

**EXPORT RESTRICTIONS IN TIMES OF PANDEMIC:
OPTIONS AND LIMITS UNDER INTERNATIONAL TRADE AGREEMENTS**

Joost Pauwelyn¹

Version: 30 April 2020

Abstract

“Trade saves lives” could have been the headline. COVID-19 hit so hard, quickly and across so many nations at the same time, that many countries not only rushed to produce and import, but also imposed export restrictions on protective masks, ventilators and other products they were running out of. On one count, as of 26 April 2020, at least 75 governments had banned or limited exports of medical supplies and medicines.

The impact and pros and cons of such export restrictions have been discussed elsewhere. What this contribution seeks to do is to set out the options and limits under international trade agreements.

Section II discusses export restrictions under EU law, first within and then outside the EU. Section III turns to WTO agreements, discussing both obligations in respect of export restrictions, and a number of exceptions explicitly provided for. It also refers to trade remedies as a possible response to export restrictions. Section IV briefly examines preferential trade agreements. Section V concludes, highlighting the importance of transparency and the limits of law and enforcement procedures when it comes to emergency measures, especially those enacted on a temporary basis in the midst of a crisis.

Economists have almost universally condemned the recent surge in export restrictions. The main take-away point when looking at what international law currently provides for is, however, that it offers countries a great deal of leeway to enact such restrictions especially during a pandemic. One question for further research and negotiations is whether this wiggle room ought to be reduced to effectively address the next pandemic. Some recent commitments and proposals have been made in this direction. They are referenced in the conclusion.

¹ Professor of International Law, Graduate Institute of International and Development Studies, Geneva, and Marse Visiting Professor of Law, Georgetown University Law Center. I would like to thank David Kleimann and Gabrielle Marceau for precious comments on an earlier draft. All errors remain mine alone. A summary of this article can be found in Richard Baldwin and Simon Evenett, [COVID-19 and Trade Policy: Why Turning Inward Won't Work](#), CEPR Press, April 2020, at p. 103-109.

I. Introduction: More, or Less, Exports?

In trade talks exports are, traditionally, seen as “good” (firms make money abroad), imports as “bad” (they threaten domestic producers). Trade agreements, in turn, continue to follow this (largely flawed) mercantilist logic, and focus predominantly on disciplining import barriers such as tariffs. So that both can export more, the US reduces, say, its tariff on Chinese cars in exchange for China cutting its tariff on, for example, US soybeans.

But what if countries do not seek to promote exports? What if, instead, they are desperate to import, and hoard whatever they manage to produce? In times of corona virus, trade concerns, like so many other things, have, indeed, been turned upside down: Countries, in (real or perceived) need of products ranging from protective masks and gloves to ventilators, medicines and even food or agricultural products such as wheat, have restricted exports, not imports. US steel tariffs and the EU’s import ban on chlorinated chicken were yesterday’s concerns. What grabs the attention today are US export curbs on respirators, and the need for formal authorization to export personal protective equipment (PPE) out of the EU. On one count, as of 26 April 2020, at least 75 governments had banned or limited exports of medical supplies and medicines.²

The impact and pros and cons of such export restrictions have been discussed elsewhere.³ What this contribution seeks to do is to set out the options and limits under international trade agreements.⁴

There are, no doubt, multiple takes on the issue. Export restrictions may not only address absolute supply shortages. They can also keep prices down at a time where normal market forces fail (price gouging, highest-bidder-take-all) and public health budgets are already strained. This may be the case for both final products (masks) and inputs (such as ingredients to make medicines or a vaccine). If masks are needed to save French lives, should the French government not be able to restrict their exportation? If Spain runs out of masks, however, should EU solidarity not require that France shares some of its masks with Spain? And what about, for example, Cameroon which was the first African country to sign an Economic Partnership Agreement (EPA) with the EU? As Cameroon opened-up to, and thereby made itself at least partially dependent on, EU imports, should it not have some kind of “access guarantee” now that it needs, say, German ventilators, life-saving machines that it cannot (or no longer) produce itself? EU export restrictions may also break up cross-border supply chains (e.g. prevent a Swiss supplier of ventilators from sourcing a critical input from Romania) or trigger a domino effect where other countries start imposing their own export restrictions, both of which may ultimately reduce -- rather than stabilize or increase -- the overall supply of medical gear in the EU.

² Simon Evenett and Alan Winters, [Preparing for a Second Wave of COVID-19: A Trade Bargain to Secure Supply of Medical Goods](#), Global Trade Alert, 26 April 2020. See also: WTO Secretariat, Information Note, [Export Prohibitions and Restrictions](#), 23 April 2020, and Anabel Gonzalez, [The G20 should expand trade to help developing countries overcome COVID-19](#), PIIE, 7 April 2020.

³ See, for example, Chad Bown, [EU limits on medical gear exports put poor countries and Europeans at risk](#), 19 March 2020, PIIE and [COVID-19: Trump’s curbs on exports of medical gear put Americans and others at risk](#), 9 April 2020, PIIE. See also Baldwin and Evenett, *COVID-19 and Trade Policy*, supra footnote 1.

⁴ See also WTO Secretariat, Information Note, [Export Prohibitions and Restrictions](#), 23 April 2020 (p. 3-5 and Annex 1), Caroline Glöckle, [Export restrictions under scrutiny – the legal dimensions of export restrictions on personal protective equipment](#), EJIL:Talk!, 7 April 2020, and Siddharth S. Aatreya, [Are COVID-19 Related Trade Restrictions WTO-Consistent?](#), EJIL:Talk!, 25 April 2020.

Economists⁵ and international organizations⁶ ranging from the WTO, IMF and OECD to the WHO and G20 have almost universally condemned the recent surge in export restrictions. The main take-away point when looking at what international law currently provides for is, however, that it offers countries a great deal of leeway to enact such restrictions especially during a pandemic. This raises the question of whether, post-corona crisis, a realignment may be in order. Indeed, what would globalization and international trade rules look like if the goal were not (or not just) to maximize profits or produce at the lowest price (efficiency), but rather to prevent and mitigate pandemics or, for that matter, slow down climate change?⁷

Rather than engage with any of the above policy questions, or assess potential alternatives, or complements, to export restrictions – ranging from “reshoring”⁸ and building “strategic autonomy”⁹ to enhanced cooperation¹⁰, joint procurement and diversifying sources of supply¹¹ -- this contribution summarizes the relevant disciplines under international trade agreements. Section II discusses export restrictions under EU law, first within and then outside the EU. Section III turns to WTO agreements, discussing both obligations in respect of export restrictions, and a number of exceptions explicitly provided for. Section IV briefly examines preferential trade agreements (more specifically: CETA and the USMCA). Section V concludes, highlighting the importance of transparency and the limits of law and enforcement procedures when it comes to emergency measures, especially those enacted on a temporary basis in the midst of a crisis.

