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POSITION | FOREIGN TRADE POLICY | COVID-19

Export Controls and Export Bans over the Course of the Covid-19 Pandemic

Export Restrictions Impair Ability to Respond to the Crisis

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Current State of Affairs and Policy Recommendations

- Export restrictions are not a solution to supply shortages. Quite the contrary, they send a devastating signal and thus cause domino effects. No country produces all the products needed for medical care or the necessary intermediate products. If every country holds back its goods, no country will have all the (medical) products needed to cope with the pandemic.
- Export restrictions on personal protective equipment (PPE) can cause production abroad to come to a standstill as PPE are required for certified cleanroom production – particularly in the chemical and pharmaceutical sectors. As a result, the worldwide production of urgently needed goods, which are particularly required for intensive care units in hospitals, could be endangered.
- Export restrictions are also delaying the necessary conversion of industrial production capacity for medical products, which are now urgently needed. This applies both to necessary basic materials and components for further processing and to deliveries to markets.
- The EU Commission renewed its export restrictions for certain PPE in late April, requiring consultations between national authorities and the EU. Instead, the EU should quickly phase out these restrictions to strengthen regional and global value chains. Furthermore, as time is a scarce resource in the fight against pandemics, the EU should avoid new bureaucratic barriers.
- The G20 countries should quickly agree to dismantle all already erected barriers and not to create new barriers to trade in medical products or the required intermediate products.
- In order to prevent further bottlenecks, World Trade Organization (WTO) members should notify the WTO of new restrictive trade measures. The WTO should process and publish these in a timely manner.
- The G20 countries should set up a forum with representatives from governments, multilateral organizations, non-governmental organizations, and industry. This could serve as a clearing house for transparent and critical information on the status, problems and solutions of the global supply chain and develop recommendations for crisis management.

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Background

Global trade will experience a sharp drop due to the Covid-19 pandemic; the World Trade Organization (WTO) expects a decline between 13 and 32 percent this year, depending on the length of the containment periods in the major economies. In addition to production losses caused by employee illness and a shutdown of production due to infection control measures, national export restrictions are hurting regional and global value chains. These not only have a negative impact on production and sales, but also send a disastrous signal and cause domino effects: Just-in-time production has become impossible in the current situation, stocks are being built up where previously there were hardly any or none, and companies have to increasingly restrict their logistics activities. While the first export restrictions were imposed mainly in Asian, Arab and European countries, the United States and numerous Latin American and Eastern European countries have now also undertaken such measures (as of 24 April 2020). The restrictions mostly target personal protective equipment (PPE) such as masks, gloves, and protective clothing, as well as production inputs for medicines. In addition, such restrictions are being discussed for the area of medical equipment (ventilators). Since production processes are deeply integrated into global value chains, the results of these restrictions are the opposite of what was intended: Export restrictions fuel PPE shortages.

So far, there is no centralized registration of the new trade barriers. The WTO has set up a website compiling relevant information for international trade in times of the Corona crisis. However, due to often incomplete notifications of new measures, the WTO information is also insufficient. According to the WTO, by late April 2020, 33 countries and the European Union have notified 92 trade and trade-related measures (including export restrictions and bans, exceptional and temporary criteria, suspension of compulsory certification, trade facilitation) to the WTO (as of 24 April 2020). Of these, twelve measures were temporary export bans (Egypt, Albania, Australia, Kyrgyzstan, Northern Macedonia, South Korea, and Thailand) and three measures indicated temporary implementation of export licensing requirements (Costa Rica, European Union, and Ukraine). The actual number of export restrictions is likely to be much higher, however, as some countries, such as the United States and India, have not yet notified their export restrictions to the WTO[1]. The organization's secretariat estimates that as of 22 April 2020 "[…] 80 countries and separate customs territories have […] introduced export prohibitions or restrictions as a result of the COVID-19 pandemic, including 46 WTO members (72 if the EU member states are counted individually) and eight non-WTO members." According to the WTO, most of the restrictions target items listed by the World Customs Organization (WCO) as relevant in fighting the pandemic (Covid-19 test-kits, personal protective equipment, thermometers, disinfectants, medical devices, medical consumables, and soap). However, 17 countries have also restricted the export of foodstuffs.[2]

