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COVID-19 and WTO: Debunking Developed Countries' Narratives on Trade Measures

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I. INTRODUCTION

In the context of COVID-19, WTO Members have notified to the WTO a range of trade measures. What has also emerged over the recent weeks are:

i) A very clear line of thinking by mostly developed Members on market access - trade liberalization, banning agriculture export restrictions, and accelerating the introduction of new trade rules for the digital economy, notably to ensure free data flows. They have put forward proposals at the WTO in relation to these issues, and have also promoted the same ideas through the G20 and other institutions.

ii) Some Members are also introducing narratives on trade and food security in the context of the COVID 19 crisis, suggesting solutions as the way forward that have not worked for developing countries in the last three decades; and

iii) Last and most importantly, there is an eerie silence on what is the most critical issue vis-à-vis the WTO and COVID – the restrictions that the WTO's intellectual property rules are likely to have on supporting countries' access to pharmaceuticals and medical products (e.g. equipment, diagnostic kits, etc.).[1]

This paper examines the narratives regarding the issues of market access and trade liberalization of medical related goods, export restrictions in agriculture and digital trade rules, ,and the 'double discourse' and interests behind them.[2]

Economic and Human Devastation Developing Countries are Facing

The Coronavirus pandemic is expected to turn global economic growth 'sharply negative' in 2020. Kristalina Georgieva, the IMF's managing director says that the world faced the worst economic crisis since the Great Depression of the 1930s. Over 170 countries will experience negative per capita income growth in 2020.[3] Whilst this will affect developed and developing countries, unlike developed countries, the developing world unfortunately has very little wherewithal to provide social security and cushion its people from the worst effects of the economic disaster.

At a macro-economic level, developing countries, even the middle income countries, are becoming extremely exposed in the following ways:

- low commodity and oil prices
- worsening debt crisis

Executive Summary

In response to the COVID-19 pandemic, developing countries at the World Trade Organization (WTO) are faced with demands to i) permanently liberalize their markets in health products, and also in agriculture; ii) ban export restrictions in agriculture; and iii) conclude new digital trade rules including liberalizing online payment systems, and agreeing to free data flows. There seems to be a confusion between short-term and long-term responses. For the short-term, governments must take measures needed to address the crisis, including liberalizing needed health products. However, permanently bringing tariffs to zero for the health and agricultural sectors will not support developing countries to build domestic industries. Export restrictions in agriculture cannot be given up. They can be a very important tool for stabilizing domestic prices and for food security. New digital trade rules at the WTO would foreclose the possibility for countries to impose data sovereignty regulations, including data localization requirements that can support their infant digital platforms and industries.

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- capital flight
- loss of income from remittances
- loss of income from tourism
- drying up of export earnings as overseas demand slows or stops entirely.

At a human level, jobs in the informal sector have disappeared. Poor people already living from hand to mouth are facing hunger and starvation. Reports are now emerging that the economic devastation of the pandemic on the ultra poor could kill more people than the virus itself.[4] The UN has warned of a looming 'hunger pandemic' bringing possibly 'the worst humanitarian crisis since World War II'. The World Food Programme has reported that famine in as many as three dozen countries is "a very real and dangerous possibility" due to ongoing wars and conflicts, economic crises and natural disasters – such as the locusts in East Africa. 130 million people could be on the brink of starvation by end 2020. Christian Aid has warned that 30 million children are at risk of dying.[5]

It is in the context of this economic and human devastation that the narratives and proposals at the WTO should be assessed, and the way forward considered.

II. TRADE MEASURES TAKEN

Governments across the entire spectrum of the WTO Membership have responded to the COVID-19 pandemic by taking a range of trade measures to ensure that they have adequate supplies of essential products to manage the pandemic. Some have also taken measures in relation to food, due to concerns about disruptions in food supply chains.

Two main forms of trade measures have been implemented in recent weeks by Members:

i) reduction of tariffs on medical related products to deal with the pandemic; and reduction of tariffs in food;

ii) export restrictions (or measures such as requirements for licensing) mainly on pharmaceuticals and medical/health products to ensure that the domestic needs are given priority; a few have taken export restrictions in relation to food items.[6]

III. PROPOSALS AND NARRATIVES ON TRADE LIBERALIZATION, EVEN AS DEVELOPED COUNTRIES SEARCH FOR 'STRATEGIC AUTONOMY'

Submissions and Narratives on Trade Liberalization

Several submissions by Members and statements by various agencies are encouraging Members to take on trade liberalization commitments. The logic is that free and open trade will facilitate access to these products. However, who can benefits from of trade liberalization in the context of the current crisis? Some of the proponents on trade liberalization are already the most competitive in the medical sector. Others who may be net importers but have the technologies are currently pumping subsidies to their domestic producers to become more self-sufficient (see section below).

The following submissions and statements propose further trade liberalization in relation to goods and/or services needed to address COVID 19:

Summary of Measures Adopted by WTO Members in Goods due to COVID-19[7]

Measures adopted by Members and Observers (Imports/Exports - trade in goods only)			**221**
Measures adopted in Exports (both Agriculture and Health)		108	
Measures adopted in Imports (both Agriculture and Health)		88	
Other type of measures adopted		25	
Measures lifting export restrictions in both health and food products (1)	5		
Measures on agricultural/food products			**38**
Exports			26
Measures eliminating restrictions on food exports (2)		1	
Imports			12
Measures imposing restrictions on food imports (3)		1	
Measures eliminating restrictions on food imports		11	
Measures on health related products			**158**
(1) India, South Africa, Viet Nam (Health related goods, SA has lifted restrictions on fresh Ag products)			
(2) South Africa's elimination of the temporary export ban on wine and fresh products			
(3) EU: Reimposition of specific import tariffs (EUR 5.27/tonne) on maize, sorghum and rye, due to the COVID-19 pandemic			

Joint Ministerial Statement (WT/GC/212, 5 May 2020)

A Statement by the Ministers responsible for the WTO of 42 members was circulated on 5 May 2020 at the request of Switzerland.[8] On tariff liberalization, the Statement says:

'We encourage work at the WTO on concrete actions aimed at facilitating cross-border flows of vital medical supplies and other essential goods and services, including through the application of best practices and simplified procedures and through further trade opening.'[9]

The Statement does not specify what 'concrete actions' are encouraged to be adopted, particularly whether it refers to improvements in custom procedures, changes in tariffs levels or other measures.

