief paragraphs tacked on to the end of a long draft text (WTO 2008: paras. 171–180).

Agricultural export subsidies are now more or less settled, with agreement in 2015 to outlaw them (WTO 2015a, 2015b). Ongoing work on this pillar is largely about monitoring to avoid circumvention and possibly to refine the rules – therefore involving both of the WTO's agricultural bodies. This would intensify if speculation is right about increased export incentives in response to COVID-19 (Evenett 2020).[8] Otherwise, the main focus in the negotiations is on the two other pillars.

Meanwhile, the (regular) Agriculture Committee's role is for governments to scrutinise each other's specific actions. The 28 July 2020 meeting included a discussion about the US' stimulus packages along with calls for members to live up to their transparency obligations on measures related to the pandemic (WTO 2020f).[9] An information session on COVID-19 followed, with presentations by other organisations and think tanks (WTO 2020g).[10]

Topics discussed included the disruption to supply chains, and constraints developing countries face in notifying emergency measures. Only six countries have formally notified export restrictions on agricultural products to the WTO in 2020 – although least-

6 Nominally the same Agriculture Committee meeting for different purposes, in regular and 'Special' sessions. In practice the negotiations and the regular committee meetings are distinct. They have separate mandates, working practices, sets of documents, chairs and sometimes delegates.

7 Ford also advocated starting work on export restrictions with information sessions leading to a possible decision in 2021. Just before the 2020 summer break, his successor Ambassador Gloria Abraham emailed delegations to say she would consult them on how to proceed in the talks, including "possible adjustments" as result of the pandemic, aiming for agreement on a work programme in late September.

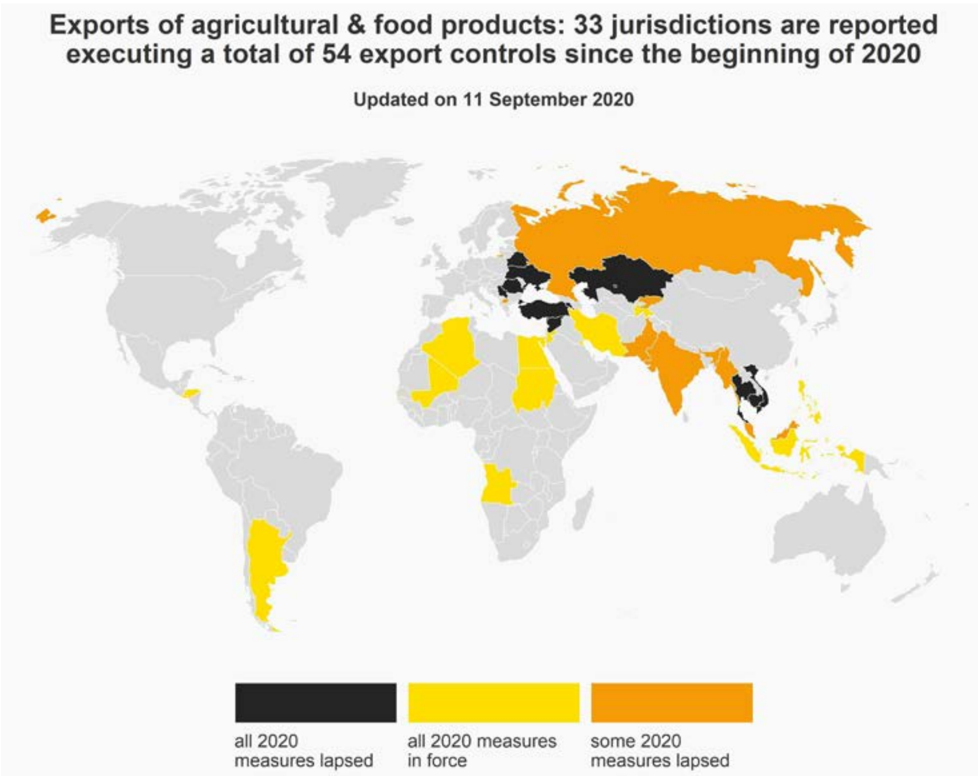
8 Some concern has been expressed about whether developing countries have enough access to export finance. The problem may be structural, about the availability of finance, rather than about WTO rules such as the 18-month repayment limit for ensuring the credit is market-based and self-financing. The rules are also more lenient when the exports go to least-developed, net-food-importing developing and some other vulnerable countries (WTO 2015a: para. 17).

