

**Policy Brief: Import policy involving Trade Remedies in Regional Trade Agreements
During Times of Crisis**

Ardita Ropaj- Çokaj

**Columbia University
Policy Brief
Word count:2,000**

Keywords: Best practices, Competition Policy/Subsidies, Supply chains

**A contribution to the Policy Hackathon on Model Provisions for Trade in Times of Crisis
and Pandemic in Regional and other Trade Agreements**

Disclaimer: The author declares that this paper is his/her own autonomous work and that all the sources used have been correctly cited and listed as references. This paper represents the sole opinions of the author and it is under his/her responsibility to ensure its authenticity. Any errors or inaccuracies are the fault of the author. This paper does not purport to represent the views or the official policy of any member of the Policy Hackathon organizing and participating institutions.

ABSTRACT

This paper will focus on ensuring trade arrangements are least compromised in a situation of crisis and pandemic. Trade remedies during time of pandemic continues to cause hardship to importers who are supplying critical supplies. This paper will focus primarily on how trade agreements/provisions can more effectively keep essential supply chains flowing through provisions aimed at reforming import policy during a pandemic and ensuring trade remedies inclusive of anti-dumping and countervailing harm is mitigated. Further, a review of current practices taken unilaterally by specific World Trade Organization members will be discussed. Recommendations on how these actions could be revised or implemented in future trade-related agreements serve as a vital piece of this policy brief. There are five distinct ways that trade policy could evolve and maintain supply chains through and after times of crisis (1) modifying threshold requirements for possible trade remedies and cases during times of crisis (2) developing access to trade lanes for entities who have the capacity to inject necessary products into various nation states (3) timetable adjustments during times of crisis for active cases, (4) expedited review of cases where the product is an active need or in shortage due to an ongoing crisis, (5) acceleration of payouts from anti-dumping/countervailing case ruling.

INTRODUCTION

In recent years, the number of regional trade agreements allowing for anti-dumping easement has boomed. Anti-dumping provisions continue to prove that competition amongst nation states can be lessened through abolishment of anti-dumping enactments. The legal foundation for these provisions stems from the World Trade Organizations ruling on how nation

states are regulated to handle anti-dumping and countervailing initiatives in their respected home country. During times of crisis easement of anti-dumping becomes a critical aspect of ensuring trade disruptions decrease and allow for the continue flow of trade. In order to identify the effects of eliminating trade remedy measures within a regional trade agreement during time of crisis, data from the United States and European Union will be focused on. The WTO members discussed in this research continue to showcase the impact anti-dumping enactments continue to alter the flow of trade in a constructive manner. Spear heading this initiative will continue to impact the viability of trade importing and competition policy in the future during times of crisis. This policy brief will analyze easement of trade remedies inclusive in the United States and European Union and how these specific temporary revisions to trade remedy scopes could be utilized in future trade agreements. Various regulations including tariffs, import taxes , anti-dumping, countervailing, and safeguard requirements have an effect on imports relative to the value and downstream users. Understanding the impact of trade remedies during time of crisis are crucial as a low threshold for activation allows for respondents to feel uncertainties that diminish their willingness to engage in trade during times of crisis in cases where the product in question consists of emergency supplies.

CURRENT PRACTICES

The current environment involves WTO members lessening or dismantling tariffs on specific goods in order to appease public policy objectives. The preservation of economic stimulus has become the forefront of current trade policy as well as the safety of citizens. During times of crisis the current framework regarding trade remedies comes to question as tariffs continue to be eliminated in the United States and European Union. RTA's continue to face challenges as

previously agreed on timelines and current protectionist ideals regarding trade remedies come to question. The financial and economic crisis currently ongoing has fostered an environment where WTO member states must analyze trade remedies as a recourse in establishing functionally amongst nations and agreement on lessening trade remedy impact during a time of crisis. The potentially negative implications for countries particularly faced with questions regarding protectionist approaches to trade remedies guidelines continues to have destructive effects on supply chain lanes.

Individual member states have continuously faced challenges in regional trade agreements that fail to solidify decisive decision-making on how trade remedies are determined. The limitations currently in the United States focus on how injury is caused by dumping, subsidizing, or exponential imports. The unclear distinction between shifting regulation in times of crisis fails to be mentioned in RTA's involving the United States leaving room for interpretation of current best practices of a business's home countries current approach to the crisis. In the European Union trade defence focuses on state induced price and costs distortions caused by various nation states in the importing country. A main level concern for current trade agreement practices concerns "other examples are public policies discriminating in favor of domestic suppliers, or exporters' access to financing pursuing public policy objectives"(Press Corner, 2020). This allows access for interpretation as public policy comes to the forefront during crisis and pandemic relief from the various governments.

IMPLICIATIONS OF PAST AND PRESENT CRISIS

Trade barriers inclusive of trade remedies continue to showcase the probability of slowing economic recovery efforts. A protectionist approach to anti-dumping, countervailing, and

safeguards requirements could potentially impact the economical standing of the imposing country. Various countries beyond the ruling state continue to be impacted by untimely and devastating trade remedies that undermine development approaches to sustaining open supply chain and trade lanes. Previous times of crisis showcase the link and increase between trade remedy cases and the current business cycle. Data from the World Trade Organization showcases that “in 2008, the number of AD initiations increased by 28 per cent compared with 2007”(World Trade Report, 2009). The increased application of cases during times of crisis continues to create an unsustainable environment where cases are backlogged. This continues to withhold exports and importers from properly participating in the trade process as they await unnecessary audits and fiscal reviews of their information due to minor changes in their home countries public policy initiatives.

