UN Initiative on Model Provisions for Trade in Times of Crisis and Pandemic
in Regional and Other Trade Agreements
MODEL CHAPTER ON TRADE IN CRISIS SITUATIONS IN REGIONAL TRADE AGREEMENTS
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Introduction

The Covid-19 pandemic highlighted the limitations of existing trade rules in ensuring trade resilience during crises. There are two ways of including more specific and dedicated legal provisions in trade agreements to minimise the impacts from trade disruption in times of crisis: (1) amending existing chapters of trade agreements to incorporate such provisions, or (2) introducing a new and separate standalone chapter. The model chapter featured in this document provides a template for the latter case, a separate standalone chapter, which can be further tailored to meet specific needs of the Parties in actual trade agreements.

At the core of this model chapter, is the establishment of a Committee on Crisis Management to oversee the coordination and cooperation to minimise trade disruption in crisis situations. The Committee is responsible for declaring the existence of a crisis situation with a view to trigger the crisis provisions provided under this chapter. After regularly reviewing the situation, the Committee can then determine that the situation has returned to a state of normality, and the focus of cooperation activities will shift back to building up preparedness for future crises.

Instead of merely providing general exceptions for countries to take unilateral measures, this chapter provides an additional mechanism to ensure a coordinated response to crises and promote cooperation on preparing for future crises. It provides for specific rights and obligations for trade in crisis situations, helping to reduce uncertainties and keep trade flowing during crises. The provisions in this model chapter are designed to ensure that trade restrictive measures taken in response to a crisis are targeted, proportionate, transparent, and temporary. In particular, the provisions are very much focused on ensuring the supply of essential goods and services during a crisis through maintaining associated trade facilitation and coordination measures.
Chapter on Trade in Crisis Situations

Definitions

For the purposes of this Chapter:

*Crisis situation* means an extraordinary situation arising from *inter alia* 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.

*National crisis situation* means an extraordinary situation that exists within a Party’s territory that a Party can self-define according to its domestic laws and regulations.

*Declaration of crisis situation* means a declaration by the Committee pursuant to Article II that a crisis situation exists to which this Chapter applies.

*Essential goods and services* refer to goods and services that are necessary to sustain or support life, health, critical infrastructure or public utilities, and other goods and services that are essential to address the crisis situation. These include, but are not limited to, food, water, medical supplies, building materials, transport services, goods and services essential to national security and provision of health and other public utility services such as distribution of electricity and telecommunications. The Parties may preliminarily agree on a list of essential goods and services, and review and update the list on a regular basis.

*Recovery phase* means a period that, in a crisis situation, follows the immediate crisis as the situation decreases in intensity to a point at which governments in affected territories shift the focus of their attention from responding to the immediate crisis to taking steps to secure the recovery of their economies. The Parties recognise that each of them may move to a recovery phase at different times.

*The Committee* refers to the crisis management committee established by the Parties pursuant to Article VIII of this Chapter.
Article I General Provisions
1. 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.
2. The Parties also 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.
3. The Parties recognise the right of each Party to set its own policies in a crisis situation for legitimate public objectives. Each Party shall ensure that any measures affecting trade that it takes to address crisis situations do not create unnecessary barriers to trade or unnecessarily disrupt global supply chains and are consistent with WTO rules and this Agreement.3
4. The Parties shall strive to refrain from imposing export restrictions or controls, as well as tariffs and non-tariff barriers, on exports of essential goods and services in crisis situations, in particular where such measures would compromise the ability of other Parties to respond to the crisis.
5. The Parties affirm their commitment to promote the coordination, cooperation, and transparency of crisis-response and crisis-preparedness measures to minimize adverse impacts on international trade and prevent unintended harm that may otherwise result from lack of coordination by Parties in responding to a crisis situation.
6. Nothing in this Chapter shall affect the rights and obligations in other chapters of this Agreement. Notwithstanding, when a declaration of crisis situation is made pursuant to Article II, priority should be given to compliance with obligations under this Chapter.

