
INTERNATIONAL TRADE (FEAT. COVID-19 PANDEMIC)- SPECIAL
REFERENCE TO USA

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ABSTRACT

The spread of the deadly virus has led to imbalance in the economy vis-à-vis international trade. The study of effects of the covid-19 on trade among nations is important to take measures to minimise the losses once the corona curve flattens, and in order to take precautions before. The study has mainly focused on trade in medical supplies and tariff application by MFN, primary source of information is World Trade Organisation research on “Trade in Medical Goods in the context of tackling covid-19” for the same. It also refers to the blow in economies of USA, China and India, with main focus on USA. With the current situation, there is most definitely to be a shift in trade paradigm, from free-trade to healthy-trade. Further, there is a visible demand and supply shock and it convincingly pulling big drops in global trade flow level, also affecting the supply-chain contagion. Supply disruptions originating from hubs are very likely to harm sectors of other nations. The relevant international rules and laws, i.e., GATT/WTO Rules, TRIPS Agreement, IHR, et al, during the times of such crisis and their application, especially for IPR-related issue post vaccine development, has been duly dealt with. The findings show that fall in GDP in the first 2 quarters has been worse than the 2008-9 global crisis. Member states of GATT are suggested to rely on waiver laws, if possible. With disruption in global supply chains and sharp reduction in global demand, world trade is estimated to contract by 15% in the year 2020 due to the outbreak. With all certainty, international trade has been strongly influenced by the covid-19.

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INTRODUCTION

In the end of 2019, Wuhan, China was hit by the worst pandemic of the decade, which was, in no time, spread globally. Before the Covid-19 pandemic, the world saw the 2009 pandemic caused by an influenza A (H1N1) Virus with estimated deaths lying somewhere between 1-4 lakhs.

The deadly Covid-19 (Coronavirus Disease 2019) is an infectious disease causing respiratory illness. It includes symptoms like fever, dry cough, breathing problem among others. The World Health Organisation declared the Novel Coronavirus as a pandemic on March 11, 2020. As of June 6, 2020, around 213 countries had been affected by the Covid-19 pandemic, with 6,535,354 confirmed cases and over 387,155 deaths globally.

The states have taken drastic measures to contain the spread of the virus, one of them being restriction to economic activities, which has caused a halt in the international trade as well, along with other drawbacks the restriction might have on the economy. Other protective measures adopted and/or recommended to the public are to wash hands frequently, social distancing (of atleast 3 feet), avoid touching of eyes, nose and mouth and seeking immediate medical care in case of symptoms being shown.

It is more than obvious that the pandemic has had a global impact on the trade and economy and the situation only seems to be worsening with time.

“The spread of the new coronavirus is a public health crisis that could pose a serious risk to the macro economy through the halt in production activities, interruptions of people's movement and cut-off of supply chains” - Japanese Finance Minister Taro Aso. G20 gathering in Riyadh, Saudi Arabia, February 24, 2020.²

SHIFT FROM FREE-TRADE PARADIGM TO HEALTHY-TRADE PARADIGM

We're now in a new “healthy trade paradigm”, the world will no longer focus on free trade, which was earlier the centre of issue on trade perspective, with many agreements being formulated for the same. The free trade theory was derived from theories invented by Adam

² UNCTAD, “Global trade impact of the Coronavirus (Covid-19) Epidemic” (UNCTAD, 2020)

Smith in 1776 and Ricardo in 1890, in which the bottom line was that it would be economically beneficial to reduce tariff as well, and not just tariff barriers.

Even before covid-19, the free trade paradigm was in jeopardy vis-à-vis many factors. An observation was made noticing the widening disparity and degradation of labour and environmental rights among others.

Healthy trade would be indispensable not just at national level but also at sub-state level. Now, the shift could be observed at three levels where the trade takes place, i.e., Multi-lateral, Bilateral and Domestic.

INTERNATIONAL LAWS VIS-À-VIS TRADE DURING PANDEMIC

The GATT/WTO rules with respect to health-related aspect of trade would come to play during the time of pandemic. The regime to be applicable is the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement). This particular agreement allows the states to impose measures vis-à-vis tariff and import bans, with the degree of limitation or constraint varying. If any state is unfavourably affected by such imposition or ban, it may resort to WTO Dispute Settlement Body, considering its record on settlement of disputes and precedent set. Now, even though the Appellate body is claimed to be a paralysed organisation as of now³, the dispute settlement body is known to have one of the most advanced dispute settlement mechanism.

