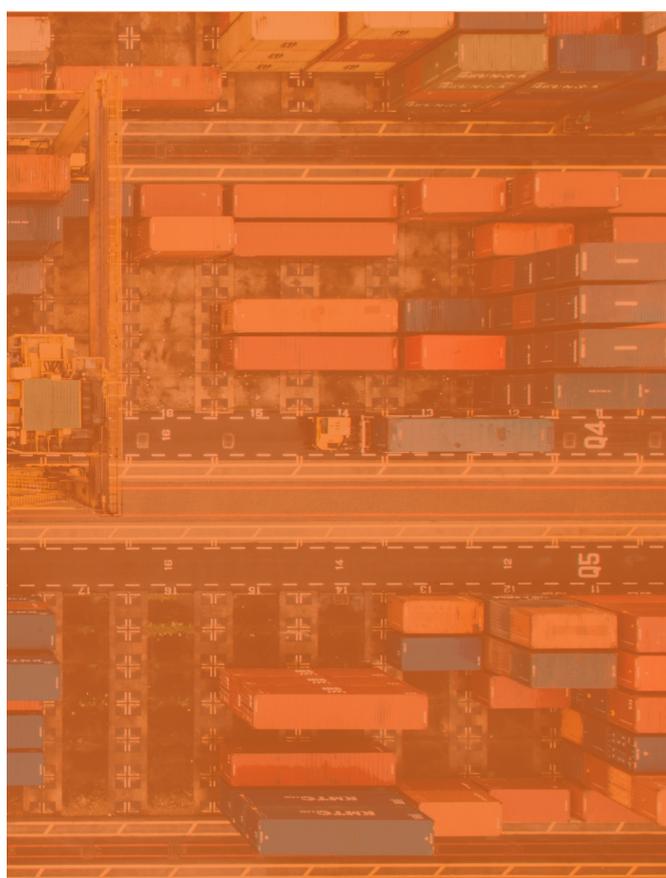
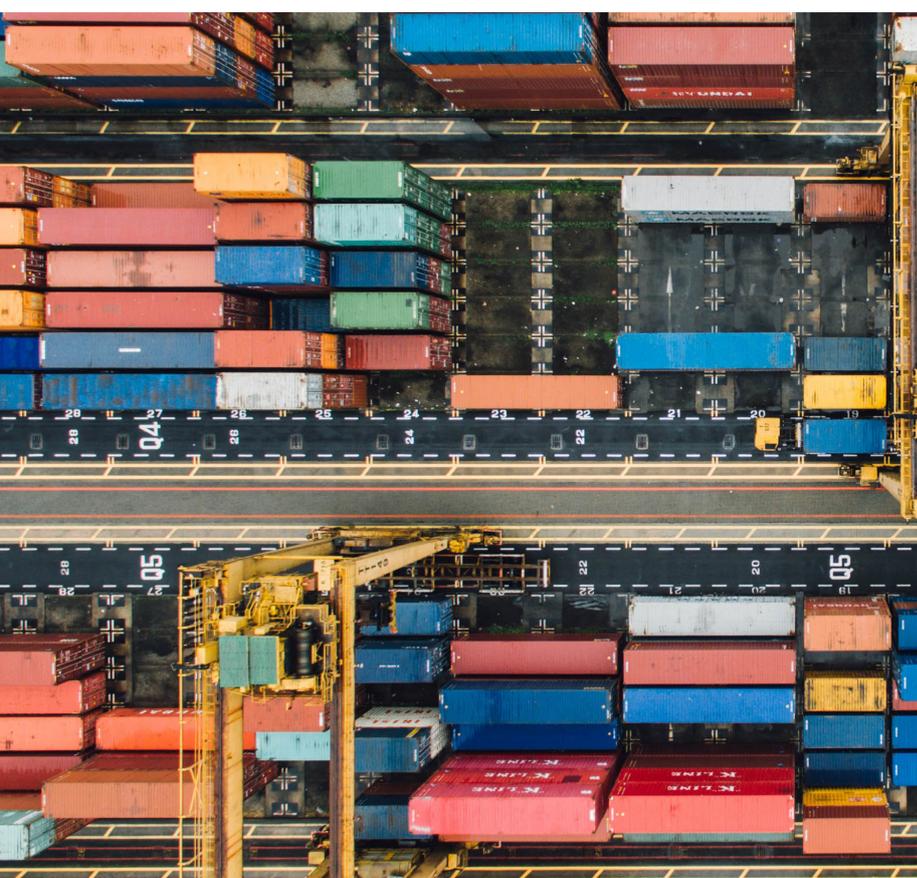


