

Restrictions to Trade in Goods and Services during Times of Crisis and Pandemic

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Executive summary

The COVID-19 pandemic has exacerbated and accelerated the global free trade weakening trend, evidencing the need of urgent reforms oriented towards enforcing international trade cooperation. It is fundamental that trade-related actions adopted during crisis/pandemic are as less restrictive as possible, as well as temporary and transparent. Our Group's proposals are intended to complement existing obligations, especially by strengthening transparency requirements and providing solutions easy to implement that contribute securing a minimum flow in global trade.

Particularly, through an authorized operator scheme for certain reputable organizations embedded in regional or global value chains, with automatic recognition of certificates validity between countries, our group intends to limit or exclude them from trade restrictions adopted in response to a crisis/pandemic.

Additionally, a transparency mechanism for times of crisis/pandemic is proposed, with the aim of incrementing notifications and information-sharing requirements when timely information is most needed.

Finally, to anticipate the need of facilitating trade and improving confidence between parties, the creation of a Group of Experts to assist countries in periods of crisis/pandemic is suggested. This Group would provide technical expertise through recommendations of best practices and serve as a forum for countries to engage in open and constructive exchanges. Representatives of countries and the private sector would have the possibility of requesting consultations or access to information related to other countries policies, contributing to encourage cooperation and dialogue.

Introduction

For the past few years, global free trade has been called into question with many countries taking actions that undermine its functioning. The COVID-19 pandemic has exacerbated and accelerated this weakening trend. With export bans on supplies of essential goods, severe interruptions of cross-border value chains and broad types of negative effects on trade in goods and services, it is now essential to reconsider the future of global trade and implement urgent reforms of the World Trade Organization (WTO) and Regional Trade Agreements (RTA) in order to provide transparent regulations for emergency measures in times of crisis/pandemic.

The latest WTO report on G20 Trade Measures recognizes that “*trade was already slowing before the pandemic struck*”¹. As highlighted by Professor Peter Draper,² the current health crisis feeds into the prior disintegrative forces set in motion by a number of causes. The most frequent actions countries have adopted are oriented to restrict or ban goods and services imports and exports.

In accordance with the “Declaration on Trade in Essential Goods for Combating the COVID-19 Pandemic” issued by New Zealand and Singapore, efforts should be oriented towards salvaging international trade cooperation by keeping open and connected supply chains, expediting and facilitating the flow and transit in goods and services. In the same line of thought, G20 Members committed to “*ensure smooth and continued operation of the logistics networks that serve as the backbone of global supply chains*”³ and to “*continue working together to facilitate international trade and coordinate responses in ways that avoid unnecessary interference with international traffic and trade*”. The G20 leaders also reiterated their goal “*to realize a free, fair, non-discriminatory, transparent, predictable and stable trade and investment environment, and to keep [their] markets open*.”⁴ In this vein, the G20 trade ministers tasked the G20 Trade and Investment Working Group (TIWG) to identify additional proposed actions that could help alleviate the impact of COVID-19 and longer-term actions to support the multilateral trading system and expedite economic recovery.⁵

We consider it vital to preserve global and regional integration, taking into account that cross-border value chains are fundamental to preserve jobs and support competitiveness. This is why our Group’s proposals will be focused on mechanisms to facilitate trade and enforce transparency. The core principles that will guide our work will be similar to those adopted by the G20 Ministerial Statement of 30 March 2020, which stressed that “*emergency measures designed to tackle COVID-19, if deemed necessary, 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*.”⁶

¹ “Report on G20 Trade Measures. Mid-October 2019 to Mid-May 2020”. G20, 29th June 2020, p.2. Online: https://www.wto.org/english/news_e/news20_e/report_trdev_jun20_e.pdf Latest access: July 1st 2020

² Draper, Peter. “Global Trade Cooperation after COVID-19: Can the G20 Contain Disintegration?”. Policy Brief. No 06, April 2020.

³ “G20 Trade and Investment Ministerial Statement”. G20, March 30th 2020. Online: https://www.wto.org/english/news_e/news20_e/dgra_30mar20_e.pdf Latest access: July 1st 2020.

⁴ “Extraordinary G20 Leaders’ Summit Statement on COVID-19”. G20, 26th March 2020. Online: [https://g20.org/en/media/Documents/G20_Extraordinary%20G20%20Leaders%E2%80%99%20Summit_Statement_EN%20\(3\).pdf](https://g20.org/en/media/Documents/G20_Extraordinary%20G20%20Leaders%E2%80%99%20Summit_Statement_EN%20(3).pdf) Latest access: July 1st 2020.

⁵ “G20 Trade and Investment Ministerial Statement”. G20, 30th March 2020. Online: https://www.wto.org/english/news_e/news20_e/dgra_30mar20_e.pdf Latest access: July 1st 2020

⁶ “G20 Trade and Investment Ministerial Meeting”. Ministerial Statement issued on May 14th, 2020. Online:

In Chuck Grassley's words, WTO global trade expansion enabled countries to respond to the pandemic. The rapid switch made by some companies in their production lines to supply essential goods to fight COVID-19 was possible thanks to global supply chains built upon WTO rules.⁷ The WTO continues to have capacity to provide solutions for trade issues that affect the globe. However, this pandemic reinforced the need for reforms that would provide more specific and appropriate tools for crisis-contexts.