The Singapore/ NZ Proposal - Declaration on Trade in Essential Goods for Combating the Covid-19 Pandemic, G/C/W/777, 16 April 2020

On 15 April, New Zealand and Singapore signed a joint *Declaration on Trade in Essential Goods for Combating the COVID-19 Epidemic*. This Declaration was then submitted to the WTO and its sponsors 'encourage(d)' other WTO Members to also sign on.

According to NZ and Singapore, 'the Declaration covers tariff elimination and both import and export measures… The purpose of the Declaration is to ensure that during the COVID‑19 global pandemic, production and trade in essential items such as medical supplies and food continue to flow freely to their intended destinations.'

The goods liberalization commitments in the declaration are as follows:

Tariff Elimination and Implementation

1. Each Participant will eliminate all customs duties and all other duties and charges of any kind, within the meaning of Article II:1(b) of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), with respect to all products listed in Annex I.

There are two lists in the NZ/ Singapore proposal. Annex I –under which liberalization would be compulsory- contains a list of 126 tariff lines consisting of medicines, medical equipment, cleaning products, personal protective equipment (PPE) plus three agricultural lines including food preparations.[10] Spirits and liqueurs are also in Annex I.[11] Annex II consists of almost all agricultural tariff lines (except cotton and vegetable oils).

It is useful to note that the top three exporters of Annex I products in 2019 are Germany ($142 billion); US ($125 billion); and Switzerland ($91 billion). The top 10 net exporters (subtracting their imports) of Annex I products are Switzerland ($53 billion); Ireland ($52 billion); Germany ($48.9 billion); Netherlands ($24 billion); Singapore ($13 billion); India ($11.8 billion); Belgium ($9 billion); France ($8.5 billion); Italy ($7 billion); and China ($5.9 billion).

New Zealand is a large exporter (nearly $3 billion), but also an importer of Annex I products. In 2019, it had an insignificant negative trade balance of about $10.7 million for Annex I products. The country is, however, a major exporter of agricultural products, which explains its interest in cutting down tariffs for agriculture tariff lines (Annex II). NZ's net trade balance for all agriculture products was $20 billion in 2019.

Australia - 'Unilateral Measures Relating to the COVID-19 Pandemic: Measures to Facilitate the Importation of Vital Medical Supplies', G/MA/W/152, 4 May 2020

It is interesting that Australia did not join the NZ/ Singapore proposal. A look at the trade data shows that Australia is actually a large net importer of the Annex I products. It has a negative trade balance of US$8.9 billion.

However, on 4 May, Australia submitted a proposal to the World Trade Organization Members regarding *temporary* 'Unilateral Measures Relating to the COVID-19 Pandemic'. Unlike NZ/Singapore, it does not commit to having permanent zero tariffs on selected lines.

The submission stated that 'Australia has introduced a temporary tariff concession measure to facilitate the importation of certain goods required to manage the crisis created by the COVID-19 pandemic… Australia encourages other Members to adopt similar trade-facilitative measures to support the global response to the COVID-19 pandemic.'

Australia's list (27 tariff lines on 8 digit level) is narrower than the WCO/ WHO list of COVID-19 products (54 lines at a 6-digit level).

It is noteworthy that in its liberalization proposal, Aus-

Australia's Liberalization List Compared with the WCO/ WHO's COVID-19 List of Products

SUMMARY - LIST COMPARISON: WCO/WHO - Australia - Singapore/N.Zealand (at 6 digits HS)	**Tariff Lines**	
WCO/WHO Tariff lines (1)		54
Australia list (2)		27
Australia Tariff lines included in WCO/WHO List	26	
Australia Tariff lines NOT included in WCO/WHO List	1	
Singapore/NZ Tariff lines (Annex I)		126
Singapore/NZ Tariff lines included in WCO/WHO List	34	
Singapore/NZ Tariff lines NOT included in WCO/WHO List	92	

(1) WCO/WHO List has many tariff lines that are not disaggregated

(2) Australia's list is at 8 digits

tralia has excluded the liberalization of hand sanitizer because it has domestic companies producing this (more below).

European Union (EU)

It was reported in mid-April that the EU Trade Commissioner was discussing a tariff liberalization agreement on medical products with EU trade ministers. On 16 April, Bloomberg said that the EU was seeking to 'permanently eliminate tariffs on medical goods needed to respond to the Covid-19 health crisis, which could cover a range of products valued at about $597 billion per year.' It said that the EU Trade Commissioner Phil Hogan had proposed launching a "comprehensive negotiation" with nations 'to cut tariffs and unburden global supply chains for key medical goods'.[12] The major European economies are, as noted above, among the largest net exporters of medical products. At the time of writing, no formal proposal has yet emerged and there is no clarity whether there might be one in the offing or not.

Statements from Other Agencies Encouraging Tariff Liberalization

WTO's Deputy Director General (DDG) Alan Wolff stated:

'Broad tariff suspensions and negotiated reductions and elimination where possible -- zero tariffs could be considered for pharmaceuticals, information technology products, environmental goods[13], and products that already bear a low tariff'.[14] Like liquors above, what is being advocated for liberalization is broader than the health sector.