II. Export Restrictions under EU Law

1. Export Restrictions Within the EU Single Market

This may come as somewhat of a surprise, but within the EU, one of the most integrated common markets in the world, individual EU Member States, such as France or Poland, retain the right to restrict exports to other EU Member States, subject to certain conditions. As a general rule, the Treaty on the Functioning of the EU (TFEU) prohibits, between EU Member States, “[q]uantitative restrictions on exports, and all measures having equivalent effect” (Article 35¹²). However, an exception is made for “prohibitions or restrictions on ...

⁵ See footnotes 2 and 3 above and also: Simon Evenett, [Tackling COVID-19 Together, The Trade Policy Dimension](#), 23 March 2020.

⁶ See G20 Trade and Investment, [Ministerial Statement](#), 30 March 2020; [Joint statement by WTO Director-General Roberto Azevêdo and WHO Director-General Tedros Adhanom Ghebreyesus](#), 20 April 2020; G20 Extraordinary Agriculture Ministers Meeting, [Ministerial Statement on COVID-19](#), 21 April 2020; [WTO and IMF Joint Statement on Trade and the COVID-19 response](#), 24 April 2020; OECD, [COVID-19 and International Trade: Issues and Actions](#), April 2020.

⁷ For a thought experiment along those lines, see [Dani Rodrik on Twitter](#), 19 March 2020. For another attempt, see Jennifer Hillman, [Six Proactive Steps in a Smart Trade Approach to Fighting COVID-19](#), Think Global Health, 20 March 2020.

⁸ See Jenny Leonard, [U.S., EU Are Far Apart on Reshoring Making of Medical Gear](#), Bloomberg, 13 April 2020.

⁹ « [Nous Tiendrons](#) », [L'Intégralité du Discours d'Emmanuel Macron](#), Le Monde, 13 April 2020 (“Il nous faudra rebâtir une indépendance agricole, sanitaire, industrielle et technologique française et plus d'autonomie stratégique pour notre Europe »).

¹⁰ Bill Gates, [Masks, tests, treatments, vaccines – why we need a global approach to fighting Covid-19 now](#), The Telegraph, 12 April 2020.

¹¹ According to one source, “[t]he top three countries exporting medical products critical to fight the pandemic supply 65 to 80 percent of total world imports of those products” (Anabel Gonzalez, *supra* footnote 1). See also: WTO Information Note, [Trade in Medical Goods in the Context of Tackling COVID-19](#), 4 April 2020.

¹² Article 30 TFEU also prohibits, as between Member States, all “[c]ustoms duties on ... exports and charges having equivalent effect” and this, without the exceptions provided for in Article 36.

exports ... on grounds of ... the protection of health and life of humans” on condition that they do not “constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States” (Article 36). Similar rules apply within the United States¹³ even though, to date, in the US, the debate between federal and state authorities has turned around travel restrictions and lockdowns, not export restrictions.¹⁴

The Article 36 exception has been narrowly interpreted by the Court of Justice of the EU (CJEU). Member States enacting an export restriction on public health grounds must respect the principle of proportionality, i.e. limit the restriction to what is necessary to attain the legitimate aim of protecting public health. Furthermore, measures at issue have to be well-founded — providing relevant evidence, data (technical, scientific, statistical) and all other pertinent information. The burden of proof in justifying export restrictions on health grounds lies with the Member State.¹⁵

The EU Commission can, however, disagree, and initiate a so-called “infringement procedure” (pursuant to Article 258 TFEU) which, eventually, may be decided by the CJEU. In the case of continued non-compliance, the CJEU can impose financial penalties. Other Member States may also challenge the export restriction before the CJEU (pursuant to Article 259 TFEU) but in almost all cases, it is the Commission that takes the lead.

The Article 36 health exception cannot be relied on to justify deviations from harmonized EU legislation. However, in the field of public health protection, the EU does not have the competence to adopt harmonization measures (except for “common safety concerns” explicitly listed in Article 168(4) TFEU regarding, for example, quality and safety standards for medicinal products and devices). When it comes to dealing with pandemics, it is, by and large, the Member States that are competent. EU institutions may only adopt “incentive measures” and “measures concerning monitoring” or “early warning” (Article 168(5) TFEU). The EU can also encourage and support cooperation between Member States in the area of public health through the open method of coordination (Article 168(2) TFEU).

2. Restrictions on Exports Outside the EU

The EU has exclusive competence over the external trade policy of EU Member States (Article 207 TFEU). This includes export policy. EU export policy is detailed in Regulation (EU) 2015/479 on *Common Rules for Exports*. This Regulation provides that exports outside

¹³ The US Constitution, in its so-called commerce clause, grants power to the US Congress to regulate inter-state commerce (Article I, §8, cl. 3). This grant of authority to the federal government has been read to imply a limitation on states to regulate inter-state commerce (the so-called “dormant” commerce clause). As a result, and on condition that the federal government has not regulated the area (which may preempt states from acting), states may be able to restrict exports but only if it does not “unduly” interfere with inter-state commerce. A New York state export restriction on masks, for example, would seem to discriminate on its face the trade with other states including, say, Rhodes Island. In that event (discriminatory state regulation), US courts would apply a “strict scrutiny” test under which New York would have to justify its export restriction “both in terms of the local benefits flowing from the statute and the unavailability of alternatives adequate to preserve the local interests at stake” (*Hughes v. Oklahoma*, 441 U.S. 322 (1979) at 336).

¹⁴ See, for example, Anthony Michael Kreis, [Contagion and the Right to Travel](#), Harvard Law Review Blog, 27 March 2020.

¹⁵ See EU Commission, [Free Movement of Goods, Guide to the Application of Treaty Provisions governing the Free Movement of Goods](#), 8 December 2013, at p. 25-27.

the Union “shall be free, that is to say, they shall not be subject to any quantitative restriction”, except as provided for in the Regulation (Article 1).