In addition, the distinction between supposedly essential and non-essential branches of production and services in numerous countries have caused distortions in global value chains and production networks. In some countries, for example, exporters must provide evidence that exported goods will be used in essential branches of production/products in the importing country. Such a certification obligation (e.g. for plastic granulate, screws, and cables which are also urgently needed for the manufacture of respiratory equipment) causes a worldwide patchwork of different definitions and regulations. The resulting legal chaos, combined with considerable lack of transparency, leads to enormous legal uncertainty for companies and a massive amount of bureaucracy, which further hampers trade.

[1] An early indication for this was a Global Trade Report published in March 2020 finding that at least 54 governments had imposed a total of 46 export restrictions on medical goods since the beginning of the year – 33 of these by 21 March alone. Global Trade Alert, Tackling Covid-19 Together, 23 March 2020, <https://www.globaltradealert.org/reports/51> (accessed 24 March 2020).

[2] WTO, *Information Note: Export Prohibitions and Restrictions*, 23 April 2020, p. 6-7, <https://www.wto.org/english/tratop_e/covid19_e/export_prohibitions_report_e.pdf>.

Worldwide Export Restrictions: Selected Examples

In the course of the corona pandemic, ever more restrictions are being imposed worldwide on the export of goods considered by governments to be essential to directly combat the disease. Because these goods are also urgently needed in the manufacture of necessary products for medical care, the WCO, WTO, and the Organization for Economic Cooperation and Development (OECD) are collecting information on export restrictions. The following presentation of selected cases does not represent a comprehensive status quo.

Export Restrictions of the European Union

Regrettably, the EU, which is otherwise a champion of open markets, is one of the countries that imposed export restrictions. With its implementing regulation 2020/402, the EU made the export of personal protective equipment (PPE) subject to authorization until the end of April.[3] This means that exports from the EU are prohibited unless a license is obtained. The granting of such licenses is limited to exceptional circumstances that require extensive checks. Shortly after, the EU revised its regulation (Implementing Regulation 2020/426) and issued guidelines thereby effectively lifting the restrictions for EFTA. However, the restrictions on exports to other third countries remained in place. In mid-April, the commission announced that further adjustment would be made so that from 26 April 2020 export licenses would have to be obtained for protective masks only.[4] However, this has not materialized. With Regulation EU 2020/568, the EU continues to control the export of protective spectacles and visors, mouth-nose-protection equipment, and protective garments. Furthermore, the Commission will monitor national licensing authorities.[5] While the attempt at streamlining European licensing procedures is laudable, the consultation obligation is likely to cause further delays and, hence, constitutes another bureaucratic hurdle chipping away at one of the most precious resources available in the pandemic: time.

Export Restrictions in the United States

The United States has also imposed export restrictions. On 3 April 2020, the White House published an executive order instructing the Federal Emergency Management Agency (FEMA), an agency belonging to the Department of Homeland Security, to ensure the availability of respiratory filters, face masks, protective gloves, and respirators in consultation with the Department of Health and Human Services.[6] A temporary final rule by FEMA was published in the Federal Register on 10 April 2020.[7] The above-mentioned medical goods may not be exported without a FEMA-permit (subject to approval). FEMA's temporary final rule exempted only shipments for existing contracts that were concluded through 1 January 2020. As a sufficient condition, it added that qualifying companies must establish that 80 percent of annual production preceding the contract had been reserved for the U.S. market.

On 21 April 2020, FEMA published a list of further exemptions effective 17 April. The list contains ten additional categories that serve as clarifications as to what is covered by FEMA's export restrictions. For example, shipments to U.S. territories like Guam, to U.S. military installations outside the United States, or diplomatic shipments are explicitly outside of the scope of the temporary final rule. Furthermore,