The OECD's policy brief on COVID and trade suggested:

'Cutting tariffs on essential medical products – countries could explore a WTO, including plurilateral, initiative to remove tariffs on a to-be-agreed list of essential medical supplies (similar to the agreement reached on Information Technology products).'[15]

In sum, a number of proposals have been made towards further trade liberalization, on the grounds of facilitating access to supplies urgently needed to address the health impact of COVID 19.

As examined below, many countries have realized that the local production of pharmaceuticals and medical supplies has strategic importance and have taken measures to actively promote it. Such measures, although taken in response to the current juncture, are likely to be permanent features in industrial policies beyond the COVID 19 crisis.

State-led Industrial Policy – Shifting Production Home

The more advanced economies are already putting in place plans to be more self-sufficient, and giving subsidies to their companies to enter into the production of essential or strategic products.

A New York Times article quotes experts suggesting that there will be "a rethink of how much any country wants to be reliant on any other country… this does accelerate the type of thinking that has been going on in the Trump administration, that there are critical technologies, critical resources, reserve manufacturing capacity that we want here in the U.S. in case of crisis."[16]

On 11 May 2020, the US Trade Representative Robert Lighthizer's Op-ed in the New York Times said: 'The pandemic has vindicated the Trump trade policy in another way: It has revealed our overreliance on other countries as sources of critical medicines, medical devices and personal protective equipment. The public will demand that policymakers remedy this strategic vulnerability in the years to come by shifting production back to the United States'.

In fact, it is estimated, in relation to medicines, that about 80 percent of the basic components used in U.S. drugs, known as active pharmaceutical ingredients (APIs), come from China and India.[17]

The box below gives an overview of some countries' plans to invest in local production of 'essential' products.

EU

EU's trade commissioner Hoganis reported to have "stressed the importance of 'ensur[ing] the EU's strategic autonomy' while noting that a full reshoring of European industries would be impossible". [18]

Further, the EU's 'Roadmap for Recovery' says: 'The Covid-19 pandemic has shown the pressing need to produce critical goods in Europe, to invest in strategic value chains and to reduce over-dependency on third countries in these areas.'[19]

France

France's Finance Minister Le Maire urges 'a deep re-evaluation of supply chains.' He has ordered a review to determine which French industries are needed to rebuild an "economic and strategic independence". [20]

French President Macron also said that "Delegating our food supply […] to others is madness. We have to take back control". This was followed two weeks later by Minister Le Maire issuing a rallying cry to the nation's supermarkets on 24 March to 'Stock French products'. Le Maire termed this "economic patriotism". French supermarket chain Carrefour has already moved to source 95% of its fruits and vegetables from within France.[21]

Switzerland

The President of the Swiss Confederation has also noted that 'We must also reduce our dependence on foreigners for medical supplies and energy.'[22]

United States

The US has passed legislation to provide a $2 trillion to address the fall out from the Coronavirus. This money includes 'loans or investments' to businesses, $32 billion in grants to the airline industry and more.[23] Funds are also being provided 'for developing domestically the coronavirus vaccine and for 'medical supplies'. [24]

Various think tanks in the US have been calling on the state to provide incentives for manufacturing to be brought back to the US. The American Enterprise Institute's Derek Scissors noted that 'The federal government can also incentivize businesses to reshore manufacturing jobs by creating tax breaks that are tied to investment in the U.S.'[25]

On 4 May, Reuters reported that 'The Trump administration was "turbocharging" an initiative to remove global industrial supply chains from China'. Keith Krach, undersecretary for Economic Growth, Energy and the Environment at the U.S. State Department told Reuters:

> '"I think it is essential to understand where the critical areas are and where critical bottlenecks exist," Krach said, adding that the matter was key to U.S. security and one the government could announce new action on soon.
>
> 'The U.S. Commerce Department, State and other agencies are looking for ways to push companies to move both sourcing and manufacturing out of China. Tax incentives and potential re-shoring subsidies are among measures being considered to spur changes, the current and former officials told Reuters.
>
> '"There is a whole of government push on this," said one. Agencies are probing which manufacturing should be deemed "essential" and how to produce these goods outside of China.'[26]

On 4 May, House Ways and Means Committee Chair, Richard Neal called for the suspension of tariffs for 90 days. He reportedly said that after the crisis is over, the United States should take another look at existing policies "and have the courage to enact the necessary transformative changes to make our supply chains smarter, our manufacturing capabilities stronger, and our country and citizens better prepared for future emergencies'.[27]

On 5 May, Josh Hawley, Republican Senator publishes in the NY Times that the 'WTO Should be Abolished' and that 'America must restore its economic sovereignty'. He said that 'That means returning production to this country, securing our critical supply chains and encouraging domestic innovation and manufacturing.'[28]

Australia

Australia's submission mentioned above states that hand sanitizer or tariff classification 3808.94.00 is specifically excluded from by-law 2019608. There is currently significant manufacturing capacity in Australia for hand sanitizer. The exclusion of hand sanitizer reflects this capacity and the fact that Australian businesses have refocused their operations to increase domestic supply in response to COVID-19.'

Japan[29]

'Japan will launch a subsidy program to encourage domestic manufacturers to transfer their overseas production bases to Southeast Asia, as the coronavirus pandemic has greatly disrupted their supply chains heavily dependent on China, Kyodo news service reported.

'The ¥23.5 billion ($220 million) program, incorporated into the government's emergency stimulus package to ease the economic fallout from the pandemic, will help firms diversify their supply chains by financially assisting the construction of production facilities as well as feasibility studies in ASEAN countries.

'The initiative came after many automakers and other manufacturers suffered a shortage of parts produced in China after the new coronavirus outbreak started late last year in the central Chinese city of Wuhan. "Even before the virus outbreak, there has been a growing need for Japanese firms to set up production bases in the ASEAN region," an Economy, Trade and Industry Ministry official said. "(The subsidy scheme) will help our country build better relationships with ASEAN countries, too."