Trade in the post-pandemic world



Gary P. Sampson
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This is analysis prepared for CEDA by Gary Sampson, Professor of International Trade at Melbourne Business School, former Director at the GATT and WTO, and Senior Counsellor to the WTO Director General. It addresses the challenges facing world trade following the COVID-19 pandemic.

The COVID-19 pandemic has led many to predict the end of globalisation. Confronted with unprecedented social and economic challenges, countries are prioritising their own citizens and aiming for varying degrees of self-sufficiency and independence. Nowhere is this more apparent than in the global trading system. History tells us that a search for self-sufficiency driven by economic nationalism is coupled with rampant protectionism: subsidies, increased border protection, export controls along with a plethora of other clandestine trade distorting measures, all of which fall outside the discipline of internationally agreed norms.

The COVID-19 pandemic has created unprecedented worldwide demand for medical products. No country is entirely self-sufficient in the products and equipment needed for its public health systems – most rely heavily on imports and have adopted a vast array of trade and production measures to ensure the supply for their citizens. Correspondingly, since the outset of the COVID-19 pandemic, there has been a haphazard proliferation of measures designed to protect national interests with deleterious consequences for the international trading system as a whole.

What is clear is that a well-functioning world trading system has a key role to play in meeting the global demands for medical products in the world after COVID-19 while ensuring they are distributed efficiently and equitably.

The most recent G20 Trade Minister's Communique states: "... emergency measures designed to tackle COVID-19, if deemed necessary, must be targeted, proportionate, transparent, and temporary, and must not not create unnecessary barriers to trade or disruption to global supply chains, and stay consistent with World Trade Organisation (WTO) rules."¹

¹ G20 (2020), *Trade and Investment Ministerial Statement*, Monday, March 30. Accessed at https://g20.org/en/media/Documents/G20_Trade%20&%20Investment_Ministerial_Statement_EN.pdf



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The COVID-19 pandemic is a global problem that requires a global solution. According to the most recent foreign policy white paper of the Department of Foreign Affairs and Trade (DFAT): “a rules-based trading system centred on the World Trade Organisation is fundamental to Australia’s interests ... many aspects of our world are inconceivable without the certainty and predictability inherent in a system based on rules.”² It is clear that the WTO has a key responsibility in bringing order to the world trading system. Against this backdrop, this paper will review trade measures related to combating the COVID crisis and what to do about them in the post-pandemic world.³ What is clear is that most of the tools required to meet this challenge can be found in the WTO. We need to update the rules, ensure WTO members adhere to the existing rules, and fill the gaps where needed.⁴

Tariffs and trade

World trade (imports plus exports) in “medical products important for fighting COVID-19” is significant to say the least: US\$2 trillion in 2019.⁵ Trade in medical products described by the World Health Organisation as “critical and in severe shortage in the COVID-19 crisis”, totalled US\$597 billion. While the trading system was already weakened prior to the crisis, the WTO now predicts that world trade may fall by as much as 32 per cent in 2020.

Paradoxically, world tariffs remain high on imports vital for combatting COVID-19. For items such as personal protective products, average tariffs are 11.5 per cent and can

2 Australian Department of Foreign Affairs and Trade 2017, *Foreign Policy White Paper: Opportunity Security Strength*, Australian Government, Canberra, p. 82.