The Regulation empowers the EU Commission to make exports subject to an export authorization “to prevent a critical situation from arising on account of a shortage of essential products, or to remedy such a situation” (Article 5.1). Measures “may be limited to exports to certain countries or to exports from certain regions of the Union” (Article 5.3). In addition, the Regulation also grants powers back to the Member States (i.e. “re-delegates”) for them to individually restrict exports to third countries, inter alia, “on grounds ... of protection of health and life of humans” (Article 10). Note that, unlike Article 36 TFEU discussed above (for intra-EU export restrictions), Article 10 (for exports outside the EU) does not explicitly include a non-discrimination requirement (i.e., for export restrictions not to “constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States”). Like Article 36, Article 10 of Regulation (EU) 2015/479 is, however, subject to the CJEU’s proportionality test. For example, in the face of recent Romanian restrictions on exports outside the EU of certain agricultural products such as wheat and corn, the EU Commission declared that they “appear to be not proportionate” as the Commission does not have “any information, which indicates that Romania is facing or will soon face shortages of agricultural products intended for human consumption”.¹⁶ On April 16, Romania announced that it had lifted all export restrictions.¹⁷

In early March 2020, some Member States such as France, Germany and the Czech Republic imposed restrictions on PPE exports both to other EU Member States (relying on Article 36 TFEU) and to third countries (invoking Article 10 of Regulation 2015/479). Partly to counteract those Member State restrictions, on March 14, the EU Commission imposed a Union-wide requirement of export authorizations for PPE destined to countries outside of the EU (relying on Article 5 of Regulation 2015/479).¹⁸ The EU Commission implementing act was set to apply for six weeks. Exports of listed PPE outside the Union are prohibited unless “the competent authorities of the Member State where the exporter is established”¹⁹ issues an authorization. Exports of certain quantities of specific products may be authorized under specific circumstances such as to ensure assistance provided to third countries. On 19 March, the Commission excluded from the authorization requirement exports to EFTA countries (Norway, Iceland, Liechtenstein and Switzerland). It argued that including those countries “would be counterproductive, given the close integration of the production value chains and distribution networks”.²⁰

With Union-wide limits on exports to third countries now in place, Germany and France reportedly committed to withdraw their national export restrictions.²¹ In subsequent Guidelines, the EU Commission stressed the importance of keeping intra-EU trade open, even though export restrictions may be “legally justified”.²² However, for the EU

¹⁶ Megan Durasin, *EU Objects to Romania’s Move to Ban Agriculture Exports*, Bloomberg, 11 April 2020.

¹⁷ Radu Marinus, *Romania lifts all wheat export restrictions - Interior minister*, Reuters, 16 April 2020.

¹⁸ Commission Implementing Regulation (EU) 2020/402 of 14 March 2020, preamble, para. 7.

¹⁹ *Ibid.*, Article 1.1.

²⁰ Commission Implementing Regulation (EU) 2020/426 of 19 March 2020, preamble, para. 2.

²¹ See Chad Bown, *EU limits on medical gear exports*, *supra* footnote 3.

²² See EU Commission, *Guidelines on the optimal and rational supply of medicines to avoid shortages during the COVID-19 outbreak*, 8 April 2020 (“it is critically important that Member States lift export bans on medicines within the internal market. Whilst it is understandable that countries wish to ensure the availability of essential medicines nationally, export bans are detrimental to the availability of medicines for European patients even when they are legally justifiable”) and *Guidelines for border management measures to protect health and*

Commission to even keep track of what Member States were doing turned out to be difficult, as the initial measure did not include reporting requirements or transparency obligations.

On 23 April 2020, the Commission extended the implementing regulation for another 30 days (as of 26 April) but limited its application to masks, spectacles and protective garments only.²³ Exports to Western Balkans countries such as Serbia and Albania were added to the exemption list, as they “are engaged in a process of deep integration with the Union”. Importantly, Member States assessing an export authorization are now required to consult the Commission which needs to issue an opinion within 48 hours. Member States also have to report to the Commission on their authorizations granted and refused, and must authorize exports of emergency supplies in the context of humanitarian aid. In addition, a new Clearing House is set up “with the objective to coordinate efforts to match supply and demand in the EU”. Crucially, whereas on March 14 and 19, the Commission acted on its own, invoking urgency procedures (Article 3.3 of Regulation 2015/479), the April 23 implementing regulation also involved the Member States, who could have blocked its adoption by qualified majority (Article 3.2 of Regulation 2015/479), but did not do so.

III. Export Restrictions under WTO Agreements

The WTO’s basic rules and exceptions were concluded in 1947. They are set out in the GATT which remains largely unchanged to this date. GATT negotiators personally lived through war and post-war shortages. It should, therefore, come as no surprise that “critical shortage” and “short supply” were, and remain, recognized escape valves in the WTO rule-book. This section first sets out a number of general rules: the prohibition on quantitative export restrictions with a carve-out for “critical shortages”; non-discrimination, publication and notification. The section then addresses a list of general exceptions: to protect health, situations of “general or local short supply”, export restrictions on input materials to supply a domestic processing industry, and national security. The section closes with a brief discussion on the use of trade remedies (anti-dumping or countervailing duties) to offset export restrictions enacted by other countries.

1. WTO obligations in respect of export restrictions

a. General prohibition on quantitative export restrictions

GATT Article XI:1 presumptively outlaws “prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas ... export licences or other measures ... on the exportation or sale for export of any product”. Other WTO Members can challenge such export restrictions (the WTO does not have an “independent prosecutor” or entity like the EU Commission). It is for claimants to prove that the challenged measure (i) falls within the scope of the phrase “quotas ... export licences or other measures”, and (ii) constitutes a prohibition or restriction on the exportation or sale for export of any product.²⁴

Most export restrictions enacted in response to the COVID-19 pandemic would probably meet the first condition, as it is broadly worded and includes not only export bans, quotas and

ensure the availability of goods and essential services, 16 March 2020 (calling on EU member states to “preserve the free circulation of all goods” and to “guarantee the supply chain of essential products such as medicines, medical equipment, essential and perishable food products and livestock”).

²³ [Commission Implementing Regulation \(EU\) 2020/568](#) of 23 April 2020.

²⁴ See Appellate Body Report, *Argentina – Import Measures*, paras. 5.216-5.218.

export licenses but also “other measures”. Note, however, that the GATT only prohibits *quantitative* export restrictions. It does not prohibit or even discipline export *duties* (“duties, taxes or other charges”) unless a given WTO Member included such commitment in its tariff schedule or accession protocol (most have not, but some, such as China, have²⁵). This implies, oddly enough (especially if one considers that from an economic perspective quotas and duties are largely equivalents) that whatever WTO Members are prohibited from doing via *quantitative* export restrictions, they can achieve by means of (largely unregulated) export *duties*. That said, in the wake of the COVID-19 pandemic, countries seem to have enacted only quantitative export restrictions, not export duties.