G20's TIWG recently addressed strategic questions that frame the discussion on the future of the WTO⁸. The latest WTO report on G20 Trade Measures points out that “[i]n the early stages of the pandemic, several of the measures introduced by G20 economies restricted the free flow of trade, principally for exports. But as of mid-May 2020, 70% of all COVID-19 related measures were trade-facilitating.”⁹ Further, emergency support measures played a key role in governments' strategies to address the pandemic-induced economic downturn and prepare for the recovery.¹⁰

There have been several attempts to propose solutions for the trade-related difficulties caused by actions to fight COVID-19 pandemic. Many organizations and groups of governments have made calls to action on this topic. Our Group's proposals are aimed at helping supply chains operate as smoothly as possible during times of crisis/pandemic. Particularly, through special certifications granted to certain economic operators that would allow them to maintain cross-border operations even in scenarios of compulsory quarantines or social distancing requirements. Although similar systems already exist, none of them provides automatic recognition of certificates validity between countries. Additionally, we propose improving current transparency mechanisms to strengthen notifications requirements, obliging countries to immediately notify trade-related measures and provide regular updates on its implementation. Finally, we propose the creation of a Group of Experts, which would provide opinions, recommendations and reports of best practices and serve as a forum where measures causing friction between countries can be discussed.

These proposals could be introduced in a plurilateral agreement, which anticipates mechanisms specifically designed for times of crisis/pandemic. Another alternative would be incorporating amendments to the WTO Agreements within the framework of the WTO reform currently discussed. Finally, these proposals could be adapted to regional demands through RTAs.

In order to provide a clear framework to identify the context and measures that are subject to our proposals and considering that the effectiveness of these proposals would be undermined if each country holds the power to determine when a regional or global crisis or a pandemic exists, the following definitions are suggested.

Crisis/pandemic: a crisis or pandemic is considered to exist from the moment it is publicly declared by the WTO Director-General or the designated authority by a RTA and until the same authority announces its conclusion. The crisis or pandemic will only be relevant for the proposals described in this paper from the moment it presents a generalized risk for international or regional

https://g20.org/en/media/Documents/G20SS_Statement_G20%20Second%20Trade%20&%20Investment%20Ministerial%20Meeting_EN.pdf Latest access: July 1st 2020

⁷ Grassley, Chuck. “WTO Needs Reform to Be the World's Nimble Trade Referee”. Bloomberg, June 16th, 2020. Online: <https://www.bloomberg.com/opinion/articles/2020-06-16/wto-reform-is-needed-for-american-free-trade-interests> Latest access: July 1st, 2020.

⁸ Online: https://g20.org/en/media/Documents/G20SS_PR_2nd%20TIWG%20Meeting_EN.pdf

⁹ “Report on G20 Trade Measures. Mid-October 2019 to Mid-May 2020”. WTO, 29th June 2020, p.2. Online: https://www.wto.org/english/news_e/news20_e/report_trdev_jun20_e.pdf Latest access: July 1st 2020.

¹⁰ Idem, p. 3.

trade, based in technical or scientific criteria, which shall be explicitly declared by the same authority.

Crisis-related measure: measures adopted after a crisis/pandemic affecting international or regional trade has been declared, in the terms defined above, whether the adopting State declares it as related to the crisis/pandemic or not, and whether it falls under the description of any existing WTO agreement or not. These include import or export restrictions, tariff increases, subsidies, countervailing measures, technical barriers to trade, trade agreements, and any other measure that may have an impact on trade.

Responsible operators

The COVID-19 pandemic has inflicted deep, fast and simultaneous economic downturns around the world through supply and demand shocks that hit production, consumption, employment, incomes and trade flows.

According to the WTO, the volume of global merchandise trade fell 3% year-on-year in the first quarter of 2020 and economists estimate that the fall deepened in the second quarter, –around 18,5% year-on-year– due to the pandemic’s spread and stricter lockdown measures. Although these figures are better than the initial estimates, they are still the steepest on record and forecasts for global economic recovery in the second half of 2020 and the year 2021 are subject to high levels of uncertainty.¹¹

In this context, maintaining trade flows through regional and global supply chains is crucial to avoid further negative effects on unemployment and poverty. Therefore, trade policies will be key to managing the crisis by, as outlined by the World Bank: i) reducing cost and increasing availability of essential goods and services, ii) reducing tax and administrative burdens on importers and exporters, iii) reducing the cost of goods most consumed by the poor and iv) supporting the economic recovery and building resilience for future crises.¹²

During the first stages of the pandemic, many countries applied emergency export restrictions, especially on essential food and medical supplies, that harmed exporters and companies linked in regional and global supply chains. As the crisis evolved, some countries also introduced restrictions on imports in order to limit the risk of “importing the virus”. Since pandemic control is advancing at a faster pace in some regions than others, exporters in countries still in earlier stages of the epidemic curve or in countries experiencing a second wave face greater challenges to their continued business operations, placing greater risk on value and supply chains.¹³

¹¹ “Trade falls steeply in the first half of 2020”, WTO Press Release PRESS/585, June 23rd 2020. Online: https://www.wto.org/english/news_e/pres20_e/pr858_e.pdf Latest access: June 24th 2020; “World Economic Outlook Update, June 2020 - A Crisis Like No Other, An Uncertain Recovery”, IMF, June 24th 2020. Online: <https://www.imf.org/en/Publications/WEO/Issues/2020/06/24/WEOUpdateJune2020> Latest access: June 24th 2020.