[3] Federal Office for Economic Affairs and Export Control, *Export von medizinischer Schutzausrüstung*, <https://www.bafa.de/SharedDocs/Kurzmeldungen/DE/Aussenwirtschaft/Ausfuhrkontrolle/20200323_export_medizinische_schutzausruestung.html> (accessed 1 April 2020).
[4] EU Commission, *European Commission Narrows down Export Authorisation Requirements to Protective Masks only and Extends Geographical and Humanitarian Exemptions*, 14 April 2020, <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2132> (accessed 15 April 2020).
[5] EU Commission, *Durchführungsverordnung (EU) 2020/568 der Kommission vom 23. April 2020 über die Einführung der Verpflichtung zur Vorlage einer Ausfuhrgenehmigung bei der Ausfuhr bestimmter Produkte*, < https://eur-lex.europa.eu/legal-content/DE/TXT/HTML/?uri=CELEX:32020R0568&from=DE> (accessed 29 April 2020).
[6] White House, *Memorandum on Allocating Certain Scarce or Threatened Health and Medical Resources to Domestic Use*, <https://www.whitehouse.gov/presidential-actions/memorandum-allocating-certain-scarce-threatened-health-medical-resources-domestic-use/> (accessed 9 April 2020).
[7] Federal Register, *FEMA Prioritization and Allocation of Certain Scarce or Threatened Health and Medical Resources for Domestic Use*, 10 April 2020, < https://www.govinfo.gov/content/pkg/FR-2020-04-10/pdf/2020-07659.pdf>.

FEMA makes clear that export restrictions should neither interfere with the international commitments of the United States nor disrupt supply chains vital to U.S. economic interests. Consequently, FEMA exempts shipments to non-governmental organizations, permits intra-company transfers to company-owned and affiliated foreign facilities, and authorizes shipments of covered materials in transit through the United States.[8]

Export Restrictions in China

China also strictly controls exports. Since 1 April 2020, all exports of medical products including Covid-19 testing kits, medical face masks, medical protective suits, ventilators, and infrared thermometers must be accompanied by proof of registration with the National Medical Products Administration (NMPA). The export controls were most likely not triggered by concerns about a possible shortage in China, but rather by deficiencies in the quality of some Chinese products. In Spain, for example, there had been complaints about the failure of Chinese virus test kits. Nonetheless, the measures have led to considerable international tensions, particularly vis-à-vis the United States.

Export Restrictions in Argentina

On 5 March 2020, Argentina increased export duties to 16 eight-digit tariff lines, two of which are in the chemicals industry and the rest in essential foodstuffs, including vegetable oils and flours. Certain vegetable oils, such as palm oil, are used in the production of cleaning and hygiene products.[9]

Export Restrictions in India

India imposed export restrictions on a number of vitamins and pharmaceutical raw materials on 3 March 2020.[10] India is one of the most important manufacturing markets for generics. Ten percent of India's pharmaceutical industry is affected, as well as medicines as basic as paracetamol (painkillers), acyclovir (antiviral agent), and substances used in the production of various antibiotics (neomycin, ornidazole, metronidazole, tinidazole).

Export Restrictions in Ukraine

On 26 March 2020, Ukraine notified the WTO that it has imposed quantitative restrictions on the export of personal protective equipment. The listed products include protective suits, gloves, protective masks, and alcoholic products to produce disinfectants. The measure is initially effective until 1 June 2020.[11]

Export Restrictions are Associated with Substantial Risks

As the WTO pointed out recently, export restrictions are associated with considerable risks to importers as well as exporters. Global prices rise, supply is distorted, and particularly poor countries "with limited production capacity" suffer.[12] This is also the conclusion of a study by the Peterson Institute for International Economics (March 2020).[13] The EU's export restrictions risk worsening the EU's supply of medical goods. Although a large proportion of medical devices and innovative medicines are manufactured in