The second condition for GATT Article XI:1 to be violated requires that the measure has “a limiting effect” on the quantity or amount of a product being exported.²⁶ Crucially, this “limiting effect” need “not be demonstrated by quantifying the effects of the measure at issue”, e.g. via evidence that the actual amount of exports of, for example, face masks fell. Rather, such limiting effects “can be demonstrated through the design, architecture, and revealing structure of the measure at issue considered in its relevant context”.²⁷ Automatic export licensing schemes, where export authorizations are granted without condition, may, therefore, be consistent with Article XI.²⁸ To assess whether a measure’s “design, architecture, and revealing structure” has a “limiting effect”, one recent panel report examined the measure’s (i) cost and burdensomeness, (ii) the uncertainty which it creates in the import/export process, and (iii) the arbitrariness of its coverage. Using these criteria, the panel concluded that a Colombian requirement that importers of clothing and footwear post a bond before imported goods are released in case a dispute arises in respect of the valuation of these goods, does not have the required “limiting effect” and hence does not violate Article XI (Colombia’s measure was allegedly imposed to combat customs fraud and money laundering involving the under-invoicing of certain imports).²⁹

b. The carve-out for “critical shortages”

GATT Article XI itself (in paragraph 2(a)) explicitly provides that the prohibition on quantitative export restrictions (in paragraph 1) does not apply to “[e]xport prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party”. Importantly, Article XI:2(a) has been construed as a “carve-out” (the general rule does not apply in the first place), not an “exception”.³⁰ An export restriction falls, therefore, outside the scope of the general prohibition if it is (i) “temporarily applied”, (ii) to prevent or relieve “critical shortages”, of (iii) foodstuffs or other “essential” products. Since Article XI:2(a) is a carve-out or exemption (not an exception), it is for claimant to prove that, notwithstanding Article XI:2(a), an export restriction *is covered* by the general prohibition under Article XI:1.³¹ Contrary to

²⁵ For a list of countries that made WTO commitments in respect of export duties, see WTO Secretariat, Information Note, [Export Prohibitions and Restrictions](#), 23 April 2020, footnotes 2 and 3.

²⁶ Appellate Body Reports, *China – Raw Materials*, para. 320.

²⁷ Appellate Body Reports, *Argentina – Import Measures*, para. 5.217.

²⁸ See Panel Report, *India – Quantitative Restrictions*, para. 5.130 and Panel Reports, *China – Raw Materials*, para. 7.957.

²⁹ Panel Report, *Colombia – Textiles*, Article 21.5, paras. 7.192 and 7.237-8.

³⁰ Appellate Body Reports, *China – Raw Materials*, para. 334.

³¹ See WTO Secretariat, Information Note, [Export Prohibitions and Restrictions](#), 23 April 2020, p. 12 (“This distinction [GATT Article XI:2(a) being a carve-out, not an exception] has implications for the burden of proof in the context of WTO disputes”) and Joost Pauwelyn, [Defences and the Burden of Proof in International Law](#) in *Exceptions and Defences in International Law* (eds. L. Bartels & F. Paddeu), Oxford University Press, 2020.

Article 36 TFEU or GATT Article XX (discussed below), the burden is thus on the challenging country to prove that one or more of the conditions in Article XI:2(a) is *not* met. This can make it easier for the regulating country to defend its export restriction.

To date, only one dispute was decided under this provision. The Appellate Body found that Chinese export restrictions to address alleged “shortages” of raw materials such as bauxite (used in the production of steel) did not meet the conditions of Article XI:2(a). The Appellate Body concluded that the restrictions, in place for more than 10 years, were not applied “for a limited time”, taken “in the interim” or “to bridge a passing need” and therefore not “temporarily applied”.³² Moreover, the Appellate Body interpreted the term “essential products” to mean products that are “absolutely indispensable or necessary”.³³ The underlying panel found that the determination of whether a product is “essential” to China is not a decision for China alone to make, but “should take into consideration the particular circumstances faced by that Member at the time when a Member applies a restriction”.³⁴ The panel confirmed, however, that refractory-grade bauxite is currently “essential” to China, as a key input in the production of iron and steel which, in turn, are “important products in the manufacturing and construction industries, two fundamental sectors that drive China’s industry and development” and “represent a significant source of employment”.³⁵ Finally, the Appellate Body found that “critical shortage” refers to “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”.³⁶ Referring to a 16-year remaining reserve lifespan for refractory-grade bauxite (which claimants contested, arguing it was, instead, 91 years), the underlying panel disagreed with China that it faced a “critical shortage”.³⁷

As long as pandemic related export restrictions are “temporarily applied”, limited to foodstuffs or “essential products” and demonstrated to “prevent or relieve critical shortages”, GATT Article XI:2(a) should, therefore, exempt such restrictions from the general prohibition in Article XI:1.

Note that in respect of export restrictions on foodstuffs imposed under Article XI:2(a), the Agreement on Agriculture (Article 12) adds certain obligations of advance notice, consultation and due consideration of importing members’ food security. These obligations do not apply to export restrictions imposed by developing countries unless they are net-food exporter of the specific foodstuff concerned.

c. Non-discrimination, publication and notification

Importantly, GATT Article XIII provides that all quantitative export restrictions -- thereby presumably including also those for “critical shortages” under Article XI:2(a) -- must “similarly” prohibit or restrict exportation of like products to all third countries. GATT Article I, in turn, provides that “all rules and formalities in connection with ... exportation” must be applied on an MFN-basis. Articles XIII:2 to 4 sum up specific rules in regard of import restrictions. Article XIII:5 provides that these shall “in so far as applicable ... also extend to export restrictions”. The main “guiding principle” is stated in Article XIII:2: When

³² Appellate Body Reports, *China – Raw Materials*, para. 323 and para. 344.

³³ *Ibid.*, para. 326.

³⁴ Panel Reports, *China – Raw Materials*, para. 7.276.

³⁵ *Ibid.*, para. 7.340.

³⁶ Appellate Body Reports, *China – Raw Materials*, para. 324.

³⁷ Panel Reports, *China – Raw Materials*, para. 7.351-2.

applying an export restriction, WTO Members “shall aim at a distribution of trade [i.e. exports] ... approaching as closely as possible the shares which various [WTO Members] might be expected to obtain in the absence of such restrictions”. This may imply that where, for example, a WTO Member limits (but does not completely ban) the export of ventilators, it ought to aim at an allocation of ventilator exports between other WTO Members that is as close as possible to the relative shares of ventilators that these other Members imported *before* the export restrictions were imposed.