IPR- The intellectual property rights is a critical area of law that holds strong relation to pandemic regulation, intellectual property is that area of law which will be stumbled upon sooner or later. Research and development of vaccine for the virus is consistent during this time, with probable chances of request for patent protection in the future. Thus, in order to avoid monopoly that maybe created by grant of exclusive rights to the patent holder so as to manufacture the pharmaceutical products, aid may be taken from the TRIPS Agreement(Trade-Related Aspects of Intellectual Property⁴), which may convert the protection into a multilateral issue.

³ Geraldo Vidigal, “Living Without the Appellate Body: Multilateral, Bilateral and Plurilateral Solutions to the WTO Dispute Settlement Crisis” (2019), 20 Journal of World Investment & Trade, 862-890.

⁴ Marrakesh Accord establishing the WTO, Annex 3.

The two aspects of right in dilemma are the intellectual property rights and right to health with regards to medicine access, thus reference must be given to the Doha Declaration (Declaration on the TRIPS Agreement and Public Health), adopted in 2001 for the same purpose. This particular declaration further expands Article 30 and 31⁵ of the TRIPS Agreement which mentions the exceptions to patent protection and allows the grant of manufacturing rights to producers other than the patent holder(s), even without his permission, during the times of national emergency or other urgent circumstances.

WHO under Article 18(2) of IHR may recommend the state parties certain “Restrictive Trade Measures” with respect to baggage, containers, cargo, conveyances, goods and postal parcels. Now, these recommendations may be in conflict with WTO laws. As of now, WHO has not given any such recommendations, thus conflict is only a theoretical possibility.

TRADING OF MEDICAL PRODUCTS

Medical products relevant during the current situation are classified into four main categories:

1. Medicines (Pharmaceuticals)
2. Medical Technologies and other equipment
3. Medical Supplies (consumables for laboratory and hospital use)
4. Personal Protective Products- sanitizers, hand soaps, face masks, protective spectacles

From 2018, there has been a 5% increase in import of medical products, reaching to a total of \$1011 billion. Combining it with exports, trade in medical product equals about 5% of the total of merchandise trade in 2019 (i.e., \$2 trillion)

United States has been the largest importer of medical products in the last three years, followed by Germany and China, all three together making 34% of the total world import in 2019. Other importers in the top 10 include Belgium, Netherlands, Japan, UK, France, Italy and Switzerland.

⁵ Id., art 30-31.

Personal protective products make for 13% of the total medical imports in 2019 with import value of \$135 billion. Around 17% of export came from China, followed by Germany and the US. More than 40% of the world export of PPP comes from these three countries combined.⁶

MFN APPLIED TARIFF- The average Most-favoured nation applied tariff on medical products relevant to covid-19 is 4.8% for WTO Members. Four members, i.e., Hong Kong, China; Macao, China; Iceland; and Singapore do not levy any tariffs at all for all medical products. Average tariffs of 31 members is between 0 and 2.5% and average tariffs of 35 members is between 2.5 and 5%.

Among the medical products, average MFN applied tariff on medicine is the lowest tariff at 2.1% with more than half of the members having no tariff on medicine. Average MFN applied tariff on medical equipment (including ventilators and respirators) is 3.4% with 19 members providing duty-free access. The average MFN tariff on medical supplies is 6.2% which is relatively high. Lastly, the tariff on covid relevant PPP is 11.5%. The variation of tariff rate on PPP among the members is extensive, with 29 members applying average duty of 5% or less and 47 members applying an average tariff of at least 15%.⁷

The WTO has had its contributions when it comes to liberalisation of trade in medical products. It's mainly been in 3 ways:

1. Tariff negotiations at the inception of WTO in 1995.
2. Pharma Agreement in the Uruguay Round (including its four subsequent reviews).
3. Expansion of IT Agreement in 2015.

This time of pandemic makes it clear that talks and contribution on liberalisation of trade in medical products by WTO (or any other organisation for that matter) has not been adequate and lacks review in many areas. Efforts to free up trade on these vital products is limited. The only time tariff on medical products was primarily considered as a matter of discussion was in Uruguay Round, that too limited.

⁶ World Trade Organization, “Trade in Medical Goods in the context of tackling Covid-19” (April 3, 2020), available at : https://www.wto.org/english/news_e/news20_e/rese_03apr20_e.pdf

⁷ Ibid.

ECONOMY BLOW

Majority of countries have sealed their borders to combat the severe outbreak. United Nations stated that the global economy might shrink by 1% in the year 2020 as opposed to the previous forecast of 2.5% jump in the economy, thus practically causing a 3.5% downturn.