9 Minutes are released some weeks after the meeting (see https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol= g/ag/r/*)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true)

10 Presentations were from the Food and Agriculture Organization (FAO), International Grains Council (IGC), International Food Policy Research Institute (IFPRI) and International Trade Centre (ITC).

developed countries are not required to – whereas Global Trade Alert reports 54 controls (admittedly a broader category than 'restrictions') from 33 countries. COVID-19 is now a standing item on the regular committee's agenda.

FIGURE 4 EXPORT CONTROLS ON AGRICULTURAL PRODUCTS DETECTED BY GLOBAL TRADE ALERT



Source Global Trade Alert, accessed 15 September 2020.

TABLE 2 TRANSPARENCY PROBLEM

Member	Date	Notification document	Duration	Products
Thailand	31.03.2020 2.04.2020	G/AG/N/THA/107 G/AG/N/THA/107/Add.1	One week 1-month extension	Eggs
Kyrgyz Rep	31.03.2020	G/AG/N/KGZ/8	6 months	Wheat, wheat flour, rice, pasta, sugar, eggs, feed
N Macedonia	2.04.2020	G/AG/N/MKD/26	40 days	Wheat and wheat flour

Source: WTO document WT/TPR/OV/W/14. Since then, Ukraine (buckwheat and grain), Myanmar and Vietnam (both for rice) have also notified – WTO Documents Online searched 15 September 2020.

PREREQUISITE: TRUST, UNDERSTANDING AND CONFIDENCE-BUILDING

It may seem strange to start an examination of WTO policy responses by discussing process. But paying attention to it might be necessary to break out of the current rut.

Genuine reform requires a change of attitude among members who have now grown accustomed to defending decades-old positions, maximising rights and minimising obligations, while playing down the concerns of others and the gains of cooperation. The chances look slim. The commitment to trade multilateralism has been weak since 2008 for both endogenous and exogenous reasons (Wolfe 2015), and it has worsened with the Trump administration's unilateralism.

The bad old habits might be broken by exploiting the well-known duality in trade negotiations – technical and political processes, which are separate but can feed into each other (Winham 1986: 205–206). Technical work can help delegations to listen to each other and learn, and this can feed back to their capitals.

A starting point is the questions and answers in the **regular committees** where specific trade concerns are discussed (Wolfe 2020a, 2020b, Ungphakorn 2019), and special information (or 'thematic') sessions, which provide 'informal learning' (Wolfe 2020c).[11] The regular Agriculture Committee already organises these, the latest being the 28 July 2020 session on COVID-19 (WTO 2020g).[12]

In the separate **agriculture negotiations**, learning through 'technical sessions' has also been useful. Nine held in early 2013, on the controversial proposal on public stockholding in developing countries, helped pave the way to an interim agreement at the end of the year, although some issues are unresolved (WTO 2013, 2014).

Joint thematic sessions under both the regular committee and the negotiations could improve coherence between implementation policies and rule making.

The WTO Secretariat's factual reports ought to feature, despite some members' reluctance to accept new reports or updated versions. Whether tactical or out of fear that the information may slant an agenda, the reluctance is perverse. Seeking reliable, digestible, factual information from the Secretariat should be part of building trust, understanding and confidence.

But this technical work would have to be organised with care, otherwise countries keen to press on with the talks would see it as an excuse to procrastinate (WTO 2020d: paras. 12–13).

11 Subtitled "Using Thematic Sessions to Create More Opportunities for Dialogue"

12 Wolfe (2020c) counted seven thematic sessions in 2017–2019, all of them on experience in implementing the Agriculture Agreement and associated commitments, two also adding "next steps".

TOWARDS A COVID-19-INSPIRED WTO WORK PROGRAMME

Since WTO rules define policy space, a WTO work programme would *not* be a prescription for how to reform agriculture. It would be about leaving space for suitable reform and avoiding countries damaging each other's interests.

Long wish lists of policies have been proposed for agriculture in response to COVID-19; many are in Table 3. But clearly much of that is outside the scope of the WTO. Internationally, other agencies – the FAO, WFP, WHO, ILO, UNDP, World Bank, IMF, etc. – are more competent on agriculture in general and the many related policies. Many policy proposals are specific to the conditions in particular countries or regions. What works well in one country might not work in another.[13]

TABLE 3 WHICH COVID-19 POLICY RESPONSES MIGHT RUN UP AGAINST WTO DOMESTIC SUPPORT RULES?