'In another effort to reinforce supply chains, the government will spend ¥220 billion to promote domestic output of items that are currently heavily imported from certain areas. Subsidies also included in the stimulus will go to financially support the relocation of Japanese firms' overseas production sites back home. The program will also target manufacturers of items essential for Japanese people to "lead a healthy life" amid the outbreak, including face masks and alcohol sanitizers. They can receive subsidies when they newly open factories or boost their existing output capacity in Japan.'

Observations and Questions

1)Liberalization for a Broader Range of Products than Those Related to COVID-19. The need to respond to COVID 19 has apparently been regarded by some WTO members, and also the WTO Secretariat (joined by other developed countries' institutions), as an opportunity to promote a deeper (and possibly permanent) trade liberalization. The call to liberalize has involved, in some cases, a wider range of products than just those relating to COVID-19. It has been a combination of sectoral NAMA (non-agriculture market access) negotiations; agriculture market access negotiations (Annex II in the Singapore/ NZ proposal); information technology products[30] as well as services.

2) The Main Beneficiaries are also the Proponents of Liberalization. The main proponents of these liberalization proposals are already the most competitive and would be the main beneficiaries should the world bring to zero tariffs on these 'essential' COVID-related products.

This suggests that some of these proposals are not merely inspired by the objective of alleviating suffering in countries affected by the pandemic, but by commercial interests as well.

3) Developed Countries' Double Discourse on Liberalization and Impact on Developing Countries. What will be the effect if developing countries open their markets whilst major economies put resources into stepping up domestic production and making themselves more self-sufficient? Several developed countries' governments are already putting in place active, state-supported industrial policies to promote domestic production and to reduce dependency on foreign supplies, including with subsidies and other measures. This would enhance their competitive capacity. Liberalization will, therefore, be a major 'win' for these competitive producers. It would be difficult for most developing countries to build up their own industries (not only important to locally generate value-added and jobs, but as a strategic resource) and compete with such foreign suppliers. They are likely to become consumers and overly dependent on foreign supplies of critical products as a result of further liberalization.

Are developing countries in a situation which reflects what Cambridge professor Ha Joon Chang has been saying in his books, including 'Kicking Away the Ladder' and 'Bad Samaritans: The Myth of Free Trade and the Secret History of Capitalism' etc.? It would seem that developed countries preach to others to 'Do As I Say, Not as I Do'.

4) Why Permanent Measures for a Serious But Temporary Crisis? What is the logic in taking permanent tariff reduction commitments at the WTO when the COVID crisis is temporary?

5) Liberlisation Will Not Support Countries' Fiscal Challenges. Developing countries will need all the income they can get to manage this crisis. There are some tariff lines which bring in revenue, and which have been suggested for tariff cuts e.g. the proposal on zero tariffs on liquor and alcohol in the Singapore / NZ proposal. This will reduce states' revenues when it is most needed.

6) Who Pays the Most? Developing Countries currently have higher average tariffs than developed countries. Those with higher tariffs would therefore be the ones 'paying' when it comes to a proposal to bring tariffs to zero.

Conclusions

There is a need to differentiate between short and long term responses. Permanently lowering (eventually bringing to zero) tariffs on pharmaceuticals, medical or food products will not help developing countries to neutralize the devastating effects of the ongoing socio-economic crisis nor to fulfill their long-term development aspirations :

In the short term, meeting public health objectives and food security are clearly the overriding priority for all governments. Members can unilaterally liberalize trade when this meets their public health / food security objectives, without awaiting for the WTO to get an agreement thereon, and determine the temporal applicability of the adopted measures.

However, taking permanent liberalization obligations in respect of pharmaceuticals or medical and food products (in the face of the growing State support for local production by some Members or simply in the face of asymmetric competitive capacities) is ill-advised. It will mean that most developing countries will not be able to nurture their own domestic production in these products even in the medium to long-term. Developing countries do not have deep pockets to provide incentives and grants to their local producers as developed countries do. They may also need tariffs after the crisis to protect industries and jobs.

In summary, further trade liberalization does not work for developing countries. In the medium to long term, developing countries need to do as developed countries are doing not as they are saying. Developing countries should use this crisis as an opportunity for diversification and to jump-start their manufacturing sector. This can be done nationally and/ or regionally. In addition to various other instruments, they will also require trade policy tools to support infant industries.

In order to address the dramatic social and economic impact of COVID, developing countries need to preserve their policy space to design and implement industrial policies adapted to their conditions and priorities. These are extraordinary circumstances and an opportunity for the WTO membership to show that the multilateral system has sufficient flexibility and the tools to provide the needed people-centered solutions.

IV. EXPORT RESTRICTIONS

Context

There has been a lot of attention on the recent use of export restrictions in response to the COVID-19 crisis. Most of the export restrictions taken by Members have been related to the medical/ health sector. According to a WTO list, 53 countries / groupings have taken export restrictions of one form or another on medical/ health products.[31] 21 countries / groupings have also done so in relation to agriculture products by way of temporary export quotas or bans.[32]

What are the Narratives and Proposals on Export Restrictions?

Joint Ministerial Statement by 42 WTO Members (WT/GC/212, 5 May 2020)

The Joint Ministerial Statement says the following:

'1.2. As Ministers responsible for the WTO, we are actively working to ensure the continued flow of vital medical supplies and other essential goods and services across borders during this health crisis. The WTO has an essential role to play in this regard. We stress that trade restrictive emergency measures aimed at protecting health, if deemed necessary, shall 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 pledge to lift any such measures as soon as possible.'[33]

'1.5. 'We also stress the necessity of maintaining agriculture supply chains and preserving Members' food security. We, therefore, pledge to not impose export restrictions and to refrain from implementing unjustified trade barriers on agricultural and food products in response to the COVID-19 pandemic.'[34]

NZ/ Singapore proposal (G/C/W/777, 16 April 2020):

The Singapore/ NZ proposal says:

'2. The Participants will not apply export prohibitions or restrictions, within the meaning of Article XI:1 of the GATT 1994, with respect to all products listed in Annex I.'

