
Covid-19, Export Restrictions, and the WTO: Magnifying Global Divisions in a Time of Crisis

Jessica Lawrence, Senior Lecturer, School of Law [DOI: 10.5526/xgeg-xs42_015]

Abstract

Trade policy has been an important part of the global response to Covid-19. In order to boost production and increase the supply of critical goods, countries have lowered tariff barriers, put export restrictions in place, and smoothed the path to issue compulsory licenses for patented medicines and medical devices. All of these measures touch on trade policy, and fall under the ambit of the World Trade Organisation (WTO). This raises the question: do the flexibilities built into WTO law give countries the policy space they need to take emergency measures during this health crisis? This short paper explains the WTO rules and their application to national trade measures in response to Covid-19 using the example of export restrictions. It finds that from a legal perspective, WTO rules are flexible enough to permit countries to deviate from their normal obligations during this time of crisis. However, from a justice perspective, these flexibilities will be far more useful for wealthy developed states than for those with less purchasing power and production capacity. Indeed, the flexibility built into WTO law may prove ineffectual—and even detrimental—for poorer states, as it permits the wealthy the policy space to take measures in their own interest while leaving the less powerful without access to critical goods. The paper concludes that here, as elsewhere, the negative economic effects of Covid-19 will fall disproportionately on the poor and the vulnerable.

I. Introduction

In response to the Covid-19 crisis, countries across the globe have implemented policies to spur production of critical goods, support the development of vaccines and anti-viral treatments, and safeguard domestic supplies of medicines, protective equipment, and diagnostic devices. Trade policy has played an important part in this global response, as countries lower entry barriers for medical products, put up export restrictions to keep scarce supplies at home, and look for ways to increase the production of medicines and medical devices and ensure affordable access for their populations.

These measures fall within the scope of World Trade Organisation (WTO) law, under which countries have agreed to certain limits on their freedom to implement trade-related policies. These limits generally require countries to remove unnecessary barriers to trade, not to discriminate against products and services from other WTO members, to fairly administer a minimum level of protection for intellectual property, among other things.

Some of the trade measures that countries have taken to combat Covid-19 are permissible—even desirable—under WTO rules. For example, many countries have lowered barriers to trade in critical goods, seeking to increase supplies and protect supply chains by making it cheaper and easier for products to cross international borders. To this end, governments have suspended or even eliminated tariffs on medicines and other critical supplies, suspended the application of anti-dumping duties on medical goods, and streamlined customs procedures, creating “green lanes” for the rapid inspection and

approval of products necessary for the fight against Covid-19.¹ WTO members are certainly permitted to decrease trade barriers by lowering tariffs and simplifying entry procedures, so long as they do so in a non-discriminatory fashion, and observers have widely applauded these moves. Indeed, some have argued that they should be made a permanent part of WTO law after the crisis ends, as cheaper access to medical goods will be of long-term benefit to all.²

Other responses, however, are less clearly compliant with WTO rules. Measures like export restrictions and limitations on patent protections are WTO-compatible only if they fall under the exceptions and flexibilities available under the current regime. This raises the important question of whether the flexibilities built into WTO law give countries the policy space they need to take emergency measures during this health crisis, and whether in doing so WTO law promotes positive global outcomes.

This short paper addresses this question in two ways. First, it asks from a *legal* perspective whether or not WTO law permits the measures that countries have imposed thus far, and are considering imposing in the future. By way of illustration, it examines the rules that govern export restrictions on goods, explaining the requirements under the General Agreement on Tariffs and Trade (GATT)³ and the carve-outs and exceptions that countries can make use of in order to justify actions that would normally fall afoul of the WTO rulebook. It concludes that the WTO Agreements do contain flexibilities for at least some types of emergency measures, and permit governments to act in ways that would normally contravene their obligations in order to respond to a public health crisis.

Second, it asks from a *justice* perspective whether the legal flexibilities contained in the WTO rulebook are sufficient to protect the interests of all countries in ensuring access to critical medicines and supplies. Here, it discusses the ways in which WTO law's flexibilities, while facially neutral, will be far more useful for wealthy developed states than for the developing world. Indeed, the flexibility built into WTO rules may prove ineffectual—and even detrimental—for poorer states, as it gives the wealthy the policy space to take measures in their own interest while leaving the less powerful without access to critical goods. As a result, WTO flexibilities may magnify, rather than diminish, the underlying divisions between countries in terms of purchasing power and production capacity.