¹² “Do’s and Don’ts of Trade Policy in the Response to COVID-19”, World Bank Group. Online: <http://documents.worldbank.org/curated/en/509521585605825305/pdf/Do-s-and-Don-ts-of-Trade-Policy-in-the-Response-to-COVID-19.pdf> Latest access: June 24th 2020.

¹³ “Tracking of COVID-19 Temporary Trade Measures”, Market Access Map, International Trade Center. Online: <https://www.macmap.org/covid19> Latest access: June 24th 2020.

A balance must be struck between risks to health and the costs of disrupting trade flows of essential goods or historical long-term flows. Therefore, it may be useful to designate certain reputable and longstanding organizations embedded in regional or global value chains as “responsible operators” in order to limit or exclude them from trade restrictions of the kind mentioned above.

For this, the most convenient approach would be to build upon the World Customs Organization's Authorized Economic Operator (AEO) programmes or other similar mechanisms (such as US CTPAT, Canada PIP, Costa Rica PROFAC, Mexico NEEC or Uruguay OEC).

These programmes are fully aligned with the WTO Trade Facilitation Agreement (Article 7, paragraph 7), which establishes the importance of implementing trade facilitation measures for authorized operators and encourages countries to develop authorized operator schemes and negotiate mutual recognition agreements. The criteria for establishing these programmes are, among others, appropriate records of compliance with customs and other regulations, appropriate systems for managing records for internal controls, financial solvency and supply chain security.¹⁴

In this sense, the AEO programme included in the WCO Framework of Standards to Secure and Facilitate Global Trade (SAFE) certifies that an organization is in compliance with specific requirements, including security procedures and crisis management, and best practices along the international supply chain.¹⁵ According to the WCO, “*the SAFE AEO Programme and related tools provide an effective way to support implementation of the WTO TFA AO Schemes in a standardized and harmonized manner, noting that Members have the flexibility to adopt other means to implement them*”.¹⁶

Economic operators that meet the requirements and obtain AEO status are considered to be trusted partners in supply chains and therefore obtain tangible benefits such as expedited clearance times, simplified customs declarations, priority treatment and reduced or audit based inspections, among others. This results in reduced costs and improved timeframes for AEOs as well as Customs, placing them as strategic and cooperative partners.

All types of organizations involved in trade may apply to become an AEO: importers, exporters, customs, warehouse keepers, cargo forwarders and freight carriers.

In addition, two or more countries may establish Mutual Recognition Arrangements/Agreements (MRA) so that the AEOs of each country is recognized in the other, forming a basis for increased cooperation.

In 2019, there were 84 operational AEO programmes and 19 being developed, as well as 74 bilateral MRA, 4 plurilateral or regional MRA and 65 MRA under negotiation.¹⁷ According to an

¹⁴ “Trade Facilitation Agreement”, WTO. Text available online: https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm#II Last access: June 30th 2020.

¹⁵ “Compendium Of Authorized Economic Operator Programmes”, World Customs Organization, 2019 Edition. Online: <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/aeo-compendium.pdf?db=web> Latest access: June 24th 2020.

¹⁶ “FAQ on linkages between the SAFE AEO programme and Article 7.7 of the WTO TFA”, World Customs Organization, 2018. Online: ” http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/faq-on-linkages-between-the-safe-aeo-programme-and-article-7_7-of-the-wto-tfa-en.pdf?la=en Latest access: July 16th 2020.

¹⁷ Ibidem.

ALADI study, in 2018 at least 32.000 organizations belonged to a responsible operator scheme worldwide.¹⁸

The following map shows countries with operational programmes:¹⁹

Countries with operational AEO programmes in 2019 (WCO)



Source: Arnoldi, Paula. Revista Integración y Cooperación Internacional.

Proposal

Our proposal for times of crisis/pandemic is for organizations that already have an AEO certification in one country be recognized as such in other countries without the need of signing an MRA. This arrangement would be valid for a limited period, established and known beforehand by all parties involved, while the crisis is ongoing.

Organizations with AEO status should be excluded or limited from trade restrictions imposed during the crisis at hand. This would mean, for example, leaving AEO operators exempt *a priori* from 100% examination drives related to the pandemic.

¹⁸ “Estudio sobre los programas Operador Económico Autorizado en los países miembros de la ALADI con especial énfasis en los requisitos para obtener la certificación”, ALADI/SEC/Estudio 229/Rev. 1. Online: http://www2.aladi.org/biblioteca/Publicaciones/ALADI/Secretaria_General/SEC_Estudios/229Rev1.pdf Latest access: June 30th 2020.

