Trade and natural disasters: A legal mapping exercise

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Purpose and scope

- **Aim** - scope under WTO Agreements and related decisions to take measures in support of (1) disaster response/ (2) recovery/ (3) resilience
  - Rights and obligations under WTO Agreements
  - Policy space under “flexibilities”

Rules designed with respect to cross-border commercial transactions

How do they impinge upon commercial and non-commercial exchanges crucial for disaster response/recovery/resilience?
(1) Disaster response

- Facilitating the availability of domestic and foreign goods, equipment, services and personnel
- How trade measures under WTO Agreements can support action by a disaster-affected Member?
Response: Disaster-affected country

TRADE IN GOODS - Entry of relief items

• Simplification of customs processes and procedures under TFA for regular commercial transactions → positive impact on speeding up and facilitating the entry of relief goods and equipment

• Rights and flexibilities under GATT 1994 could justify the (discriminatory) suspension of customs charges on the entry of relief items → lowering the costs of foreign and international assistance
Response: Disaster-affected country

TRADE IN GOODS - Quality and safety of relief goods and equipment

- Concern: balance between control and facilitation

- TBT and SPS agreements:
  - Use of international standards
  - CAPs and control, inspection and approval procedures undertaken as expeditiously as possible

- Shifting to cash aid?
Response: Disaster-affected country

TRADE IN GOODS - Access to goods of primary necessity (food)

- Domestic programmes and measures
  - “Limited tendering” under the Revised GPA
  - Green Box measures under the Agreement on Agriculture on
    - Public stockholding for food security purposes
    - Domestic food aid
  - Restrictions on the exports of agricultural products under GATT 1994
Response: Disaster-affected country

TRADE IN SERVICES - Entry of foreign relief personnel (medical teams)
• Concern: balance between guaranteeing competence and facilitating entry
• Recognition of foreign professional qualifications under GATS: a preferable alternative to waiving domestic regulations?

TRADE IN SERVICES - Access to monetary resources
• Concern: facilitating access to remittances and cash aid
• Money transfers via mode 1 under GATS
Response: Trade partners

TRADE IN GOODS - Entry of relief items

• Simplification of customs processes and procedures under TFA:
  • Traffic in transit and Border agency cooperation

TRADE IN GOODS - Access to goods of primary necessity (food)

• International food aid
  • Revised GPA on procurement of the purpose of providing international assistance
  • 1994 Decision on LDCs and NFIDCs and 2015 Decision on Export Competition
Response: Trade partners

TRADE IN SERVICES - Access to monetary resources

• Impact of domestic regulations on combating illicit or fraudulent practices on transfers of remittances or use of cash aid
(2) Disaster recovery

• Restoring the full functioning of an economy or a community affected by a disaster
• How trade and trade-related measures under WTO law can help to stimulate recovery?
Recovery: Disaster-affected country

TRADE IN GOODS - Subsidies in support of domestic producers

• Concern: Support firms in recovering the losses and damages

• Green Box measures under the Agreement on Agriculture on
  • Payments to farmers aiming at upholding relief from natural disasters (para. 8) (predominantly for the re-establishment of production facilities)
Recovery: Disaster-affected country

- **SCM Agreement**
  - Definition of “specificity” (objective criteria, neutral, economic in nature and horizontal in application, e.g. subsidies to micro, small and medium enterprises)
  - Provisions on “prohibited” subsidies do not apply to LDC and some developing Members ...
  - Other subsidies are “actionable” to the extent the other conditions set in SCMA are satisfied
  - Peace clause on measures implemented by developing Members with a view to achieving “legitimate development goals” (2001 Ministerial Decision on Implementation-related issues and concerns) (including restoration of economic activities in a disaster affected area?)
TRADE IN GOODS - Imports by the disaster-affected country

• Concern 1: addressing BoP deficit or supporting domestic production
• Import restrictions for BoP purposes under **GATT 1994**
  • E.g. “Infant industry”: including “the reconstruction of an industry destroyed or substantially damaged as a result of natural disasters”
• Waiver under **Marrakesh Agreement** (Philippines 2014)
• Concern 2: facilitate the entry of foreign products required for reconstruction
  • Suspension by New Zealand of **AD duties** on imports of building materials
  • 2006 US-Mexico “Trade Cement Agreement”
Recovery: Disaster-affected country