II. Are Export Restrictions on Goods Permissible under WTO Law?

Among other measures put into place in the context of the Covid-19 crisis, a growing number of countries have enacted various types of export restrictions on goods, including medicines, medical devices, protective supplies, and food.⁴ These measures have come

¹ For example, Argentina has suspended anti-dumping duties on the import of syringes from China; Costa Rica granted a moratorium on import tariffs from April – June 2020; and the European Union implemented “green lanes” to facilitate the movement of essential goods and services. See, WTO, ‘COVID-19: Trade and Trade-Related Measures’, 29 May 2020, <https://www.wto.org/english/tratop_e/covid19_e/trade_related_goods_measure_e.htm> accessed 10 June 2020.

² See, e.g., Jennifer A Hillman, ‘Six Proactive Steps in a Smart Trade Approach to Fighting COVID-19,’ *Think Global Health*, 20 March 2020, available at <<https://www.thinkglobalhealth.org/article/six-proactive-steps-smart-trade-approach-fighting-covid-19>> accessed 10 June 2020.

³ General Agreement on Tariffs and Trade, LT/UR/A-1A/1, 14 April 1994(GATT) <<http://docs.wto.org>>.

⁴ The WTO maintains a regularly updated list of such measures: ‘Trade and Trade-Related Measures’ (n 1).

in the form of outright bans or restrictions on export as well as the introduction of new or strengthened export licensing and approval procedures. Such restrictions seek to safeguard national supplies of critical products, ensure food security, and prevent domestic shortages by keeping goods inside a country's borders.

The GATT generally prohibits quantitative restrictions (that is, measures such as bans and quotas) on exports of goods.⁵ The ban on quantitative restrictions is quite broad, covering both *de jure* and *de facto* measures imposed by WTO members. Any prohibition or limitation of exports in order to combat Covid-19 would clearly be caught by this rule, and is thus in principle incompatible with the GATT.

The prohibition of quantitative restrictions is, however, subject to four important sets of exceptions that significantly soften the impact of this ban.

First, the GATT includes a carve-out for '[e]xport prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party.'⁶ In the context of Covid-19 this means that a country can impose temporary export restrictions or prohibitions in order to prevent critical shortages of medical or other supplies. 'Temporary' means that the restrictions should last only so long as necessary,⁷ and 'critical shortage' means 'those deficiencies in quantity that are crucial, that amount to a situation of decisive importance, or that reach a vitally important or decisive stage, or a turning point.'⁸ Thus, countries must be careful to restrict exports only of essential products, and only for a limited period (though this period may extend as long as necessary). Such restrictions should also be non-discriminatory, applying to all third countries equally and maintain insofar as possible a proportional distribution of trade.⁹ Where a country's measures do meet these criteria, they will not be considered violations of the GATT, and may thus be freely imposed. This carve-out is one of the two flexibilities cited most by the countries that have adopted export restrictions thus far, along with the general exception for health measures discussed below.¹⁰

When it comes to restrictions on the export of agricultural products a few additional rules apply. Export restrictions on food are permitted where necessary to protect food security. Such restrictions were used extensively during the 2007–2008 global food crisis, for example. The WTO's Agreement on Agriculture specifies that when a government puts in place restrictions on food exports, it should take into account the potential effects of the measure on the food security of other countries, notify the WTO's Committee on Agriculture about the nature and extent of the rules, and, if requested, consult with other countries and provide them with information regarding the export restrictions.¹¹ There is

⁵ GATT, art XI(1). The Agreement on Agriculture provides further specific rules on export restrictions in the context of agricultural products (Agreement on Agriculture, LT/UR/A-1A/2, 15 April 1994, (AoA) art 12 <<http://docs.wto.org>>). For an academic overview of the WTO's rules on export restrictions, see Gabrielle Marceau, 'WTO and Export Restrictions', (2016) 50 *Journal of World Trade* 563.

⁶ GATT, art XI(2)(a).

⁷ *China—Measures Related to the Exportation of Certain Raw Materials*, WT/DS394/AB/R, 30 January 2012, [323]–[331].

⁸ *Ibid* [324].

⁹ GATT, art XIII.

¹⁰ WTO, 'Export Prohibitions and Restrictions: Information Note', 23 April 2020, 5 <https://www.wto.org/english/tratop_e/covid19_e/export_prohibitions_report_e.pdf> accessed 10 June 2020.