In addition, GATT Article X requires that export restrictions of general application “be published promptly in such a manner as to enable governments and traders to become acquainted with them” (Article X:1). WTO Members must also “administer [their export restrictions of general application] in a uniform, impartial and reasonable manner” (Article X:3(a)). Finally, WTO Members are required to notify the WTO of quantitative export restrictions they enact.³⁸ Also the WTO Agreement on Trade Facilitation imposes publication, information and notification obligations in respect of export restrictions.

2. WTO exceptions

Any of the GATT obligations set out above are, however, subject to the general exceptions in GATT Articles XX and XXI, discussed next.³⁹

a. *Measures necessary to protect health*

Any violation of the GATT obligations set out in the previous section can be justified on health grounds. In other words, even if the “critical shortages” carve-out (in Article XI:2(a)) would not apply and the prohibition on quantitative export restrictions (in Article XI:1) were triggered, GATT Article XX(b), and the other exceptions discussed below, offer a second line of defense.⁴⁰

The general exception in GATT Article XX(b) allows for measures “necessary to protect human ... life or health”. It is for the WTO Member imposing the export restriction to prove that the restriction (or any discriminatory element in it) is “necessary” to protect health. Yet, “necessity” has been interpreted rather broadly as a weighing and balancing exercise with reference to (i) the importance of the health objective pursued, (ii) the contribution made by the measure to the health objective and (iii) the measure’s trade restrictiveness. Ultimately, only when a “less trade restrictive alternative” can be pointed at, that is reasonably available, and makes an equivalent contribution to the health objective, would a WTO panel conclude

³⁸ See *Decision on Notification Procedures for Quantitative Restrictions*, G/L/59/Rev.1, 3 July 2012.

³⁹ Another GATT exception that may be relevant is Article XXIV, stating that GATT provisions “shall not prevent ... the formation of a customs union or of a free-trade area” (Article XXIV:5). In one dispute, the Appellate Body examined whether Article XXIV justified a violation by Turkey of Article XI, but concluded that it did not on the ground that the import quotas imposed by Turkey on Indian textiles, allegedly to align Turkey with EU import quotas in place prior to the EU-Turkey customs union, were not “necessary” for the formation of the customs union (Turkey could, instead, use rules of origin to prevent that Indian textiles circumvented EU import quotas). See Appellate Body, *Turkey – Textiles*, paras. 42-63.

⁴⁰ In this respect, it is interesting to note that some WTO Members notified their COVID-19-related export restrictions under GATT Article XI:2(a) (and/or Article 12 of the Agreement on Agriculture), others under GATT Article XX(b) and some mention both GATT articles. The EU notification refers to “[p]rotection of human life or health, *inter alia*” without specifying any GATT provision (EU Notification, G/MA/QR/N/EU/4/Add.1, 8 April 2020).

that an export restriction fails to meet the Article XX(b) exception.⁴¹ In an earlier dispute, the Appellate Body found that an import ban can be “necessary” on the basis of a demonstration that it is “apt to produce a material contribution to the achievement of its objective”.⁴² Note that whereas “critical shortages” measures (under Article XI:2(a)) are, by definition, temporary, health measures under Article XX(b) (such as an import ban on asbestos) can be imposed on a permanent basis.

In addition, like any Article XX exception, health restrictions cannot be applied “in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade” (the so-called *chapeau* of Article XX). Where a WTO Member applies a health-based export restriction to some countries, but not others, it may have to demonstrate that different conditions prevail in those countries, or that any discrimination made is not “arbitrary or unjustifiable”. What may count as “justification” remains debated. In one earlier case, legitimate justifications to make distinctions between countries were limited to those linked to the overall justification for the measure as a whole, i.e. health.⁴³ Exemptions from export restrictions for some countries that can be explained based on health considerations may, therefore, be “justifiable”. In another case, the door was opened also to additional (non-health-related) factors.⁴⁴ Whether these include justifications such as being “engaged in a process of deep integration with the Union”⁴⁵, to the extent they are *not* health-related, remains an open question.⁴⁶

b. Measures “essential” to address “general or local short supply”

A second exception that may be relevant in times of pandemic is Article XX(j). This provision allows WTO Members to take measures that are (i) “essential” to (ii) “the acquisition or distribution of products in general or local short supply”, provided that such measures are (iii) “consistent with the principle that all [WTO Members] are entitled to an equitable share of the international supply of such products” and (iv) “discontinued as soon as the conditions giving rise to them have ceased to exist”. Like the Article XX(b) health exception discussed earlier, the burden of proof rests on the regulating country and short-supply restrictions cannot be applied “in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade” (*chapeau* of Article XX).

Article XX(j) was originally meant to allow for building, distributing or orderly liquidating war or post-war stocks of products in short supply in the aftermath of World War II. With time, it was, however, retained in the GATT “to meet emergency situations which may arise in the future”⁴⁷ including “natural catastrophes”.⁴⁸ This may, in other words, include situations like the COVID-19 pandemic.

⁴¹ See, for example, Appellate Body Report, *Brazil – Tyres*, paras. 139-143.

⁴² *Ibid.*, para. 151.

⁴³ Appellate Body Report, *Brazil – Tyres*, para. 246.

⁴⁴ Appellate Body Report, *EC – Seals*, para. 5.320-338.

⁴⁵ See *supra* footnote 23.

⁴⁶ Distinctions made between countries, in favor of FTA or custom union partners, may also be justifiable under GATT Article XXIV, see footnote 39 above.

⁴⁷ GATT Analytical Index, Article XX, at p. 594, https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_e.htm.

⁴⁸ *Ibid.*, at p. 593.

Article XX(j) allows for measures beyond export restrictions and refers to both “local” and “general” short supply. It may, therefore, justify restrictions not only when, for example, protective masks are in “local short supply”, e.g. in short supply in the regulating country, but also when protective masks are in general or international short supply and an exporting country (not itself in short supply) distributes exports of masks to where they are needed most.⁴⁹ In 1949, Czechoslovakia complained that it was discriminated under a US export licensing system favoring exports to countries in the European Recovery Program. The United States invoked the short-supply exception in GATT Article XX(j) (it also invoked national security under GATT Article XXI, discussed below) arguing that its export restrictions promoted the distribution of commodities in short supply in line with multilateral arrangements. No formal GATT decision was taken to resolve the dispute.