Article II Declaration of Crisis Situation
1. The Committee on Crisis Management established in Article VIII (henceforth the Committee) may declare a crisis situation to exist in any of the following three situations:
   (a) Meeting following declaration of national crisis: The Parties recognise the right of each Party to declare the beginning and the end of a national crisis situation according to its domestic laws and regulations. Each Party shall notify the Committee in a timely manner if it considers that a national crisis situation within its territory exists or is imminent. Following such notification, the Committee shall meet in a timely manner to discuss whether the notified national crisis situation constitutes a crisis situation within the meaning of this Chapter.
   (b) Meeting on request regarding any situation: On request of one or more of the Parties, the Committee shall meet in a timely manner to discuss any situation that the Party or Parties making the request consider may imminently become, or is already, a crisis situation.
Meeting following significant event within the free trade area: In the event of a significant event within the free trade area, the Committee shall meet in a timely manner to discuss whether the event has caused or will imminently cause a crisis situation. Any decision made by the Committee shall be based on risk assessment, considering the suggestions of other competent organizations including the World Health Organization. For the purposes of this paragraph, a ‘significant event’ includes a natural disaster, extreme financial event, pandemic or other emergency.

A declaration made according to any of the above three paragraphs has the same effect.

2. If, following a meeting held pursuant to paragraph 1 of this Article, the Committee determines that a crisis situation exists or is imminent, it may make a declaration of crisis situation. The rights and obligations in a crisis situation provided by this Chapter shall be triggered accordingly.

3. The Committee shall make a further declaration when it determines that the situation has returned to a state of normality such that it is appropriate that the focus of cooperative activities under Article VII shall shift to those described in paragraph 4 of Article VII.

Article III Essential Goods and Services

1. Essential goods and services in this Article refer to those identified according to the definition provided by this Chapter, including those on the list agreed by the Parties according to Article VII:2.

2. 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.

3. Where any Party institutes any new export prohibition or restriction on essential goods in accordance with paragraph 2(a) of Article XI of GATT 1994, that Party shall:

   (a) give due consideration to the effects of such prohibition or restriction 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. The Party instituting the export prohibition or restriction shall provide, upon request, the other Party with necessary information to enable consultations.4

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4 Adapted from the Agreement on Agriculture, Article 12.
4. During a crisis situation, an origin declaration shall not be required for the customs clearance of essential goods, except where such a declaration is deemed necessary to ensure the safety of the goods. An origin declaration may be submitted after the clearance within a reasonable period of time.

5. During the period that a crisis situation is in place as declared pursuant to Article II, 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.

**Article IV Trade Facilitation**

1. During the period that a crisis situation is in place as declared pursuant to Article II, the Parties shall take the actions set out in paragraphs 2 to 7 of this Article.

2. Each Party shall 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. Such documentation shall include, but is not limited to, that relating to completion of customs formalities and pre-arrival declaration of goods, including submission of a provisional declaration.

3. Each Party shall 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.

4. Each Party shall endeavour to apply international standards and guidelines to ensure interoperability in paperless trade and to develop safe, secure and reliable means of communication for the exchange of data.

5. Each Party shall allow for all customs duties, taxes and charges to be paid through an electronic payment system. In the event that a Party does not have such an option available, it will ensure that it sets up such a channel as soon as is feasibly possible.

6. The Parties shall coordinate to set up a 24/7 fast track customs clearance system to facilitate transit of essential goods between the Parties.

7. Where feasible, the Parties shall, leverage the existing National Single Window system and establish a 24/7 helpdesk to facilitate resolution of issues faced by importers and exporters.

