COVID-19 PANDEMIC SLOWS GLOBAL TRADE AND EXPOSES FLAWS IN NEOLIBERAL TRADE POLICY

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Both the World Trade Organisation (WTO) and the United Nations Conference on Trade and Development (UNCTAD) are forecasting dramatic falls inboth global trade and investment, which parallel predicted falls in economic growth resulting from shutdowns and disruptions to global production chains that began in March 2020.

UNCTAD has published a new series of figures on merchandise trade for the 2020 first quarter that show a decrease of 3%compared with the first qurter of 2019, as trade slowed in March, but predict a much larger fall of 27% in the second quarter (UNCTAD 2020d: 22-3) WTO statistics published in April noted that trade was already slowing from January to December 2019, reflecting low growth before the pandemic began. The WTO best case forecast scenario for 2020 predicts that merchandise trade will decline by 13%, and the worst case scenario a decline of 32%. Services trade is more difficult to measure and predict, but the WTO notes that transport, tourism, education and other traded services could be severely affected. The falls in merchandise trade are worse than during the global financial crisis of 2008-09 and could be the worst since the 1930s Depression (WTO 2020: 1-2). The UNCTAD predicts falls of 30 - 40% in foreign direct investment in 2020-21 (UNCTAD 2020a:1).

The pandemic has prompted a more public debate about the flaws in the 'one-size-fits-all' neoliberal trade policy, pursued by successive Australian governments, which aims to achieve not only zero tariffs but also zero other barriers to all trade and investment. This policy demands that each country should specialise in its most cost-competitive exports, import everything else at the lowest possible prices, have no active industry

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policies and minimise government regulation and expenditure. The policy maximises low cost global production chains for corporations, but can result in a race to the bottom rather than improving labour rights and environmental standards. It has left many economies with a narrow manufacturing base, unable to produce essential medical products and with scarce public health resources to deal with the pandemic.

Critics of neoliberal policy point to the limitations of the basic assumptions of early nineteenth century neoclassical comparative advantage theory, most of which do not apply to real world 21st century economies (Dunkley 2004: 18-62; Stanford 2015: 304-11). Historical studies question whether the policy has actually delivered successful economic development, or whether the imposition of strict neoliberal policies on low income countries amounts to 'kicking away the ladder' to economic development (Chang 2002, Stiglitz and Charlton 2005). Studies of contemporary trade agreements criticise their expansion into non-tariff areas of law and policy normally decided through national democratic processes (Stiglitz 2015; Ranald 2015).

Regional trade agreements like the Comprehensive and Progressive Agreement for Trans-Pacific Partnership and numerous bilateral agreements have used this model to maximise lowest-cost production chains for global corporations. They are negotiated in secret and texts are not released until after they are signed (Senate Standing Committee on Foreign Affairs Defence and Trade 2015). There is no independent evaluation of their costs and benefits (Hutchens 2016).

In addition to zero tariffs, these agreements open up most services including health and other essential services to global private investment. All services are included unless specifically excluded, and trade rules treat regulation of services like a tariff, which can only be decreased and not increased in future (Kelsey 2016).

These rules enable private corporate ownership of hospitals, aged care centres and energy companies, leaving the government with less ability to regulate in a crisis. Trade agreements also deregulate levels of foreign investment. When prices fall in economic crises like that caused by the pandemic, many sectors are vulnerable to increased concentrated ownership by global companies.

Despite the rhetoric of free trade, competition and lower prices, these agreements have increased the monopoly rights of global corporations at the expense of consumers. Pharmaceutical companies have successfully lobbied for trade rules that entrench and/or increase their 20-year monopoly on new medicines, delaying the availability of cheaper medicines (Gleeson and Labonté 2020: 39-65).

In recent months the realities of the pandemic have forced the Australian government to act against some aspects of this policy. The government has assisted firms to develop local manufacturing capacity for facemasks and ventilators (Tobin 2020; ABC 2020). The government has directed and funded private hospitals to treat pandemic patients (McCauley 2020). It has also reintroduced some screening of foreign investment by the Foreign Investment Review Board to prevent predatory takeovers by global companies (Crowe 2020).