As noted above, Annex I includes a very broad list of health related products (much broader than a list identified by WCO/ WHO). It also includes some agriculture tariff lines.

Canada, US, Australia, NZ, Brazil, Japan, Switzerland et al Statement in Relation to Agriculture (WT/GC/208, 22 April 2020):

Canada's initiative with 47 Members pledged the following:

'1.6. To help ensure well-functioning global agriculture and agri-food supply chains in response to this crisis we therefore are committed…

'c. Not to impose agriculture export restrictions and refrain from implementing unjustified trade barriers on agriculture and agri-food products and key agricultural production inputs.'

LDC Proposal – Securing LDCs Emergency Access to Essential Medical and Food Products (WT/GC/211, 4 May 2020)

The Least Developed Countries (LDCs) have also pronounced themselves on the issue of export restrictions:

'7. While noting the rights and obligations of Members[35], given the gravity of the COVID-19 pandemic, the reliance of LDCs on imports of essential medical goods and basic food products, and in view of the proliferation of trade restrictive measures, the LDC Group is hereby requesting non-LDC Members:

a. not to impose export prohibitions or restrictions within the meaning of Article XI:1 of the GATT 1994 with respect to the products listed in Annex I as identified by the WHO and WCO, and with respect to basic food products, when such products are requested or purchased by LDCs for their domestic use or are exported for humanitarian purposes'.

FAO, WHO, WTO joint call to keep food trade flowing in response to COVID-19

The heads of the FAO, WHO and WTO have also noted the following:

'Uncertainty about food availability can spark a wave of export restrictions, creating a shortage on the global market. Such reactions can alter the balance between food supply and demand, resulting in price spikes and increased price volatility. We learned from previous crises that such measures are particularly damaging for low-income, food-deficit countries and to the efforts of humanitarian organizations to procure food for those in desperate need.

'We must prevent the repeat of such damaging measures. It is at times like this that more, not less, international cooperation becomes vital. In the midst of the COVID-19 lockdowns, every effort must be made to ensure that trade flows as freely as possible, specially to avoid food shortage.'[36]

Observations

1. Scope of export restrictions. The main suggested disciplines on export restrictions relate to agricultural products. The main push on banning the use of export restrictions (aside from the Singapore/ NZ proposal) has been in the area of agricultural products (Joint Ministerial Statement, Singapore and NZ submission, Canada et al statement), not so much in the area of medical supplies.

2. Proposals go further than the COASS transparency proposals. Are some Members using this crisis to give impetus to their proposals on export restrictions in the negotiations on agriculture held in the WTO's Committee on Agriculture – Special Session (COASS)? In fact, the current submissions have gone much further than the COASS proposals (which have been about increased transparency) to now aiming at banning the use of export restrictions in food. Those who have been advocating for greater disciplines on export restrictions are either net-food importing countries (such as Singapore[37]; Japan), or major agriculture exporters who want to ensure that they have high demand for their exports. Banning export restrictions would encourage countries to depend on trade and the world market for their food security, instead of putting the emphasis on domestic production.

3. Export restrictions are legal under WTO rules. Importantly, export restrictions are legal under WTO rules (Art XI of GATT; Art 12 of the Agreement on Agriculture - AoA). All Members can apply them, however, such restrictions have been negotiated by developing countries and thus they should not be too quick to give up the right to use them, particularly in emergency situations or to attain long-term objectives such as food or health security.

The export restriction disciplines in the Agreement on Agriculture's article 12 is only on transparency (notification of export restriction measures). In the WTO, there is no mandate to have new disciplines going beyond the scope of that article. Further, the disciplines have a limited application to developed countries and developing countries who are net-food exporters of the specific foodstuff in question. The current proposals are much more far-reaching, as they are intended to be applied to all WTO Members.

4. Export Restrictions Can be Critical for Domestic Food Security. Export restrictions is an important food security policy tool in times of price volatility. Where there are people who are food insecure (and these numbers unfortunately is rising exponentially because of the widespread loss of employment), even slight increases in domestic food prices could lead to starvation.

5. Fiscal Constraints – Export Restrictions are Important to Mitigate these Constraints. There were already debt and food insecurity crises taking place across many developing countries even before the pandemic. By the end of 2019, 44% of low-income and least-developed countries were already having serious debt and fiscal challenges.[38] Their food bills were also daunting given their food security challenges e.g. many African countries were struggling with droughts, floods, pests, and the impact of climate change. These fiscal challenges have now only been compounded with the pandemic.

6. Even in the absence of export restrictions, net-food importing countries may not have access to food supplies when these are in shortage. Even if there are no export restrictions, if there are supply shortages in the world, supplies will go to the highest bidder. Further if in a year of bad harvests (due to drought or other conditions), a major developing country, for instance, has to go to the world market for its rice (which is thinly traded on world market), prices on the world market could very easily spike, making supplies out of reach for many poorer Members.

7. Instead of Export Restrictions, Developing Countries Need Rules that can Support Countries to Build Resilient Agricultural Sectors. The focus in agriculture should be about countries building resilient and sustainable agricultural sectors. Developing countries and especially the lower income countries should be encouraged, as far as possible, to invest and strengthen their domestic agricultural production in the context of food security policies.