The rules potentially constraining agricultural policy (depending on details) are:

● = *Amber Box (AMS, de minimis)* ■ = *Green Box (not/minimally distorting)* ○ = *None*

Basing policy responses on entire food systems			
	If price, coupled income support: ●	*If decoupled income support, etc:* ■	*If other measures:* ○
Ensuring continued supply in quantity and nutritional quality of food			
	If price, coupled income support: ●	*If decoupled income support, etc:* ■	*If other measures:* ○
Sustaining demand with support for employment and income			
	If price, coupled income support: ●	*If decoupled income support, etc:* ■	*If other measures:* ○
Being preparing for unexpected shocks			
	If price, coupled income support: ●	*If decoupled income support, etc:* ■	*If other measures:* ○
Strengthening social safety nets with improved targeting			
	Generally: ○	*If decoupled agricultural income support/insurance:* ■	
Tackling poverty — *generally:* ○			
Supporting migrant labour and remittances: ○			
Ensuring logistics operates smoothly — *generally:* ○			
Ensuring internal and international markets function: ○			
Ensuring credit is available: ○			
Expanding e-commerce and mobile and contactless payments: ○			
Regulating wild food markets: ○			
Expanding access to healthcare: ○			
Dealing with mental health: ○			
Improving water supply, sanitation: — ○ *except irrigation subsidies:* ■ *(developed countries:* ● *)*			
Implementing gender-sensitive policies: — ○ *unless agricultural income support:* ●, ■			
Adjusting fiscal and monetary policy: ○			
Ensuring agriculture ministries are part of the national response: ○			
Action by international organisations: ○			

Notes: Policy list compiled from Swinnen and McDermott 2020; OECD 2020a, 2020b; Clapp 2020, WFP 2020, Hepburn (2020). Domestic support rules are in WTO Agriculture Agreement Article 6, the Green Box in Annex 2, the formula for calculating AMS in Annex 3 (WTO 1995). "Amber Box" support distorts trade by directly affecting prices and output and is limited; "Green Box" support is allowed without limits (WTO undated-a).

13 See, for example, articles on India, China, South Africa, Ethiopia, among others, in Swinnen and McDermott (2020).

Or, using the WTO's frame of reference, many policies in Table 3 are completely free from WTO trade rules. Much of the rest can simply be chucked into the 'Green Box' of support that is allowed without limit because its market distortion is at worst minimal. Some work might be needed to ensure the box can accommodate them, but not much. That would leave a small number of issues warranting particular scrutiny in the WTO.

Ford's June report (WTO 2020d) summarised the discussion on COVID-19 in the last agriculture negotiations meeting. He said members felt they needed more time to study the situation, particularly since the pandemic was in different stages in different countries, and they said any responses should respect WTO rules. COVID-19 had "brought to the fore some particular needs and imbalances," especially for food security. Some said negotiations could not resume until meetings are in person again, instead of online.

But, "the fundamental issues at stake in the agriculture negotiations remain the same. Food security, social and economic welfare depend on an open, fair, rules based, market oriented and predictable trading system," he wrote.

Interestingly, Ford thought some agreement on domestic support and export restrictions might be possible. He also noted concerns about increasing support for farming in response to COVID-19. But on market access he envisaged nothing more than a work programme to be agreed at the next ministerial conference (WTO 2020d: paras. 9, 43, 47, 54).

Ultimately it will be up to WTO members to discover what is needed and to decide what to do. Assuming that the pandemic persuades members to engage more, what can we realistically hope to be achieved? What should a desirable programme include?

Some issues are immediate (WTO 2020e: 77–78), others are longer term, including distortions caused by tariffs, tariff quotas and domestic support (OECD 2020b, WTO 2020d), and dealing with unexpected shocks and volatility (Hepburn 2020).

Export restrictions are the most obvious topic, with scope for work in both the regular committee and the negotiations.

The harmful impact on supply chains and food security has been discussed at length elsewhere (e.g. Martin and Glauber 2020, AMIS 2020). Clearly, the restrictions can be counterproductive, with the risk of retaliation. They might only be justified if they are temporary and designed to deal with a genuine emergency.

"Calls have [...] been made in recent weeks to underline the need for any export restriction emergency measures in response to the COVID-19 crisis to be 'targeted, proportionate, transparent, and temporary'," Ford wrote (WTO 2020d: para. 53).

Improved transparency and possible assistance for developing countries to notify are already on the regular committee's agenda. Continuing blame-free analysis of the repercussions would shed more light, including on the impacts domestically and on other countries. A recurring theme in WTO discussions is for countries restricting exports to exempt humanitarian purchases by the World Food Programme (WTO 2020d).

More countries could join the 56 WTO members' non-binding commitment to keep agricultural markets and supply chains open (WTO 2020c), including significant agricultural traders such as China, India, Russia, Argentina, Thailand and Vietnam.

