Model Chapter on Trade in Crisis Situations in Regional Trade Agreements
Introduction

• The Model Chapter is a template for a new and standalone chapter to be incorporated into new or existing regional or bilateral free trade agreements (FTAs).

• It is designed to be adapted by economies according to their specific needs.

Purpose of the Chapter

• Covid-19 highlighted the limitations of existing trade rules in ensuring trade resilience during crises.

• The Chapter aims:
  • to ensure that trading partners have a coordinated response to crisis situations, and cooperate to prepare for future crises
  • to reduce uncertainties and keep trade flowing during crises
  • to ensure that trade restrictive measures taken in response to a crisis are targeted, proportionate, transparent, and temporary.
  • to ensure the supply of essential goods and services during a crisis through maintaining associated trade facilitation and coordination measures
• The Parties:
  • acknowledge that, in crisis situations, coordinated regional and international responses are necessary and desirable to ensure the continued flow of goods, services, people, and information;
  • acknowledge that, in crisis situations, continued international trade and resilient supply chains, especially of essential goods and services, can contribute to the readiness for, effective response to, and recovery from crises;
  • recognise the right of each Party to set its own policies in a crisis situation for legitimate public objectives.
Crisis situation means:

an extraordinary situation arising from, among other things, wars, natural disasters, extreme financial events, pandemics, and other emergencies, which affects one or more territories and puts at risk core public interests including national security, public health, and environmental health and safety, provided that:

(a) such a situation has the potential to cause significant disruption to cross-border trade; or

(b) measures adopted by a Party in such a situation are likely to have significant adverse impacts on international trade, including by reducing its contribution to sustainable development and economic growth.
Declaration of crisis (Article II)

• The Committee on Crisis Management (established in Article VIII) may meet and declare a crisis situation to exist in any of the following situations:
  • one of the Parties has declared that a “national crisis situation” exists;
  • one of the Parties requests a meeting to discuss a situation it thinks is, or may imminently become, a crisis situation; or
  • there is a significant event within the free trade area (including natural disaster, extreme financial event, pandemic or other emergency).
Essential goods and services (Article III)

• Each Party shall ensure that any measures affecting trade in essential goods and services that it takes to address crisis situations, including export restrictions, are targeted, proportionate, transparent, and temporary and do not create unnecessary barriers to trade or disrupt global supply chains, and are consistent with WTO rules and this Agreement.

• Whenever possible, the Parties shall use their best endeavours to facilitate trade in essential goods and services.
A Party that institutes **any new export prohibition or restriction on essential goods** in accordance with GATT Article XI.2(a) shall:

a) give due consideration to the effects on other Parties’ domestic supply of essential goods, and where possible, take action to mitigate any negative effects;

b) give notice in writing to the other Parties, as far in advance as practicable, of the nature and duration of the measure; and

c) consult, upon request, with any other Party having a substantial interest as an importer of the affected essential goods.
Essential goods and services cont’d

• During the period that a crisis situation is declared:
  • Parties may institute, by mutual agreement, reciprocal green lanes for the expedited movement of essential workers, service providers and business travellers, with appropriate safeguards to be determined by the Parties as befitting the nature of the crisis
Trade facilitation (Article IV)

• During the period that a crisis situation is declared, Parties have to do certain things, including:
  • adopt measures that allow for **pre-arrival processing** of documentation related to all essential goods in electronic format in order to expedite the release of these goods upon arrival
  • provide for **mutual recognition** of trade-related data and documents in electronic form originating from other Parties based on a substantially equivalent level of reliability
  • endeavour to apply international standards and guidelines to ensure **interoperability in paperless trade**
  • allow for all customs duties, taxes and charges to be paid through an **electronic payment system**
  • coordinate to set up a **24/7 fast track customs clearance system** to facilitate transit of essential goods
Non-tariff measures (Article V)

• Obligations on Parties, including to:
  • ensure *flexibility of their regulatory requirements* whenever possible, such as by relaxing non-tariff measures to temporarily authorise trade in essential goods and services
  • use best endeavours to *adopt international standards* where they are available and feasible to increase availability of essential goods and services
  • consider accepting SPS measures and technical regulations of other Parties as *equivalent*, especially for essential goods
• After the Committee makes a declaration of crisis situation, each Party shall:
  • notify the other Parties with a list of any measures which it adopts in response to that crisis that may affect international trade
• Another Party may then request further information, which has to be provided; or technical discussions
• Each Party must publish requirements, procedures, required forms and documents for travelling across its border and within its territory during a crisis, in a non-discriminatory and easily accessible manner
Cooperation – in a crisis situation (Article VII)

• The Parties shall endeavour to agree on a list of essential goods and services and keep it updated.

• If a declaration of a crisis is made, the Parties shall:
  • work together to identify trade disruptions that are likely to result;
  • work together to review the preliminarily agreed list of essential goods and services, and, as needed, identify additional essential goods and services particular to the ongoing crisis; and
  • cooperate to develop joint responses to the crisis situation.

• Parties may request other Parties or the Committee for technical assistance.
Cooperation – to improve preparedness (Article VII)

• The Parties shall cooperate to collectively prepare for future crisis situations, on matters including:
  • exchanging information and best practices in relation to supply chain management;
  • exchanging information on financial risk management;
  • promoting the digitalization of economies and paperless trade;
  • ensuring sustainable development, especially on the protection of the environment and fighting climate change to prevent natural disasters; and
  • establishing early-warning mechanisms for potential crises.
Each Party shall:

- take appropriate measures to promote the active participation of the private sector to support a coordinated approach in the event of a crisis situation that ensures the continued flow of goods and services and minimizes disruption to supply chains in essential goods and services;
- consider establishing one or more working groups comprised of representatives of the private sector to map supply chains for essential goods and services.
Committee on Crisis Management (Article VIII)

• Functions include to:
  • provide a forum to improve the Parties’ understanding of the likelihood and potential economic and humanitarian impacts of future crises;
  • facilitate information exchange in areas including experiences and insights gained through previous crises, and planning for further crises; and
  • where appropriate, declare a crisis situation pursuant to Article II.

• Required to meet regularly after declaration of a crisis
Dispute Settlement (Article IX)

• Parties can choose whether to not to apply dispute settlement provisions to the Chapter
Thank you