



EU Trade Policy after the virus: Some preliminary considerations

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By Dr. Constantine Michalopoulos



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Dr. Constantine Michalopoulos

Senior Policy Advisor, ELIAMEP, former Special Advisor WTO, senior official, World Bank and USAID

Summary

- The obvious lesson governments should take from the Covid-19 experience is the need for increased resilience which means more secure access to trusted sources of supply for essential products.
- The first thing to be done is to review controls imposed during the crisis to ensure that they are not retained when they are not needed. It is also useful to explore, if it is desirable and feasible to organize EU wide stockpiles of Personal Protection Equipment.
- Global pandemics require a global multilateral response.
- The World Trade Organization (WTO) is the global institution where any global multilateral agreements aimed at increasing security of supplies in public health products must be pursued. Unfortunately since 2016 the WTO has been crippled by policies of the protectionist US Trump administration.
- Any serious EU engagement on this issue in the WTO must await the results of the US election later this year.
- A Trump re-election, would force the EU to seek other partners with whom to develop joint efforts aimed at increasing security of supplies without resorting to increased protection.

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Introduction

As the European economies are starting to open up, many voices are starting to ask questions about Europe's future trade policies after the end of the pandemic. Disruptions in supply chains have raised the specter of increased protectionism. In addition, Europe should also be concerned about the virulent protectionism that is being pursued by the Trump administration. The Trump virus may be more toxic for world trade than covid-19. For the latter, there is at least a possibility of a vaccine. The virus will disappear if he loses the November election. But how quickly will the international community regain its trust on the future US policy and commitment to a rules-based international trading system? These are the issues for the EU in the next few months and years.

Resilience vs Efficiency

The pandemic has highlighted an additional cost of globalization: on the goods side, long supply chains of critical materials and equipment were interrupted as the pandemic hit different countries at different times and governments started to scramble to secure products needed to save lives. Domestic stocks were rapidly depleted, imports were hard to obtain and the situation deteriorated further as countries imposed export bans; 54 countries worldwide imposed such bans.¹ At the same time, on the side of services, there was a boom for long distance provision through the internet—while transport and tourism were devastated. There is little doubt that one of the obvious lessons that governments should take from the experience is the need for increased resilience which means more secure access to trusted sources of supply for essential products that may be needed to address a future pandemic.

Increased resilience, in the first instance, means developing optimum stockpiling policies. But stockpiling is costly and, in any case, cannot be the only answer. While it may be prudent to stockpile certain personal protection equipment (PPE), stockpiling machinery makes little sense as the needs for such equipment to fight a new virus or other pandemic cannot be easily predicted.

Resilience can increase through improvements in securing access—which in a nation state system means shortening supply chains by establishing policies that promote more costly domestic production through subsidies and/or tariffs. The logic of the argument leads one to more and more protection at the cost of more and more inefficiency. In this connection, basic trade policy principles argue in favor of production subsidies being preferable to import controls. But there are many dangers: for example, there may be pressure to increase food security by further increasing protection under Europe's common agricultural policy.

Long supply chains had been established because it was less costly to produce components of things in distant places, put them together in yet other distant places and imported for consumption in Europe or elsewhere. In the immediate period before the pandemic there was a tendency of firms to shorten supply chains for a variety of unrelated reasons. The key question today is how much government intervention and what policy tools are needed that would maximize resilience and minimize inefficiency. Increased resilience through increased protection at the national level makes little sense for most countries. But the temptation is great for large markets like the EU.

¹ World Trade Alert, *Tackling Covid-19 together: The Trade Dimension*, March, 2020.

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Legal Provisions

Public health for the EU falls within the jurisdiction of member states which are in principle free to organize and supply their health care systems (Article 168 of the Treaty of the Functioning of the EU-TFEU). Article 34 of the same treaty prohibits export controls, but permits them on security, public health and other grounds (e.g. antiquities). EU action however, can supplement and support national actions on such issues as disease prevention and cross-border threats to health. The WTO also prohibits export controls, but permits them on the grounds of public health (Article XX).

At the onset of the pandemic France and Germany imposed export controls on PPE and in France's case the government confiscated a great deal of PPE from the privately owned stocks of producers or distributors of such equipment. The EU Commission reacted to these restrictions by issuing guidelines aimed at both protecting public health and ensuring the availability of essential goods and services across national borders *within* the EU. But at about the same time (March 15, 2020) the Commission also passed regulations (EU 2020/402 and EU 2020/426) that required that PPE exports from the EU to non-EU states be subject to prior authorization by competent authorities in member states. Following these developments, France and Germany withdrew their controls. The EU regulation of exports to non-EU states also were allowed to lapse at their expiration on April 30, 2020. The question is what should be EU trade policy affecting public health issues in the long term. The question can be separated into two components: policies for the movement of goods and services within the EU and those between the EU and third countries. One of the first things to do after the virus is under control is to ensure that temporary trade distortions introduced during times of the crisis do not become permanent features.

