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Making trade in Asia and the Pacific more competitive, sustainable and inclusive

Towards a model chapter on trade in crisis situations in regional trade agreements

Note by the secretariat

Summary

The coronavirus disease (COVID-19) pandemic has highlighted the limitations of existing trade rules in ensuring trade resilience during crises. The model chapter annexed to the present document was developed under the Initiative on Model Provisions for Trade in Times of Crisis and Pandemic in Regional and Other Trade Agreements to fill the gap. The model chapter provides a template for a separate stand-alone chapter on trade in crisis situations that can be further tailored to meet the specific needs of the parties to trade agreements. It includes more specific and targeted legal provisions to minimize the impacts of trade disruption and promote coordination in times of crisis. The provisions in the model chapter cover key issues of trade in crisis situations, including the establishment of a committee on crisis management, declarations of crisis situations, the treatment of essential goods and services, non-tariff measures, transparency and information-sharing, and cooperation.

The Committee on Trade, Investment, Enterprise and Business Innovation may wish to provide advice on the potential application of the model chapter and the future work of the secretariat in support of trade negotiations.

* ESCAP/CTIEBI(1)/1/Rev.1.

I. Background

1. The coronavirus disease (COVID-19) pandemic has highlighted the limitations of existing trade rules in ensuring trade resilience during crises. There are two ways of including more specific and targeted legal provisions in trade agreements to minimize the impacts of trade disruption in times of crisis: (a) amending existing chapters of trade agreements to incorporate such provisions; or (b) introducing a new and separate stand-alone chapter. The model chapter annexed to the present document provides a template for the second option, a separate stand-alone chapter that can be further tailored to meet the specific needs of the parties to trade agreements.

2. At the core of the model chapter is the establishment of a committee on crisis management to oversee coordination and cooperation efforts to minimize the impacts of trade disruption in crisis situations. Such a committee would be responsible for declaring the existence of a crisis situation with a view to triggering the crisis provisions provided in the chapter. After regularly reviewing the situation, the committee could then determine when the situation has returned to a state of normality and the focus of cooperation activities would then shift back to building up preparedness for future crises.

3. Instead of merely providing general exceptions for countries to take unilateral measures, the chapter provides an additional mechanism to ensure a coordinated response to crises and promote cooperation for preparing for future crises. It sets out specific rights and obligations for trade in crisis situations, helping to reduce uncertainties and keep trade flowing during crises. The provisions in the 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 focused on ensuring the supply of essential goods and services during a crisis by maintaining associated trade facilitation and coordination measures.

II. Issues for consideration by the Committee

4. The Committee on Trade, Investment, Enterprise and Business Innovation may wish to provide advice on the potential application of the model chapter and the future work of the secretariat in support of trade negotiations, including through increased capacity-building on the use of the model chapter, with the aim of encouraging its application in trade negotiations conducted by member States.

Annex

Model chapter on trade in crisis situations

Definitions

For the purposes of the present chapter:

“Crisis situation” means an extraordinary situation arising, inter alia, from wars, natural disasters, extreme financial events, pandemics and other emergencies, and that 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 made pursuant to article II that a crisis situation exists to which the present chapter applies;

“Essential goods and services” means 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 the period that follows an immediate crisis situation and that is characterized by a decrease in intensity to the point that governments in affected territories shift the focus of their attention from responding to the immediate crisis situation to taking steps to secure the recovery of their economies. The Parties recognize that each of them may move to a recovery phase at different times;

“The committee” means the committee on crisis management established by the Parties pursuant to article VIII of the present 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 readiness for, effective response to and recovery from crises.

3. The Parties recognize the right of each Party to set its own policies in a crisis situation for legitimate public objectives. Each Party shall ensure that any measure affecting trade that it takes to address crisis situations does not create unnecessary barriers to trade, does not unnecessarily disrupt global supply chains and is consistent with World Trade Organization (WTO) rules and the present agreement.¹

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 a crisis.

5. The Parties affirm their commitment to promoting the coordination, cooperation and transparency of crisis-response and crisis-preparedness measures to minimize the 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 the present chapter shall affect the rights and obligations set out in other chapters of the present agreement. Nonetheless, when a declaration of crisis situation is made pursuant to article II, priority shall be given to compliance with the obligations set out in the present chapter.

Article II

Declaration of crisis situation

1. The committee on crisis management established pursuant to article VIII may declare that a crisis situation exists in any of the following three situations:

(a) *Meeting held following a declaration of national crisis.* The Parties recognize 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 a notification, the committee shall meet in a timely manner to discuss whether the national crisis situation in question constitutes a crisis situation within the meaning of the present chapter;

(b) *Meeting held upon request regarding any situation.* Upon the request of one or more 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;

(c) *Meeting held following a 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 is likely to imminently cause a crisis situation. Any decision made by the committee shall be based on a risk assessment and the suggestions of other competent organizations, including the World Health Organization (WHO). For the purposes of the present article, a “significant event” could be a natural disaster, an extreme financial event, a pandemic or another emergency.

