CHAPTER 2

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

Bernard Hoekman
EUI and CEPR

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

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

G20 DECLARATIONS ON COVID-19 EMERGENCY RESPONSES

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

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

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1 I am grateful to Filippo Santi for compiling the figures used in this chapter, and to Simon Evenett, Petros Constantinos Mavroidis and Robert Wolfe for comments on an initial draft.

2 As of 18 September 2020, 91 jurisdictions had imposed 202 export controls on such products. See https://www.globaltradealert.org/.
and temporary. We task our Trade Ministers to assess the impact of the pandemic on trade. We reiterate our goal to realize a free, fair, non-discriminatory, transparent, predictable and stable trade and investment environment, and to keep our markets open.”

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

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

**DO G20 PRINCIPLES ADD TO EXTANT WTO RULES?**

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

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

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4 http://www.g20.utoronto.ca/2020/2020-g20-trade-0330.html.
5 Two possible exceptions are calls by Trade Ministers to exempt “humanitarian aid related to COVID-19 from any export restrictions on exports of essential medical supplies [...] consistent with national requirements” and to avoid disruption of supply chains used to produce and distribute essential supplies. The latter arguably is covered in WTO disciplines, as these are agnostic about the type of trade involved. See the 14 May 2020 G20 Trade and Investment Ministers statement at: https://g20.org/en/media/Documents/G20SS_Statement_G20 SECOND%20Trade%20&%20Investment%20Ministerial%20Meeting_EN.pdf
including deep regional integration arrangements such as the EU – permits governments to impose trade restrictions if needed to attain regulatory objectives, including public health and safety.\(^6\) The relevant language reads as follows:

“Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures”.

“necessary to protect human, animal or plant life or health” (Art. XX:b); or

“essential to the acquisition or distribution of products in general or local short supply [p]rovided that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist” (Art. XX:j).

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

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

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

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

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

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

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

9 This is consistent with the 14 May 2020 G20 trade ministerial commitment to: “Reduce sanitary and technical barriers by encouraging greater use of relevant existing international standards and ensuring access of information on relevant standards is not a barrier to enabling production of PPE and medical supplies.” See footnote 3 above.
10 See footnote 2. The GTA COVID-19 monitoring exercise does not encompass SPS and TBT measures.
11 For example, Australia has more notifications to the WTO (6) than policies captured by the GTA (1). The latter aims to facilitate imports of PPE. Australia’s notifications pertain to updates for this one measure.
12 https://www.wto.org/english/tratop_e/covid19_e/trade_related_goods_measure_e.htm
FIGURE 1 COVID-19 TRADE MEASURES: GTA VS WTO

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

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

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

**FILL THE TRANSPARENCY/ANALYSIS GAP**

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

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

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

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\(^{13}\) See https://www.wto.org/english/news_e/news20_e/mark_08jun20_e.htm

\(^{14}\) https://www.wto.org/english/news_e/news20_e/good_11jun20_e.htm
Reallocating a small percentage of the WTO’s CHF200 million budget to collection of policy data and analysis – especially pertaining to subsidies and export controls – would make a big difference in the ability of the organisation to bolster the evidence base needed to inform and sustain multilateral cooperation on trade.

REFERENCES


ABOUT THE AUTHOR

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