¹⁹ Arnoldi, Paula. “Cambios en las dinámicas de control del Comercio Internacional: El programa Operador Económico Autorizado”, Revista Integración y Cooperación Internacional, N° 29, July-December 2019. Centro De Estudios En Relaciones Internacionales De Rosario CERIR. Online: <https://rephip.unr.edu.ar/bitstream/handle/2133/17549/Revista%20Nro.%2029.pdf?sequence=2&isAllowed=y> Last access: June 30th 2020.

Restrictions applied to these responsible operators, if any, should not prevent them from maintaining their historical trade flow, meaning the average volume traded during the three previous years with origin/destination countries.

This special treatment could be denied to a certain company if it is particularly affected by the crisis/pandemic, for example, if it produces goods that represent a risk for human health or if it is found to be in breach of safety measures or industry best practices in relation to health and safety standards. This should be determined by risk-based post-clearance audit controls²⁰ or self-reporting (for example, if there is an outbreak at a facility, with voluntary suspension of operations).

To increase the number of organizations in AEO programmes or similar mechanisms, and with the ultimate goal of covering a greater proportion of global trade, we also propose that during “normal/business as usual” times, and especially during times of crisis/pandemic, banks and other lending institutions, whether national or multilateral, create special financing lines for organizations looking to achieve AEO status or similar certifications. These credit lines should be especially geared towards importing/exporting Small and Medium Enterprises (SME) who face higher cost burdens when trying to meet these requirements. Capacity building and development of standards for health issues are also encouraged for AEO programmes.

Transparency mechanisms

In the context of the WTO, governments are obliged to inform the WTO and fellow-members of specific trade-related measures, policies or laws through regular notifications. Additionally, the WTO conducts regular reviews of individual countries’ trade policies. These mechanisms are necessary to increase transparency, and by that means enabling a “peer review” process by other WTO members, and allowing other peers and the private sector to understand each country’s trade policies and practices.

For example, the Agreement on Subsidies and Countervailing Measures establishes an obligation to notify all specific subsidies and the possibility of submitting a counter-notification when a Member state does not fulfill this requirement.²¹

The Agreement on Technical Barriers to Trade provides as well an obligation to notify other Members any proposed technical regulation in the absence of an international standard, or whenever the proposed regulation differs from the existing standard. Yet, Article 2.10 provides

²⁰ “Comments on the Impact of the COVID-19 Crisis: Ideas for the WCO and Its Members from the WCO Private Sector Consultative Group”, April 2020. Online: http://www.wcoomd.org/-/media/wco/public/global/pdf/media/important-notice/pscg-covid_19_en.pdf?db=web Latest access: June 24th 2020.

²¹ Article 25 of the SCM Agreement requires that Members notify all specific subsidies (at all levels of government and covering all goods sectors) to the SCM Committee. New and full notifications are due every three years with update notifications in intervening years. The Agreement provides that any Member may, at any time, make a written request for information on the nature and extent of any subsidy granted or maintained by another Member. In the same line, any Member which considers that any measure of another Member having the effects of a subsidy has not been notified may bring the matter to the attention of such other Member or the Committee, if the omission persists.

Additionally, all Members are required to notify their countervailing duty laws and regulations to the SCM Committee pursuant to Article 32.6. Members are also required to notify all countervailing actions taken on a semi-annual basis, and preliminary and final countervailing actions at the time they are taken.

flexibility to this obligation “*where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Member*”.²²

In the same line, there is a transparency mechanism for Regional Trade Agreements. Members participating in new negotiations aimed at the conclusion of an RTA, or Members party to a newly signed RTA, should inform the WTO Secretariat about it as soon as possible.²³ The WTO Secretariat posts this information on the WTO website and periodically provides Members with a synopsis.²⁴ Within a week from the day of notification, Members shall consider the RTA and submit written questions or comments to be transmitted to the parties and later discussed in the Committee on Regional Trade Agreements.

The 2012 Decision on Notification Procedures for Quantitative Restrictions also establishes an obligation to make complete notifications of all quantitative restrictions in force at two yearly intervals.²⁵ Other Members are able to make reverse notifications and the Member who is the subject of the notification “*will have two months from the date of circulation of the notification to comment in writing on whether the notified measure is in force and to correct any information element contained therein*” (paragraph 5).

However, the need for global transparency mechanisms increases exponentially in times of crisis/pandemic. G20 trade ministers have “*emphasize[d] the importance of transparency in the current environment and [their] 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*”.²⁶ Current provisions do not oblige countries to notify immediately the entire scope of trade-related measures that might be adopted in response to this kind of situations. Consequently, specific provisions are required in order to maintain a timely and accurate level of information that helps both public and private sectors to keep working despite the difficulties.

Article XI:2(a) of GATT 1994 allows export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other essential products. Likewise, Article XX establishes general exceptions for measures that countries can adopt related to or necessary to protect certain values that can be in danger during a crisis/pandemic. These general exceptions, nevertheless, do not include an obligation to notify other fellow-members all measures adopted in this regard in advanced or immediately after their implementation.

²² Article 2.9 requires that whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards, and if the technical regulation may have a significant effect on trade of other Members, Members shall notify other Members through the Secretariat of the products to be covered by the proposed technical regulation, together with a brief indication of its objective and rationale. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account.