For this to happen, developing countries require the trade distortions that have destroyed their agriculture sectors to be removed. This includes the long-standing domestic supports agenda (elimination of AMS[39] is an first important step). Developing countries, particularly those who still have a rural poor population need to produce more rather than rely on the world market as a matter of food security and communities' livelihood strategies, hence the importance of supportive rules for public stockholding programs to purchase, stockpile and distribute food to people in need.; as well as the possibility to implement an agricultural safeguard in times of price drops or import surges.[40]

8. Developmental Considerations. Given the understandably precarious situations of net-food-importing developing countries, when developing countries impose export restrictions, these should be done temporarily and with a lot of deliberation, especially giving consideration to LDCs and others.

Conclusions

There is growing emphasis and demands for WTO members to adopt new commitments / pledges which would disallow them to implement export restrictions in agriculture.

Doing so will not support food security. Under some circumstances, export restrictions can be extremely important for ensuring domestic food security and for reducing the fiscal pressures many developing countries already grapple with. For a poor person, export restrictions which support domestic prices to be low could mean the difference between survival and starvation. Further, what is suggested is contrary to existing WTO rules (where export restrictions are allowed) and beyond the scope of article 12 of the WTO's Agreement on Agriculture.

Instead of focusing on banning export restrictions which can negatively impact domestic food security, the long standing agenda of developing countries in the agriculture negotiations must be taken up. Developing countries want to build sustainable, productive and resilient agricultural sectors. Thus, addressing the distortions in agricultural trade, negotiations for rules that can support small farmers and food security should be the priorities.

V. DIGITAL TRADE RULES?

Some institutions and Members have taken the COVID 19 crisis as an opportunity to further argue for new digital trade rules in the WTO, on the grounds that with lockdowns, the digital economy and digital tools have served us well. In line with this narrative, some conclusions have been drawn:

i) There should be liberalization of online services, such as financial services and others.

OECD's Policy Brief on COVID 19 and Trade[41] talks about 'keeping trade moving without physical contact through enacting regulations to enable e-payments, e-signatures and e-contracts.'

ii) There should be free data flows i.e. governments should not try to step in to regulate data flows or localize data.

The World Economic Forum, an institution that has been actively involved in supporting developed countries in the plurilateral E-commerce discussion at the WTO notes that

'Data flows and digital services delivery, particularly across borders, are also playing a critical role in response to the COVID-19 pandemic response. Digital trade in services are among the most dynamic sectors in the global economy and could be further harnessed for the recovery process…However, barriers to digital trade exist and in some cases growing, whether due to outdated rules, new forms of protectionism, or as domestic policymakers seek to address novel governance questions without international collaboration… New data localization policies are emerging and other hurdles are emerging for international digital service supply. The promise of trade technologies to increase efficiency and inclusiveness is being challenged.'[42]

iii) In this regard, the WTO's Deputy Director General, Alan Wolff has said, in referring to the ongoing plurilateral negotiations on new digital trade rules, that the E-Commerce negotiations should be 'concluded successfully'.[43]

Observations

1. <u>The digital divide remains a major problem.</u> This divide has become clearer during this pandemic. Some have access to the infrastructure (e.g. electricity, broadband infrastructure) and tools to conduct their work and businesses online. However, for most governments and businesses in developing countries, the infrastructure and Internet connectivity challenges have become even more apparent. Rather than reducing divides, the digital divide is exacerbating the economic and social divides.

- An Example of the Divide: Who Owns the Digital Markets/ Platforms

  Aside from broadband and internet access and infrastructure issues, there is a huge gap between countries who have exporting and supply capacities in digital goods (e.g. e-books, downloadable music, video, etc.), services and the others. The platform is now the new business model in the digital economy. Platforms extract data - the new raw material. Who is getting ahead in the platform economy? The UNCTAD 2018 Trade and Development Report notes that of the top 25 big tech firms (in terms of market capitalization), 14 are based in the US, 3 in the EU, 3 in China and 4 in other Asian countries, and 1 in Africa. The top three big tech firms in the US have an average market capitalization of more than $400 billion, compared with an average of $200 billion in the top big tech firms in China, $123 billion in Asia, $69 billion in Europe and $66 billion in Africa.[44]

2. <u>What Developing Countries Need to Not be Left Behind</u>. Developing countries will need to find ways to move quickly to have their own platforms, consolidate their data, and extract value and markets from this data. Failing this, most countries will fall behind in the digital economy and simply become importers of digital goods and services. However, to become digital goods and services suppliers, it is critical that countries must have data sovereignty regulations. They can then decide what to do with their different types of data depending on their own capacities and national objectives– for some data to be shared freely perhaps, others to be localized and used domestically for value extraction, and yet others to be 'sold' or 'shared' at a price.

3. <u>Negotiations on New Digital Rules Centered Around Free Data Flows are Not in Developing Countries' Interests.</u> The new digital trade rules being discussed in the Joint Statement Initiative at the WTO will not support developing countries to have sovereignty over their data. Instead, if the US model of free data flows prevails, it will prevent countries to regulate the transmission and use of data. This will pander to the interests of the countries with the biggest digital companies who extract data globally to create value and markets for their own profits. Developing countries need to preserve the existing policy space to benefit from the digital economy by adopting the measures that they deem necessary to protect and develop their industries.

4. <u>Free Data Flows Really Means Only One-Sided Data Flows – Developing Countries' Data to Support Developed Countries' Companies.</u> 'Free data flows' opens the markets of the world. However, it does not open the US market because US data by and large will remain under the control of US companies. This is because US consumers will continue predominantly to use US platforms. EU citizen data will also stay in the EU because of EU's privacy standards (its General Data Protection Regulation) and its non-recognition of equivalence of others' privacy standards. However, developing countries' data will flow to the companies that own the main platforms.

<u>5. E-commerce Moratorium Needs Rethinking to Address Developing Countries' Constraints.</u> The fiscal challenges faced by developing countries are going to become more acute. All possible sources of income are important. The WTO's E-Commerce Moratorium on Digital Transmissions needs rethinking:

i) allowing customs duties on transmissions will allow countries to tax digital products and services for purposes of raising revenue, including on luxury products.[45]

ii) Customs duties on digital products may be very important for providing support to infant digital industries and for countries' digital industrialization aspirations. How this policy space can be utilized should be further explored and should not be foreclosed.

