



*Policy Brief No. 1*

# SEEKING MARKET ACCESS BEHIND THE VEIL OF COMBATING COVID-19

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## **BACKGROUND**

In the wake of the COVID-19 pandemic, some WTO Members have recently made proposals for negotiating new rules and disciplines on international trade in order to combat the health crisis. This policy brief analyses the implications of the proposals contained in two submissions made recently at the WTO. The joint submission by New Zealand and Singapore<sup>i</sup> are in the form of a draft declaration seeking a commitment from WTO Members for ensuring that “during the COVID-19 global pandemic, production and trade in essential items such as medical supplies and food continue to flow freely to their intended destinations”. It seeks to create new obligations in two categories of essential goods supposedly to combat COVID-19 - medical products and agricultural products.

The submission<sup>ii</sup> by 48 WTO Members, including the United States, European Union, Japan, Australia, Brazil, states that: “As Members take measures to address the pandemic, it is imperative that these measures do not adversely affect trade in agriculture and agri-food products which would ultimately have negative impacts on the food security, nutrition and health of Members and their populations”. The submission articulates the commitment of these Members to “help ensure well-functioning global agriculture and agri-food supply chains in response to this crisis”.

While the broad objective of these proposals is to combat the pandemic through taking, or abjuring, trade-related measures, it would require WTO Members to take binding commitments, particularly in policy areas related to market access. The commitments proposed in these two submissions would have far-reaching and adverse impacts on India and many other developing countries. On the other hand, most of the developed countries are likely to be the primary beneficiaries if the entire WTO Membership accepts the proposals. This policy brief analyses some of the key elements of the two proposals and highlights their implications for India.

## ESSENTIAL ELEMENTS OF THE PROPOSALS

### *1. New Zealand – Singapore Joint Submission*

In respect of issues related to market access and trade in goods, following are the elements of the New Zealand - Singapore joint submission:

- Willing WTO members to eliminate customs duties on a list of products specified in Annex I of the submission. This list comprises 5 agricultural and 119 non-agricultural products. The agricultural products include food preparations, protein concentrates, undenatured ethyl alcohol and spirits, liqueurs not elsewhere specified. The non-agricultural products are predominantly medical products including pharmaceuticals, consumables for hospital and laboratory use, medical equipment and personal protective products.
- Countries participating in the joint initiative will not apply export prohibitions or restrictions on the products specified in Annex I.
- Participants will endeavour not to apply export prohibitions or restrictions with respect to agriculture and marine products specified in Annex II of the joint submission.
- A participant may enter into arrangements with another participant to eliminate customs duties on products in Annex II.

Following are the proposals for facilitating trade in essential goods:

- Consistent with their obligations under the Trade Facilitation Agreement, the participants will expedite and facilitate the flow and transit of all products listed in Annex I and Annex II through their respective sea and airports.
- Participants will endeavour to expedite the release of such products upon arrival. This would require the participants to adopt or maintain procedures allowing for submission of import documentation and other required information in order to begin processing prior to the arrival of products.
- Participants will endeavour to abide by the World Health Organization International Health Regulations (IHR) to allow free pratique to cargo ships –the permission to enter a port, discharge or load cargo or stores.
- Participants will endeavour to facilitate, entry, transit and departure of air cargo containing essential medical supplies in accordance with the ICAO COVID-19 Declaration, adopted by the ICAO Council on 9 March 2020.

### *2. Joint submission by 48 WTO Members*

Following are some of the elements of the joint submission by 48 WTO Members:

- To ensure that supply chains remain open and connected.
- To exercise restraint in establishing domestic food stocks of agricultural products that are traditionally exported so as to avoid disruptions or distortions in international trade.
- Not to impose agriculture export restrictions and refrain from implementing unjustified trade barriers on agriculture and agri-food products and key agricultural production inputs.

- Emergency measures related to agriculture and agri-food products designed to tackle COVID-19 must be targeted, proportionate, transparent, and temporary, and not create unnecessary barriers to trade or disruption to global supply chains for agriculture and agri-food products. Any such measures are to be consistent with WTO rules.
- To inform the WTO as soon as practicable of any trade-related COVID-19 measures affecting agriculture and agri-food products, including providing scientific evidence in accordance with WTO agreements if necessary, to ensure transparency and predictability. Members should be given opportunities to review new measures.
- To ensure that updated and accurate information on levels of food production, consumption and stocks, as well as on food prices is widely available.

## IMPLICATIONS OF THE PROPOSALS

Implications of the proposals contained in the two submissions are examined below. It may be noted that the examination does not include issues related to trade facilitation.