²³ Member should inform the RTA’s official name, scope, date of signature, any foreseen timetable for its entry into force or provisional application, relevant contact points and/or website addresses, and any other relevant unrestricted information. Additionally, any changes affecting the implementation of an RTA, or the operation of an already implemented RTA, should be notified to the WTO as soon as possible after changes occur.

²⁴ Online: <http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx> Latest access: July 1st 2020.

²⁵ The Decision adds, “They should also notify changes to those quantitative restrictions as soon as possible, but not later than six months from their entry into force”. Subparagraph 2(v) requires including in the notification “an indication of the grounds and WTO justification for the measures Maintained”.

²⁶ “G20 Trade and Investment Ministerial Statement”, WTO, March 30th 2020. Online https://www.wto.org/english/news_e/news20_e/dgra_30mar20_e.pdf Latest access: July 1st 2020.

The COVID-19 pandemic has demonstrated the speed and diversity of measures and actions that countries can adopt in order to protect its citizens and markets. There have also been situations in which some countries have taken advantage of the crisis to adopt trade restrictive measures that could hardly be justified as an intent to administer the crisis. Therefore, the obligation to adequately justify a measure adopted under any of the aforementioned provisions should be even more stringent during times of crisis/pandemic.

Following the COVID-19 disease outbreak, many proposals have surged to solve the lack of transparency and coordination between countries while fighting a crisis/pandemic. There have been many attempts to track and compile measures adopted in this context by COVID-related policy trackers²⁷. However, these efforts are insufficient as there is no guarantee of an effective tracking of all relevant measures. Besides, the speed of change and diversity of countries' actions adds uncertainty to the outcomes of these individual projects.

Several experts and institutions have called the attention on the need to safeguard transparency and up-to-date information. The 79th policy brief of the United Nations Conference on Trade and Development remarks: *“In times of a rapidly changing trading environment, it is particularly important for Governments to communicate clearly and ensure information is available to all actors and stakeholders and to keep online trade information and help desks updated and operational continuously”* and adds *“Governments should support industry associations in their efforts to share information and offer assistance throughout their global networks.”*²⁸

The WTO has also stressed the importance for different actors engaged in supply chains to be aware of new trade measures and requirements so the struggle to adapt to the new conditions can be ameliorated and so the risk of unnecessary disruptions can be reduced. *“For example, 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.”*²⁹ Especially considering that often the use of export restrictions in one sector also triggers the use of similar measures in other sectors beyond those required to combat the crisis or pandemic.³⁰

OECD guidelines for contributing to a global effort in the fight of COVID-19 pandemic can be tackled by a plurilateral agreement, a RTA, or through a WTO reform to improve transparency mechanisms in times of crisis/pandemic: 1) boost confidence in trade and global markets by improving transparency about trade-related policy actions and intentions; 2) keep supply chains flowing, especially for essentials such as health supplies and food; 3) avoid making things worse

²⁷ UN Global Survey on Digital and Sustainable Trade Facilitation (Online: <https://untfsurvey.org/>); WTO COVID-19 Trade Facilitation Repository (Online: <https://www.tfafacility.org/covid19-trade-facilitation>); OECD-WTO track of trade-related country actions on COVID-19 (Online: <http://www.oecd.org/coronavirus/policy-responses/COVID-19-and-international-trade-issues-and-actions-494da2fa/>); WTO Secretariat report on trade and trade-related measures taken in the context of COVID-19 (Online: https://www.wto.org/english/tratop_e/covid19_e/trade_related_goods_measure_e.htm); IMF policy tracker of economic responses to COVID-19 crisis (Online: <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19>); OECD monitor for agriculture rules, which contains information of actions to contain the spread of the virus; countries that are helping people, small businesses and the economy in relation to the crisis and beyond, etc. (Online: <http://www.amis-outlook.org/>).

²⁸“COVID-19: A 10-Point Action Plan to Strengthen International Trade and Transport Facilitation in Times of Pandemic”.

UNCTAD Policy Brief, April 2020, n°79, p. 3. Online: https://unctad.org/en/PublicationsLibrary/presspb2020d3_en.pdf Latest Access: Jul 1st 2020

²⁹“Transparency – why it matters at times of crisis”. WTO, 7th April 2020, p.1. Online:

https://www.wto.org/english/tratop_e/covid19_e/transparency_report_e.pdf Latest Access: July 1st 2020.

