

10. Replace Chapter 10 (Institutional Provisions) with:

CHAPTER 10

TRADE IN HUMANITARIAN CRISIS SITUATIONS

Article 10.1

Definitions

For the purposes of this Chapter:

- (a) **essential goods** means goods considered by a Member State as essential for disaster relief or urgent medical purposes during a humanitarian crisis;¹
- (b) **humanitarian crisis** means an event that poses, or series of events that pose, an imminent threat to or affect the health, safety, or well-being of, a community or a region, such as pandemics, natural or human-induced disasters and may occur throughout a large land area; and
- (c) **measure** means laws, regulations, procedures, and administrative rulings of general application.

Article 10.2

General Provisions

1. Member States acknowledge that, during humanitarian crisis situations, co-ordinated regional responses are necessary and desirable to ensure the continued flow of goods and information within the region.

¹ A Member State may refer to guidelines issued by relevant international organisations, of which all Member States are members, when determining if a good is essential.

2. Member States also acknowledge that, during humanitarian crisis situations, continued international trade and resilient supply chains, especially of essential goods, can contribute to the readiness for, effective response to, and recovery from the crises.

3. Nothing in this Chapter shall prevent a Member State from exercising its rights or obligations under the WTO Agreement, or any other international agreements to which it is a party to during humanitarian crisis situations.

4. Notwithstanding paragraph 3, each Member State shall ensure that any measure affecting trade that it takes to address humanitarian crisis situations do not create unnecessary barriers to trade or unnecessarily disrupt global supply chains and are consistent with the WTO Agreement, this Agreement, and any other international agreements that the Member State is a party to.

5. Member States affirm their commitment to promote the co-ordination, co-operation, and transparency of crisis-response and crisis-preparedness measures to minimise adverse impacts on regional trade and prevent unintended harm that may otherwise result from lack of co-ordination by Member States in responding to a humanitarian crisis situation.

Article 10.3

Essential Goods

1. During a humanitarian crisis situation, a Member State shall, to the extent possible:

- (a) refrain from imposing trade-restricting non-tariff measures (NTMs) on essential goods; if necessary, such trade-restricting measures must be targeted, proportionate, transparent,

temporary, and in conformity with its rights and obligations under the WTO Agreement and other relevant international agreements; and

- (b) unilaterally rollback all NTMs on essential goods that are not in conformity with its rights and obligations under the WTO Agreement. In cases where a complete rollback of NTMs on essential goods is not feasible, Member States will discuss an appropriate modality to address the NTMs' trade distorting effects, if any.

2. Where any Member State institutes an export prohibition or restriction on essential goods in accordance with Article XI.2(a) of GATT 1994, that Member State shall, to the extent possible:

- (a) give exemptions to Member States, such that the Member State considers imposing the export prohibition or restriction on Member States only after doing so for non-Member States;²
- (b) give exemptions to Member States, such that the Member State considers lifting the export prohibition or restriction on Member States before doing so for non-Member States; and
- (c) give due consideration to the possible effects of such export prohibition or restriction on importing Member States' domestic supply of essential goods.

² This subparagraph shall not prevent a Member State from requiring, as a condition for exporting essential goods of that Member State to the other Member States, that the good not be re-exported to non-Member States.

Article 10.4

Trade Facilitation

1. During humanitarian crisis situations, each Member State shall, to the extent possible:

- (a) adopt or maintain measures that allow for pre-arrival processing of documentation related to all essential goods in electronic format to expedite the release of such goods upon arrival. Such documentation shall include, that relating to the completion of customs formalities and pre-arrival declaration of goods;
- (b) accept scanned copies of Certificate of Origin, Origin Declaration, or Sanitary and Phytosanitary (SPS) certificates in place of the original copies of Certificate of Origin, Origin Declaration, or SPS certificates, and electronically signed Certificate of Origin, Origin Declaration, or SPS certificates in accordance with its laws and regulations;³
- (c) 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 trade-related data;
- (d) adopt or maintain procedures to expeditiously process the export or import of essential goods, including allowing for all customs duties, taxes and charges to be paid through an electronic payment system. In the event that a Member State does not have such an option available, it will ensure that it sets up such a channel as soon as is feasibly possible;

³ For greater certainty, the acceptance of such scanned copies may require the submission of the original copy at a later date.