**Article V Non-tariff measures**

1. The Parties recognise that required responses in a crisis situation may vary and shall thus ensure flexibility of regulatory requirements whenever possible. This flexibility may include, but is not limited to, arrangements to relax non-tariff measures to temporarily authorise trade in essential goods and services that would otherwise be prevented or slowed down by those measures. Non-tariff measures include, inter alia, measures under the WTO Agreement on Technical Barriers to Trade (TBT) and WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), and qualification and licensing requirements.
2. Where international standards are available and feasible to apply during a crisis situation, the Parties shall use their best endeavours to adopt such international standards to increase availability of essential goods and services.

3. In a crisis situation, the Parties shall consider accepting SPS measures and technical regulations of other Parties as equivalent, especially for essential goods.

4. In a crisis situation, the Parties shall consider accepting the results of conformity assessment activities to demonstrate conformity of products with their mandatory requirements including SPS and other technical requirements when the conformity assessment activities are undertaken by recognised conformity assessment bodies of the other Parties. The Parties may preliminarily agree on a list of recognised conformity assessment bodies and update the list on a regular basis.

5. Where urgent problems of health protection arise or threaten to arise for a Party, that Party has the right to adopt emergency non-tariff measures (including SPS and TBT measures) to tackle the urgent health issue, provided that the Party:

(a) immediately notifies other Parties, in writing through the contact points designated under Article VIII or already established communication channels of the Parties of the particular measure and the products covered, with a brief indication of the objective and the rationale of the measure, including the nature of the urgent problem(s), as well as the expected timeline of the measure;

(b) makes the measure available to the other Parties;

(c) allows other Parties to make comments in writing and discusses these comments upon request. Such discussions shall be held as soon as practicable. Each Party participating in the discussions shall endeavour to provide relevant information, and shall take due account of any information provided through the discussions; and

(d) review its measures within a reasonable period and provide the result of the review to the other Parties upon request. If the emergency measure is maintained after the review, the Party should review the measure periodically based on the most recent available information, and shall explain the reason for the continuation of the emergency measure.7

6 Id, Article 9.
7 Adapted from SPS Agreement, Article 7 and RCEP, Article 5.11.
6. The Parties shall endeavour to strengthen their domestic legal frameworks and penalties and develop a harmonized regional approach to the criminalization of the manufacture and trafficking of falsified essential products. The Parties shall consider applying stricter penalties on the manufacture and trafficking of falsified essential products in a crisis situation than during normal times.

7. The Parties shall promote coordination on consumer protection issues to protect consumers from counterfeit products and other unfair practices in a crisis situation.

**Article VI Transparency and Information Sharing**

1. Within 7 days after the Committee makes a declaration of crisis situation pursuant to Article II, 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. Each Party shall keep its list updated so long as a crisis situation is extant.

2. If the information required to be notified pursuant to paragraph 1 has been made available by notification to the WTO in accordance with its relevant rules and procedures or when the mentioned information has been made available in a publicly accessible and fee-free way on the Internet, the information exchange required by paragraph 1 shall be considered to have taken place.

3. A Party may request another Party to provide information on any measure notified pursuant to paragraph 1. A Party receiving a request shall promptly provide the information, by electronic means if possible.

4. A Party may request technical discussions with another Party with the aim of resolving any matter that arises under this Chapter, including as a result of a measure imposed in response to a crisis as notified pursuant to paragraph 1. The relevant Parties shall discuss the matter within 15 days of the date of the request.

5. Notifications and requests for information or technical discussions shall be conveyed through the respective Contact Points established pursuant to Article VIII.

6. Each Party shall promptly publish on the Internet its 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 in order to enable governments, traders, and other interested persons to become acquainted with them.

**Article VII Cooperation**

*Cooperation in crisis situations*

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8 Adapted from Turkey-Singapore FTA, Article 16.3 (5).
9 Adapted from RCEP, Article 4.5 (1).
1. The Parties shall cooperate to address matters of mutual interest related to their individual and collective preparation for, and response to, a crisis situation.