TRADE IN SERVICES - Subsidies in support of domestic services and service suppliers

- **GATS**: absence of a specific discipline on subsidies, but
  - MFN obligation
  - NT obligation for committed sectors

TRADE IN SERVICES - competing demands for market opening and protection (construction services)

- Bindings in **Schedules of commitments** as a “minimum threshold”
- Protection of domestic suppliers for committed sectors: waiver under **Marrakesh Agreement** (Albania 2004)
Recovery: Disaster-affected country

PUBLIC PROCUREMENT

• Concerns: need of a speedy procedure; potential lack of domestic suppliers; avoiding cost increase; avoid price speculation

• Framework agreements and special rules for emergencies

• Revised GPA general exception clause
Recovery: Trade partners

TRADE IN GOODS - Subsidies

• Give consideration to recovery needs of the disaster-affected country before consultations under the SCM Agreement

• Give consideration to request for financial assistance under bilateral and multilateral development assistance networks
Recovery: Trade partners

TRADE IN GOODS - Support resumption of exports

• Trade preferences under the 1979 Enabling Clause and the 2005 and 2013 Ministerial Decisions on DFQF to LDCs
  • Weight of exposure to natural disaster in LDCs graduation process
    • "economic vulnerability" measured also on the basis of n° of victims of past disasters and instability of agricultural production
    • Deferral of consideration of graduation or transition period following a graduation decision may be tied to exposure to natural disasters
Recovery: Trade partners

TRADE IN GOODS - quality and safety of exports from disaster-affected countries

• Concern: damage to quality infrastructure, undermining confidence and affecting exports
• Technical assistance under TBT and SPS Agreements to support the rebuilding of quality infrastructure
• «Zoning» measures under SPS Agreement
(3) Disaster resilience

- Reduction of disaster risks and losses “through the implementation of measures that prevent and reduce hazard exposure and vulnerability”

- How WTO agreements can support the design and implementation of resilience measures
Resilience: At risk country

TRADE IN GOODS - mainstreaming DRR into national discipline and domestic policies on customs

- Implementation of TFA also taking into consideration
  - IFRC Model Act
  - Adaptation of customs regulations and infrastructures to the ASYREC module of UNCTAD ASYCUSA
- Adaptation of the ISO Standard on «Business continuity management» to governmental authorities, including customs authorities
Resilience: At risk country

TRADE IN GOODS - Technical regulations and standards

• Build Back Better approach and impact on construction regulations

• **TBT Agreement:**
  • Preference for “performance-based” regulations (less-trade restrictive than codes prescribing the characteristics of materials allowed to be used)
  • Technical specifications set by national or regional standards
  • Incentive on the use of “international standards” as a basis for technical regulations
TRADE IN GOODS - Strengthening resilience of the agriculture sector

• Green Box under the Agreement on Agriculture:
  • Provision of general services
  • Investment aid
  • Environmental programmes
  • Payments to producers in disadvantaged regions under regional investment programmes
  • Participation in income insurance and income-safety net programmes
TRADE IN SERVICES - Foreign professional qualifications

- Recognition under **GATS** (unilaterally, agreements/arrangements)
- Domestic mandatory professional qualifications based on **multilaterally agreed criteria**, whenever appropriate
- Temporary **waivers** to domestic regulation ad hoc or according to pre-established criteria (**MFN basis**)
TRADE IN SERVICES - Increase the availability of services crucial for reducing vulnerability to disasters

- Increase liberalization potential positive impact on the overall service supply capacity of disaster-prone countries
  - Insurance and reinsurance services
  - Telecommunication services
- Weather-related services: Policy dialogue on
  - Implications on import policy for hydromet equipment and trade-related IP aspects
  - Role of public bodies under both GATS and Revised GPA
  - Issues related to observational data
  - What services in weather-related services?
Concluding remarks

Wide range of actions can be taken

Across a broad cross-section of WTO Agreements

Purpose of study to clarify the scope for action within the legal architecture

Next steps...