THRESHOLD MODIFICATION

The pillar of trade policy provisions in sustaining open trade lanes requires review of current trade remedies and the potential provisional additions in securing threshold modification. The threshold for an entity to be flagged for possible anti-dumping/countervailing duties during times of crisis continue to remain the same causing a backlog and delay in access to trade lanes for entities that are focused on providing supplies during times of crisis. During times of crisis public policy becomes an active motivation for the governmental agencies as they attempt to sustain economic and financial viability during unknown times. Subsidies are currently being injected in the system inclusive of business entities that are importing and exporting out of the United States and European Union. Due to escalating times during a period of crisis, a

modification of threshold must be adjusted in future regional trade agreements. An adjustment will create an opportunity for business entities to continue trade practices and minimizes the

impact on business interaction. As future crises continue to mix public policy and trade policy, trade remedies demand a shift in current practices in order to allow for continued stimulation of current supply chains. Currently in the United States and the European Union transparency regarding stricter criteria for case implementation is necessary. In the United States dumping is considered an unfair price practice whereas the WTO does not consider this to be the case. This level of transparency regarding trade remedy thresholds will enable greater ability to negotiation trade remedy provisions in times of crisis.

TIME-TABLE EXTENSIONS

Revisions to current time limits for trade remedy cases must be examined as a provision recommendation. Currently the European Union and United States have enacted temporary timetable revisions to current case process and time allocation. This has allowed for greater availability for businesses under review the option to continue assembling necessary financial and reporting information during a period of turmoil. This current approach to trade remedies in regional trade agreements would allow for greater flexibility in trade negotiations and allow for open communication regarding possible business impact due to a home countries adaption of policy during a time of crisis which may trigger a review of businesses exporting from that country. Further, time extensions requested by the entity in equation allows for adequate review of information by agents on the case without causing imposed penalties or fines on the business

entity. Since crisis's tend to be an unforeseen event, time limits must be negotiated as retaining a typical process for trade remedies during a period of unknown turmoil would likely impede the economic wellbeing of the entity in question. Provisional changes regarding anti-dumping and countervailing approaches during times of crisis must be added as possible agents to competition policy.

EXPEDITING CASE REVIEW BASED ON NEED OF SERVICE

Developing access to trade lanes for entities under current anti-dumping, countervailing, and/or surge importing, who have the capacity to inject necessary products into various nation states must be revised as a possible remedy in sustaining viability of active supply chains. Expedition of such cases would allow for greater probability of boosting access to required products. Coupled with reforms in threshold requirements, time-limit revisions, and expedition of necessary products will allow for a lesser chance of disparity regarding the number of products available to the general public during times of crisis. In periods of crisis products that are in shortage must be brought to the forefront of provisions regarding trade remedies. Allowing for a clear distinction of emergency products will enable continued supply chains to remain open even during a possible review of business injury practices.

ACCELERATION OF PAYOUT'S FROM RULINGS IN TIMES OF CRISIS

Allowing the ability for provisions to adjust the method that cases are reviewed and ruled on will create opportunity for injured entities who are impacted by the anti-dumping, countervailing, and/or surge importing in the home country possibility of receiving compensation in a quicker manner allowing for economic sustainability during a period of crisis. Countries that accelerate

access to received funds from rulings have the potential of allowing greater economic stimulus. Measuring the level of injury to the importing country at an expediated timeframe, would allow for the actual purpose of trade remedies to continue supporting impacted businesses in a beneficial manner. Retroactive payouts would alleviate the impacted party while also pumping monetary factors into the current economic environment of the business entity and importing country.

CONCLUSION

Trade remedies continue to become a topic of discussion during times of crisis as countries look for ways to develop positive public reception. As public policy becomes a shaping agent in current trade policy, provisions in future regional trade agreements must combat various areas of trade remedies that cause damage to the home and foreign country involved in a supply chain.

Trade barriers during a time of crisis are inclusive of trade remedies and must be negotiated properly in order to ensure trade lanes continue operations with minimal interferences.

Alleviating both the exporting and importing entities involvement in the transaction continues to allow interpretation of current best practices. The United States and European Union were used as data points in understanding current approaches to trade remedies and the specific actions taken during a period of crisis. During time of crisis public policy comes to the forefront of member states viability and regulation construction. Creating viable solutions for citizens in terms of access to necessary products continues to bring to question the need for provisions in regional trade agreements regarding trade remedies during times of crisis. Through provisions such as threshold modification, timetable extensions, expedited case review, and acceleration of injury payments to impacted entities, trade remedies in regional trade agreements can be utilized

in positively impacting trade lanes and economic standing during times of crisis. This policy brief attempts to solidify provisions that may prove useful in future negotiations of regional trade agreements relative to trade remedies.

References

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON
COMMERCIAL POLICY.” *Official Journal of the European Union*, June 2020, eur-
lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0316(02)&from=EN.

Press corner. (n.d.). Retrieved July 28, 2020, from
https://ec.europa.eu/commission/presscorner/detail/en/MEMO_17_5377

United States Department of Commerce . International Trade Administration . Import
Administration . contact: webmaster_support@trade.gov. (n.d.). Retrieved July 28, 2020,
from <https://enforcement.trade.gov/intro/index.html>

World Trade Report 2009.” *Https://Www.wto.org/English/res_e/booksp_e/anrep_e/wtr09-
2d_e.Pdf*, 2009, www.wto.org/english/res_e/booksp_e/anrep_e/wtr09-2d_e.pdf