3 See also Gary P. Sampson (2020), “COVID-19 and Tensions in the World Trading System”, in *Pearls and Irritations*, April, accessible at <https://johnmenadue.com/g20-response-to-trade-tensions-by-gary-sampson/>

4 Gary P. Sampson (2020), “Bypassing Trump Paves the way for WTO Renewal”, *Australian Financial Review*, Thursday, 9 May, accessible at <https://www.afr.com/policy/economy/bypassing-trump-s-fake-complaints-paves-way-for-wto-renewal-20200506-p54q6q>

5 The WTO classification of “medical products” includes: medicines (pharmaceuticals); medical supplies (alcohol, syringes, gauze, reagents, etc); medical equipment and technology; and personal protective products (hand soap and sanitizer, face masks, protective spectacles etc.)



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be as high as 27 per cent in some countries. There are 98 WTO countries that have a tariff average for all medical products greater than 10 per cent and 76 with average tariffs higher than 20 per cent. The same is true for individual products; for hand soap, the first line of defence in combatting the virus, the world average tariff is 17 per cent while in some countries it is more than 65 per cent. Face masks, another critical personal protective product, are subject to a 9.1 per cent tariff on average worldwide.⁶ In the post-pandemic world, tariffs on medical products should be reduced to zero. While this may appear to be an unrealistic goal, there is an important precedent.

During the WTO Uruguay Round negotiations, thirteen trading partners (including Australia), accounting for approximately 90 per cent of global production, agreed to a “zero-for-zero initiative” for pharmaceutical products. In 2011 the signatories of the “Pharma Agreement” updated the agreement and added 735 products to increase the coverage to more than 10,000 products. This is a principal reason why tariffs on medical products are low for Australia – 1.5 per cent for all medical products, 0.3 per cent for medicines, 2.7 per cent for medical supplies, 0.4 per cent for medical equipment, and 3.9 per cent for personal protective products.

Global supply chains

The G20 Communique notes that global supply chains (GSCs) should not be disrupted in this time of crisis. GSCs involve design, production, marketing, distribution and customer support across various countries. Multiple firms in different locations produce goods and services with labour and materials assembled in another country that are ultimately consumed all over the world. As a label of origin, “made in the world” would be appropriate.

GSCs owe their existence to, among other things, the success of the WTO in reducing barriers to trade of intermediate goods. Maintaining protectionist measures against inputs into the final output of a GSC makes little sense from an efficiency point of

⁶ This data is drawn from WTO (2020), *Trade in Medical Goods in the Context of Tackling COVID-19*, 3 April, accessible at https://www.wto.org/english/news_e/news20_e/rese_03apr20_e.pdf



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view. For GSCs to be efficient requires more than low barriers to trade, it also requires a stable and predictable policy framework.

Government regulations and restrictions exist at every stage of the supply chain. They are clearly a global phenomenon and, if a coordinated response is required, it should be done at the global level. The G20 calls for “global supply chains ... consistent with World Trade Organisation (WTO) rules”.

An important question here is whether the existing WTO agreements are adequately equipped to deal with GSCs. WTO rules are present at many critical points of the supply chain (technical barriers to trade, sanitary and phytosanitary measures, trade in services, intellectual property, trade facilitation, and information technology among others). As the G20 has clearly stated, the challenge is for measures affecting the fluidity of GSCs to be levied in accordance with WTO obligations agreed to by the 164 WTO members. They encompass all forms of regulations and standards, the goal being to increase the efficiency of GSCs.

However, it is clear that many countries will move to greater self-sufficiency in the post-pandemic period and adopt restrictive measures to internalise their supply chains. Regulations and other measures at various stages of GSCs will be rationalised on grounds other than economic efficiency. Heightened concerns about national security have awakened new motivations for guaranteed access to critical inputs to the supply chain.