<u>6. WTO's 1998 E-commerce Work Programme Should be Reinvigorated, Focusing on Addressing the Digital Divide and the Anti-competitive Practices of Digital Titans.</u> Instead of exerting energy to negotiate new digital trade rules that are based on the US' model of free data flows, what developing countries first need are a lessening of the digital divide and ways to address the anti-competitive practices of the digital titans. At the WTO, such an agenda can be pursued under the 1998 E-Commerce Work Programme discussions. Ministers agreed in Buenos Aires to 'reinvigorate' these discussions. Members should pursue this, focusing especially on the digital divide and market concentration issues.

Conclusions

COVID 19 has shown the importance of deploying information technologies at the national level. However, the enormous North-South gap in the access to such technologies and the 'digital divide' continues to be unresolved, exacerbating the social and economic divides.

The high levels of concentration in the digital economy where digital goods and services to the global market are supplied by a fairly limited number of companies (mostly US-based) , could be aggravated by rules limiting countries' capacity to decide how the data produced in their territories will be stored, transmitted, processed and used.

The socio-economic crisis generated by the pandemic does not provide additional support to arguments promoting the free flow of data as a foundational principle for a digital economy that works to the benefit of countries at all levels of development.

VI. CONCLUSION

In response to the COVID-19 pandemic, developing countries at the WTO are faced with demands to i) permanently liberalize their markets in health products, and also in agriculture; ii) ban export restrictions in agriculture; and iii) conclude new digital trade rules including liberalizing online payment systems, and agreeing to free data flows.

There should not be a confusion between the immediate trade measures countries have taken to respond to the COVID-19 pandemic, and longer term solutions these proposals and narratives suggest.

Trade liberalization proposals are not in the medium to long-term interest of developing countries, particularly at the time when developed countries, whilst professing the importance of openness, are not counting on 'trade' but are pouring in resources to make themselves more competitive and more self-sufficient in 'essential' products. For a recovery that is job-centered, takes into consideration their fiscal challenges, and advances their aspirations to industrialize, including by becoming suppliers in health products, developing countries should do as developed countries are doing, and this will entail protecting their policy space to implement tariffs so that they can develop at least some of the inputs and products used in their health sector.

There has also been a major push to ban export restrictions in agriculture. Export restrictions can be very important for food security, including by stabilizing domestic prices. This policy instrument should not be given up. As far as is possible, and particularly for those with comparatively large rural populations, it would be prudent for developing countries to invest in building resilient agricultural sectors that can provide employment and food security especially for the rural poor.

In the context of an increased focus on the digital economy during lock-downs, there are calls to conclude new digital trade rules at the WTO. These negotiations center on the US' demand for free data flows. In direct contrast to free data flows, developing countries must institute data sovereignty regulations so that they can decide on the strategic use of their data for their economic growth. The E-commerce moratorium also needs rethinking. Tariffs are important for infant digital industry protection and for fiscal revenue.

Endnotes:

[1] This issue is not addressed in this paper. See: Viviana Muñoz Tellez, "The COVID-19 Pandemic: R&D and Intellectual Property Management for Access to Diagnostics, Medicines and Vaccines", South Centre Policy Brief 73 (April 2020), available at https://www.southcentre.int/policy-brief-73-april-2020/; Germán Velásquez, "Rethinking R&D for Pharmaceutical Products After the Novel Coronavirus COVID-19 Shock", South Centre Policy Brief 75 (April 2020), available at https://www.southcentre.int/policy-brief-75-april-2020/.

[2] This policy brief will be followed by another one that looks at what a development-oriented WTO agenda would look like.

[3] BBC 2020 'Coronavirus: Worst economic crisis since 1930s depression, IMF says', 9 April, https://www.bbc.com/news/business-52236936

[4] https://www.nbcnews.com/news/world/u-n-warns-hunger-pandemic-amid-threats-coronavirus-economic-downturn-n1189326

[5] NBC news ibid; https://www.latimes.com/world-nation/story/2020-05-11/more-than-a-billion-people-escaped-poverty-in-the-last-20-years-the-coronavirus-could-erase-those-gains

[6] Further details are available at https://www.wto.org/english/tratop_e/covid19_e/trade_related_goods_measure_e.htm

[7] Source: WTO list updated to 4 May 2020

[8] The 42 co-sponsors of the Ministerial Statement include: Afghanistan; Australia; Barbados; Benin; Cambodia; Canada; Chile; Colombia; Costa Rica; Ecuador; El Salvador; Guatemala; Guyana; Hong Kong, China; Iceland; Israel; Jamaica; Japan; Kenya; Republic of Korea; The State of Kuwait; Liechtenstein;Madagascar; Mauritius; Mexico; Republic of Moldova; Montenegro; Nepal; New Zealand; Nigeria; North Macedonia; Norway; Peru; Saint Lucia; KINGDOM OF Saudi Arabia; Singapore; Solomon Islands; Switzerland; Ukraine; United Arab Emirates; United Kingdom and Uruguay.

[9] Emphasis added.

[10] Interestingly, Singapore, who has traditionally been a net food importer is, in 2019, a net exporter. Its largest export tariff line is food preparations.

[11] It is completely unclear how whisky, brandy, vodka, Rum and the like are related to COVID-19.

[12] Baschuk, B 2020 'Europe Seeks to Abolish Tariffs in $597 Billion Medical Trade', Bloomberg, 21 April.

[13] Until now, there has been no agreement at the WTO about what constitutes 'environmental goods' – is a fuel efficient car an environmental good?

