



Natural Disasters and Trade Research

Study II

A legal mapping

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Acknowledgements

On 25 July 2018, the WTO Secretariat commissioned research work on a legal mapping of natural disasters, WTO Agreements and other legal instruments. The author is grateful to the many members of the WTO Secretariat who helped by offering input and advice.

Disclaimer

The narrative and perspectives are the responsibility of the author, Professor Giovanna Adinolfi. The report is without prejudice to the positions of Members or to their rights and obligations under the WTO Agreements.

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Executive Summary



1. This report surveys the scope that exists under World Trade Organization (WTO) Agreements for Members to take trade measures in support of:

- Disaster response (i.e. in the immediate aftermath of a disaster event);
- Disaster recovery (i.e. for the restoration of assets, systems and activities within a disaster-affected economy); and
- Disaster resilience (i.e. actions to support the ability of an economy to withstand future shocks).

The analysis focuses on disasters arising from geological or geophysical hazards (originating from internal earth processes) and hydro-geological hazards of atmospheric, hydrological or oceanographic origin. Together these hazards are referred to as natural hazards or disasters in the text.

2. The analysis is informed by trade issues identified in accompanying [country research reports](#). The analysis that follows suggests that a wide range of actions can be taken across a broad cross-section of WTO Agreements dealing with trade in goods, trade in services and, where germane, trade-related aspects of intellectual property rights. The author does not discuss if the scope of action is “sufficient”. That is a matter for WTO Members to decide. The intention is to shed light on the scope for action that is presently available under existing Agreements.

3. Analysis is given to the rights and obligations arising under the multilateral trading system, and to the “policy space” available to Members under the flexibilities (e.g. the waiver under Article IX:3 and IX:4 of the Marrakesh Agreement establishing the WTO – hereinafter, the Marrakesh Agreement – the exception clauses in the General Agreement on Tariffs and Trade (GATT) 1994 and the General Agreement on Trade in Services (GATS) or the provisions on special and differential treatment included in WTO Agreements and decisions in favour of developing and least-developed Members) envisioned therein. In parallel, the report highlights that trade issues arising from natural disasters are also addressed within a number of international legal instruments or recommendations on disaster law. Where scope exists to apply such disciplines and approaches under existing WTO Agreements, it is highlighted in the text.

4. The separation of issues into three phases of disaster risk management (i.e. disaster response, disaster recovery and disaster resilience) facilitates analysis for the purposes of this paper. In practice, these phases may tend to overlap or merge. For some readers, the humanitarian disaster response phase may appear as separate and distinct. Why should disaster response measures be affected by measures designed with commercial transactions

in mind? The answer given by the author is that trade measures that apply to regular cross-border commercial operations impinge on both commercial and non-commercial exchanges (e.g. those by humanitarian agencies). Furthermore, the goods and services provided in the course of regular commercial trade are essential for disaster response, recovery and resilience. Goods and services used for disaster risk reduction and resilience also involve private actors.

5. One central insight from the legal analysis is that there is significant potential to advance actions that will support preparedness in the face of specific, known hazards. Preparedness and *ex ante* action, including in the area of trade policy, have the potential to mitigate negative trade effects. When hit by a disaster, Members frequently find themselves in situations where they need urgently to approve temporary “derogations” from legislation in force to prevent trade issues arising. Such an exception-based approach is, by definition, both time-consuming and costly, for the government and the commercial and non-commercial actors concerned. With the number and economic burden of such events growing, improving legislation *ex ante*, including adapting measures dealing with trade policy to take account of the exigencies of disasters, should promote resilience.

6. The trading partners of disaster-affected Members can also give *ex ante* consideration to how best to support recovery and reconstruction through their trade policy regimes. In some cases, this may mean refraining from certain actions (e.g. measures that would otherwise restrict the trade of the disaster-affected Members). In others, it may involve taking positive actions to facilitate the trade of a disaster-affected Member (i.e. encouraging exports from that country).

7. A wide range of actions can be taken to support disaster risk reduction and resilience across a broad cross-section of WTO Agreements. However, such actions should be informed by WTO disciplines to ensure that Members remain within their legal commitments. Where relevant, the report highlights these obligations and how they may inform measures to address the trade issues identified in the country research.

8. The report identifies measures that Members can take, as well as those from which they should refrain. And it does so both from the perspective of:

- Measures that can be taken by a disaster-affected Member towards the imports of foreign suppliers of goods and services;
- Measures that can be taken by the trading partner(s) of a disaster-affected Member

towards the goods and services exported by that Member.

These measures are briefly summarized in the following paragraphs and dealt with in detail in the three sections of the report on disaster response, disaster recovery and disaster resilience. Measures taken by a disaster-affected Member and its trading partners can be trade facilitating, trade neutral or trade restrictive. In turn, such measures could be considered as promoting disaster recovery and reconstruction, or be neutral, or negatively impact recovery and resilience in the disaster-affected trading partner.