In this context, the G20 governments agreed to avoid “unnecessary interference with international trade”. But what does “unnecessary interference” mean? Does it include self-sufficiency in specific industries for national security purposes? And who judges necessity in such cases?

There is nothing in the WTO agreements that prevents any member from acting to protect its national security. Claims for a security exception from WTO rules are self-judging. As governments rarely challenge the use of protection for national security purposes, it has rarely featured in formal procedures either under GATT 1947 or the WTO. However, as its use is open ended, it could constitute the top of a slippery slope for trade restrictions.



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Some appear to be taking that authority and using it for protectionist purposes as "threat to national security" can be defined very broadly and provides virtually unlimited authority to impose a tariff or quota remedy. In the case of steel, for example, President Trump recently restricted imports of foreign steel on the grounds of "national security", despite the fact that defence consumes just three per cent of US domestic steel consumption.⁷

To avoid the multilateral system degenerating into some form of anarchy, governments should create an understanding of how to interpret a national security threat in terms of justifying trade restrictions.

Export restraint

A further characteristic of the pandemic is the use of export restraint measures to increase self-sufficiency for medical products. The logic is simple: consumers hoard products and prices increase. Fearing shortages and price increases, governments resort to restricting exports to ensure adequate domestic supplies while shielding consumers from price increases. Hoarding is exacerbated when there is an expectation that everyone else will do so. Export restraints have been likened to a football match where all spectators stand up at the same time and no-one gets a better view.

While the introduction of export-restrictive measures is understandable, the lack of international cooperation may well cut import-reliant countries access to much needed medical products. Transparency is critical in this area in knowing where the needs are, which countries are producing and exporting which goods, and which are restricting exports.

WTO members are obliged to notify all measures affecting exports – most have not. Of the 146 countries imposing export restraints, only 51 have notified their export restrictions on medical products. The products and nature of restrictions vary consid-

⁷ For and elaboration see Gary P. Sampson (2018), "Challenges Facing the World Trade Organization: An Overview" *Australian Economic Review*, Volume 51, No. 4 pp 1-21.



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erably – most have focused on medical supplies (e.g. facemasks and shields), pharmaceuticals and medical equipment (e.g. ventilators), but others have extended the controls to products such as foodstuffs and paper towels.

This is certainly an area where global cooperation is required. Knowing who is restricting, producing and trading which restricted items is critical in securing adequate supplies for all countries. Only with this knowledge can sensible decisions be taken via the requisite coordination of supplies at the global level.

Transparency

The importance of the transparency and notification of all measures that affect international trade is fully recognised by the G20: “we recognise 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.” Transparency through the publication and notification of trade measures is the common requirement for virtually all WTO agreements. In the context of the COVID-19 pandemic, transparent, efficient information-sharing of all trade restrictive measures, not just export restraints, is crucial.

Under the Trade Policy Review Mechanism, members are required to conduct country-specific trade policy reviews and monitor and report on the implementation of all trade-related measures. In a more specific manner, individual WTO Agreements require publication and notification to the WTO secretariat of all laws and regulations affecting trade. One example is the Trade Facilitation Agreement, which requires notification of provisions for expediting the movement, release and clearance of goods. It sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues and encourages or requires members to publish this information.

More generally, exporters and importers need to know about new procedures and regulations affecting exports and imports, newly introduced export restrictions, tariffs, taxes and regulations, and new customs rules and transportation regulations. Without

this information, essential equipment like COVID-19-relevant medical goods can be blocked at the border, and critical inputs can be stopped in transit.

Willingness to negotiate

As noted, the COVID-19 pandemic is a global problem that requires a global solution. According to the Department of Foreign Affairs and Trade document noted above: “a rules-based trading system centred on the World Trade Organisation is fundamental to Australia’s interests.”