³⁰ Idem

through unnecessary export restrictions and other trade barriers; and 4) even in the midst of the crisis, think beyond the immediate.³¹

By making available a complete, robust and timely compendium of trade-related policies adopted from the moment the crisis/pandemic is declared, the extreme stress on socioeconomic systems and the private sector in general can be alleviated. As the WTO stated, “[i]n the context of the COVID-19 pandemic, it is crucial to pool information within a multilateral platform to avoid duplication of efforts and to increase efficient collaboration. The WTO has the legal and practical tools, as well as the resources, to contribute to this goal.”³²

Proposal

This Group hereby proposes the following notification scheme before the proposed-Group of Experts:

1. Prior to the adoption of crisis-related actions, a plurilateral agreement/RTA/WTO Member shall:
 - a. Publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties and/or other Members to become acquainted with the proposed action.
 - b. Notify the Group of Experts of the content of the proposed action, together with a brief indication of its objective and rationale. If the proposed action is intended to be justified under one of the exceptions provided in the WTO Agreements the burden to demonstrate that it is ‘necessary’ within the meaning of that provision shall be strengthened by the obligation to associate the proposed action with a particular need induced by the crisis/pandemic and provide a justification of its proportionality. Such notification shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account.
2. The content of notifications should be sufficiently specific to enable other Members to evaluate the trade effects and to understand the operation of such actions. Members shall ensure that their notifications contain the following information:
 - a. General description of the crisis-related action
 - b. Type of action
 - c. Affected Tariff lines
 - d. Detailed product(s) description
 - e. Alleged crisis
 - f. Relationship between the alleged crisis and the proposed measure
 - g. WTO/RTA justification

³¹ *Idem*, pp. 3-9.

³² “Transparency – why it matters at times of crisis”. WTO, 7th April 2020, p. 2. Online: https://www.wto.org/english/tratop_e/covid19_e/transparency_report_e.pdf Latest access: July 1st 2020.

h. National legal basis

3. While the crisis-related action remains in force, the adopting Member shall send an update report to the Group of Experts at a fifteen-day interval. The report shall include an analysis of the application of the measure, any amendments introduced and an estimation of its duration.
4. Any interested party shall be free to make reverse notifications identifying the Member adopting a crisis-related action, as well as the known elements of paragraph 2 above. Notifications shall be sent in written to a designated inbox, including all the relevant information reasonably available to the interested party that allows for the identification of the alleged action.
5. If the Group of Experts determines that a Member failed in its obligation to notify a crisis-related measure in the terms of Article 1, it will request the Member to fulfil its obligation within the next five days. If the Member persists in its violation after the referred deadline, the measure will be deprived of enforcement. If the Member insists on enforcing the measure it will be automatically considered in violation of its obligations under the plurilateral agreement/RTA/WTO Agreements.
6. All notifications will be automatically included in the agenda of the Group of Experts.
7. Any interested party may, at any time, make a written request for information on the nature and extent of any crisis-related action taken by another Member, or for an explanation of the reasons for which a specific measure has been considered as not subject to the requirement of notification.
8. Members so requested shall provide such information as quickly as possible and in a comprehensive manner, and shall be ready, upon request, to provide additional information to the requesting party. Any interested party which considers that such information has not been provided may bring the matter to the attention of the Group of Experts.

Group of Experts

The impact of the global COVID-19 pandemic is pressing and affecting supply chains and global trade flows in an unprecedented way. Strengthening technical assistance for developing countries in ensuring safe trade is now more important than ever.

The World Bank Group explicitly discourages constraining job maintaining exports by arbitrarily closing borders to commerce. On the contrary, it recommends countries to implement containment measures while allowing commerce to flow as much as possible.³³ To make this possible, on one hand, governments need input on best practices that can be implemented during times of crisis/pandemic. On the other hand, it is crucial to facilitate a continuous dialogue between

³³ “Do’s and Don’ts of Trade Policy in the Response to COVID-19”, World Bank Group. Online: <http://documents.worldbank.org/curated/en/509521585605825305/pdf/Do-s-and-Don-ts-of-Trade-Policy-in-the-Response-to-COVID-19.pdf> Latest access: June 24th 2020.

countries and provide room for the private sector to take notice and express their concerns regarding trade-related actions adopted by countries.

A non-judicial mechanism designed for times of crisis/pandemic could be useful at helping concentrate and apply peer pressure on a government proposing or maintaining a measure to adjust its rule and, consequently, avoiding unnecessary restrictions and further disputes.³⁴

Proposal

To address these global challenges and discuss human safety concerns related to the COVID-19 outbreak, we propose the creation of a Group of Experts that meet virtually. The Group would be composed by a chair member and by representatives of WTO missions. The Group shall consist of members from different countries-level governmental organizations. Every country shall nominate up to two representatives and shall be responsible for ensuring that their representatives provide a high level of expertise.

The Group of Experts shall be composed of well-qualified governmental and/or non-governmental individuals. Members should be selected with a view to ensuring their independence, a sufficiently diverse background and a wide spectrum of experience.

To assist in the selection of experts, the WTO Secretariat, or the designated authority in a plurilateral agreement or RTA, shall maintain an indicative list of governmental and non-governmental individuals possessing enough qualifications. Members may periodically suggest names of governmental and non-governmental individuals for inclusion on the indicative list, providing relevant information on their knowledge of international trade and of the sectors or subject matter of the covered agreements.

Registration in the Transparency Register will be required for members to be appointed. In order to ensure continuity and the smooth functioning of the Group, there will be a reserve list of suitable members that may be used to appoint replacements.

The Group shall act at the request of the WTO Director General, or the designated authority in a plurilateral agreement or RTA, after a crisis/pandemic has been declared.