For the longer term, members might be encouraged to negotiate updated rules, perhaps drawing on the 2008 draft (WTO 2008: paras. 171–180). This would have created time limits for the restrictions. It would have expanded countries' obligations to notify, with more information to justify the restrictions and to assess the impact on others. And it would have enhanced the regular committee's surveillance role.

Green Box domestic support. Table 3 shows how few policy responses are likely to be affected by WTO domestic support disciplines. And even then, it seems unlikely that Green Box rules would obstruct any of them — including general development policies for agriculture — so long as they do not directly affect prices and production. Countries may also be lenient with each other on responses to COVID-19. Discussion in information sessions would address any doubts and clarify the situation. It would also provide a wider perspective of the needs of agriculture around the world even when WTO rules do not intervene, putting the rules in context.

Trade-distorting domestic support is where the response to COVID-19 might link up with the agriculture negotiations. Here we are likely to see continued debate over two subjects: (1) public stockholding for food security in developing countries; and (2) disciplines for trade-distorting support as a whole. Progress is unlikely in either of them unless countries climb down by recognising each other's genuine concerns.

1. "**Public stockholding for food security**" has been a thorny issue for years. Its description is misleading.

There are no WTO rules preventing public stockholding for food security. Recognising this is important when COVID-19 threatens to worsen food insecurity.

The problem only arises when public stockholding is also used to support farmers by using government-set prices instead of market prices. The formula used to calculate the level of trade-distorting support (the aggregate measurement of support, AMS) is also a factor because its reference is not current prices but those from 1986–88 (details in Ungphakorn 2020b).

Negotiators struggled to agree on the present (2013–14) "interim" decision, a "peace clause" shielding breaches of subsidy limits from legal challenge in WTO dispute settlement (WTO 2014). They are now deadlocked over a "permanent" solution, reflecting broadly a failure to address each other's genuine concerns seriously, particularly over spillover effects. Until they do, time will continue to be wasted endlessly covering repetitive ground.

Much of the controversy is about the effects on other countries. India is a leading proponent whose use of the programme has breached its WTO domestic support limits (WTO 2020a, 2020f).[14] It is the world's largest rice exporter, with substantial wheat exports. Critics say the release of subsidised stocks is bound to have an effect on domestic and international markets, even if – as India claims in its notification – the released stocks themselves are not exported.

The compromise in the 2013–2014 peace clause was to add transparency obligations, which India and its allies argue are too burdensome for developing countries. It's a debatable defence.

2. **Domestic support rules**. Ford's report cited new papers and "overlapping" views as evidence that agreement is possible on capping and reducing trade-distorting support (WTO 2020d: paras. 34, 35, 43).

He wrote: "My judgment is that a shared overall objective towards capping and reducing [trade-distorting domestic support] with numerical goals could possibly be agreed" (WTO 2020d: para. 43). Achieving this might require choosing which of the WTO's many categories of domestic support to work on first, he said.

The words "objective towards" could be key. It might not mean agreeing the actual limits in one go, but how the limits are constructed. If so, that would be a re-working of the structure in the 2008 draft (WTO 2008: 4–13).

What Ford did not say is that while some major players will have little difficulty agreeing to cut their limits, some others stand in the way of consensus. While the rhetoric is about the need to cut support, in practice some major players are increasing it.

For example, the EU uses less than 10% of its entitlement (WTO 2020b). But the US could be close to its limit (Glauber 2019, US Congress 2020), meaning that reductions in US limits would bite into the support actually provided.

One of the US's complaints about China, India, and some other developing countries is the way their entitlements expand as their farm sector grows because they rely on "de minimis" limits, which are a percentage of production. For some countries – mainly

14 India notified exceeding its "de minimis" support entitlement for rice in marketing year 2018/19. The AMS calculation is just over $5 billion. The value of rice production is $43.7 billion, making the de minimis limit $4.4 billion (10% of the value of production). India invoked the peace clause as protection against litigation.

developed – higher absolute (AMS) entitlements apply when de minimis is exceeded, fixed in monetary value and therefore shrinking in real terms with inflation. The US mixes the two, keeping a lot of support in its expanding de minimis entitlements.

It is not difficult to see why this issue irritates the US. A crude calculation suggests that China's entitlement is now more than double that of the US and growing. But while the US complains about the scale of support available to China and India, they counter that it is small per capita (or per farmer), and much less than in the US (details of all of this in Ungphakorn 2020b).

This is not only about food. Cotton is also at the heart of the WTO deadlock on domestic support, with sub-Saharan producers pitted mainly against the US.