Disaster response

9. In the disaster response phase, trade measures taken by a disaster-affected country are mainly focused on facilitating the availability of domestic and foreign relief goods, equipment, services and personnel. WTO Agreements can support these actions, particularly the Trade Facilitation Agreement (TFA), which addresses bottlenecks in the functioning of customs and other border agencies that can arise in disaster response, or the flexibilities under the GATT 1994 allowing (discriminatory) derogations from customs duties and other fees and charges. Domestic regulations on the quality and safety of products can slow the entry of relief items. Basing national measures on international standards (where they exist and are relevant) can help to strike a balance between control and facilitation. WTO Agreements and related decisions can help disaster-affected Members source food aid from domestic suppliers and through international food assistance. In the services sector, *ex ante* measures to facilitate the entry of foreign service suppliers may prove helpful. The same can be affirmed with respect to domestic regulatory measures to support money transfers from abroad (remittances and cash aid) and to regulation of the allocation of frequencies in view of the critical role of telecommunications in disaster response.
10. Actions can also be taken by trade partners to support disaster response. In the goods sector, compliance with provisions on traffic in transit should prevent unnecessary delays, as would enhanced cooperation between border agencies. Food aid to disaster-affected countries should be carried out in accordance with the relevant WTO provisions, the Food Assistance Convention, and the guidelines of other recognized international humanitarian entities. Consideration could also be given to the obstacles trade partners may (inadvertently) introduce on disaster response to disaster-affected countries, for instance with respect to measures aiming at promoting compliance with prudential financial regulation (potentially hindering money transfers) or with

regulation on the quality and safety of products. The provision of technical assistance under relevant WTO Agreements and relevant instruments could seek to improve the preparedness of Members in the face of natural disasters and the ability to enact trade measures that support effective disaster response.

Disaster recovery

11. In many instances, disaster recovery by local businesses may require financial support or support channeled through general government services. In this regard, both the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and the Agreement on Agriculture (AoA), provide for a considerable margin of action that could be exercised by disaster-affected Members, particularly developing countries. The latitude provided for subsidies to the service sectors is somewhat broader due to the structure of the GATS. Governments may also receive requests for tariff protection from badly affected businesses or sectors. Some built-in flexibilities exist notably as regards any space between applied and bound tariff rates, where Members have made such commitments in their schedules. Volume safeguards and balance of payment provisions may also be invoked. Recovery though is likely to be hastened by market opening as for example concerns the importation of products necessary for the reconstruction of physical infrastructure (e.g. building materials). The same consideration can also be made for the supply of some essential services, crucial for recovery activities (e.g. engineering services). Public procurement policies also play an essential role in this respect.
12. Technical cooperation under the Agreement on Technical Barriers to Trade (TBT Agreement) and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) from trade and development partners deserve consideration, notably in cases where a prior determination of regulatory compliance is lost, and exports from a disaster-affected country are negatively affected. Taking account of natural disasters when designing preference schemes may also be conducive to export recovery in disaster-affected Members.

Disaster resilience

13. The 2015 Sendai Framework on Disaster Risk Reduction¹ has changed the focus of global attention to strengthening resilience to hazards before a disaster strikes. On trade matters, disaster risk management requires the adoption of specific regulatory measures addressing customs issues that may arise in the disaster response phase aiming at ensuring “continuity management” in customs operations. In these matters, the

¹ UN doc. A/RES/69/283 of 3 June 2015.

implementation of the TFA can be helpful for disaster-prone countries.

14. Resilience depends also on the quality of physical infrastructure. The TBT Agreement offers broad latitude to promote a “Build Back Better” approach using both domestic regulations and regulatory co-operation internationally. Flexibilities are also available under the AoA and the Ministerial Decision on General Services² for the implementation of government-financed support schemes aiming at strengthening resilience to disasters. Indeed, the burden of these events (particularly hydro-meteorological events) tends to fall disproportionately heavily on the agricultural sector.
15. In the services sectors, *ex ante* measures may include the conclusion of agreements on the mutual recognition of professional qualifications (or the adoption of domestic regulation in this regard) as it would facilitate the entry of foreign qualified personnel in the event of, or to reduce exposure to, a natural hazard. Overall, the improvement of disaster resilience is highly dependent upon the availability of some services (e.g. environmental services, health services, engineering services, telecommunication and weather-related services). Liberalization in these sectors could have a positive impact, encouraging the growth of the private sector and, overall, enhancing the domestic capacity to supply services crucial for reducing vulnerability to disasters.
16. Trade and development financing partners can play a useful role in providing technical assistance to disaster-prone countries, in order to improve their “trade” preparedness for natural hazards. This assistance could support, for example, the participation in international standard-setting bodies, that would give vulnerable countries the opportunity to actively contribute to the elaboration of international standards (e.g. on building materials, coherent with a “Build Back Better” approach), or focus on the elaboration of domestic regulatory frameworks on critical services for resilience purposes (e.g. telecommunication services, data storage and data management services). To support economic development and the efficient use of resources to finance disaster resilience programmes, the strengthening of trade preferences could be considered, particularly for those developing or least-developed country (LDC) Members that have adopted a comprehensive domestic legislation on disaster risk management and disaster assistance. Trade measures that would help bridge the insurance protection gap and promote the global weather enterprise also merit consideration, including as part of discussions on environmental goods and services.

Next steps

17. This report sheds light on the scope that exists under WTO Agreements for Members to take trade measures in support of disaster response, recovery and resilience. Such actions are the responsibility of WTO Members. It is also the responsibility of WTO Members to determine what further steps, if any, they may wish to take on the basis of the analysis contained in this report.

² WT/MIN(13)/37, WT/L/912 of 11 December 2013

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ISBN 978-92-870-5113-4
Report designed by Graphic and Event Design,
Print and Distribution Section
Printed by the World Trade Organization.

Image credits:
Cover image: istock
Page 4: © WTO/Michael Roberts.

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ISBN: 978-92-870-5113-4



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