Unfortunately, the credibility of the WTO has been severely undermined by the failure of governments to complete the most recent round of multilateral trade negotiations: the Doha Development Agenda. This, however, is not a manifestation of an unwillingness to negotiate trade agreements. There has been a proliferation of negotiations creating a vast array of preferential trade agreements – 490 have been notified to the WTO in very recent times.

One way to move forward in reaching future agreement for trade and regulation of medical products (and elsewhere for that matter) would be for interested governments to move to *plurilateral* agreements, eventually progressing to a broader accord ideally engaging all WTO members.⁸ In this case the subject matter is decided upon by a subset of the WTO members and kept open ended with willing countries joining when they are ready.

According to the Productivity Commission: “Australia should continue to invest effort in the development of plurilateral or sector-specific agreements, especially those that allow most favoured nation treatment and that can be incorporated into the World Trade Organisation.”⁹

⁸ This line of reasoning is further developed in Gary P. Sampson (2018), “Challenges Facing the World Trade Organization: An Overview” *Australian Economic Review*, Volume 51, No. 4 pp 1-21.

⁹ Productivity Commission 2017, ‘Rising protectionism: Challenges, threats and opportunities for Australia’, Research Paper, July, p. 94.



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The “Pharma Agreement” referred to above is one such plurilateral agreement. Another very recent example is the WTO notification by Singapore and New Zealand that they will not only eliminate all tariffs for medical products, they will refrain from imposing export prohibitions or restrictions on hygiene and pharmaceutical products. The agreement offers an open-ended invitation for all other WTO members to join the initiative.

It can be confidently predicted that in the aftermath of the pandemic there will be an expansion of disputes brought to the WTO as governments move to consolidate temporary measures or create new ones. The timing is unfortunate, as this coincides with a crisis in the WTO dispute process with the United States rendering the dispute settlement system inoperable via a lack of willingness to appoint the requisite number of Appellate Body judges. As a response, Australia, along with China, the European Union, Canada, Switzerland and 12 other countries, created a replacement process – an Interim Appeal Arbitration Arrangement – as a surrogate for the now non-functional WTO Appellate Body, the pillar of the much-lauded WTO dispute settlement process. Japan and South Korea are likely to join this arrangement in the future.

The Australian government is to be congratulated in joining this open-ended initiative with. In fact, this initiative could well be used as a launching pad for a much-needed renewal and strengthening of WTO rules and procedures more generally.

Replacement of WTO Director General

The WTO Director General (DG) Roberto Azevêdo announced his resignation on 15th May. He will step down at the end of August 2020. Member countries are now engaged in the DG selection process with the intention to rapidly conclude the process. This simply won't happen for a number of reasons. Choosing a DG requires consensus on the part of all WTO members and after the behaviour of the Trump Administration in blocking the consensus needed to fill Appellate Body vacancies, there is no reason to believe that the Trump Administration will cooperate with the rest of the world in appointing a new DG for the WTO.



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Another reason is that experience points to the fact that the appointment of DG's has been a complicated and convoluted affair. A classic example is the process to find a replacement for Renato Ruggiero, who was Director General from May 1995. Ruggiero announced his retirement in June 1998. With numerous missed deadlines and a blocked process, a most unsatisfactory compromise was met with two candidates each being appointed for a non-renewable three-year term starting September 1999. The void in this case will be filled by one of the four Deputy Director Generals which would be another unsatisfactory outcome.

The nominees are typically drawn from domestic trade ministries and departments. The post-pandemic world will need an effective WTO to enforce and improve its rules led by a prestigious and high-level Director General with the clout to force decisions on countries at times of blockage in negotiations. The late Peter Sutherland and his role in the closure of the Uruguay Round provide an example.

Conclusion

The world economy will require more, not less, global trade cooperation after COVID-19. Reforming the WTO has become more pressing than ever to help update rules in line with the dramatic changes brought about by the pandemic. The G20 countries have allowed international collaboration on trade to unravel. They now have a chance to seize on the crisis to sow the seeds for renewed global trade cooperation.