[14] https://www.wto.org/english/news_e/news20_e/ddgaw_20apr20_e.htm, 20 April 2020

[15] OECD 2020 'COVID-19 and International Trade: Issues and Actions' https://www.oecd.org/coronavirus/policy-responses/covid-19-and-international-trade-issues-and-actions/

[16] The New York Times 2020 'It's the End of the World Economy as We Know It', 20 April. https://www.nytimes.com/2020/04/16/upshot/world-economy-restructuring-coronavirus.html

[17] See Council on Foreign Relations 2020 'The Coronavirus Outbreak Could Disrupt the U.S. Drug Supply', 5 March, https://www.cfr.org/in-brief/coronavirus-disrupt-us-drug-supply-shortages-fda

[18] Politico, report by Giorgio Leali, 16 April 2020

[19] European Commission 2020 'A Roadmap for Recovery: Towards a more resilient, sustainable and fair Europe' https://www.consilium.europa.eu/media/43384/roadmap-for-recovery-final-21-04-2020.pdf

[20] Reuters 2020 'UPDATE 1-France urges business to rethink supply chains as coronavirus hits Asia' https://www.reuters.com/article/china-health-france/update-1-france-urges-business-to-rethink-supply-chains-as-coronavirus-hits-asia-idUSL8N2AL3KZ

[21] France 24 2020 'France issues call to 'buy French' as coronavirus erodes single market', 28 March, https://www.france24.com/en/20200328-france-issues-call-to-buy-french-as-coronavirus-erodes-single-market

[22] https://www.letemps.ch/suisse/simonetta-sommaruga-on-ne-exiger-port-masque-permanence, 17 April 2020

[23] See https://www.govtrack.us/covid-19; H.R. 748: Coronavirus Aid, Relief, and Economic Security Act — Enacted March 27, 2020.

[24] See https://www.govtrack.us/covid-19; H.R. 6074: Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 — Enacted March 4, 2020. Provided $8.3 billion in emergency funding for federal agencies to respond to the coronavirus outbreak related to developing a vaccine, medical supplies, grants for public health agencies, small business loans, and assistance for health systems in other countries. Allowed for temporarily waiving Medicare restrictions and requirements regarding telehealth services.

[25] https://www.bostonherald.com/2020/04/19/coronavirus-fallout-reshoring-manufacturing-is-key-for-economy-and-national-security-experts-say/

[26] Reuters, 4 May 2020 https://www.reuters.com/article/us-health-coronavirus-usa-china/trump-administration-pushing-to-rip-global-supply-chains-from-china-officials-idUSKBN22G0BZ?utm_medium=Social&utm_source=Facebook

[27] Washington Trade Daily, 5 May 2020.

[28] The New York Times, 2020 'The WTO Should be Abolished', https://www.nytimes.com/2020/05/05/opinion/hawley-abolish-wto-china.html

[29] This section is taken entirely from the Washington Trade Daily, 6 May 2020.

[30] The Information Technology Agreement (ITA) I and ITA II were agreements by a sub-set of WTO Members to bring tariffs on information technology products down to zero and to offer these to all WTO Members.

[31] These include Albania, Argentina, Armenia, Australia, Azerbaijan, Bangladesh, Belarus, Brazil, Colombia, Costa Rica, Côte d'Ivoire, Czech Republic, Ecuador, Egypt, Estonia, Eurasian European Union, France, Georgia, India, Indonesia, Iran, Japan, Jordan, Kazakhstan, Kenya, Korea, Kyrgyz Republic, Lebanon, Libya, Malaysia, Moldova, Morocco, Netherlands, Norway, Oman, Pakistan, Peru, Romania, Russian Federation, Saudi Arabia, Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, Serbia, South Africa, Sri Lanka, Switzerland, Thailand, Turkey, Ukraine, United Kingdom, United States, Uzbekistan, Viet Nam, Zambia (updated till 4 May 2020).

[32] These include Algeria, Argentina, Belarus, Cambodia, Chad, Egypt, El Salvador, Eurasian Economic Union, Honduras, India, Kazakhstan, Sudan, Kyrgyz Republic, Myanmar, North Macedonia, Pakistan, Romania, Russian Federation, Serbia, Syrian Arab Republic, Thailand (updated till 4 May 2020).

[33] Emphasis added

[34] Emphasis added

[35] Under GATT Article XI:2 (a) and XX (b) and Agreement on Agriculture Article 12.

[36] Emphasis added

[37] Singapore is dependent on food imports. In the recent years, it has had a positive trade balance because of its exports in 'food preparations'.

[38] South Centre Statement to G24, Statement by Carlos Correa, 14 April 2020. Available from https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=3a728aa517.

[39] AMS stands for 'Aggregate Measures of Support', which in the WTO's Agriculture Agreement is the category of subsidies that are acknowledged to be trade distorting. Only 31 Members (counting EU as 1) have AMS entitlements resulting from the Uruguay Round negotiations. All others had to bind their AMS at 0. All Members can provide a 'de minimis' amount of these trade-distorting supports (5% product-specific de minimis for developed countries and 10% for developing countries).

[40] The Special Safeguard Mechanism is a long-standing negotiating issue in WTO for which there have been many ministerial mandates.

[41] OECD 2020 'COVID 19 and International Trade: Issues and Actions', 10 April, http://www.oecd.org/coronavirus/policy-responses/covid-19-and-international-trade-issues-and-actions-494da2fa/

[42] World Economic Forum 2020 'Digital Trade' https://www.weforum.org/projects/digital-trade

[43] Wolff A 2020 https://www.wto.org/english/news_e/news20_e/ddgaw_20apr20_e.htm

[44] UNCTAD 2018 Trade and Development Report

[45] Banga R, 2019 'Growing Trade in Electronic Transmissions: Implications for the South', UNCTAD paper at https://unctad.org/en/PublicationsLibrary/ser-rp-2019d1_en.pdf ; Banga R, forthcoming.

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