As per United Nations World Economic Situation and Prospects (WESP) mid-2020 report, the global economy is expected to contract by 3.2% this year.

Due to covid-19, the global economy is expected to lose nearly \$ 8.5 trillion over the next two years, almost wiping out gains of four years preceding 2020. The economies of developed countries are expected to fall by 5%, whereas that of developing countries by 0.7%.⁸

An additional warning provided by the UN is that it may contract more if the restriction to the economic activities is extended without adequate fiscal responses. Further, position of two economies are provided in order to understand the situation better, which are as follows:

Chinese Economy

At first, the novel coronavirus had significantly slowdown the Chinese economy, which per se affected the global economy as China has been the manufacturing hub for over the last two decades. China Manufacturing Purchasing Manager's Index (PMI) fell by 22 points in the month of February 2020 which implies reduction of exports of about 2% on annual basis.⁹

According to Reuters poll, analysts expect China's GDP to have shrunk 6.5% in January-March from a year earlier. That would reverse a 6% expansion in the fourth quarter of 2019 and mark the first decline since at least 1992 when official quarterly GDP records started.¹⁰

Since February, the Chinese Government has been attentive towards the restart of economy with various measures being announced by the financial authorities to meet the firms' financial needs and also came up with policies to facilitate business operations. Measures

⁸ United Nations World Economic Situation and Prospects (WESP) mid-year update (May 13, 2020).

⁹ <https://tradingeconomics.com/china/manufacturing-pmi> (last visited on April 23, 2020)

¹⁰ <https://economictimes.indiatimes.com/news/international/business/coronavirus-to-push-chinas-q1-gdp-into-first-decline-on-record/articleshow/75155206.cms> (last visited on April 24, 2020)

include VAT Reduction, affordable transportation, reduction of utility cost, exemptions & reduction in insurance premium payments by firms, and relaxation in land use policy.

Even though Chinese economy depends heavily on trade and it's production activities for the same, policies have been issued to encourage meeting of domestic demand.

Indian Economy

The Indian Government's response to the Covid-19 has rather been a pro-active one, with a 21-day nationwide lockdown (Lockdown 1) declared on March 25, 2020 and further extended time and time again. Also, our citizens have been evacuated from the major covid hit regions. As of June 7, 2020, there've been 258,090 confirmed cases of coronavirus with over 7,207 deaths.

As predicted, Indian economy too has suffered severe impact of the covid-19 pandemic with the merchandise exports being crashed by 34.6% in March and imports by 28.7% during the same month.

Out of the total of 30 items each in the export and import basket of the country, 29 items have seen contraction in the month of March, 2020. The 2 items that had growth as recorded are iron ore exports (58.4% rise) and transport equipment imports (11.9% rise)

During the financial year 2020, India's exports have declined by 4.8% to \$314.3 billion and imports shrank by 9.1% to \$467.2 billion, hence leading to a trade deficit of \$152.9 billion.

India is more vulnerable to the situation since it's economy is already down for several quarters

Business Outsourcing(BPO), one of largest export in India, has been severely affected as lockdown has forced offices to shut down. In long term this has a tendency of leading to fewer new projects as well as fall in existing ones. United Nations Conference on Trade and Development (UNCTAD) suggested that impact on India's trade due to the outbreak could be around USD 348 million¹¹. Breaking it down further, estimated trade impact for chemical sector to be around 129 million dollars,

¹¹ <https://www.thehindu.com/business/Economy/covid-19-trade-impact-for-india-estimated-at-348-million-un-report/article30987932.ece>

automotive sector at 34 million dollars, apparel and textile sector at 64 million dollars, electrical machinery sector at 12 million dollars, metals and metal products at 27 million dollars, leather products at 13 million dollars and furniture and wood products at 15 million dollars. In case there's a 2% reduction in export of intermediate inputs from China, exports across global value chains during the year could decrease by USD 50 billion, as per UNCTAD estimates.

The government has, on March 24, 2020, announced several relief measures in areas of Income tax, Customs & Central Excise, Corporate Affairs, GST, Insolvency & Bankruptcy Code (IBC) Fisheries, Commerce and Banking Sector. The much-awaited relief is mainly provided on statutory and regulatory compliance.

3 days later, the Government also announced a relief package of Rs. 1.7 lakh crore as a safety net for those hit hardest by the lockdown and to cover insurance of the front-line medical personnel.