### *a. Taking long term commitments for resolving serious, yet short term, problems*

No doubt, the COVID-19 pandemic has posed and continues to pose, severe challenges on multiple fronts. Nevertheless, there is little credible evidence so far in public domain, which might suggest that the crisis is here to stay permanently. It is relevant to mention that the operative part of the joint proposal by New Zealand - Singapore appears to suggest that the commitments required to be taken by the participating countries would not be confined to the period of the COVID-19 pandemic, but would be *permanent*. In the preamble of the New Zealand - Singapore joint submission, it has been specified that that “this initiative supports the global response to the COVID-19 pandemic”. This might create a misleading impression that the commitments contained in the proposals are limited to responding to the pandemic. However, in the operative part of the submission, there is nothing to support this impression.

The conclusion that the commitments would be permanent is reinforced by the text in paragraph 13 of the joint submission. In this paragraph, it has been specified that “the paragraphs of this Declaration and the product coverage specified in Annex I and Annex II and consider whether, in the light of the COVID-19 pandemic, or changes to the HS nomenclature, the paragraphs of this Declaration should be amended or Annex I and Annex II should be updated to incorporate additional products.” This suggests that the proponents envisage the commitments to be permanent, and not merely limited to the period for combating COVID-19.

*b. Eliminating tariffs on medical products and other products in Annex I of the New Zealand- Singapore joint submission would result in the extremely skewed and asymmetric bargain to the disadvantage of most developing countries*

The average bound tariffs of the products contained in Annex I of the New Zealand - Singapore joint submission shows a marked trend - high bound tariffs in most developing countries and low bound tariffs in developed countries. To illustrate, average bound tariffs on these products in India (40%), Indonesia (35%) and South Africa (25%) are significantly higher than the average bound tariffs in the New Zealand (7%), US (1.5%) and the EU (1.9). Thus, eliminating tariffs would not represent a balanced outcome. It would require developing countries to make significant market access concessions, without securing reciprocal market access gains in developed countries. Although developed country Members are not expected to demand reciprocity in tariff negotiations, the implication of agreeing to the proposal would result in an extraordinarily skewed and asymmetric bargain which would be to the disadvantage of most developing countries.

An argument could be made that consumers in developing countries would benefit from lower-priced imports during the ongoing pandemic, if these countries bind their tariffs on medical and other products in Annex I at zero. It is true that consumers stand to benefit from lower prices. However, the same result can also be achieved by developing countries by unilaterally reducing their tariffs to zero, if they so desire.

*c. If the countries participating in the New Zealand-Singapore initiative eliminate their tariffs on medical products and other products in Annex I, the primary beneficiaries will be the exporters - almost entirely based in developed countries*

Global exports of products included in Annex I of the New Zealand - Singapore joint submission was \$ 1 trillion in 2018. However, the distribution of exports is substantially tilted in favour of developed countries. They accounted for 80% of global exports of these products, with Germany (14.9%), US (10.1%), Switzerland (8.4), Belgium (6.4), Ireland (6.4), Netherlands (5.3%), France (5.1%), UK (4.5%), Italy (3.1%), and Singapore (2.3%) accounting for two-thirds of global exports. Among the developing countries, the main exports included China (7.6%), and India (1.9%). Thus, binding tariffs on these products at zero would benefit the exporters, most of whom are based in developed countries. Further, many developed countries have already declared their intention to become self-sufficient in medical products. This would diminish the already low export prospects of developing countries in these products.

*d. In the absence of tariff protection, most developing countries would find it extremely difficult to create and sustain a vibrant domestic industry for medical products*

It is a fact that except for China and India, the share of other developing countries in global exports of medical and other products in Annex I of the New Zealand - Singapore joint submission is less than 1%. This reflects the underlying lack of productive capacity and competitiveness in these countries in Annex I products. Given this imperative, if some

developing countries seek to create a manufacturing base for medical and other products included in Annex I, then the nascent industry will require tariff protection for a few years. The New Zealand - Singapore joint submission will eliminate this possibility. In the absence of tariff protection, it is likely that manufacturing firms in most developing countries in medical and other products would fail to survive import competition. This would also have adverse implications for the economic revival of developing countries after the pandemic gets over.

*e. Enhancing import dependence for medical and other products in Annex I in developing countries*

The ongoing COVID-19 pandemic has highlighted the need for countries to be self-sufficient in products that may be required for current and future medical emergencies. This has become a stated goal of even developed countries, such as France. As tariffs in most developed countries are already very low, eliminating the tariffs is not likely to have much adverse impact on their productive capacities and production. On the other hand, without tariff protection, most developing countries would be unable to create a vibrant domestic industry for manufacturing medical and other products listed in Annex I of the joint submission by New Zealand and Singapore. Thus, the developing countries would remain almost perpetually dependent on imports from firms in the developed countries during the COVID-19 pandemic and for the perpetuity. Overall, it may not be an exaggeration to state that implementing the proposal on binding tariffs at zero would enhance import dependence of developing countries on the developed world, but would continue to provide an opportunity to developed countries to strive for self-sufficiency in these critical products.