If Ford is right about agreement being possible, then the US, China, India and others will have to climb down. For now, there is no sign that they will. And yet COVID-19 underscores the need to ensure support for agriculture, including in stimulus packages, does not destabilise or depress international prices and disrupt markets. This ought to be an opportunity.

Market access. Ford said agreement on market access as a whole is unlikely in the near future.

Irreconcilable differences over "offensive" and "defensive" pressures within and between countries are part of the picture. So are new preferential agreements outside the WTO. The complexity is compounded by the long list of countries, singly or in groups and both rich and poor, demanding special treatment because of their specific situations.[15]

A lot of repetitive and futile discussions can be expected on a proposed "special safeguard mechanism (SSM)" for developing countries. Now a standalone provision, agreement on it is even less likely than when it was part of a package of sweeping tariff cuts (Ungphakorn 2020c, Wolfe 2009).

One positive response to COVID-19 has been countries lowering trade barriers to ensure food supplies for their consumers (Figure 4), with governments monitoring the balance so their own producers can compete with imports.

All of this relates to the broader objective of **ensuring markets function well**, a repeated call from now ex-WTO Director-General Roberto Azevêdo often together with heads of other international organisations (see WTO undated-b). It requires policies that reduce distortions and good market information, such as from the multi-agency Agricultural Market Information System (AMIS).

15 Perhaps the most labyrinthine of all is how to negotiate increased market access through tariff quotas (where imports within the quotas are duty-free or have lower rates than normal); see the draft agreement (WTO 2008): Annex C (pp. 45–46) and "Attachment Ai" (pp. 104–120)

Labour. Finally, COVID-19 restrictions on travel and migration have brought into focus the importance of migrant labour, both for agriculture and for remittances sent home. Farm workers are not usually considered under "mode 4" (movement of people) in WTO services rules. So, while governments will discuss this in various agricultural, development and labour organisations, it is only peripheral to the WTO itself. The Secretariat has produced a report on the impact of mobility restrictions on trade (WTO 2020k), but it only mentions agricultural workers once in passing.

CONCLUSION

To summarise: for any work programme within the WTO itself, three groups of activities will be important

- Information sessions and thematic discussions, to clarify issues and help build confidence and understanding at a technical level, a first step towards members collaborating more.
- Choosing least damaging trade actions and rule making where related directly to COVID-19, including on export restraints, mitigating the impact of the pandemic, and domestic support in stimulus packages.
- Grasping the opportunity to update the trade rules more broadly on agriculture, particularly on domestic support, to reduce spillover effects.

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ABOUT THE AUTHOR

Peter Ungphakorn is a freelance journalist and former Senior Information Officer with the WTO Secretariat.

CHAPTER 21

Technical regulations in the WTO: The need to improve transparency

Biswajit Dhar
Jawaharlal Nehru University

Economic downturns have always brought with them apprehensions of rising trade protectionism and the domino effect that the latter could inflict on the economies. In times of economic stress, the dismal imagery of the 1930s inevitably comes alive when protectionist policies accentuated the adverse impact of the stock market crash of 1929, taking the global economy down to the depths that modern civilisation had not witnessed. These fears have grown larger in recent decades with economies more interconnected than ever before, as production networks, both global and regional, drive output and employment.

Given the extent of deterioration in trade volumes caused by systemic economic downturns, the global community has shown considerable alacrity in ensuring that the trade protectionism should not trigger the second-order effect of pushing the global economy towards a depression. These concerns were palpable when the leaders of the G20 met for the first time in November 2008 under the shadow of the Great Recession and made a commitment to an "open global economy". In the Washington Declaration they agreed to the following:

> "We underscore the critical importance of rejecting protectionism and not turning inward in times of financial uncertainty. In this regard, within the next 12 months, we will refrain from raising new barriers to investment or to trade in goods and services, imposing new export restrictions, or implementing World Trade Organization (WTO) inconsistent measures to stimulate exports" (G20 2008).

Since their first Summit, G20 leaders have consistently made this commitment to keep the global markets open in each of their Summit Declarations, mindful of the fact that the fragile recovery from the 2008 recession could have easily promote protectionist tendencies.[1] As detailed by Bernard Hoekman in his chapter in this eBook, at the conclusion of the Extraordinary G20 Leaders' Summit on COVID-19 held on 26 March 2020, the G20 leaders expressed their determination to "[m]inimize disruptions to trade

1 Although the explicit pledge to eschew protectionism was dropped from the G20 Leaders communiqué in December 2018.

and global supply chains". The question is: did the governments of these major economies follow the principles to which they had agreed to keep the markets open, and were they able to provide the necessary motivation for the global community to follow their lead?