2. The Parties shall endeavour to work together through the Committee to agree on a list of essential goods and services no later than three months after this Agreement/Chapter enters into force, and review and update the list on a regular basis.

3. If the Committee has made a declaration of a crisis situation pursuant to Article II, then the Parties shall:
   (a) work together through the Committee to identify trade disruptions that are likely to result from the crisis situation;
   (b) work together through the Committee to review the preliminarily agreed list of essential goods and services, and, as needed, identify additional essential goods and services particular for the ongoing crisis;
   (c) cooperate to develop joint responses to the crisis situation. The matters on which Parties shall endeavour to cooperate include, but are not limited to, those covered by Articles III, IV, V, VI of this chapter; and
   (d) cooperate to build and enhance the capacity to fulfil the obligations under this Chapter.

4. Any Party may request the Committee and other Parties for technical assistance. The relevant Parties and Committee shall promptly respond after receiving such a request.

5. The Parties recognise that after an immediate crisis situation has receded, there may be a period during which economic and other effects continue to exist and require government action (the “recovery phase”). During the recovery phase, the Parties may, by mutual agreement, adjust their cooperative activities as they consider appropriate. When the Committee makes a declaration pursuant to Article II:3 that the situation has returned to a state of normality, the focus of cooperative activity shall shift to that described in paragraph 5.

Cooperation to improve preparedness for crisis situations

6. During a state of normality, the Parties shall cooperate to collectively prepare for future crisis situations, including by reviewing and identifying insights from global, regional and individual government responses to recent previous crises in order to identify insights for responding to future crises and inform future cooperation activities. The matters on which Parties may cooperate include, but are not limited to:
   (a) exchanging information and best practices in relation to supply chain management to assist Parties in their responses in a crisis situation so as to ensure supply chain continuity. This may relate to matters including:
      (i) development of continuity plans and specific plans for crisis response and management, including development of supply chain plans before a crisis happens;
(ii) regular assessment of supply chain and transport risks as part of procurement, management and governance processes;

(iii) development of trusted cross-border networks, made up of suppliers, customers, competitors and government officials that are focused on risk management; and

(iv) improvement of the visibility of network risks through information sharing and development of standardized risk assessment and quantification tools.

(b) exchanging information and best practices in relation to:

(i) the development and maintenance of documentation regarding preparations for crises, active management during crisis situations, and responses after crises; and

(ii) how best to manage risk communication before and after disruptions to ensure a balanced public and private-sector discussion, and an environment in which trade can continue to flow.

(c) exchanging information on financial risk management;

(d) promoting the digitalization of economies and paperless trade;

(e) ensuring sustainable development, especially on the protection of the environment and fighting climate change to prevent natural disasters; and

(f) establishing early-warming mechanisms for potential crises.

**Cooperation in Other International Fora**

7. The Parties shall work with each other in other relevant international fora such as the WTO, United Nations, the WHO, the Organisation for Economic Cooperation and Development (OECD) and the International Monetary Fund (IMF) to foster regional and international cooperation in relation to the matters covered in this Chapter.

**Participation of the Private Sector**
8. Each Party shall take appropriate measures to promote the active participation of the private sector within its territory 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. In considering measures to ensure compliance with this obligation, Parties shall consider measures that can be taken to prepare for potential future crises, as well as to respond to a crisis situation.

9. Recognising that the smooth functioning of regional and global supply chains is aided by a mutual understanding between governments and their private sectors of how those supply chains operate and their potential weaknesses in a crisis situation, each Party shall consider establishing one or more working groups comprised of representatives of the private sector to map supply chains for essential goods and services. The functions of the working groups shall include, but are not limited to, conducting studies to:

(a) map regional and global supply chains to identify the nature and origin of inputs, and the bundling of those inputs in the production process; and

(b) identify the governance structure of relevant regional or global supply chains and the most binding regulatory policy constraints that affect the operation of those supply chains.

