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8. Can international economic agreements combat COVID-19? Singapore's experience

Pasha L. Hsieh²³⁵

Introduction

The COVID-19 pandemic has significantly disrupted the international economic order. According to the World Trade Organization (WTO), the unprecedented health crisis may sink global trade by 32% in 2020.²³⁶ As an island state highly dependent on trade, Singapore is expected to encounter a 5.8% contraction in gross domestic product, marking its “worst recession since independence.”²³⁷

The number of confirmed COVID-19 cases in Singapore surpassed the 45,000 mark on July 7, 2020.²³⁸ Most cases have occurred in foreign worker dormitories, whereas the spread of the disease in the rest of the community has been limited. To gradually resume economic activities and ease border controls, the Singapore government embarked on a three-phased approach when “circuit breaker” measures that imposed lockdown ended on June 1, 2020.²³⁹

Much discussion focuses on Singapore's domestic policy such as stimulus packages and fiscal measures that provide relief to companies and citizens.²⁴⁰ Nevertheless, Singapore's less-reported international law strategy toward the crisis yields salient global implications. Selected Asian states that have reasonably managed the coronavirus outbreak, including Korea, Taiwan and Vietnam, have been able to do so without international assistance. Notably different from the self-reliance approach, Singapore has resorted to a two-pronged legal strategy that is built upon international economic agreements at bilateral and regional levels.

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²³⁶ World Trade Organization (WTO), ‘Trade Set to Plunge as COVID-19 Pandemic Upends Global Economy’ (8 April 2020) <https://www.wto.org/english/news_e/pres20_e/pr855_e.htm> accessed 13 July 2020.

²³⁷ Ovais Subhani, ‘Singapore Economy May Shrink 5.8% This Year: MAS Survey’ (*The Straits Times*, 15 June 2020) <<https://www.straitstimes.com/business/economy/singapore-economy-may-shrink-58-per-cent-in-2020-mas-survey>> accessed 13 July 2020.

²³⁸ Worldometer, Singapore (13 July 2020) <<https://www.worldometers.info/coronavirus/country/singapore/>> accessed 13 July 2020.

²³⁹ Gov.sg, ‘Ending Circuit Breaker: Phased Approach to Resuming Activities Safely’ (28 May 2020) <<https://www.gov.sg/article/ending-circuit-breaker-phased-approach-to-resuming-activities-safely>> accessed 13 July 2020.

²⁴⁰ Organisation for Economic Co-operation and Development & Association of Southeast Asian Nations (ASEAN), ‘Enterprise Policy Responses to COVID-19 in ASEAN: Measures to Boost MSME Resilience’ (2020) <<https://asean.org/storage/2020/06/Policy-Insight-Enterprise-Policy-Responses-to-COVID-19-in-ASEAN-June-2020v2.pdf>> at pp 48-51.

As of today, Singapore is a party to 25 free trade agreements (FTAs), including the recent Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the European Union (EU)-Singapore FTA.²⁴¹ The country is also a member of the Association of Southeast Asian Nations (ASEAN) and the Asia-Pacific Economic Cooperation (APEC). The mechanisms under these trade initiatives provide valuable lessons for forging the trade-health nexus and multilateral efforts to combat COVID-19. This essay's account of these "positive" measures thus adds to the existing literature, which centers on "defensive" mechanisms such as the WTO and FTAs' exceptions to justify export controls or force majeure and public policy exceptions clauses under investment treaties.²⁴²

Facilitating health cooperation, essential goods and electronic commerce

The direct benefits of FTAs for managing the COVID-19 challenge is the reduction of tariffs and non-tariff barriers for medical products, including medicine, medical supplies and personal protective equipment such as face masks and hand sanitizer. First, based on the information from its 94 members, the WTO found that the overall preferential average (1.6%) for medical products was less than half of the overall most-favoured-nation average (3.8%).²⁴³ FTAs have therefore resulted in tariff liberalization, thus facilitating trade in medical products.

Second, many FTA provisions lower technical barriers to trade covering medical products, including the recognition of an exporting country's standards, regulations and conformity assessment procedures by the importing country.²⁴⁴ Some FTAs also facilitate cooperation, transparency and obtaining the relevant product registration certificates. Singapore possesses rich experiences in incorporating these provisions into its trade agreements.

For instance, Annex 6A of the US-Singapore FTA specifically provides a framework to establish a Working Group on Medical Products. The group composed of US and Singaporean health authorities aims to enhance the exchange of information, professional competencies and scientific

²⁴¹ WTO, Regional Trade Agreements Database <<http://rtais.wto.org/UI/PublicSearchByMemberResult.aspx?MemberCode=702&lang=1&redirect=1>> accessed 14 July 2020 .

²⁴² See e.g. Joost Pauwelyn, 'Export Restrictions in Times of Pandemic: Options and Limits under International Trade Agreements', in Richard E. Baldwin & Simon J. Evenett (eds), *COVID-19 and Trade Policy: Why Turning Inward Won't Work* (CEPR Press 2020) at pp 103, 105-08; United Nations Conference on Trade and Development, 'Investment Policy Responses to the COVID-19 Pandemic', Special Issue, No. 4 (2020), Investment Policy Monitor, at annex.