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

¹ Group of 20 trade and investment ministerial meeting: ministerial statement, 14 May 2020.

2. If, following a meeting held pursuant to paragraph 1 of the present article, the committee determines that a crisis situation exists or is likely to be imminent, it may make a declaration of crisis situation. The rights and obligations in a crisis situation set out in the present chapter shall be triggered accordingly.

3. The committee shall make an additional declaration when it determines that the situation has returned to a state of normality such that it is appropriate for the focus of cooperative activities set out in article VII to shift to those described specifically in article VII, paragraph 6.

Article III **Essential goods and services**

1. For the purposes of the present chapter, “essential goods and services” are those defined above and include those on the list agreed upon by the Parties according to article VII, paragraph 2.

2. Each Party shall ensure that any measure affecting trade in essential goods and services that it takes to address crisis situations, including export restrictions, is targeted, proportionate, transparent and temporary, does not create unnecessary barriers to trade or disrupt global supply chains and is consistent with WTO rules and the present agreement. Whenever possible, the Parties shall use their best endeavours to facilitate trade in essential goods and services.

3. Any Party that institutes a new export prohibition or restriction on essential goods in accordance with article XI, paragraph 2 (a), of the General Agreement on Tariffs and Trade 1994, shall:

(a) Give due consideration to the effects of such a 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;

(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 the other Party, upon request, with the information necessary to enable consultations.²

4. In 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 clearance within a reasonable period of time.

5. During a crisis situation 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.

² See the WTO Agreement on Agriculture, art. 12.

Article IV

Trade facilitation

1. During a crisis situation as declared pursuant to article II, Parties shall take the actions set out in paragraphs 2 to 7 of the present article.
2. Each Party shall adopt measures that allow for the 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 not be limited to that relating to the completion of customs formalities and the pre-arrival declaration of goods, including the submission of a provisional declaration.
3. Each Party shall provide, for mutual recognition, trade-related data and documents in electronic format originating from other Parties based on a substantially equivalent level of reliability.³
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 feasible.
6. The Parties shall coordinate to set up a 24/7 fast-track customs clearance system to facilitate the 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 help desk to facilitate the resolution of issues faced by importers and exporters.

Article V

Non-tariff measures

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

³ Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific, art. 8 (Economic and Social Commission for Asia and the Pacific resolution 72/4, annex).

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

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

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 sanitary and phytosanitary and technical barriers to trade 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, as well as the expected duration of the measure;

(b) Makes the measure available to 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;

(d) Reviews its measures within a reasonable period and provides the result of the review to other Parties upon request. If the emergency measure is maintained after the review, the Party shall review the measure periodically based on the most recent available information and explain the reason for the continuation of the emergency measure.⁵

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 of and trafficking in falsified essential products. The Parties shall consider applying stricter penalties on the manufacture of and trafficking in 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 the manufacture and sale of counterfeit products and other unfair practices in a crisis situation.

Article VI

Transparency and information-sharing

1. Within seven days of the committee making a declaration of crisis situation pursuant to article II, each Party shall provide to the other Parties a list of any measures adopted in response to the crisis situation that may affect

⁴ Ibid., art. 9.

⁵ See the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, art. 7, and the Regional Comprehensive Economic Partnership Agreement, art. 5.11.

international trade. Each Party shall keep its list updated so long as the crisis situation lasts.

2. If the information referred to in paragraph 1 above has been made available by notification to WTO, in accordance with its relevant rules and procedures, or if that information has been made publicly accessible online at no fee, the information exchange required by paragraph 1 shall be considered to have taken place.⁶

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 to engage in technical discussions with another Party with the aim of resolving any matter that arises from the provisions in the present chapter, including from a measure imposed in response to a crisis situation 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 online 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 entities to become acquainted with them.⁷

Article VII Cooperation

Cooperation in crisis situations

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 on crisis situations with a view to agreeing on a list of essential goods and services no later than three months after the present [agreement] [chapter] enters into force and review and update the list on a regular basis.

3. If the committee makes a declaration of crisis situation pursuant to article II, 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 any additional goods and services that prove to be essential during a particular ongoing crisis;

⁶ See the Türkiye-Singapore Free Trade Agreement, art. 16.3, para. 5.

⁷ See the Regional Comprehensive Economic Partnership Agreement, art. 4.5, para. 1.

(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–VI of the present chapter;

(d) Cooperate to build and enhance the capacity to fulfil the obligations set out in the present chapter.

4. Any Party may make a request to the committee and other Parties for technical assistance, to which the committee and the relevant Parties shall respond promptly.