Both academic and social movement critics of neoliberal policies are arguing for longer term change. Unions and some sections of manufacturing industry are calling for active local industry policies to enable local manufacturing of essential health products (Sas and Exposito 2020; Stanford 2020). Health researchers are calling for publicly funded vaccine development to ensure speedy and affordable access for all. This would bypass monopoly patents enshrined in trade agreements (Mannix 2020; Gleeson and Legge 2020). Over 390 community organisations from 150 countries have called on the WTO to ensure that intellectual property rules in WTO agreements do not prevent access to medicines and medical supplies, especially for low income countries (Civil Society Organisations 2020).

All trade agreements are enforced through government-to government dispute processes. However, global corporations have additional weapons. They have lobbied successfully for specific trade rules that give foreign investors special legal rights to bypass national courts and sue governments in international tribunals for millions of dollars if they can argue that new laws or regulations harm their investment, known as Investor-State Dispute Settlement (ISDS). The tribunals are staffed by practising advocates, not independent judges, and there are no precedents or appeals, leading to inconsistent decisions (French 2014; Kahale 2014).

ISDS has been rejected by the low-income majority of countries in the 164-member WTO, but has featured in bilateral and regional agreements. There are now over 1,000 ISDS cases, many against low income countries (UNCTAD 2020b), with costs awarded against governments amounting to hundreds of millions or even billions of dollars. (Transnational Institute 2017; Tienhaara 2019).

The Philip Morris tobacco company used ISDS to claim billions in compensation from the Australian government for Australia's plain packaging legislation. Defeating this case took a total of seven years, cost the Australian government $12 million in legal costs, and other countries delayed similar regulation pending the result (Ranald 2014; Ranald 2019). There are increasing numbers of ISDS cases against government regulation to reduce carbon emissions and combat climate change (Tienhaara 2018).

ISDS rules could result in cases from global companies claiming compensation for government actions during the pandemic that reduced their profits but were essential to save lives.

Legal firms specialising in ISDS are already advising corporations on possible cases. An international arbitration law firm has told its clients:

> While the future remains uncertain, the response to the COVID-19 pandemic is likely to violate various protections provided in bilateral investment treaties and may bring rise to claims in the future by foreign investors…While States may invoke *force majeure* and a state of necessity to justify their actions, as observed in previous crises that were economic in nature, these defences may not always succeed (Aceris Law 2020).

Legal scholars critical of ISDS have confirmed that after the pandemic governments could face claims for compensation from global corporations. They have called for all governments to withdraw consent from ISDS rules to avoid an avalanche of cases relating to the pandemic (International Institute for Sustainable Development 2020). UNCTAD, the UN body which monitors ISDS cases, has also acknowledged this danger (UNCTAD 2020c: 11-2). Prominent global economists and lawyers led by Jeffrey Sachs have called for_a moratorium on ISDS claims relating to government actions during the pandemic (Columbia Centre on Sustainable Investment 2020).

These debates open up the possibility that post-pandemic trade policies could reject both the extremes of neoliberal trade policy and the Trump and Hanson policies of building walls and a return to high tariffs. Such policies could expand trade based on internationalist principles that reject the trap of the US-China trade wars.

Unions, community organisations and human rights advocates are promoting post-pandemic trade policies that could improve peoples' lives. They should enable a diverse manufacturing sector with the capacity to deal with health crises, as well as agriculture, services and other sectors, supported by high quality health, education and other essential services. Trade rules should be negotiated openly and democratically in a system which includes all governments and provides for the specific needs of developing countries.

Trade agreements should not prevent governments from regulating for public health or the environment. They should not strengthen medicine monopolies, nor give additional legal rights like ISDS to global corporations which already have enormous market power. And finally, trade agreements should be based on internationally-agreed and fully enforceable labour rights and environmental standards, to counter the race to the bottom on these standards.

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