²⁴³ WTO, 'The Treatment of Medical Products in Regional Trade Agreements' (27 April 2020) <https://www.wto.org/english/tratop_e/covid19_e/medical_products_report_e.pdf> at p 5.

²⁴⁴ *ibid* at p 7.

collaborations.²⁴⁵ The Singapore-Australia FTA includes commitments on medical devices. The Sectoral Annex on Medical Devices under Chapter 5 of the agreement mandates that both countries agree to classify “medical devices based on different levels of risk.” In deciding to grant marketing authorization, Australia and Singapore will preclude “the use of sale data, pricing data, or related financial data.”

The India-Singapore Comprehensive Economic Cooperation Agreement illustrates another example of implementing a special scheme to decrease the technical barriers to trade. Under the scheme that both governments committed in a side letter, India’s “generic medicinal products” that have been approved by a recognised regulatory authority in the United States, United Kingdom, Australia, the European Union and Canada will be subject to a special, more streamlined process for obtaining marketing authorization in Singapore.

Annex 8-E of the CPTPP extends the marketing authorization commitment for medical devices under the Singapore-Australia FTA to pharmaceutical products. The CPTPP also obliges both parties to include an appeal or review mechanism in the marketing authorization process.²⁴⁶ It is important to note that the recent EU-Singapore FTA reflects the trend for buttressing the trade-health nexus by including provisions on promoting cooperation between health authorities. Moreover, the FTA ensures objective and non-discriminatory criteria for “the listing, pricing or reimbursement of pharmaceutical products” and accords applicants adequate opportunities to provide comments. These procedural guarantees will facilitate the multilateralization of COVID-19 vaccines once they are available.

The international economic agreements that Singapore has utilized go beyond conventional FTAs. Building on the Joint Ministerial Statement on Supply Chain Connectivity that Singapore and eight WTO members issued, Singapore and New Zealand signed the Declaration on Trade in Essential Goods for Combating the COVID-19 Pandemic.²⁴⁷ Both countries agreed to eliminate customs duties, not to apply export prohibitions or reductions, and remove non-tariff barriers for “essential goods.” The declaration is also open to participation by other WTO members.

Although this declaration encompasses only soft-law commitments, it is important to note that New Zealand honored the commitments by sending essential supplies to Singapore within a week after

²⁴⁵ United States Food and Drug Administration, ‘FDA –Singapore, MOU Regarding New Medical Products’ (31 January 2018) <<https://www.fda.gov/international-programs/cooperative-arrangements/fda-singapore-mou-regarding-new-medical-products>>.

²⁴⁶ Comprehensive and Progressive Agreement for Trans-Pacific Partnership (2018), annexes 8-C & 8-E.

²⁴⁷ WTO, ‘Communication from Singapore, Measures Relating to the COVID-19 Pandemic: Declaration on Trade in Essential Goods for Combating the COVID-19 Pandemic’, G/C/W/779 & G/MA/W/151 (16 April 2020) <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/C/W779.pdf&Open=True>>

the declaration was issued.²⁴⁸ The coverage of essential goods in the two annexes provides a model for similar agreements. The annexes cover not only gloves, medicaments and vaccines, but also agricultural products and food, even including beer and ice cream!

Tellingly, regulatory responses to COVID-19 involve border closure but travel is essential to international business. In this regard, Singapore has implemented or is negotiating with China, Malaysia and New Zealand to launch a “travel bubble” scheme.²⁴⁹ As part of the “fast lane” arrangement that decreases or eliminates the 14-day quarantine period, travellers must obtain pre-clearance prior to departure and undergo both pre-departure and post-arrival health checks. Furthermore, governments’ social distancing and work-from-home requirements have substantially increased the demand for electronic commerce (e-commerce).²⁵⁰ In addition to provisions of the WTO Trade Facilitation Agreement, additional rules that promote digital trade have been included in FTAs. Singapore is the pioneer for initiating digital trade-specific pacts, known as Digital Economy Agreements (DEAs). The country has concluded a trilateral DEA with Chile and New Zealand and is expected to sign additional DEAs with Australia and Korea.²⁵¹

The DEAs confirm core commitments of the CPTPP, including the cross-border transfer of information and the prohibition of data localization.²⁵² In addition, the DEAs enhance trade facilitation by promoting paperless trading and e-invoicing. More importantly, DEAs include FTA-plus rules that buttress cooperation for FinTech and artificial intelligence. Consequently, the DEAs that Singapore and like-minded countries conclude will enhance a digital economy that will be essential to the post-pandemic recovery.

Regional initiatives of ASEAN and APEC

Singapore is a member of ASEAN and APEC, which constitute the two intertwined pillars underpinning the framework for Asian economic integration. Since its inception in 1967, ASEAN

²⁴⁸ Lena Loke, ‘New Zealand sends first batch of essential supplies to Singapore, as part of pact to keep trade flowing amid COVID-19’ (*TODAY Online*, 22 April 2020) <<https://www.todayonline.com/singapore/new-zealand-sends-first-batch-essential-supplies-singapore-part-pact-keep-trade-flowing>> accessed 14 July 2020.