In principle, the Group shall meet in closed sessions during the crisis/pandemic in order to discuss and request information on the various matters under its remit. We suggest the Group meet in Geneva or through virtual meetings. A scheme should be conducted according to procedures established under a Working Procedures or guidelines for Group of Experts.

If implemented at the WTO level, the expenses incurred by persons serving in the Group of Experts, including travel and subsistence allowance, shall be met from the WTO budget in accordance with

³⁴ Inveer Manak, M.A.. "Enforcing International Trade Law in the World Trade Organization's Committees: Courting Third Party Opinion", November 24, 2019. Online: https://repository.library.georgetown.edu/bitstream/handle/10822/1057304/Manak_georgetown_0076D_14424.pdf?sequence=1&isAllowed=y. Latest access: July 20, 2020

criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance and Administration.

Members' representatives should be prepared to attend meetings systematically, contribute actively to discussions in the Group, be involved in preparatory work ahead of meetings, examine and provide comments on documents under discussion, and to act, as appropriate, on an ad hoc basis.

The Group will assist the countries during periods of crisis/pandemic by: (i) providing technical expertise and practical experience relevant to trade; (ii) engaging in open and constructive exchanges with other members of the group; (iii) providing input related to trade agreements; and (iv) providing feedback on the perception and public debate on trade agreements.

The Group of Experts will develop a wide range of recommendations, decisions, and principles that should be implemented by members. The Group shall adopt its opinions, recommendations or reports by consensus and based on the standard rules of procedure for expert groups.

The Group will have a technical, substantive and expert-driven work. The members of the Group and their representatives, as well as invited experts and observers, would be subject to the obligation of professional secrecy.

Among the Group of Experts specific work will be to provide a platform to address a broad range of measures that cause friction between countries—not only in a formal, legal sense but also in a practical one.

On the normative side, the Group will have to develop a guidance to help countries implement measures during times of crisis/pandemic or clarify certain provisions. The Group of Experts will submit this information on periodic reports with key data and best practices.

The private sector will have access to the Group by requesting consultations or asking for information.

The possibility of becoming acquainted with draft regulations and exchanging comments on notifications opens an avenue for dialogue between counterparts across borders. This dialogue is a vehicle for confidence and trust.

The Group of Experts is about allowing access to this information and more. It enables governments and traders to keep up to date in a rapidly evolving trade landscape and provides much-needed clarity. Transparency is in the mutual interest of all Members.

Conclusions

Expeditious and concrete actions are necessary to improve global free trade and, particularly, to assure a minimum trade flow during times of crisis/pandemic. As many declarations formulated during this pandemic stated, global trade is essential to save lives and speed up recovery in the aftermath of a crisis.

Although, this crisis evidenced the degree of dependence on international trade and global value chains to source essential products, policies broadly implemented such as lockdowns, border closures and exports prohibitions and restrictions have had a deep negative impact in trade.

Current provisions at the WTO level are not designed for scenarios of global crisis as the one posted by COVID-19 disease, where multiple industries and virtually all countries have suffered humanitarian and economic struggles. Accordingly, this group's proposals are intended to complement existing obligations, especially by strengthening transparency requirements and providing solutions easy to implement that contribute securing a minimum flow in global trade.

While elaborating these proposals our group had in mind the many challenges and obstacles that cross-border supply chains had to face during the crisis due to lack of available and timely information regarding trade-related actions adopted and/or modified by countries and the unproportioned scope of many of those measures. This combination of circumstances ended up injuring unnecessarily many companies that had the resources and capabilities to continue operating despite of the crisis by implementing the appropriate actions to guarantee the safety of its workers, products and services.

Particularly, through an authorized operator scheme for certain reputable organizations embedded in regional or global value chains, our group intends to limit or exclude them from trade restrictions implemented in response to a crisis/pandemic.

Additionally, a transparency mechanism for times of crisis/pandemic is proposed, with the aim of strengthening notifications and information-sharing requirements when timely information is most needed.

Finally, to anticipate the need of facilitating trade and improving confidence between parties, the creation of a Group of Experts to assist countries and the private sector in periods of crisis/pandemic is suggested. This Group would provide technical expertise through recommendations of best practices and serve as a forum for countries to engage in open and constructive exchanges. Representatives of countries and the private sector would have the possibility of requesting consultations or access to information related to other countries policies, contributing to encourage cooperation and dialogue.

As the OECD highlights, keeping trade flowing requires co-operation and trust.³⁵ Consequently, is fundamental that trade-related actions adopted during crisis/pandemic comply with the G20's proposed principles: measures should be targeted, proportionate, transparent and temporary³⁶.

³⁵ "COVID-19 and international trade: Issues and actions". OECD, Tackling Coronavirus (COVID-19) Contributing to a Global Effort. Updated 12th June 2020, p.11. Online: https://read.oecd-ilibrary.org/view/?ref=128_128542-3ijg8kfswh&title=COVID-19-and-international-trade-issues-and-actions Latest access: July 1st 2020.

³⁶ "G20 Trade and Investment Ministerial Meeting". Ministerial Statement issued on May 14th, 2020. Online: https://g20.org/en/media/Documents/G20SS_Statement_G20%20Second%20Trade%20&%20Investment%20Ministerial%20Meeting_EN.pdf Latest access: July 1st 2020

References

Agreement on Subsidies and Countervailing Measures, Annex 1A to the Marrakesh Agreement, 1869 U.N.T.S. 14.