*f. Prohibiting export restrictions could jeopardise the ability of many developing countries to secure the health and livelihood of its citizens*

The impact of export restrictions on food security of the vast population in developing countries is indeed complex, and not straight forward, as made out by some analysts. The immediate effect of export restrictions on global markets would be to limit the global availability of foodstuff. Shortage of foodstuff may lead to increase in their international prices, particularly if the restricted volume of products is not substituted by other sources. When export restrictions are simultaneously imposed by several exporters, they may have a cumulative effect that increases the upward pressure on world prices, making them more uncertain and volatile. This would adversely affect the food security of the poor and vulnerable consumers, particularly in Net Food Importing Developing Countries (NFIDC).

Net food exporters institute export restrictions with the aim of protecting their domestic consumers from rising prices and ensuring the availability of food grains at affordable prices in the domestic market. Generally, food security remains the major concern for restricting exports, along with the objective to ensure stabilisation of domestic prices, especially in nations that have a large percentage of food-insecure populations<sup>iii</sup>. Hunger and food shortages can present national security threats as well as societal problems<sup>iv</sup>. Food riots

during the 2007-2008 crisis<sup>v</sup> show the significant domestic upheaval that might result if domestic prices are not stabilised and domestic supply not ensured<sup>vi</sup>. Some literature seems to suggest that export restrictions were not the ‘key driver’ of price spikes, but rather were a factor which put significant additional upward pressure on prices, whose rise had been initially fuelled by other factors. These studies are, however, in the limited context of the 2007-08 food crises<sup>vii</sup>.

Amidst the COVID-19 Pandemic, many countries such as Cambodia, Egypt, El Salvador, Romania, Honduras, Kazakhstan, Myanmar and Russia, among others, has already initiated export restrictions to shields their people from steep price fluctuations. From India’s perspective, foregoing the right to impose restrictions on exports of food grains can have an adverse impact on domestic food security. This is best understood by taking a hypothetical scenario involving two years of a successive bad crop. On account of higher international prices, private players in India would prefer to export food grains in large quantities to the highest bidder internationally, rather than sell in the domestic market. In the first year, the government might be in a position to bridge the shortfall in the domestic availability of food grains by selling from its public stockholding. With public stockholding being depleted, the full brunt of the prohibition on export restrictions would be felt in the second year. Without the option of using export restrictions to increase the availability of food grains for preventing domestic prices from flaring up, the government would be compelled to import from the international market. Given the size of the population to be fed in India, this would result in a substantial surge in global demand, thereby leading to a further increase in global prices and speculations. It is apprehended that rice would be particularly impacted, as less than 10 percent of global production of this product is traded internationally. This upward pressure on global prices on account of an increase in demand from India will also hurt NFDCs. Thus, prohibiting export restrictions on foodstuff may actually also have adverse consequences for NFDCs.

Overall, prohibiting export restrictions would adversely impact food security in India and some other developing countries with a large population.

*g. Despite the prohibition on export restrictions, during times of global shortages, poorer countries might not be able to access medical products and food at affordable prices*

During times of shortages, a producer will sell to those who are willing to pay the highest price. Developing countries are unlikely to match the deep pockets of the buyers in developed countries. The products in short supply in global markets are likely to be cornered by rich buyers, and access of poor countries to these products would not get enhanced by prohibition on export restrictions. Thus, banning export restrictions on medical products and food items is unlikely to be a panacea if developing countries face shortage of these products, including those aimed at combating COVID-19.

- h. What the developed countries failed to achieve through agriculture negotiations, and sectoral negotiations on chemicals and health care products, during the Doha Round, is now sought to be pushed under the thinly veiled pretext of combating COVID-19*

During the initial stages of the Doha Round of Multilateral Trade Negotiations, an attempt was made by the developed countries to open the agriculture markets in developing countries. The blended formula approach for reducing agriculture tariffs, as proposed by the US and EU in August 2003, would have resulted in substantial reductions in bound rates of developing countries. This would have included the products contained in Annex II of the New Zealand - Singapore joint submission. However, on account of stiff opposition from many developing countries, including the G-20 coalition spearheaded by Brazil, India and Argentina, this initiative could not make much progress. Further, many of the products for tariff elimination, included in Annex I of the New Zealand - Singapore joint submission, were also considered for tariff elimination under the sectoral initiative on chemicals and health care products during the Doha Round. However, this attempt too, did not succeed. Thus, the joint submission seeks to revive some of the tariff reduction/ elimination initiatives mainly of the developed countries, that were considered, but rejected by many developing countries during the Doha Round.