10. The Parties may invite, by agreement, representatives of other relevant entities, including from the private sector, with necessary expertise relevant to the issues to be discussed, to attend meetings of the Committee.10

Article VIII Committee on Crisis Management and Contact Points

Committee on Crisis Management

1. The Parties establish a Committee on Crisis Management (henceforth the Committee) composed of senior government representatives of the relevant trade and emergency national authorities of each Party responsible for the implementation of this Chapter.

2. The purpose of the Committee is to oversee the implementation of this Chapter and its functions shall be to:

(a) provide a forum to improve the Parties’ understanding of the likelihood and potential economic and humanitarian impacts of future crises, including on sustainable development prospects and in particular, of developing country Parties;

(b) facilitate the exchange of information between the Parties in areas including, but not limited to, experiences and insights gained through previous crises, and planning for further crises;

(c) where appropriate, declare a crisis situation pursuant to Article II;

(d) in the event of a declaration of a crisis situation, to determine the appropriate means, which may include through ad hoc working groups, to undertake specific tasks related to the functions of the Committee;

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10 Adapted from Indonesia-Australia Comprehensive Economic Partnership Agreement, Article 18.5(3).
(e) coordinate with other committees, working groups and any other subsidiary body established under this Agreement as appropriate; and

(f) perform any other functions as the Parties may decide.

3. The Committee shall meet within one year of the date of entry into force of this Agreement and once a year thereafter unless the Parties agree otherwise, or the Committee makes a declaration of a situation of crisis in which case paragraph 4 shall apply.

4. After the declaration of a crisis situation is made pursuant to Article II, the Committee shall meet promptly (being no later than three months after the declaration is made), and regularly afterwards, to assess and discuss the Parties’ response to the crisis situation. The Committee shall publish a report of the results of overseeing Parties’ responses, naming Parties if any which are not compliant with obligations under this Chapter. Unless otherwise agreed by the Parties, such a report shall be published within 6 months after the Committee makes a declaration pursuant to Article II:3 of this Chapter that a situation of normality has resumed.

5. Cooperative activities initiated under Article VII:2 shall continue, with adjustments pursuant to Article VII:3 of this Chapter as the intensity of the crisis situation decreases, until the Committee makes a declaration pursuant to Article II:3 of this Chapter that a situation of normality has resumed. At that time, the Committee shall discuss adjusting the nature and extent of its work as agreed by Parties.

6. All decisions and reports of the Committee shall be made by consensus, unless the Committee agrees otherwise or unless otherwise provided in this Chapter.

7. All decisions and reports of the Committee shall be made available to the public, unless the Committee agrees otherwise.

8. The Committee shall provide for public input and consultation on matters relevant to the Committee’s work, as appropriate, and shall hold a public session at least once every two years.

Contact Points

9. Each Party shall designate and notify a Contact Point from its relevant authorities within 60 days of the date of entry into force of this Agreement. Each Party shall promptly notify the other Parties in the event of any change to its Contact Point.

10. The responsibilities of each Contact Point shall include:

   (a) communicating with the other Parties’ Contact Points, including facilitating discussions, requests and the timely exchange of information on matters arising under this Chapter;

   (b) communicating with and coordinating the involvement of relevant government agencies in its territory on relevant matters pertaining to this Chapter; and

   (c) consulting and, if appropriate, coordinating with interested persons in its territory on relevant matters pertaining to this Chapter; and carrying out any additional responsibilities specified by the Committee.
Article IX Application of Dispute Settlement (optional)

No Party shall have recourse to dispute settlement under Chapter [xx] (Dispute Settlement) for any matter arising under this Chapter.

Or

Disputes arising from [may add “selected articles”, or “except selected articles”] under this Chapter are subject to dispute settlement under Chapter [xx] (Dispute Settlement).

Or

A Party may, at any time, request consultations on any matter related to this Chapter by giving notice in writing. The consultations shall take place within three months of receipt of the request.