5. The Parties recognize that, during the recovery phase that follows an immediate crisis situation, they may, by mutual agreement, adjust their cooperative activities as they consider appropriate. When the committee makes a declaration pursuant to article II, paragraph 3, that the situation has returned to a state of normality, the focus of cooperative activities shall shift to those described in paragraph 6 of the present article.

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 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 on supply chain management to assist Parties in responding to crisis situations so as to ensure supply chain continuity. This may relate to several matters, including:

(i) The development of continuity plans and specific plans for crisis response and management, including the development of supply chain plans before a crisis happens;

(ii) Regular assessments of supply chain and transport risks as part of procurement, management and governance processes;

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

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

(b) Exchanging information and best practices on:

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

(ii) How best to manage risk-related 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 with the aim of protecting the environment and fighting climate change to prevent natural disasters;

(f) Establishing early warning mechanisms for potential crises.

Cooperation in other international forums

7. The Parties shall work with each other in other relevant international forums such as the United Nations, WHO, WTO, the Organisation for Economic Co-operation and Development and the International Monetary Fund, to foster regional and international cooperation in relation to the matters covered in the present 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 to a crisis situation that ensures the continued flow of goods and services and minimizes disruptions to the supply of essential goods and services. In considering measures to ensure compliance with such an 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. Recognizing that the smooth functioning of regional and global supply chains is aided by mutual understanding between Governments and their private sectors of how those supply chains operate and their potential weaknesses in crisis situations, each Party shall consider establishing one or more working groups involving representatives of the private sector to map out supply chains for the provision of essential goods and services. The functions of the working groups shall include but not be limited to conducting studies:

(a) To map out regional and global supply chains to identify the nature and origin of inputs and how those inputs are bundled in the production process;

(b) To 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 of the issues to be discussed, to attend the meetings of the committee.⁸

⁸ See the Indonesia-Australia Comprehensive Economic Partnership Agreement, art. 18.5, para. 3.

Article VIII Committee on crisis management and contact points

Committee on crisis management

1. The Parties shall establish a committee on crisis management composed of senior government representatives of the relevant national trade and emergency authorities of each Party responsible for the implementation of the present chapter.
2. The purpose of the committee is to oversee the implementation of the present chapter. The functions of the committee shall be:
 - (a) To 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, in particular, of developing States Parties;
 - (b) To facilitate the exchange of information between Parties, including on experiences and insights gained through past crises and on planning for future crises;
 - (c) Where appropriate, to declare a crisis situation pursuant to article II;
 - (d) In the event of a declaration of crisis situation, to determine the appropriate means, which may include ad hoc working groups, to undertake specific tasks related to the functions of the committee;
 - (e) To coordinate with other committees, working groups and any other subsidiary body established under the present agreement, as appropriate;
 - (f) To 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 the present agreement and once a year thereafter, unless the Parties agree otherwise or the committee makes a declaration of situation of crisis, in which case paragraph 4 of the present article shall apply.
4. After a declaration of crisis situation has been made pursuant to article II, the committee shall meet promptly (no later than three months after the date of the declaration) and regularly thereafter to assess and discuss the Parties' responses to the crisis situation. The committee shall publish a report on the results of its assessment of the Parties' responses, naming Parties that are not compliant with the obligations set out in the present chapter. Unless otherwise agreed upon by the Parties, such a report shall be published within six months of the committee making a declaration pursuant to article II, paragraph 3, of the present chapter that the situation has returned to a state of normality.
5. Cooperative activities initiated under article VII, paragraph 2, shall continue, with adjustments made pursuant to article VII, paragraph 3, of the present chapter as the intensity of the crisis situation decreases, until the committee makes a declaration pursuant to article II, paragraph 3, that the situation has returned to a state of normality. At that time, the committee shall discuss adjusting the nature and extent of its work as agreed upon by the Parties.
6. All decisions of the committee shall be made by consensus, unless the committee agrees otherwise or unless otherwise provided in the present 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 its 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 the present 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 with a view to facilitating discussions, requests and the timely exchange of information on matters arising from the provisions in the present chapter;

(b) Communicating with and coordinating the involvement of relevant government agencies in its territory on matters pertaining to the present chapter;

(c) Consulting and, if appropriate, coordinating with interested persons in its territory on matters pertaining to the present chapter;

(d) Carrying out any additional responsibilities specified by the committee.

Article IX

Dispute settlement mechanism [optional]

No Party shall have recourse to a dispute settlement mechanism under chapter [xx] (Dispute settlement) for any matter arising from the provisions in the present chapter.

Article IX bis

Dispute settlement mechanism [optional]

Disputes arising from [selected articles] [selected articles except articles xx] in the present chapter are subject to dispute settlement under chapter [xx] (Dispute settlement).

Article IX ter

Dispute settlement mechanism [optional]

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