¹¹ AoA, art 12.

some debate, however, as to whether this provision in fact imposes any hard substantive obligations, or whether it simply amounts to ‘soft law’ that is unlikely to constrain agricultural export restrictions.¹²

Second, the prohibition of quantitative restrictions exempts ‘duties, taxes and other charges’ from its coverage, meaning that export tariffs or duties are generally permitted by WTO law so long as they continue to respect non-discrimination rules and continue to treat other countries equally.¹³ This means that countries could impose taxes on the export of medicines, devices, protective equipment, or other critical supplies in order to generate revenue or discourage exports.¹⁴

Some countries have made special additional commitments to minimise, transform, or eliminate export taxes as part of their terms of accession to the WTO, and a few of these may be relevant in the context of measures taken to combat Covid-19.¹⁵ Montenegro, for example, agreed that it ‘would not apply or reintroduce any export duty,’¹⁶ which would include any new charge imposed on critical goods. Domestic policy space may in such cases face additional constraints.

Third, even in the event that a country’s export restrictions cannot rely on the previous flexibilities, they may still fall under the general exceptions to WTO law. Three of these exceptions are potentially relevant here.

First, countries may put in place measures otherwise incompatible with their GATT obligations if ‘necessary to protect human, animal or plant life or health,’ provided they do so in a way that does not arbitrarily or unjustifiably discriminate among countries, and does not amount to a disguised restriction on trade.¹⁷ Such measures must be ‘necessary’ to addressing the Covid-19 situation, which may bar rules that are deemed to be more restrictive than is reasonable. Siddharth Aatreya has argued that this would exclude, for example, measures that hoard essential goods beyond the level that a country could reasonably need.¹⁸ But given that public health is such an important goal, the ‘necessity test’ is likely not to be read strictly.¹⁹ This general exception for health measures is the second flexibility commonly cited by the countries that have adopted export restrictions thus far, alongside the carve-out explained above.²⁰

¹² For the argument that the provisions of the Agreement on Agriculture should be read more strictly, see Robert Howse and Tim Josling, ‘Agricultural Export Restrictions and International Trade Law: A Way Forward’ (2012) International Food and Agriculture Trade Policy Council, 15–16.

¹³ See further *China—Raw Materials* (n 7) [321].

¹⁴ But see Howse and Josling (n 12) 17–18 (arguing that the exemption of export taxes should be read in light of the object and purpose of GATT Article XI, and thus restricted to measures with a primarily fiscal, rather than trade-restrictive, objective).

¹⁵ These countries include Bulgaria, Mongolia, Latvia, Estonia, Georgia, Croatia, China, Saudi Arabia, Viet Nam, Ukraine, Montenegro, Russia, Lao People’s Democratic Republic, Tajikistan, Kazakhstan, and Afghanistan (Marceau (n 5) 576–581).

¹⁶ WTO, ‘Report of the Working Party on the Accession of Montenegro to the World Trade Organization’, WT/ACC/CGR/38, 5 December 2011 [132].

¹⁷ GATT, art XX(b).

¹⁸ Siddharth S Aatreya, ‘Are COVID-19 Related Trade Restrictions WTO-Consistent?’, *EJIL:Talk!*, 25 April 2020, <<https://www.ejiltalk.org/are-covid-19-related-trade-restrictions-wto-consistent/>> accessed 10 June 2020.

¹⁹ WTO, ‘European Communities—Measures Affecting Asbestos and Asbestos-Containing Products’, WT/DS135/AB/R, 12 March 2001 [172].

²⁰ WTO, ‘Export Prohibitions and Restrictions’ (n 10) 5.

Second, countries may make use of the general exception for ‘restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry’ if they do so ‘during periods when the domestic price of such materials is held below the world price.’²¹ Here, too, such measures would need to be put in place in a way that does not arbitrarily or unjustifiably discriminate among countries, and does not amount to a disguised restriction on trade. This exception could cover, for example, situations in which a country placed price caps on materials necessary for the production of critical supplies, and coupled these price controls with export restrictions in order to keep the supplies from being sold on world markets at higher prices.