[8] FEMA, *Prioritization and Allocation of Certain Scarce or Threatened Health and Medical Resources for Domestic Use; Exemptions*, < https://www.regulations.gov/document?D=FEMA-2020-0018-0002> (accessed 23 April 2020).
[9] Global Trade Alert, *Argentina: Changes to the export tax regime*, <https://www.globaltradealert.org/state-act/43433/agentina-changes-to-the-export-tax-regime> (accessed 3 April 2020).
[10] India Ministry of Commerce & Industry, *Notification No. 50 / 2015-2020, New Delhi dated 3 March 2020, Amendment in Export Policy of APIs*, <https://dgft.gov.in/sites/default/files/Noti%2050_0.pdf> (accessed 1 April 2020).
[11] World Trade Organization, *COVID-19 and world trade*, < https://www.wto.org/english/tratop_e/covid19_e/covid19_e.htm> (accessed 03 April 2020).
[12] WTO, *Information Note: Export Prohibitions and Restrictions*, 23 April 2020, p. 8, <https://www.wto.org/english/tratop_e/covid19_e/export_prohibitions_report_e.pdf>.
[13] Peterson Institute for International Economics, *EU Limits on Medical Gear Exports Put Poor Countries and Europeans at Risk*, 19 March 2020, p. 10, <https://www.piie.com/blogs/trade-and-investment-policy-watch/eu-limits-medical-gear-exports-put-poor-countries-and> (accessed 24 March 2020).

the EU, the EU is dependent on imports necessary for medical care, especially for generic drugs, protective equipment, and pharmaceutical raw materials. In 2019, the EU imported PPE products worth 17.6 billion U.S. dollars. Thus, if other countries, such as China, were to impose similar export restrictions, the EU would be worse off than it would be if markets remained open. There is a real danger for Europe that necessary medical services cannot be provided on a reliable basis to the extent necessary, for example for the chronically ill or in case of emergency operations with and without connection to Covid-19.

Export Restrictions Impede a Rapid Expansion of Production

Analyses show that the production of PPE is distributed internationally over many producing countries.[14] Countries have different specializations in the production of individual product types, such as masks or gloves. With open borders, this international division of labor and the utilization of economies of scale allow an efficient and sufficient supply of all individual products to all countries.

Since larger quantities of these products are now needed quickly during the crisis, it is necessary to expand the network of global production sites. As time is a decisive factor in containing the pandemic, international specialization and economies of scale from large production centers should be utilized. If the international network of suppliers is disrupted, entire production chains must be laboriously reorganized in each individual country. In some cases, this has already led to unnecessary delays and lost capacities. One example is the production of ventilators, which is concentrated in developed economies (North America, Western Europe, China, Japan, and Australia).[15]

The production of medical equipment is dependent on international supplier networks for components. Therefore, even countries with strong production capacities should oppose export restrictions – they will hardly be able to utilize or expand their production capacity if they lack essential components of PPE for production.

All across the world, manufacturers are working tirelessly to expand and re-equip their production capacities for goods necessary to cope with the health crisis. In this Herculean task, they must be able to rely on unbureaucratic processes and open markets. This applies both to the raw materials and components required for further processing (input side) and to delivery to markets abroad (output side). Any additional restrictions can delay this necessary conversion by weeks – if not months. This is time we do not have.

Export Restrictions on Protective Equipment Interrupt Production Processes

In many industrial production processes, for example in cleanroom environments, PPE is a necessary component. This is particularly relevant for the production of medicines, medical equipment, and medical consumables. Important production sites of the (European) chemical and pharmaceutical industry are located outside Europe, particularly in the United States, China, Brazil, Indonesia, South Africa, Canada, Mexico, and Russia – each with a regional supply chain and serving as a supplier to production sites in the EU. The BDI has gathered initial findings about this dependence in a non-representative survey between 11 and 16 March 2020. 38 percent of companies surveyed regularly use PPE in production and work processes. 53 percent have sites abroad and 75 percent maintain supply chains within Europe, 48 percent with China, and 53 percent with other third countries. More than 30 percent of the companies

[14] Simon J. Evenett (Global Trade Alert), *Tackling Covid-19 Together, The Trade Policy Dimension*, 23 March 2020, p. 23, <https://www.globaltradealert.org/reports/download/51> (accessed 1 April 2020).
[15] Peterson Institute for International Economics, *EU Limits on Medical Gear Exports Put Poor Countries and Europeans at Risk*, March 19, 2020, p. 6, <https://www.piie.com/blogs/trade-and-investment-policy-watch/eu-limits-medical-gear-exports-put-poor-countries-and> (accessed 24 March 2020).

observe strong (9 %) or moderate (22 %) disruptions in their supply chains. The export ban on PPE therefore threatens the production and expansion of production of essential medical goods.