²⁴⁹ See e.g. Ministry of Foreign Affairs Singapore, ‘Joint Press Statement by Ministry of Foreign Affairs and Ministry of Trade and Industry on the Singapore-China Fast Lane for Essential Travel’ (3 June 2020) <<https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2020/06/20200603-SG-CHINA-Fast-Lane-Essential-Travel>> accessed 14 July 2020.

²⁵⁰ WTO, ‘E-Commerce, Trade and the COVID-19 Pandemic’ (4 May 2020) <https://www.wto.org/english/tratop_e/covid19_e/e-commerce_report_e.pdf> at pp 3-4.

²⁵¹ Infocomm Media Development Authority, ‘Singapore and The Republic of Korea Launch Negotiations on Digital Partnership Agreement’ (22 June 2020) <<https://www.imda.gov.sg/news-and-events/Media-Room/Media-Releases/2020/Singapore-and-The-Republic-of-Korea-Launch-Negotiations-on-Digital-Partnership-Agreement>> accessed 15 July 2020.

²⁵² For contents of Digital Economy Agreements, see New Zealand Ministry of Foreign Affairs & Trade, DEPA Modules. <<https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/digital-economy-partnership-agreement/depa-modules/>> accessed 15 July 2020.

has evolved to be an indispensable “middle power” in the Asia-Pacific through its networks of “ASEAN Plus Three,” “ASEAN Plus Six” and dialogue partners outside the region. Unlike the EU’s top-down, hard-law approach, the ten-state ASEAN has focused on a model of horizontal integration that accords members constructed flexibility in implementing ASEAN pacts. The establishment of the ASEAN Economic Community signified a milestone for regionalism of Southeast Asian countries.

In 2020, ASEAN leaders have held special summits and ministerial meetings within the bloc and with ASEAN Plus Three countries (China, Japan and Korea). The countries have pledged to ensure regional supply chains and food security, as well as emergency responses such as financial cooperation for liquidity challenges.²⁵³ ASEAN countries’ commitments to sign the mega-regional agreement, the Regional Comprehensive Economic Partnership (RCEP), in 2020 are also seen as a collective trade response to COVID-19.²⁵⁴

Distinct from the legal nature of ASEAN as a formal international organization, APEC is a loose forum that includes 21 Asia-Pacific economies. The diversity of topics that APEC members discuss has helped converge international consensus and transform them into binding agreements. APEC trade ministers have agreed to facilitate the flow of essential goods and services to fight the pandemic, including medical supplies and agriculture and food products across borders.²⁵⁵ Similar to ASEAN’s commitment, they will also ensure that trading links remain open and minimise disruptions to the global supply chains.

In addition, the APEC Health Working Group highlights the importance of collaboration at all levels to control the epidemic promptly.²⁵⁶ The group also functions as APEC’s contact point to cooperate with the World Health Organization and provides a forum to share members’ experiences in response to the SARS epidemic. Singapore has contributed to APEC initiatives and benefited from information-sharing and capacity building perspectives.

²⁵³ See e.g. ASEAN, ‘Declaration of the Special ASEAN Summit on Coronavirus Disease 2019 (COVID-19)’ (14 April 2020) <<https://asean.org/storage/2020/04/FINAL-Declaration-of-the-Special-ASEAN-Summit-on-COVID-19.pdf>>; ASEAN, ‘Joint Statement of the Special ASEAN Plus Three Summit on Coronavirus Disease 2019 (COVID-19)’ (14 April 2020) <<https://asean.org/storage/2020/04/Final-Joint-Statement-of-the-Special-APT-Summit-on-COVID-19.pdf>>.

²⁵⁴ ASEAN, ‘Chairman’s Statement of the 36th ASEAN Summit’ (26 June 2020) <<https://asean.org/storage/2020/06/Chairman-Statement-of-the-36th-ASEAN-Summit-FINAL.pdf>> at pp 16-17.

²⁵⁵ Asia-Pacific Economic Cooperation (APEC), ‘Statement on COVID-19 by APEC Ministers Responsible for Trade’ (5 May 2020) <https://www.apec.org/Meeting-Papers/Sectoral-Ministerial-Meetings/Trade/2020_trade>

²⁵⁶ APEC, ‘APEC Health Working Group Statement on COVID-19’ (23 Mar 2020) <https://www.apec.org/Press/News-Releases/2020/0323_HWG>.

Conclusion

The COVID-19 pandemic is a global challenge that calls for an international solution. Singapore's two-pronged legal strategy that utilizes bilateral and regional agreements provides a unique and remarkable case study. These bilateral pacts include FTAs that reduce tariffs and non-tariff barriers for medical goods and thus facilitate trade in medical devices and pharmaceutical products. They also ensure the supply of essential goods and promote e-commerce. Moreover, regional agreements via the ASEAN and APEC networks galvanize multilateral efforts to secure supply chains and healthcare cooperation. Consequently, Singapore's experience has demonstrated the significance of strengthening regional integration and trade-health interactions for combatting COVID-19.