Agreement on Technical Barriers to Trade, Annex 1A to the Marrakesh Agreement, 1868 U.N.T.S. 120.

ALADI. “Estudio sobre los programas Operador Económico Autorizado en los países miembros de la ALADI con especial énfasis en los requisitos para obtener la certificación”, ALADI/SEC/Estudio 229/Rev. 1. Online: http://www2.aladi.org/biblioteca/Publicaciones/ALADI/Secretaria_General/SEC_Estudios/229Rev1.pdf Latest access: June 30th 2020.

Arnoldi, Paula. “Cambios en las dinámicas de control del Comercio Internacional: El programa Operador Económico Autorizado”, Revista Integración y Cooperación Internacional, N° 29, July-December 2019. Centro De Estudios En Relaciones Internacionales De Rosario CERIR. Online: <https://rephip.unr.edu.ar/bitstream/handle/2133/17549/Revista%20Nro.%2029.pdf?sequence=2&isAllowed=y> Latest access: June 30th 2020.

Decision on Notification Procedures for Quantitative Restrictions. Adopted by the Council for Trade in Goods on June 22th 2012, Revision, G/L/59/Rev.1.

G20. “G20 Trade and Investment Ministerial Meeting”, Ministerial Statement, May 14th 2020. Online: https://www.wto.org/english/news_e/news20_e/dgra_30mar20_e.pdf Latest access: July 1st 2020.

IMF. “World Economic Outlook Update, June 2020 - A Crisis Like No Other, An Uncertain Recovery”, June 24th 2020. Online: <https://www.imf.org/en/Publications/WEO/Issues/2020/06/24/WEOUpdateJune2020> Latest access: June 24th 2020.

International Trade Center “Tracking of COVID-19 Temporary Trade Measures”, Market Access Map. Online: <https://www.macmap.org/covid19> Latest access: June 24th 2020.

Inveer Manak, M.A.. “Enforcing International Trade Law in the World Trade Organization's Committees: Courting Third Party Opinion”, November 24, 2019. Online: https://repository.library.georgetown.edu/bitstream/handle/10822/1057304/Manak_georgetown_0076D_14424.pdf?sequence=1&isAllowed=y Latest access: July 20, 2020

OECD. “COVID-19 and international trade: Issues and actions”, Tackling Coronavirus (COVID-19) Contributing to a Global Effort. Updated 12th June 2020, p.11. Online: https://read.oecd-ilibrary.org/view/?ref=128_128542-3ijg8kfswh&title=COVID-19-and-international-trade-issues-and-actions Latest access: July 1st 2020.

Transparency Mechanism for Regional Trade Agreements, General Counsel Decision of December 14th 2006, WT/L/671.

UNCTAD. “COVID-19: A 10-Point Action Plan to Strengthen International Trade and Transport Facilitation in Times of Pandemic”, Policy Brief, April 2020, n°79. Online: https://unctad.org/en/PublicationsLibrary/presspb2020d3_en.pdf Latest Access: July 1st 2020

United States - Section 337 of the Tariff Act of 1930, Report by the Panel adopted on November 7th 1989, L/6439 - 36S/345. Online: https://www.wto.org/english/tratop_e/dispu_e/gatt_e/87tar337.pdf Latest Access: July 1st 2020.

World Bank Group. “Do’s and Don’ts of Trade Policy in the Response to COVID-19”. Online: <http://documents.worldbank.org/curated/en/509521585605825305/pdf/Do-s-and-Don-ts-of-Trade-Policy-in-the-Response-to-COVID-19.pdf> Latest access: June 24th 2020.

World Customs Organization. “Comments on the Impact of the COVID-19 Crisis: Ideas for the WCO and Its Members from the WCO Private Sector Consultative Group”, April 2020. Online: http://www.wcoomd.org/-/media/wco/public/global/pdf/media/important-notice/pscg-covid_19_en.pdf?db=web Latest access: June 24th 2020.

World Customs Organization. “Compendium of Authorized Economic Operator Programmes”, 2019 Edition. Online: <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/aeo-compendium.pdf?db=web> Latest access: June 24th 2020.

World Customs Organization. “FAQ on linkages between the SAFE AEO programme and Article 7.7 of the WTO TFA”. Online: ” http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/faq-on-linkages-between-the-safe-aeo-programme-and-article-7-7-of-the-wto-tfa_en.pdf?la=en Latest access: July 16th 2020.

WTO. “Transparency – why it matters at times of crisis”. WTO, 7th April 2020. Online: https://www.wto.org/english/tratop_e/covid19_e/transparency_report_e.pdf Latest Access: July 1st 2020.

WTO. “Trade Facilitation Agreement”. Online: https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm#II Lastest access: June 30th 2020.

WTO. “Trade falls steeply in the first half of 2020”, Press Release PRESS/585, June 23rd 2020. Online: https://www.wto.org/english/news_e/pres20_e/pr858_e.pdf Latest access: June 24th 2020.