Third, countries may also make use of the general exception for measures ‘essential to the acquisition or distribution of products in general or local short supply,’ again provided they do so in a way that does not arbitrarily or unjustifiably discriminate among countries, and does not amount to a disguised restriction on trade.²² Such measures must be ‘essential’ to acquiring or distributing the products in question, which would (as with the ‘human health’ exception) bar measures that are more trade restrictive than is necessary to achieve this goal.²³ The products in question must also be in ‘general or local short supply’, meaning that they are not available on the market – a simple lack of domestic production capacity will not be sufficient.²⁴ This exception includes the further caveats that such measures must be ‘consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products’ and that they be ‘discontinued as soon as the conditions giving rise to them have ceased to exist.’ In the context of Covid-19 export restrictions, this would seem to permit, for example, restrictions on trade in protective equipment, so long as that equipment is in short supply, the restrictions do not direct all exports to one country (violating the principle of equity), and are limited to the duration of the shortage.

Finally, countries could also attempt to justify their export restrictions on the basis of national security concerns. The GATT contains a broad national security exception that permits a WTO Member to take ‘any action which it considers necessary for the protection of its essential security interests [...] taken in time of war or other emergency in international relations.’²⁵ The national security exception has so far been referenced primarily to justify boycotts and restrictions on trade and transit during times of conflict, and this seems to have been the understanding of the original drafters of the GATT.²⁶ However, the outer limits of what qualifies as an ‘emergency in international relations’ are not entirely clear,²⁷ and it is possible that Covid-19, which has been declared a global pandemic by

²¹ GATT, art XX(i).

²² GATT, art XX(j).

²³ The AB in *India—Solar Cells* found that the same weighing and balancing process would apply to assessing whether measures are ‘essential’ as is typically used to determine whether measures are ‘necessary’ (*India—Certain Measures Relating to Solar Cells and Solar Modules*, WT/DS/456/AB/R, 16 September 2016 [5.63]).

²⁴ *Ibid* [5.75]–[5.77].

²⁵ GATT, art XXI(b)(iii).

²⁶ ECOSOC ‘Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment’ E/PC/T/A/PV/33, 24 July 1947.

²⁷ A WTO Panel in 2019 provided a first interpretation of this provision in *Russia—Traffic in Transit*, in which it found that a series of Russian measures preventing the movement of goods from Ukraine during the 2014 conflict could be justified under the national security exception (*Russia—Measures Concerning Traffic in Transit*, WT/DS512/R, 5 April 2019).

the World Health Organization, could pass the test, permitting countries to take whatever measures they consider ‘necessary’ to protect their public health sectors.

Provided that they apply their measures in a non-discriminatory way and respect the other limited requirements imposed by the various carve-outs and exceptions discussed in this section, it is likely that many national export restrictions on critical goods will be permissible under WTO rules.²⁸ As was seen during the 2007–2008 food crisis, GATT flexibilities do seem broadly sufficient to permit countries to put in place extraordinary export measures in order to deal with a national crisis. However, the question of whether and to what extent this flexibility will actually serve to ensure that WTO Members are able to access the medicines, devices, protective equipment, food, and other supplies they need to combat the global pandemic is another matter. Indeed – these very flexibilities may prove detrimental to countries that need to import goods from abroad and the lack domestic production capacity or financial resources to make up for the loss of global supply.

III. Are the WTO Flexibilities Sufficient to Ensure Medical and Food Security?

While it is understandable that countries concerned with supply would wish to put export restrictions in place, such restrictions also pose significant dangers, particularly to smaller economies and those lacking in domestic production capacity.

To begin with, export restrictions disrupt supply chains, causing delays in production and transport and impeding access to essential goods. Pharmaceuticals, medical devices, and other high-priority items are frequently the products of multiple jurisdictions, with manufacturers, intellectual property holders, and shipping lines stretching across national borders. In such cases, self-sufficiency is simply not a viable option. The interruption of global supply chains negatively impacts production, approval, and distribution processes, reducing supply and increasing prices for all.

Second, export restrictions can be self-defeating, leading to a ‘multiplier effect’²⁹ as countries put their own limitations in place in response to previously imposed rules. Research has found that during the global food crisis of 2008, export restrictions led to a 13% increase in world food prices in general, and a 45% increase for rice, one of the hardest-hit products.³⁰ In the case of medical devices, almost all economies are importers as well as exporters, making everyone vulnerable to price increases, but affecting those with less purchasing power the most. Countries with greater financial resources will be better placed to withstand price surges, while states with weaker fiscal positions and higher public debt will see the real value of their budgets fall, and will be far less able to borrow to support government policies.³¹

Retaliation is also a matter of concern. For example, when US President Donald Trump decided to impose export restrictions on N95 protective masks, Canadian Prime Minister

²⁸ Countries are also responsible for notifying any new quantitative restrictions to the WTO ‘as soon as possible, but not later than six months from their entry into force’ (Decision on Notification Procedures for Quantitative Restrictions, G/L/59/Rev.1, 22 June 2012 <<https://docs.wto.org>> accessed 10 June 2020).