A Rs. 15,000 crore package was approved on April 9, 2020, for health infrastructure, to be given to state governments and UT's to develop covid-19 hospital, purchase the required medical supplies like PPE, set-up laboratories and further strengthen our health systems¹².

DEMAND & SUPPLY SHOCK: EFFECTS ON TRADE FLOW

The 'gravity equation' is one of the most reliable economic relations. It depicts the export value from one country (first nation) to another (the destination country) depending on the total destination demand (as measured by its GDP) and the combined contribution from the original (as measured by its GDP).

The output of GDPs is divided into two ranges to show the conflict. Since the distances do not change, shocks sent abroad drop well in bringing shocks (change in GDP of the origin country, i.e. with the exporter) and demand shock (changes in the GDP of a nation going there, e.g. the customer). Thinking in advance, this decays suggests two interrelated trading effects:

¹² <https://www.mondaq.com/india/operational-impacts-and-strategy/936014/coronavirus-covid-19-and-indian-economy>

1. It gets to the point where COVID-19 shocks shipping, exports will decrease, and will decrease most in the majorly affected nations.
2. Until COVID-19 is a demand shock, sales will fall, and will decline most of the international trade partners of severely hit nations.

Considering their economic importance, the demand and supply shock in the six severe hit nations will convincingly be pulling big drops in global trade flow level.¹³

COVID-19 IMPACT ON USA

Doctor Brian Monahan forecasts that US covid projections indicate that around 150 million residents and 70 million people are likely to be infected by the disease. The first case in USA was confirmed in Washington on January 21, 2020. New York has reported most cases by far, accounting for over 40% of deaths in the country, some may compare it to Wuhan, China.

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Measures- USA has taken early measures such as travel restrictions, evacuation of its citizens and approval of test kits, apart from its large scale production of the ventilators has been ordered. A nationwide ban on gathering of more than 10 people has been issued by their government. People have also been strictly directed to avoid public places and non-essential travel. Initially for only 15 days, these social distancing measures have been further adopted till April 30, as social distancing was found to be the primary way to contain the spread. Some are of the view that the measures so adopted are not stringent enough, considering the fact that it's a pandemic and many other states, even less affected ones, have ordered a complete/partial lockdown.

Travel Restrictions- As far as travel restrictions are concerned, President Donald Trump has signed a proclamation on January 31 banning entry of travellers from China and those who've transited through China any day in the last 14 days prior to the signing of

¹³ Richard Baldwin and Eiichi Tomiura, “Thinking ahead about the trade impact of Covid-19” Pg 59-69 (CEPR Press, 2019)

¹⁴ <https://www.pharmaceutical-technology.com/features/coronavirus-affected-countries-usa-covid-19-measures-impact-pharma-hotel-tourism-medical/> (Last visited on April 25 2020)

proclamation. Although this restriction is not for Permanent Residents or Permanent Visa Holders.

Emergency Bill- The US Government passed an Emergency Coronavirus Response Bill in execution to which the states will receive millions of dollars to aid the situation. A \$2.2 tn bill was approved by the US Senate to buy required medical equipment and further aid the US economy.

ECONOMIC IMPACT ON U.S.

National Economic Council Director, Larry Kudlow, states that the coronavirus outbreak’s impact on the US economy would be minimal. The U.S. Federal Reserve noted that it could result in elevated asset value and low grade corporate debt.

The travel industry is among the hardest hit industries due to the outbreak. As far as transportation is concerned, Boeing, US based Aircraft Manufacturer, has announced that there has been fall in demand from airlines. More than 200,000 flights have been cancelled only between Europe and US, which is only a fraction of the actual number of total cancelled flights.

According to US Travel Association, third highest overseas visitors in US are from China, right after UK and Japan. As per estimates made by Tourism Economics, the US tourism industry is expected to lose \$10.3bn. Due to less visitors from China, the hotel industry in the US has seen a 28% drop in customers from China. Considering the fact that, on an average, Chinese visitor stays for 15 nights, the hotel room nights lost is estimated to be around 4.6 millions in the year 2020.

COVID-19 PANDEMIC EFFECTS ON USA PHARMACEUTICAL INDUSTRY

The outbreak of the Wuhan coronavirus in China could affect the supply of finished medicines and APIs to the US. Approximately 83% of China's import lines in the US were in human form doses, and only 7.5% were APIs in 2018. A factory delay in China and a material delay due to coronavirus measures at ports could mean low production and shipping delays for American manufacturers' APIs.