In this chapter, I try to answer this question by making reference to the technical regulations or standards that countries have adopted in the realm of trade since the outbreak of the COVID-19 pandemic. Sanitary and phytosanitary (SPS) and technical barriers to trade (TBT) measures have the potential to disrupt trade and supply chains, especially when they are not adopted in a transparent manner (Devadason 2020). As such, this chapter complements that of Bernard Hoekman, who takes a broader perspective. I begin my discussion by assessing the "WTO members' notifications on COVID-19", a useful compilation of the trade measures adopted by the members of that organisation from the beginning of February 2020, more than a month before the World Health Organization (WHO) declared COVID-19 as a pandemic. In the following section, I will focus specifically on the standards, notified under the Agreements on Sanitary and Phytosanitary Standards and Technical Barriers to Trade. Members notifying their standards under the two agreements are supposed to comply with agreed yardsticks of transparency, a critical element for ensuring that the standards are not used as proxies for trade protectionism. However, the notifications issued during the COVID-pandemic fall short of the transparency yardsticks on several counts, which I shall discuss in this chapter. Finally, I provide a few recommendations as a way forward for a future WTO work programme.

TRADE MEASURES REPORTED TO THE WTO BY ITS MEMBERS

As of 21 September 2020, the WTO Secretariat reports that members of the organisation had submitted a total of 244 notifications[2] related to COVID-19. These notifications were tabled by 74 WTO members. Of these 244 notifications, 234 involved the introduction or modification of specific trade measure(s), implying that they would have a definite trade-effect (or effects). The remaining ten notifications were either declarations and/or requests to the WTO membership by a member (or members) to keep the markets open, which would not necessarily have immediate trade effects since there is no evidence that all the members have accepted the principles enunciated in these notifications. Thus, for my discussion here, I will consider the 234 notifications containing specific trade measures.

Ten types of trade measures have been included in the notifications submitted by members, as shown in Table 1.

2 The WTO Secretariat lists 245 notifications. One notification, a joint submission by New Zealand and Singapore, has been counted twice in its list (accessed from: www.wto.org/english/tratop_e/covid19_e/notifications_e.htm).

TABLE 1 TRADE MEASURES THAT ARE THE SUBJECT OF NOTIFICATIONS RELATED TO COVID-19

Types of measures	Number of notifications
Technical barriers to trade (TBT)	89
Sanitary and phytosanitary (SPS) standards	59
Quantitative restrictions (QRs)	41
Import liberalisation	18
Measures covering agriculture	11
Export restriction	7
Government Procurement Agreement	3
SPS-TBT	2
Trade Facilitation Agreement	2
Trade-related aspects of intellectual property rights	2
Total	234

Source: WTO Secretariat.

Almost a quarter of the trade measures reported by the WTO Secretariat were import-liberalising or export-promoting measures. This is an unusual occurrence, as in times of economic stress protectionist tendencies are more dominant.

Among the trade-restrictive measures, QRs were the most used, which, coupled with other trade-restrictive measures (mostly covering agricultural products), account for more than a quarter of the total trade measures reported. Despite the fact that QRs are among the most disavowed trade measures under the WTO rules, members were able to creatively use the loopholes in Article XI to adopt these trade-restrictive measures.[3] Almost two-thirds of the trade measures adopted by the WTO members were related to standards – namely, SPS and TBT.

Six countries – Brazil, Kuwait, the US, the Philippines, Thailand, and the EU members – accounted for nearly 40% of the total trade measures, with Brazil notifying 28 of them. Moreover, a total of 50 WTO members tabled these notifications, meaning that fewer than a third of the total membership of the organisation had notified the trade measures they had adopted since the outbreak of the COVID-19 pandemic.

3 See the chapter by Bernard Hoekman in this eBook.

This, yet again, reflects the weaknesses of the WTO rules and their inability to ensure that the members implement one of their fundamental obligations of transparency under the different covered agreements by notifying their trade measures. In a phase when every government, without exception, has undertaken a plethora of policy measures in response to the impact of the pandemic on their economies, the reluctance of most WTO members to adequately notify their trade measures must be considered one of the more significant systemic issues that should be promptly addressed by the organisation.

The distance between the trade measures notified in the WTO and the reality is evident from the numbers provided by the Global Trade Alert (GTA) database. As against the list of 233 COVID-related measures provided by the WTO Secretariat, of which a majority are addendums and corrections,[4] GTA reports that 694 trade measures were announced by 133 trading jurisdictions.