²⁹ Paolo E. Giordani, Nadia Rocha, and Michele Ruta, ‘Food Prices and the Multiplier Effects of Trade Policy’ (2016) 101 *Journal of International Economics* 102.

³⁰ *Ibid.*

³¹ See, eg, Cesar Calderon et al, *Africa's Pulse, No 21, Spring 2020: An Analysis of Issues Shaping Africa's Economic Future*, World Bank, 2020.

Justin Trudeau swiftly threatened countermeasures, noting that ‘the United States also receives essential supplies and products’ from Canada.³² Retaliation is a concern with Covid-related food export restrictions as well, to the degree that the Directors-General of the Food and Agriculture Organization and the World Health Organization joined the WTO Director-General in issuing a joint statement cautioning that ‘[u]ncertainty about food availability can spark a wave of export restrictions, creating a shortage on the global market.’³³

Finally, export restrictions have a differential impact on countries with smaller or non-existent domestic production capacity for critical goods.³⁴ For example, World Bank economists Aaditya Mattoo and Michele Ruta have found that only seven countries account for 70% of world exports of ventilators.³⁵ Export restrictions put in place by any of these states would endanger access to medical supplies throughout the world, and the hardest hit states would, again, be those without the resources to buy or build their own. In some areas, this has already come to pass. Despite calls for solidarity,³⁶ the EU put in place restrictions on face shields, mouth-nose protection equipment, protective spectacles and visors, protective garments, and gloves beginning in March, and continued to restrict the export of masks, spectacles, and protective garments through the end of May.³⁷ Chad Bown of the Peterson Institute for International Economics warned of the severe consequences of this move for countries that have historically imported these products from the EU, such as Cape Verde (89% of protective spectacles and visors), Niger (71%), and Angola (62%).³⁸

States and international organisations have recognised the damage that may be caused by export restrictions, and in response have proposed some guiding principles that countries should follow when enacting emergency trade measures. The G20, for example, has recommended that export restrictions should be ‘targeted, proportionate, transparent, temporary, [and] reflect our interest in protecting the most vulnerable.’³⁹ And the WTO and World Customs Organisation (WCO) have stressed the importance of export measures

³² Richard Hall, ‘Trudeau Threatens Retaliation after Trump Keeps Shipment of Masks Intended for Canadian Doctors’, *Independent*, 3 April 2020.

³³ WTO, ‘Agency Chiefs Issue Joint Call to Keep Food Trade Flowing in Response to COVID-19’ (WTO, 31 March 2020) <https://www.wto.org/english/news_e/news20_e/igo_26mar20_e.htm> accessed 27 April 2020.

³⁴ See, e.g., Alvaro Espitia, Nadia Rocha, and Michelle Ruta, ‘Trade and the COVID-19 Crisis in Developing Countries’, *VoxEU*, 9 April 2020 <<https://voxeu.org/article/trade-and-covid-19-crisis-developing-countries>> accessed 15 April 2020.

³⁵ Aaditya Mattoo and Michele Ruta, ‘Viral Protectionism in the Time of Coronavirus’, *World Bank Blogs*, 27 March 2020, <<https://blogs.worldbank.org/voices/viral-protectionism-time-coronavirus>> accessed 27 April 2020.

³⁶ Dr Tedros Adhanom Ghebreyesus, ‘WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19’, 3 March 2020, <<https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---3-march-2020>> accessed 14 April 2020.

³⁷ Commission Implementing Regulation (EU) 2020/568 of 23 April 2020 making the exportation of certain products subject to the production of an export authorisation [2020] OJ L 129/7.

³⁸ Chad P Bown, ‘COVID-19: Demand Spikes, Export Restrictions, and Quality Concerns Imperil Poor Country Access to Medical Supplies’ in Richard Baldwin & Simon J Evenett (eds), *COVID-19 and Trade Policy: Why Turning Inward Won’t Work* (Vox / CEPR Press 2020), 35.