Two WTO-era disputes have, however, examined GATT Article XX(j). Starting with the first requirement of “essential”, the Appellate Body defined the term as “[a]bsolutely indispensable or necessary”, adding that “the term thus suggests that this word is located at least as close to the 'indispensable' end of the continuum as the word 'necessary'”. The Appellate Body then applied the same process of weighing and balancing as it uses to determine “necessity” under Article XX(b), discussed earlier (health exceptions).⁵⁰

Turning to the requirement that products are “in general or local short supply”, the Appellate Body has pointed out that, contrary to Article XI:2(a) (“critical shortages” discussed earlier), this provision “does not include the word ‘critical’, or another adjective further qualifying the short supply”. Hence, “the kinds of shortages that fall within Article XI:2(a) are more narrowly circumscribed than those falling within the scope of Article XX(j)”.⁵¹ The Appellate Body also found that “shortage” of a product in a particular geographical area or market (in that case, India) must be determined with reference to availability of supply from both domestic *and* foreign or international sources.⁵² The Appellate Body refused to recognize a mere lack of sufficient *domestic* manufacturing capacity to produce solar cells within India, as a situation of “short supply” which would somehow justify Indian support measures (local content requirements) for the Indian solar cell industry. Relevant factors to decide whether there is a “short supply” may include, however, the extent to which “international supply of a product is stable and accessible” as well as “the reliability of local or transnational supply chains”.⁵³ Applied to an alleged “short supply” of, for example, ventilators in a given WTO Member during the COVID-19 pandemic, this may imply that not only *domestic* production and supply of ventilators must be considered, but also ventilators that the WTO Member in question can reliably expect to be able to *import* from other countries.

In another dispute, the EU invoked Article XX(j) in an attempt to justify elements of its Third Energy Package. The EU based its argument of “short supply” on the alleged existence of “genuine and serious risks” of disruption of supply of natural gas in the EU. The panel, however, found that Article XX(j) covers products “that are presently in short supply” and

⁴⁹ See GATT Analytical Index, Article XX, at p. 593, https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_e.htm. The 1950 Report of the Working Party on *The Use of Quantitative Restrictions for Protective and Other Commercial Purposes* (GATT/CP.4/33, at p. 1) refers, for example, to “export restrictions used by a [WTO Member] to obtain a relaxation of another [WTO Member’s] export restrictions on commodities in local or general short supply, or otherwise to obtain an advantage in the procurement from another [WTO Member] of such commodities”.

⁵⁰ Appellate Body Report, *India – Solar Cells*, para. 5.62-63.

⁵¹ Appellate Body Report, *China – Raw Materials*, para. 325.

⁵² *Ibid.*, para. 5.69.

⁵³ *Ibid.*, para. 5.71.

not those that are "currently not in short supply but that may become".⁵⁴ The EU has appealed this 2018 panel finding. Completion of this appeal is uncertain as the Appellate Body is no longer operational (due to the US blocking the appointment of Appellate Body members⁵⁵).

Like the Article XI:2(a) carve-out (and unlike Article XX(b) which allows for permanent measures), Article XX(j) imposes a time limit: As soon as the conditions giving rise to the "short supply" have ceased to exist, the measures must be discontinued.

Intriguingly, Article XX(j) adds a condition, not found in Article XI:2(a) (but see the non-discrimination provisions in Articles I and XIII, and the *chapeau* of Article XX, discussed above), namely: that short-supply restrictions must respect the principle that all WTO Members are entitled to "an *equitable share* of the international supply" of, for example, face masks, ventilators or medicines. What this precisely implies is not further defined, but it may support claims by some WTO Members to have access to a certain (equitable) share of the worldwide production of, for example, PPE or an eventual COVID-19 vaccine. A 1950 GATT Working Party found that "if a [WTO Member] diverts an excessive share of its own supply [e.g. of face masks] to individual countries ... this may well defeat the principle that all [WTO Members] are entitled to an equitable share of the international supply of such a product".⁵⁶

c. Export restrictions on input materials to supply a domestic processing industry

Where countries are concerned about shortages or high prices of input materials (e.g. ingredients to produce medicines or vaccines), the exception in Article XX(i) may be relevant. It allows for export restrictions on "domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry", but this only "during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan". Article XX(i) adds the caveats that such export restrictions on inputs (i) "shall not operate to increase the exports of or the protection afforded to such domestic [processing] industry", and (ii) shall not depart from GATT non-discrimination provisions. Article XX(i) export restrictions must also meet the *chapeau* of Article XX, discussed above.

d. National security

Another provision that may be relevant to excuse export restrictions in time of a pandemic is GATT Article XXI "Security Exceptions". This provision allows a WTO Member to take "any action which it considers necessary for the protection of its essential security interests" including action "taken in time of war or other emergency in international relations".

Some WTO Members (including the United States) have argued that given the explicit terms "any action *with it considers* necessary", it is up to individual WTO Members alone to decide what Article XXI includes. On this view, WTO panels and the Appellate Body do not have

⁵⁴ Panel Report, *EU – Energy Package*, para. 7.1348.

⁵⁵ See Joost Pauwelyn, *WTO Dispute Settlement Post 2019: What To Expect?*, 22 *Journal of International Economic Law* (2019) 297-321.

⁵⁶ 1950 Report of the Working Party, *supra* footnote 49, at p. 3, adding that "the word 'equitable' is used in [what is now Article XX(j)] and not the word 'non-discriminatory'" and that "[t]he determination of what is 'equitable' to all [WTO Members] in any given set of circumstances will depend upon the facts in those circumstances".

the power to question any formal invocation of Article XXI, e.g. in defense of export restrictions to deal with a pandemic which a WTO Member may, for example, consider as threatening its “essential security interests”, taken in time of “emergency in international relations”. A recent WTO panel (un-appealed) did, however, review compliance of certain Russian transit restrictions with the language in Article XXI, at the request of Ukraine. The panel found that the Russian measures were justified under Article XXI but only after subjecting them to a review of whether the measures were (i) “necessary”, (ii) for the protection of Russia’s “essential security interests”, and (iii) “taken in time of war or other emergency in international relations”. Based on the terms “any action *with it considers* necessary”, the panel did, however, use deferential standards of review such as “good faith”, “a sufficient level of articulation” or “a minimum requirement of plausibility”.⁵⁷

Interestingly, to date, WTO Members have notified COVID-19 related export restrictions under “critical shortages” and health exceptions, not national security.⁵⁸

3. Anti-dumping or Countervailing Duties to Offset Export Restrictions?

Restrictions on exports of, for example, masks, are likely to drive down the domestic price of masks. When export restrictions are imposed on inputs -- say, wheat used in the production of food items or ingredients to make a vaccine -- the price reduction of these inputs may benefit domestic processing industries, that is, the companies making bread or vaccines. Where final, processed goods can be exported *without* similar restrictions, processing industries will likely gain a price advantage in export markets and may, thereby, upset foreign competitors. These competitors may challenge “cheap” imports of final products and ask their governments for the imposition of anti-dumping or countervailing duties to offset export restrictions.