SPS AND TBT MEASURES USED BY WTO MEMBERS

Table 1 shows that according to the WTO Secretariat, 150 SPS-TBT notifications were issued by members since early February 2020. I undertook a careful examination of these notifications submitted by the members, examining the standards that have been adopted in response to the COVID pandemic. My exercise shows that the WTO Secretariat has failed to include 12 notifications in their list. In other words, a total of 162 COVID-related SPS or TBT notifications were submitted by the WTO members since early February 2020. These include 66 SPS measures and 96 TBT measures. The following discussion is based on this larger set of notifications.

These SPS and TBT measures were notified by a total of 36 WTO members, which once again reinforces the point made above about the lack of enthusiasm among the membership to inform trading partners of the standards that they have adopted.[5]

I mentioned earlier that one of the important features of the COVID-related trade measures notified in the WTO was used to facilitate trade. This feature was prominent in the SPS notifications – almost two-thirds of the SPS notifications were aimed at easing the supply bottlenecks for food products and to prevent the trade channels from collapsing. The TBT notifications were in sharp contrast, but overall, a third of these standards were aimed at preventing trade flows from being impacted by the pandemic.

WTO members relied considerably on emergency measures to notify the regulations, which are notified when there are "urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a member".[6] These measures can be adopted without being subjected to scrutiny in the respective Committees, which

4 See also the statistics presented in the chapter by Bernard Hoekman in this eBook.

5 By contrast, during 2019 a total of 93 WTO Members made submissions on TBT alone (WTO 2020).

6 Articles 2.10 and Article 5.7 of the TBT Agreement allow members to adopt emergency measures in case "urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a member"; see also Annex B of the SPS Agreement ("Transparency of Sanitary and Phytosanitary Regulations").

is expected in these pandemic times. More than 40% of the SPS notifications and nearly 60% of the TBT notifications belong to this category. Emergency measures are intended to be temporary measures, but most SPS and TBT measures notified during recent months did not include termination dates. This is the first of several yardsticks of transparency that the SPS and TBT notifications did not adhere to.

While emphasising that standards should not become unnecessary barriers to trade, the SPS and TBT Agreements strongly encourage the use of international standards in the preparation of standards or technical regulations. The emphasis on using international standards is based on the assumption that they are non-discriminatory, although the standards-setting body may not have considered the effects of the standards on trade (Wolfe 2015: 3). Moreover, improved transparency, implying the ability to identify the use of standards for specific regulatory objectives, would be beneficial for evaluating the impact of standards on trade (Fliess et al. 2010: 9).

Thus, Article 2.4 of the TBT Agreement provides that "[w]here technical regulations are required and relevant international standards exist or their completion is imminent, members shall use them, or the relevant parts of them ...". Further, Article 2.9 clarifies that should an international standard not exist, "or the technical content of a technical regulation is not in accordance with the technical content of relevant international standards", the member notifying such a regulation must "publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties in other members to become acquainted with it ...".

Members are encouraged to notify all proposed regulations that are based on, conform to, or are substantially the same as an international standard, guideline, or recommendation if they are expected to have a significant effect on trade of other members. The SPS Agreement mentions in its preamble the desirability of use by WTO members "of harmonized sanitary and phytosanitary measures between members, on the basis of international standards, guidelines and recommendations developed by the relevant international organizations, including the Codex Alimentarius Commission, the International Office of Epizootics, and the relevant international and regional organizations operating within the framework of the International Plant Protection Convention." Such are the touchstones of transparency, which underline the adoption of standards under the SPS and TBT Agreements.

However, most of the COVID-related standards adopted by the WTO members are not in keeping with the international standards. Of the 66 SPS notifications issued since early February, only 18 conform to internationally recognised standards. The conformity of the TBT notifications with international standards is even worse. Among the 96 TBT notifications, a mere seven are based on standards developed by international organisations; the remaining are all based on standards developed by national agencies. Further, there is no evidence that members that are notifying these standards that do not conform to international standards have met the requirements of Article 2.9, which requires them to "publish a notice" so that "other members can become acquainted with it".

When adopting a technical regulation, a member is expected to give a reasonable period of time to other members to comment on the regulation. The Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3 of the TBT Agreement) provides that "[b]efore adopting a standard, the standardizing body [of the member concerned] shall allow a period of at least 60 days for the submission of comments on the draft standard by interested parties within the territory of a member of the WTO". Similarly, for the SPS Agreement, the "procedures recommend that a normal time limit for comments on notifications of at least 60 days is allowed before a measure comes into force" (WTO 2002: 15).

