



AN APPRAISAL OF THE GLOBAL TRADE REGIME IN COVID-19 TIMES

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Abstract

While the United States, Brazil, India and others continue to grapple with the economic shock that COVID-19 brought, China has been the surprise package in the entire story. Despite allegedly being the point of origin for the virus and one of the worst hit States, China bounced back as the only State with a considerable rise in exports by the end of 2020.

This short piece, however, is not concerned with the market behaviour in terms of statistics on exports and imports. It rather looks into the limitations of international trade laws that stand exposed in the COVID-19 aftermath. It analysis how the pandemic situation has disrupted the world trade and identifies the priority issues that trading institutions can address in this moment of global distress.

Keywords: WTO, TRIPS, UNCTAD, COVID-19, World Trade.

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The Problématique

COVID-19 has changed many things around humans- education, transport, interpersonal relationships, sense of hygiene etc. All things big and small are affected and international trade also, features well within that list. Charts prepared by César A. Hidalgo for the World Economic Forum depict a mixed behaviour of the international market wherein on one side transportation saw the worst times for the exporting States, on the other, medical goods and products like soybean and frozen beef witnessed a significant spike.²

The World Trade Organisation (WTO) released the statistics in December 2020 showing that the trade activity improved significantly in the third quarter after falling 12.7 percent in the second quarter.³ Some estimates, however, were saddening. In a report, the United Nations Conference on Trade and Development (UNCTAD) predicted a contraction of 4.3 percent in the global GDP with 130 million more people being pushed into extreme poverty due to the crisis.⁴

Similar fears were also flagged by the United Nations Economic Commission for Africa (UNECA), which highlighted the limits of the international trade law and exhorted African nations to resort to radical policy level changes in order to cope up.⁵ Industrialisation, investing in R&D and revisiting the African Continental Free Trade Agreement of 2018 in its present form were proposed as critical steps if African nations wish to ensure the free flow of essential products such as medicines at times of difficulty such as the ongoing pandemic.⁶

² César A. Hidalgo, *How COVID-19 has Affected Trade, in 8 Charts*, World Economic Forum, 6 November 2020, available at <https://www.weforum.org/agenda/2020/11/how-covid-19-has-reshuffled-international-trade/>; WTO, *WTO Updates Report on Trade in Medical Goods in the Context of COVID-19*, 22 December 2020, https://www.wto.org/english/news_e/news20_e/covid_22dec20_e.htm.

³ WTO, *World Trade Volume Rallies in Third Quarter after COVID-19 Shock*, 18 December 2020, available at https://www.wto.org/english/news_e/news20_e/stat_18dec20_e.htm

⁴ UNCTAD, *Impact of the COVID-19 Pandemic on Trade and Development: Transitioning to a New Normal*, UNCTAD/OSG/2020/1.

⁵ UNECA, *Covid-19 and Export Restrictions: The Limits of International Trade Law and Lessons for the AfCFTA*, 19 May 2020, available at <https://www.un.org/africarenewal/news/coronavirus/covid-19-and-export-restrictions-limits-international-trade-law-and-lessons-afcfta>.

⁶ *Ibid.* To read on how free trade agreements restrict the ability of States to regulate supply chains for critical products see generally, Timothy Meyer, *Trade Law and Supply Chain Regulation in a Post-COVID-19 World*, 114:4 AJIL 637-646 (2020).



Further, India and South Africa submitted a communication to the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) highlighting the apprehension that intellectual property rights may hinder the 'timely provisioning of affordable medical products to the patients'.⁷ To allay these fears they have proposed suspension of some sections of the Agreement on Trade-Related Aspects of Intellectual Property Rights.⁸

Questions of inequities also pervade the Information and Communications Technology (ICT) sector. Developed or high-income economies where a sound ICT infrastructure is in place did not find it hard to build-up on their robust e-commerce ecosystem and a distribution network.⁹ On the other hand, developing and least developed countries found it hard to make such infrastructure available to their people, those particularly situated in rural areas.¹⁰

It is worrying because there is a strong link between ICT and accessibility to health care facilities as the Ebola experience has taught the Africans.¹¹ A weak ICT means diminished chances of quality access to health care, obstacles in learning avenues and weak economic growth.