In a pandemic situation this is unlikely to happen. If anything, most countries would be happy to import “cheaper” (including “subsidized” or “dumped”) foodstuffs or vaccines. Exporting countries may also impose similar restrictions on exports of both inputs *and* final products, thereby not offering processing industries an export advantage. After all, the producing country may want to keep bread and vaccines within the country, rather than export them, let alone *promote* their export.

Moreover, in a number of dispute rulings, WTO panels and/or the Appellate Body have found against the use of trade remedies to offset export restrictions. In one subsidy dispute, a panel (un-appealed) rejected the idea that Canadian export restraints on, for example, logs constitute a “subsidy” to Canadian exporters of lumber, that is, the processing industry able to use “cheaper” logs in its production process.⁵⁹ The SCM Agreement includes within its definition of a “subsidy”, financial contributions in the form of a government that “entrusts or directs a private body” to provide “cheap” goods. However, the panel rejected the US approach “that, because, or to the extent that, an export restraint causes an increased domestic supply of the restrained good, it is the same as if a government had expressly entrusted or directed a private body to provide the good domestically”.⁶⁰ The *effect* of export restraints on log prices was not found to be sufficient. What is required for government “entrustment or direction”, according to this panel, is “an explicit and affirmative action of delegation or

⁵⁷ Panel Report, *Russia – Traffic in Transit*, paras. 132, 135 and 138.

⁵⁸ See the WTO’s dedicated website, [COVID-19: Trade and Trade-Related Measures](#).

⁵⁹ Panel Report, *US – Export Restraints*, para. 8.75.

⁶⁰ *Ibid.*

command”.⁶¹ As a result, in this case, the US was *not* permitted to impose countervailing duties to offset Canadian export restraints.

In another dispute, the EU imposed anti-dumping duties on biodiesel from Argentina, arguing that an Argentine export tax on soybeans, the main raw material used in the production of biodiesel in Argentina, distorted the price of biodiesel.⁶² More specifically, when constructing the “normal value” of Argentine biodiesel (required to calculate whether Argentine exports of biodiesel were “dumped” into the EU), EU authorities replaced the actual (deflated) purchase price of soybeans as reflected in the biodiesel producers’ records, with an international reference price. The Appellate Body found that this violates the obligation in Article 2.2 of the Anti-Dumping Agreement to construct “normal value” on the basis of the cost of production “in the country of origin”.⁶³ Here as well, a WTO Member was *not* permitted to offset export restrictions with a so-called trade remedy on imports, in this case, an anti-dumping duty.

IV. Preferential Trade Agreements

As even the EU struggles to control intra-EU export restrictions and to cooperate on public health, it should come as no surprise that other, less integrated, preferential trade agreements add little discipline to what is already in the WTO. Take, for example, the recently concluded CETA, between Canada and the EU. Article 2.11 simply incorporates GATT Article XI including the carve-out for “critical shortages” (and even grandfathers additional export restrictions, such as those on “logs of all species”). Unlike GATT, CETA Article 2.5 does, however, also prohibit export duties (“any duties, taxes or other fees and charges imposed on, or in connection with, the export of a good”). Chapter 28 of CETA incorporates GATT Article XX general exceptions including those on health, “short supply” and processing industries, as well as a national security exception similar to GATT Article XXI. The more recently concluded USMCA does something similar.⁶⁴ Article 3.5 of the USMCA (part of its chapter on agriculture) does add provisions regarding export restrictions on foodstuffs to address concerns of food security. The provisions focus on prior notification, consultation, and detailed explanation of export restrictions taken, limits them to 6 months (with exceptions), and prohibits export restrictions on “foodstuff purchased for a non-commercial, humanitarian purpose”.

⁶¹ *Ibid.*, para. 8.44.

⁶² Appellate Body Report, *EU – Biodiesel (Argentina)*. For similar findings, see Panel Report, *EU – Biodiesel (Indonesia)*; Appellate Body Report, *Ukraine – Ammonium Nitrate*; and Panel Report, *Australia – Copy Paper*.

⁶³ Appellate Body Report, *EU – Biodiesel (Argentina)*, para. 6.83. In the Appellate Body’s view, at para. 6.82, “the surrogate price for soybeans used by the EU authorities to calculate the cost of production of biodiesel in Argentina did not represent the cost of soybeans in Argentina for producers or exporters of biodiesel”. Article 2.2.1.1 of the Anti-Dumping Agreement adds that « costs shall normally be calculated on the basis of records kept by the exporter or producer ... provided that such records ... reasonably reflect the costs associated with the production and sale of the product under consideration”.

⁶⁴ See Article 2.11 on export restrictions and Article 2.15 on export duties.

V. Conclusion

“Trade saves lives” could have been the headline. COVID-19 hit so hard, quickly and across so many nations at the same time, that many countries not only rushed to produce and *import*, but also imposed *export restrictions* on protective masks, ventilators and other products they were running out of. As a result, like so many trade law analyses before it⁶⁵, this contribution focused on the options and “limits” international trade agreements impose on countries restricting trade allegedly in the public interest. Headlines of “trade kills”, e.g. “the WTO forces us to export ventilators to the highest bidder abroad”, have generally been avoided. Indeed, although trade agreements, ranging from EU treaties, CETA and USMCA to the WTO treaty, generally prohibit quantitative export restrictions, they also provide for a series of carve-outs and exceptions that explicitly allow countries to restrict exports in times of pandemic.

Under EU law, EU Member States can rely, in particular, on health exceptions, for both intra-EU export restrictions (Article 36 TFEU) and extra-EU export restrictions (Article 10, Regulation (EU) 2015/479). EU institutions, in turn, have the power to impose export authorization requirements for exports outside the EU to deal with critical shortages within the EU (Article 207 TFEU and Article 5, Regulation (EU) 2015/479).