In the case of emergency measures – which, as mentioned above, form a large share of the COVID-related SPS and TBT standards – the TBT Agreement stipulates that the period for seeking comments may be shortened in cases where urgent problems of safety, health or environment arise or threaten to arise. Similarly, the SPS Agreement provides that "[e] mergency measures may be notified either before or immediately after they come into effect" (WTO 2002: 15).

However, notwithstanding these provisions, members notifying the COVID-related standards or technical regulations had, barring a few exceptions, begun implementing the measures well before they were formally notified in the WTO. In only three cases of SPS notifications were the covered standards implemented after the date on which they were notified, while for the TBT Agreement this figure was five. Thus, irrespective of whether such measures adopted by members were trade restricting or liberalising, delayed notification of an already adopted measure meant that their partner countries were potentially discriminated against.

In sum, many of the SPS and TBT notifications submitted since the onset of COVID-19 clearly violate the tenets of transparency established at the WTO on multiple counts. In the following section, I provide a possible way forward for addressing these hitherto less well-known deficiencies.

THE WAY FORWARD

The TBT Committee has long emphasised the "importance of members fully complying with their transparency obligations under the TBT Agreement and in particular those related to the notification of technical regulations and conformity assessment procedures". The Committee has also consistently argued for more than a decade that "transparency is a 'fundamental pillar' in the implementation of the TBT Agreement and a key element of good regulatory practice" (WTO 2009: para. 29, see also WTO 2019). However, the implementation of the both the SPS and the TBT Agreements in the COVID-19 era has been fraught with a lack of transparency, which I have demonstrated above.

What is the problem? Several years back Robert Wolfe gave his prognosis, which, without doubt, is more relevant today: "transparency remains under-supplied, but the importance of regulatory matters has been increasing" (Wolfe 2015: 1). Technical regulations have increased but, as I have discussed above, the level of transparency in the notifications has clearly been falling short of the members' obligations on two counts, in particular: first, members have usually notified their standards well after they were adopted; and second, most notifications have not been in conformity with international standards. WTO members must find an expeditious solution to this issue, for they must prevent the rise of 'murky protectionism'.

From their early days, the SPS and the TBT Committees instituted formal monitoring and surveillance mechanisms for addressing the "specific trade concerns" (STCs). To date, the STCs raised in the SPS and TBT Committees total 483 and 638, respectively. The two Committees have, however, adopted different yardsticks for informing on the status of the STCs that have been reported to them. While the SPS Committee has reported that almost 60% of the STCs have not been resolved, the TBT Committee has not reported on this important issue, although the number of STCs it has heard is considerably larger.

Given the rapid increase in technical regulations in nearly all jurisdictions, an improvement in the reporting and early resolution of STCs could be immensely beneficial to global trade as it struggles to recover from the pandemic-induced plunge. WTO members have taken an important step forward in the May meeting of the TBT Committee by registering their STCs on the new online platform (eAgenda). Such processes, reflecting the collective will of the membership of the WTO, will surely help in finding agreed solutions to the vexed issue of STCs.

Finally, better appreciation of the importance of transparency, both by the WTO members and also by the Secretariat, will be a critical step towards minimising the burden of discriminatory technical regulations.

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ABOUT THE AUTHOR

Biswajit Dhar is Professor of Economics at Jawaharlal Nehru University, New Delhi.

CENTRE FOR ECONOMIC POLICY RESEARCH

In the midst of profound contemporary shifts and shocks facing humankind, a quarter of a century after its creation the World Trade Organization (WTO) is evidently not where pressing trade problems are being solved. Using the COVID-19 pandemic as a lens, the purpose of this volume is to offer insights into the underlying choices faced by WTO members as well as to offer pragmatic suggestions for a WTO work programme over the next three years.

Our assumption is not that the COVID-19 pandemic changes everything, but it is an excellent example of the type of shock that the governments and the WTO must respond to. That shock interacts with the underlying shifts taking place in the world economy, as many of the chapters in this volume make clear. As a result, the 22 contributions in this volume go beyond typical agreement-specific silo thinking and reflect upon:

- The effectiveness of the WTO during crises
- The WTO's place in the firmament that is the world trading system, given that cross-border trade is so dependent on practices governed by other national, regional, and international bodies, such as those dealing with shipping, air transportation, etc.
- The appropriacy of the current WTO rule book

This timely volume, published on the eve of the appointment of a new Director-General and just after a pivotal US presidential election, will be of interest to trade policymakers, diplomats, analysts, and scholars of the multilateral trading system.

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33 Great Sutton Street | LONDON EC1V 0DX | UK
TEL: +44 (0)20 7183 8801 | FAX: +44 (0)20 7183 8820
EMAIL: CEPR@CEPR.ORG
WWW.CEPR.ORG