⁷ Communication from India and South Africa, *Waiver from certain provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19*, WTO-TRIPS Council, IP/C/W/669.

⁸ Ibid.

⁹ Supra note 4.

¹⁰ Ibid.

¹¹ Amina Mohamed, *Here's Why Protectionism is Weakening Africa's – and the World's – Response to COVID-19*, World Economic Forum, 28 April 2020, available at <https://www.weforum.org/agenda/2020/04/protectionism-africa-pandemic-coronavirus-covid19>



Towards Global Solidarity

There have been efforts by sections of the global community to make sure that trade systems do not lead to a situation of desperation for middle and low-income States. Gavi, the Vaccine Alliance, the Coalition for Epidemic Preparedness Innovations and the World Health Organization (WHO) have joined hands to coordinate an ambitious initiative- COVAX to facilitate access to COVID-19 related medical care.¹²

It envisions the distribution of 2 billion doses of COVID-19 vaccines by the end of 2021. Nevertheless, it is unclear what role the global intellectual property regime will have in COVAX. TRIPS provisions are still not suspended but the WTO does declare itself in 'alliance' with Gavi.¹³ Unless there is a large-scale procurement by the WHO or States for distribution purposes, it is difficult that the Multinational Corporations (MNCs) investing in the development of medicines will let their profits get diluted by waiving off their IP entitlements.

¹² Seth Berkley, *COVAX Explained*, 3 September 2020, available at <https://www.gavi.org/vaccineswork/covax-explained>.

¹³ WTO, *Developing and Delivering COVID-19 Vaccines Around the World*, WTO, available at https://www.wto.org/english/tratop_e/covid19_e/vaccine_report_e.pdf. Recently, Australia, Canada, Chile, Colombia, New Zealand, Norway and Turkey have again urged the WTO to, inter alia, promptly identify and address 'any trade-related impediments to the utilization of production capacity and the scaling up of vaccine production, as well as to the production and distribution of other COVID-19-related medical products'. WTO, *Enhancing the Role of the World Trade Organization in the Global Effort Toward the Production and Distribution of COVID-19 Vaccines and other Medical Products*, 9 March 2021, WT/GC/230.



Conclusion

In any case, these steps are not the solution for the mechanisms in place for international trade. Multilateralism becomes an amorphous term when States and MNCs display uncanny selfishness manifested in protectionism or profiteering in times when there is a genuine need for global solidarity.¹⁴

The UNCTAD seems to have diagnosed the core issue and as a result, it suggests looking beyond revamping of the trade policies as the only solution to the issues of accessibility and equity imbued in the global market. Hence:

“While trade is an important instrument for achieving prosperity through economic recovery, trade policy alone would not be able to ensure that the recovery would contribute concurrently to people and planet. A comprehensive recovery package for building a stronger, fairer, more inclusive, and greener (and bluer) economy would require cooperation-oriented trade policy and effective competition policy and consumer protection policy, with the aspiration of green growth at the centre of a long-term objective.”¹⁵

¹⁴ Over 400 civil society organizations in their supporting letter to India—South Africa Communication lamented the ‘business as usual’ approaches of pharmaceutical companies (like non-sharing of IP data with the WHO facilities and signing secretive/restrictive licensing agreements) and had this to say:

“...there is no meaningful global policy solution to ensure access. Instead, there is an inequality of access to critical technologies that are needed to address the pandemic. Many countries, especially developing and least developed countries struggling to contain COVID-19 have experienced and are facing acute shortages of medical products, including access to diagnostic testing. Furthermore, wealthy nations representing only 13 percent of the global population have locked up at least half the doses of the world’s five leading potential vaccines.”

WTO, *Civil Society Letter: Supporting Proposal by India and South Africa on Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19*, available at https://www.wto.org/english/tratop_e/covid19_e/cso_letter_e.pdf.

¹⁵ Supra note 4.