- i. Arrangements for tariff elimination on agriculture products could undermine MFN obligation*

In the joint submission by New Zealand - Singapore it has been proposed that a participant may enter into arrangements with another participant to eliminate customs duties on products in Annex II. What these arrangements could be, has not been specified in the submission. Would the “arrangements” be confined to deciding the specific products in Annex II on which tariffs would be eliminated? Would the “arrangements” determine whether the tariff elimination would be applied on an MFN-basis to the entire WTO Membership, or would its application be confined to the participants of the New Zealand - Singapore initiative? If tariff elimination under New Zealand - Singapore is extended only to a subset of the participants and not the entire WTO Membership, then it cannot be justified under any of the existing exceptions to MFN obligation. Thus, arrangements for tariff elimination on agriculture products could undermine the MFN obligation, a cardinal principle on which the foundation of GATT/WTO rests.

- j. Food security in developing countries could be compromised if they exercise restraint in establishing domestic food stocks of agricultural products*

The submission by 48 WTO Members, including the US and the EU, proposes that countries exercise restraint in establishing domestic food stocks of agricultural products. Multiple objectives underpin the attempts of developing countries to establish domestic food stocks, including the following: stabilising prices, particularly during times of scarcity; ensuring the availability of food stocks, if harvests fail; preventing distress sales by farmers; reducing downward pressure on prices; and ensuring that the farmers have the purchasing power to

procure food grains when the need arises. As a satisfactory harvest in one crop season may not necessarily imply that there would be a satisfactory harvest in the subsequent season, developing countries with the large population generally tend to build stocks, whose quantity might go beyond annual needs. Overall, establishing domestic food stocks is aimed at ensuring food security of the poor, particularly in times of food scarcity. If countries are compelled to exercise restraint in establishing domestic food stocks, then this basic objective will be substantially compromised.

## CONCLUSION

The two submissions discussed in this policy brief appear to use the pandemic as an opportunity for extracting binding concessions from developing countries at the WTO. The various proposals contained in the two submissions could have the following adverse consequences for many developing countries: first, hinder their attempts at economic recovery in the post-COVID-19 phase, as developing countries would not be able to give a fillip to their domestic producers by imposing tariffs on a large number of products; second, discourage domestic manufacturing capabilities in medical and other critical products, thereby making these countries dependent on imports from developed countries; third, lead to asymmetric bargains at the negotiating table, with market access outcomes skewed heavily against most developing countries; and fourth, undermine food security concerns in many developing countries. Some of the gains projected from the proposals can be garnered by developing countries by temporarily reducing tariffs on critical products and without taking binding commitments on eliminating tariffs on these products on a permanent basis. It would be in the interest of India and many developing countries to retain the right to impose tariffs if it can facilitate their efforts at boosting their manufacturing sector and giving a fillip to their agriculture.

## ENDNOTES

<sup>i</sup> WTO document G/C/W/777 dated 16 April 2020. Response to the COVID-19 Pandemic: Ensuring the free flow of trade in Essential goods for Combating the COVID-19 Pandemic.

<sup>ii</sup> WTO document WT/GC/208 dated 22 April 2020. Responding to the COVID-19 pandemic with open and predictable trade IN agricultural and food products

<sup>iii</sup> G. Anania, Agricultural Export Restrictions and the WTO: What Options do Policy-Makers Have for Promoting Food Security, 2013 (ICTSD).

<sup>iv</sup> Jim McGovern, Food Security Is National Security, World Food Program USA (2011) <<http://wfpusa.org/blog/food-security-national-security>>, National Intelligence Council, Intelligence Community Assessment: Global Food Security I, <http://www.dni.gov/files/documents/Newsroom/Reports%20and%20Pubs/Global-Food-SecurityICA.pdf>. as cited in Marsha A. Echols, Right to Food, National Security and Trade: Resolving Regime Conflicts, 20 UCLA J. Int'l L. Foreign Aff. (2016) 163 at 204-207.

<sup>v</sup> U.N. Dept. Econ. & Soc. Aff., The Global Food Crises, in THE GLOBAL SOCIAL CRISIS 61-74 (2011) at <http://www.un.org/esa/socdev/rwss/docs/2011/chapter4.pdf>.

<sup>vi</sup> Arezki R. and M. Brückner, Food Prices and Political Instability. IMF Working Paper WP/11/62 (2011) at <<https://www.imf.org/external/pubs/ft/wp/2011/wp1162.pdf>>.

<sup>vii</sup> C.P Timmer, Causes of High Food Prices, ADB Economics Working Paper Series 128, Asian Development Bank, (Manila. October) (2008), R. Trostle, Global Agricultural Supply and Demand: Factors Contributing to the Recent Increase in Food Commodity Prices, Outlook Report WRS-0801, (ERS, USDA, Washington DC) (2008)

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