The WTO imposes a general prohibition on quantitative export restrictions and obligations of non-discrimination, publication and notification. But it provides for an even broader range of carve-outs and exceptions:

- (i) export restrictions to address “critical shortages” (GATT Article XI:2(a))
- (ii) health protection (GATT Article XX(b))
- (iii) products in “general or local short supply” (GATT Article XX(j))
- (iv) certain export restrictions on input materials to supply a domestic processing industry (GATT Article XX(i))
- (v) national security (GATT Article XXI).

At the same time, checks and balances are in place (with the possible exception of national security). Under EU law, a principle of strict proportionality applies. For a WTO Member to rely on the carve-out or any of the exceptions, a series of conditions must be met, ranging from the type of products covered (foodstuffs or other “essential” products” under Article XI:2(a)) and “necessity” (for health measures under Article XX(b)) to “equitable” distribution of supplies (under Article XX(j)).

That said, in emergency situations like a pandemic, the force of legal constraints may be limited. Time is of the essence, whereas the law and enforcement procedures move slowly. Delays in WTO dispute settlement today are such that filing a standard case to enforce WTO limits on export restrictions is hardly an option.⁶⁶ In addition, the WTO’s Appellate Body is

⁶⁵ See, for example, Joost Pauwelyn, [Carbon Leakage Measures and Border Tax Adjustments under WTO Law](#), in Research Handbook on Environment, Health and the WTO (G. Van Calster and D. Prévost, eds.), Edward Elgar, 2013.

⁶⁶ See Joost Pauwelyn and Weiwei Zhang, [Busier than Ever? A Data-Driven Assessment and Forecast of WTO Caseload](#), 21 *Journal of International Economic Law* 2018:3, 461-487 and Joost Pauwelyn, [The Real Rot in the System: Delays are Making WTO Dispute Settlement Irrelevant, Especially During a Pandemic](#), IELP Blog, 27 March 2020.

currently out of service⁶⁷ (but a sub-group of WTO Members set up an interim appeal arbitration arrangement).⁶⁸ Expedited arbitration under Article 25 of the DSU could be envisaged and is available if both parties agree.⁶⁹ Yet, in the heat of crisis, transparency, notifications and consultations may be the best one can hope for.⁷⁰ The main deterrent for countries considering export restrictions in times of pandemic is most likely self-interest, including the realization that export restrictions may cut-off your own supply chains, and that other countries may emulate you or retaliate. At the same time, the EU's and WTO's legal strictures do play an important role "in the shadow" of crisis. They can inform other countries, stabilize the situation and avoid escalation. Once the crisis subsides, lessons can be learned, and rules and procedures potentially revised.

At the time of writing, several countries already made a variety of commitments:

- On 30 March 2020, Trade and Investment Ministers of the G20 agreed 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".⁷¹
- On 21 April 2020, the G20 Agriculture Ministers reaffirmed this commitment and agreed, more specifically, "not to impose export restrictions or extraordinary taxes on food and agricultural products purchased for non-commercial humanitarian purposes by the World Food Programme (WFP) and other humanitarian agencies".⁷²
- On 15 April 2020, New Zealand and Singapore initiated and agreed to the *Declaration on Trade in Essential Goods for Combating the COVID-19 Pandemic*.⁷³ This Declaration is open for signature by other countries and commits participants, *inter alia*, (i) to "eliminate all custom duties" and (ii) not to apply "export prohibitions or restrictions, within the meaning of Article XI:1 of the GATT 1994" with respect to all products listed in Annex I to the Declaration. Participants will also "endeavour to not apply export prohibitions or restrictions with respect to the products listed in Annex II, unless they fall within exceptions set out in GATT 1994".
- On 22 April 2020, 26 WTO Members (including the EU-26 and the United States, but excluding China and India), accounting for 63% of global exports, and 55% of global imports, of agriculture and agri-food, committed "not to impose agriculture export restrictions", and agreed that "emergency measures related to agriculture and agri-

⁶⁷ See footnote 55 above.

⁶⁸ See [Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU](#), 30 April 2020, Job/DSB/1/Add.12.

⁶⁹ See, for example, CUTS International, [Pledge for Trade as a Global Public Good](#), urging WTO Members to "avoid raising trade disputes at the WTO as under the existing mechanisms and instead constitute an arbitration panel for resolving disputes without resorting to trade restrictive measures".

⁷⁰ See the discussion in Section III.1.c above, WTO Information Note, *Transparency – Why It Matters At Times of Crisis*, 7 April 2020, https://www.wto.org/english/tratop_e/covid19_e/transparency_report_e.pdf and the WTO's dedicated website, *COVID-19: Trade and Trade-Related Measures*, https://www.wto.org/english/tratop_e/covid19_e/trade_related_goods_measure_e.htm. Also the WTO's Trade Policy Review Mechanism (TPRM) may play a role in this respect.

⁷¹ G20 Trade and Investment, [Ministerial Statement](#), 30 March 2020.

⁷² G20 Extraordinary Agriculture Ministers Meeting, [Ministerial Statement on COVID-19](#), 21 April 2020.

⁷³ [Declaration on Trade in Essential Goods for Combating the COVID-19 Pandemic](#), 15 April 2020.

food products designed to tackle COVID-19 must be targeted, proportionate, transparent, and temporary”. They also committed to “engage in a dialogue to improve our preparedness and responsiveness to regional or international pandemics, including multilateral coordination to limit unjustified agriculture export restrictions, in particular at the WTO”.

Other proposals to further discipline export restrictions are on the table.⁷⁴ Of particular note is a “bargain”, presented by Profs. Evenett and Winters, between importing and exporting countries of medicines and medical products whereby (i) importers would eliminate import tariffs (or make recent tariff cuts permanent) in exchange for (ii) a guarantee that exporters drop current export restrictions and only impose new ones under strict conditions (cogent rationale; limited in time and product coverage; expressed in quantitative terms/percentage reduction in historical exports, without reducing exports by more than 50%, rather than in the form of export authorizations).⁷⁵

⁷⁴ See, for example, CUTS International, [Pledge for Trade as a Global Public Good](#) (proposing, *inter alia*, to “[a]void export restrictions on food and pharmaceutical items and products including medical devices”) and EUROCHAMBRES, [Letter to the EU Commission](#), 15 April 2020 (calling to “keep export controls for protective equipment to a minimum and temporary and ensure that such controls do not take place within the European Single Market as per Commission guidelines”).

⁷⁵ Simon Evenett and Alan Winters, [Preparing for a Second Wave of COVID-19: A Trade Bargain to Secure Supply of Medical Goods](#), Global Trade Alert, 26 April 2020.