

# **The Impact of COVID-19 Pandemic on International Trade Law: Resilient Multilateral Trade as a Catalyst in Transitioning to the New Normal**

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## **Abstract**

*The epoch of the Virocene has been a harbinger of multipronged fears, and there is much uncertainty about the future world order. The unprecedented global economic shock triggered by the COVID-19 pandemic has further accentuated the fault lines of a current global order characterized by pervasive institutionalized inequality and selective retreat from multilateralism. The spread of the virus has benefitted immensely from the underlying interconnectedness, as well as frailties, of globalization, catapulting a global health crisis into a global economic shock that has adversely affected the most vulnerable the hardest. This paper takes a stock of this transcendence of a global health emergency to a global economic crisis. The objective of this paper is to appraise the impact of the pandemic on international trade law in general, and locate the issues pertaining to the right of access to COVID-19 treatment in the scheme of the global regime on intellectual property rights in particular. Cognizant of the fact that the COVID-19 pandemic demands of the community of nations a quintessential reevaluation of ideals of globalization and multilateralism, this paper argues in favour of, and seeks to substantiate, the role that could be played by a resilient variant of multilateralism in international trading regime.*

*This paper strives to capture, albeit succinctly, the need for a coordinated global response to the crisis in the form of recalibrating certain aspects of the ITL regime, so as to better instill resilience and inclusivity in the system. It offers a bird's eye view, referring to relevant available data, of a global health emergency that transmuted into a global economic shock, and the proximate causes thereof. Delving deeper, it looks into the transmission of market disruption across the globe, attributable primarily to the domino effect of imposition of trade-restrictive unilateral measures, or exceptions, in order to assuage the plights of the pandemic and ensure access to treatment. A pithy perusal of the exceptions is followed by a peek into the perils of exceptionalism, thereafter pondering on the need to rethink the contours of the extant model of economic liberalization. Finally, a few suggestions are adduced to imbue the extant multilateral trading regime with increased resilience and inclusivity, which could ensure that multilateral trade acts as a catalyst in transitioning to the new normal.*

## **1. Introduction**

The epoch of the Virocene is on us. As the viral conative force<sup>1</sup> vies with that of the human on “an unprecedented scale of contingency and

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uncertainty”, as a consequence of “a multitude of unintended entanglements between the human and the nonhuman”,<sup>2</sup> we are forced to take a deeper look into the state of affairs of global governance. Whatsoever progress had been made in addressing the plights of the impoverished and the scourge of inequality in the post-colonial era, despite international law and international institutions covertly or overtly sustaining and legitimizing a neo-colonial project, is facing a threat. The unprecedented global shock triggered by the COVID-19 pandemic further accentuates the fault lines of a current global order characterized by pervasive institutionalized inequality, failed nationalistic responses to the global COVID-19 crisis, and selective retreat from multilateralism.<sup>3</sup>

Across the borders, the spread of the virus has benefitted immensely from the underlying interconnectedness, as well as frailties, of globalization, catapulting a global health crisis into a global economic shock that has adversely affected the most vulnerable the hardest. This paper seeks to take a stock of this transcendence of a global health emergency to a global economic crisis, and appraise the impact of the pandemic on international trade law (ITL) in general, and intellectual property rights (IPRs) in particular. Cognizant of the fact that the COVID-19 pandemic demands of the community of nations a quintessential reevaluation of ideals of globalization and multilateralism, this paper argues in favour of, and seeks to substantiate, the role that could be played by a resilient variant of multilateralism in international trading regime.

This paper strives to capture, albeit succinctly, the need for a coordinated global response to the crisis in the form of recalibrating certain aspects of the ITL regime, so as to better instill resilience and inclusivity in the system. Part 1 offers a bird’s eye view, referring to relevant available data, of a global health emergency that transmuted into a global economic shock, and the proximate causes thereof. Delving deeper, Part 2 looks into the transmission of market disruption across the globe, attributable primarily to the domino effect of imposition of trade-restrictive unilateral measures, or exceptions, in order to assuage the plights of the pandemic and ensure access to treatment. A pithy perusal of the exceptions is followed by a peek into the perils of exceptionalism, thereafter pondering on the need to rethink the contours of the extant model of economic liberalization. In Part 3, a few suggestions are adduced to imbue the extant multilateral trading regime with increased resilience

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<sup>1</sup> See generally Stephen Connelly (2015), *Spinoza, Right and Absolute Freedom*, Birkbeck law Press, Routledge, 1<sup>st</sup> edition.

<sup>2</sup> Andreas Philippopoulos-Mihalopoulos, “Life and Language in the Virocene”, *Critical Legal Thinking*, 20 November 2020, at <https://criticallegalthinking.com/2020/11/20/life-and-language-in-the-virocene/>.

<sup>3</sup> See also António Guterres, Nelson Mandela Annual Lecture 2020, 18 July 2020, at <https://www.nelsonmandela.org/news/entry/annual-lecture-2020-secretary-general-guterres-full-speech>.