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Trade Policies within the EU

Strengthening resilience means strengthening security of access, which in turn is affected by the existence of agreements that are adhered to by all participants. Broadly speaking the EU treaties provide the multilateral framework within which additional agreements could be explored. This means that existing treaty requirements affecting the movement of goods linked to public health should be reviewed and where appropriate strengthened so as to ensure that access to such goods continues across borders uninhibited by domestic regulations. As noted above, the first thing to be done is to review controls imposed during the crisis to ensure that they are not retained when they are not needed. One new question that would be useful to explore, is the extent to which it is desirable and feasible to organize EU wide stockpiles of PPE.

Pandemics also of course affect the flow of services some of which involve physical presence. Different issues arise for different services. Provisions affecting transport services for example need to be reviewed in light of the recent experience. Tourism is of great economic importance for many EU countries. A multilateral understanding affecting the flow of tourists within the EU is obviously needed and should be part of the opening up of countries when appropriate health safeguards have been put in place. Finally, tracking the transmission of the pandemic raises a variety of privacy issues that also require multilateral agreement.

Trade Policies towards Third Countries

EU trade policies towards the rest of the world must be informed by the existing patterns of trade on products of importance to public health and the global architecture of multilateral agreements that specify rules and procedures that govern international trade. The most important of the latter are the EU commitments in the WTO and within that its complex existing preferential relationships with a very large group of countries, ranging from Canada, the UN list of Least Developed Countries (LDCs), the Economic Partnership Agreements with many countries in Sub-Sahara Africa and the Caribbean and of course the new arrangements with the UK.

A brief look at the pattern of trade in public health products of relevance to the covid-19 virus suggests that the EU should not be afraid of risks associated with the concentration of suppliers in a few countries: Disinfectants constitute almost half of total global trade of \$715 billion of covid-19 linked products in 2018. Twenty-five countries including several in the EU exported at least \$10 million in ventilators. Only a very small amount, roughly 3.5% of the total trade came from a small number of countries.² On the other hand, very few developing countries were producers of medical instruments, or their components. This in turn implies that any actions taken by the EU to limit the exportation of medical equipment and supplies to third countries would have devastating effects on poor countries especially in Sub-Sahara Africa.

The WTO is the global institution where any global multilateral agreements aimed at increasing security of supplies in public health products must be pursued. Unfortunately, since 2016 the organization has been crippled by what I call the Trump virus. The 2016 US election produced a president with puerile understanding of economics who decided to use tariffs as a new WMD—a weapon of mutual destruction against the economies of friend and foe. Early on, he also took the USA out of the Paris climate accords and his confrontational tactics against China have been pursued completely bilaterally outside the WTO.

The continued US subversion of the WTO dispute settlement mechanism (DSM) has resulted in an EU led initiative agreed to by 16 other countries including Australia, Brazil, Canada, China, and Korea to establish an ad-hoc appeal body that can be used to settle trade disputes among themselves thus overcoming the US blockage of appointments to the WTO Appellate Body that has paralyzed the WTO DSM.³ Most recently, in early May, the Trump administration eschewed international co-operation on vaccines absenting itself from the virtual world summit of vaccines led by European Commission President Ursula von der Leyen and has attacked the WHO handling of covid-19. His actions have shaken the global trade architecture and multilateral cooperation more broadly that had been so painfully built up over the course of several decades and cannot be excused by the fact that China has also undermined the same architecture.

The Trump protectionist virus has spread to some parts of Europe. If he is reelected, another four years of his administration can become deadly for the world trading system.

² World Trade Alert, *ibid*.

³ www.Strtrade.com/news-122720

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Traditionally, the US Democratic party has not been supportive of liberal trade regimes. But it is certainly the case that any US administration other than Trump’s is likely to be more supportive of multilateral agreements including the WTO and the WHO. It is also true that Trump’s policies have undermined the trust that the US enjoyed in the EU and which had been so carefully built into WTO’s DSM that ensured countries large and small would abide by its decisions. Thus, any serious EU engagement on this issue must await the results of the US election. By that time, there will also be a better appreciation of the economic impact of the current pandemic.

A Trump re-election, would force the EU to seek other partners with whom to develop joint efforts aimed at increasing security of supplies without resorting to increased protection—just like it did in connection with the WTO DSM. An agreement with China on these issues which enhances transparency and addresses problems created by its state-trading practices would be most welcome. Europe can also take the lead in working with developing countries to develop multilateral agreements that ensure that export bans of critical health products are not imposed during times of crises. None of these arrangements will be simple to negotiate. It would best if the US were to participate and multilateral collaboration is pursued within the WTO. But that would require the extinction of the Trump virus first.

Conclusion

The post pandemic world will require EU action on trade policy to increase its resilience against the risks of future pandemics at the lowest cost in increased inefficiency. This can best be achieved through multilateral co-operation both within the EU and with third countries. In the latter case it should be pursued in the context of the WTO provided there is a change in US trade policy that would be more likely under a new administration. Many have feared that the virus pandemic will strike a fatal blow to EU co-operation. But it is also possible that the crisis can be used to strengthen European solidarity and the long-term European project.