³⁹ ‘G20 Trade and Investment Ministerial Meeting: Ministerial Statement’, 14 May 2020, Annex art 1.1.1 <https://g20.org/en/media/Documents/G20SS_Statement_G20%20Second%20Trade%20&%20Investment%20Ministerial%20Meeting_EN.pdf> accessed 10 June 2020.

being temporary and designed in a non-discriminatory way.⁴⁰ These guidelines do not impose any hard limits on national behaviour, but seek to prompt countries to think more carefully about the design of their export restrictions while preserving their freedom to act as they believe necessary.

Fearing that these moves do not go far enough to prevent or remedy the negative impacts of export restrictions, some scholars have called on the international community to take bolder and more legally binding action. Wendy Cutler, for example, has argued that the G7 and G20 should call for a standstill on tariff hikes, export bans, and export limitations, and that the WTO should call an emergency session to act on the surge in export restrictions.⁴¹ Mona Pinchis-Paulsen has argued for a revision of the WTO rules to add an ‘inverse-exception’ whereby countries would be asked to *drop* their trade barriers, rather than being permitted to *raise* them, during times of global emergency.⁴² The likelihood of any legal development of this type is, however, vanishingly small—particularly given the WTO’s pre-existing struggles over the collapse of the Doha round trade negotiations, the turn to bilateralism and regionalism as the primary forums for economic liberalisation, and the breakdown of the dispute settlement process that has resulted from the US’s refusal to appoint new members to the Appellate Body.⁴³

Covid-19-related export restrictions—even those that are WTO-compliant—are likely to increase prices, decrease supply, and disrupt supply chains, especially when put in place by important industrial centres. And in the absence of more extensive international cooperation and commitment to ensure that the interests of developing countries are protected, it can only be the case that the poorest and most vulnerable will disproportionately suffer the negative impacts of any trade measures enacted in response to the crisis.

IV. Conclusion

Times of crisis prompt us to reconsider law and policy by exposing stress points and weaknesses in the existing system. In the world of WTO law, the Covid-19 crisis, like the food crisis of 2007–2008, has brought attention to, among other issues, the tricky question of export restrictions.

As explained in Section II, the GATT provides numerous flexibilities that allow countries to enact emergency measures that would otherwise be incompatible with their WTO obligations. So long as export restrictions are non-discriminatory, temporary, and do not go beyond what is needed to protect domestic supply, they are likely permissible under

⁴⁰ ‘WCO-WTO Joint Statement on COVID-19 Related Trade Measures’, 6 April 2020, <https://www.wto.org/english/news_e/news20_e/igo_06apr20_e.htm>.

⁴¹ Wendy Cutler, ‘Coronavirus: The Need to Adjust and Reshape Our Trade Agenda’, *Asia Society Policy Institute*, 17 March 2020, <<https://asiasociety.org/policy-institute/coronavirus-need-adjust-and-reshape-our-trade-agenda>> accessed 10 June 2020.

⁴² Mona Pinchis-Paulsen, ‘COVID-19 Symposium: Thinking Creatively and Learning from COVID-19—How the WTO can Maintain Open Trade on Critical Supplies’, *Opinio Juris*, 2 April 2020, <<https://opiniojuris.org/2020/04/02/covid-19-symposium-thinking-creatively-and-learning-from-covid-19-how-the-wto-can-maintain-open-trade-on-critical-supplies/>> accessed 28 April 2020.

⁴³ See, e.g., Imogen Saunders, ‘Populism, Backlash and the Ongoing Use of the World Trade Organization Dispute Settlement System: State Responses to the Appellate Body Crisis’ (2020) 35 *Maryland Journal of International Law* (forthcoming) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3611539> accessed 10 June 2020.

WTO rules. This means that the many nations that have put such rules in place—from Colombia to India to the UK—will not face multilateral restrictions on their freedom to act.

But is this flexibility really a good thing? As discussed in Section III, export restrictions come with many negative side effects, including increases in prices and disruptions in production and distribution networks. These effects are problematic for everyone, but especially for those countries without the money or industrial capacity to buy or make their own substitutes. As with other aspects of the Covid-19 crisis, the impact of export restrictions will disproportionately fall on the poor and vulnerable.

While the WTO's flexibilities are sufficient in terms of providing policy space to member states who wish to enact export restrictions, they do not help to ensure equitable global access to critical supplies. Indeed, they exacerbate inequality in distribution by failing to control the use of export restrictions by countries that seek to protect their own citizens at the expense of their neighbours. We may well wish for a global trade regime that pays more attention to issues of justice and equity, but that it is not the one we have.