With the spread of coronavirus in the EU, US pharmaceutical companies will have to fight for increased costs. Pharmaceutical company AstraZeneca has already revealed that COVID-19 is likely to affect its revenue growth by 2020.

COVID-19 IMPACT ON SUPPLIES OF API FROM CHINA, INDIA & EU

The active pharmaceutical ingredients (API) made by US pharmaceutical manufacturers are mainly imported from India (18%) and the European Union (EU, 26%), while China accounts for 13%. As of August 2019, API Supplies manufactured domestically account for 28% in the US.

API imports from Indian manufacturers have been a huge cost advantage for pharmaceutical companies in the US, but chances are that the outbreak of disease in China and its spread in the EU could limit the supply of API thereby increasing overall costs to US manufacturers and importers.

API imports from India save between 30% and 40% of the cost to US and European pharmaceutical companies, according to the US FDA, but now the reports show that covid spread can be seen in India as well, which may affect the API supply in the US from all three exporters.

MEDICAL DEVICES COMPANIES

Another industry that may be temporarily affected is of medical devices. China is the largest importer of medical devices in the US, Chinese import lines account for 39.3%. A slight reduction in productivity could mean delay in supply and loss of revenue for assemblers and manufacturers in the US.

COVID-19: US DRUG MAKERS SCOPE

The outbreak, however, presents opportunities for American companies to develop vaccines and certain drugs. US-based companies such as Johnson & Johnson, Vir Biotechnology, Novavax and NanoViricides are working on developing coronavirus vaccines.

Biopharmaceutical companies such as Abbvie and Gilead are expected to benefit from higher sales of their existing products Kaletra and Favilavir, respectively.

FDA CHECKS ON CHINESE PLANTS

The US FDA conducts 500 annual inspections of Chinese medicinal device plants, food and pharmaceuticals. Its inspection in China scheduled for February 2020 was postponed due to travel warning advice issued by the US State Department. Most of the surveillance inspection scheduled for March are for medical products and are scheduled to be postponed.

The postponement could mean less surveillance which in-turn raises doubts on the products' merits, although the FDA currently sees no reason to panic.

SUPPLY CHAIN CONTAGIAN

In early March 2020, covid-19 impact was mainly felt in China with 90% of the reported cases. Other two hard hit nations were Japan and Korea, in that order. These three nations are in the centre of the global supply chain for manufactured goods and/or industrial inputs. Now, two main features for the covid supply chain contagion are as follows:

1. China is centrally positioned in the global network of production and trade, specifically when it comes to textile sector.
2. As far as textiles are concerned, Italy, China and US are hearts of factory Europe, factory Asia and factory North America respectively, with no such hubs in South America and Africa.

Similarly when it comes to Information and Communication Technology(ICT) Sector, China, Japan, Korea and Taiwan are co-hubs of factory Asia.

Hence, supply disruptions originating from these hubs are very likely to harm the sectors of other nations.¹⁵

¹⁵ See supra note 11.

CONCLUSION AND REMARKS

With all certainty, it can be said that the international trade is in danger due to Covid-19 pandemic. Also considering the fact that US was already in a trade war with its trading partners, especially China, couple it with supply chain disruption and it may cause a push to repatriate supply chains. The last global crisis was seen during the 2008-09, said to have steepest fall of world trade ever recorded and the deepest fall since the great depression. At this point it can be said that the hit might be as severe or even worse than the 2008-09 global crisis as fall in GDP (Gross Domestic Product) in the Quarter 1 & 2 are worse than what was experienced in the 2008-09 crisis. Also, unemployment rate is falling at a rather significant rate. Best approach right now would be to hope for the best and be prepared for the worst of situations. Not due to the pandemic, but rather provoked by the Chinese wage hikes, the Japanese MNCs have had already started to diversify the Foreign Direct Investment destinations away from China in the recent years. This pandemic has also shown that exclusive reliance on only one nation for supply of a particular product only increases the risk. The companies may adopt to more domestic approach towards production and sourcing due to the pandemic, which may result in sustained reduction of trade globally. Many states may rely on waiver laws during this time, and GATT post-pandemic, however, support of WTO is needed for the waiver, and also due to the cumbersome provisions, it is expected that some may not focus on the laws entirely and rather depend on seeking a formal apology later, which though sounds satirical, makes sense nonetheless. Information and Communication Technology (ICT) is intensively being used by firms to manage the global network and in coordinating global sourcing. With disruption in global supply chains and sharp reduction in global demand, world trade is estimated to contract by 15% in the year 2020 due to the outbreak.