Inspections Increase the Bureaucratic Hassle for Urgently Needed Supplies and Tie Up Limited Official Resources

Export restrictions on protective equipment or medical devices result in enormous additional bureaucratic efforts for the responsible authorities and companies. Up to now, the German export control authority, BAFA, has managed to quickly issue approvals in most cases. Nevertheless, this creates bureaucratic obstacles where none existed before. The well-intended new obligation to consult with the EU means another increase of the bureaucratic burden, binding capacities that are urgently needed in other approval processes.

In order to determine whether a particular product is subject to the export license requirement, the regulation refers to customs codes from the internationally used Harmonized System (HS codes) and a general description of products in the implementing regulation. The customs administration cannot carry out targeted controls on this basis. As a result, lengthy consultations and the submission of supporting documents (such as zero declarations, datasheets, self-declarations and other explanations) for thousands of individual products are inevitable.

Even when exports are authorized, there is a massive loss of time, especially due to the predilection of customs authorities directly responsible for exports to insist on detailed controls rather than finding pragmatic solutions. In addition, in some cases German customs have stopped or delayed the export to EFTA countries. This is not only counterproductive, but an additional burden for all parties involved.

The total time required for transaction from the supplier to recipient is already greatly delayed due to the crisis (capacity bottlenecks in logistics). Export restrictions and costly bureaucratic approval procedures further delay deliveries, contradicting the overriding political objectives of effective crisis management. In particular, the expansion and conversion of production capacities for medical goods requires smooth processes and delivery networks.

Recommendations

Further Easing of European Export Restrictions

The EU Commission renewed its export restrictions for certain PPE in late April, requiring consultations between national authorities and the EU. Instead, the EU should quickly phase out these restrictions to strengthen regional and global value chains. Furthermore, as time is a scarce resource in the fight against pandemics, the EU should avoid new bureaucratic barriers.

Supporting Global Supply Chains

Instead of national go-it-alone policies, a policy that secures and strengthens global supply chains for now urgently needed PEE and medical goods is necessary. As long as there is no corresponding agreement among WTO members or the G20, the EU should lead by example and at a minimum exempt all countries that have not imposed export restrictions themselves from EU export restrictions. An agreement should be reached with countries that have imposed export restrictions to mutually lift them.

Arrange Standstill and Roll Back

The G20 countries should rapidly agree not to erect new trade barriers and to dismantle barriers already in place. This is the only way to ensure that these goods are available where they are most needed. The G20 should instruct the WTO to keep a close watch on new trade measures taken by the G20 countries.

Creating more Transparency in Trade Policy

Opaque national measures lead to considerable uncertainty and consequently to a further decline in trade in key products. WTO members should fulfil their obligation to notify new trade measures to the WTO. The WTO should then swiftly process them and make the information available to the public.

Consultation of Industry

At the European level, the EU and the Federal Republic of Germany should always grant companies and trade associations the right to comment before export restrictions or other measures are adopted. Only then will it be possible to consider the consequences of such measures in their full scope.

Prevent or Reduce New Bureaucracy in Trade

Countries that have defined essential industries and services should refrain from requesting certificates from importing countries for the use of the goods. New bureaucracy must be dismantled again. Transparency and legal certainty are indispensable in trade.

Promoting Open Markets and International Coordination

International coordination is essential to prevent further shortages of PEE and medical goods from arising or worsening. Accordingly, the G20 should establish a forum with representatives from governments, multilateral organizations, non-governmental organizations, and industry. This could serve as a clearing house for transparent and critical information on the status, problems, and solutions of global supply chains. The forum could also advise governments, based on scientific and ethical principles, on how to allocate and use critical goods effectively and efficiently to meet the challenges of Covid-19.

Promote the Production of Medical Goods

The G20 countries should agree on measures to support industry in converting production capacities to goods that are now urgently needed. Special write-offs on new machinery, special permits for bureaucratic requirements, or medium-term purchase guarantees could be helpful here. Capacities must be expanded worldwide; international cooperation and investment in production and research of protective and medical goods must be strengthened. This would increase resilience in the medium- and long-term and effectively protect states and their populations.

Imprint

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