- (e) open up alternative ports or airports or grant expedited access for emergency cargo flights, for the transportation of essential goods if required; and
 - (f) avoid imposing discriminatory policies and procedures that limit warehousing options for storing imported essential goods.
2. During humanitarian crisis situations, Member States shall, to the extent possible, coordinate to set up a 24/7 customs clearance system to facilitate the transit of essential goods.
3. Where feasible, Member States shall leverage online systems, including the existing ASEAN Single Window, referred to in Article 4.12 (Application of Information Technology and Single Window), and establish a 24/7 helpdesk to facilitate resolution of issues faced by exporters and importers.

Article 10.5

Non-Tariff Measures

1. Member States recognise that required responses during humanitarian crisis situations may vary and shall thus ensure flexibility of regulatory requirements whenever possible. This flexibility may include arrangements to relax NTMs to temporarily authorise trade in essential goods that would otherwise be prevented or slowed down by those measures. NTMs include, *inter alia*, measures under the TBT Agreement and SPS Agreement.
2. Where international standards are available and feasible to apply during a humanitarian crisis situation, Member States shall endeavour to adopt such international standards to increase availability of essential goods.

3. Notwithstanding Chapter 6 (Standards, Technical Regulations, and Conformity Assessment Procedures) and Chapter 5 (Sanitary and Phytosanitary Measures), during humanitarian crisis situations, a Member State shall in accordance with its laws and regulations, consider accepting the results of conformity assessment procedures to demonstrate conformity of products with their mandatory requirements including SPS and other technical requirements when the conformity assessment procedures are undertaken by recognised conformity assessment bodies of the other Member States.

4. The ATIGA Joint Committee, referred to in Article 15.2 (ATIGA Joint Committee) shall be convened, where necessary and possible, to identify and resolve any issues on NTMs on trade in essential goods in an expedited and timely manner during humanitarian crisis situations. A Member State may request essential goods from another Member State and the requested Member State shall, to the extent possible, positively consider the request, subject to the requested Member State's internal situation and considerations.

Article 10.6

Transparency and Information Sharing

1. To the extent possible, a Member State shall ensure the timely publication and notification of any measure adopted in humanitarian crisis situations, including export prohibitions or restrictions in Article 10.3 (Essential Goods) and emergency NTMs in Article 10.5 (Non-Tariff Measures), in electronic version and in the English language.

2. Where any Member State institutes an export prohibition or restriction on essential goods in accordance with Article XI.2(a) of GATT 1994, that Member State shall, to the extent possible:

- (a) give notice in writing to the other Member States as far in advance as practicable. This notice should include the reasons for instituting the export prohibition or restriction, and its duration;
- (b) consult, upon request, and provide the necessary information to enable consultations within 15 days of the request or as soon as practicable; and
- (c) terminate such export prohibition or restriction as soon as condition triggering the export prohibition or restriction ceases to exist. The duration of the export prohibition or restriction shall not exceed the period necessary for the containment of triggering condition.

3. Nothing in this Chapter prevents a Member State from adopting emergency NTMs (including sanitary and phytosanitary and technical barriers to trade measures), where urgent problems in a humanitarian crisis situation arise or threaten to arise, provided that the Member State:

- (a) immediately notifies other Member States in writing, once the measure is implemented, through the designated contact points, 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 timeline of the measure;
- (b) upon request, makes a summary or copy of the measure available to the other Member State as soon as practicable;
- (c) responds in writing to any question posed by any other Member State on the measure within a reasonable period of time. Upon receipt of the request, the relevant Member State shall enter into discussions within 45 days or as soon as

practicable, with a view to reaching a mutually satisfactory solution as soon as possible. Each Member State participating in the discussions shall endeavour to provide relevant information, and shall take due account of any information provided through the discussions; and

- (d) in accordance with its laws and regulations, reviews such measures within a reasonable period. If the emergency measure is maintained after the review, the Member State should review the measure periodically based on the most recent available information and shall provide the reason for the continuation of the emergency measure to the requesting Member State.

Article 10.7

Co-operation

Member States shall co-operate in a humanitarian crisis situation:

- (a) to the extent practicable, to exchange information and best practices in relation to supply chain connectivity, including response measures to a humanitarian crisis situation including facilitating efficient movement of essential goods, deterring unfair practices such as cornering and hoarding;
- (b) to promote active participation of the private sector in supporting a co-ordinated approach;
- (c) to provide assistance, upon request and where possible, for emergency procurement and transportation of essential goods; and

- (d) to consider proposals for co-operation on matters of mutual interest, on request of a Member State.

Article 10.8

Implementation Arrangement

The ATIGA Joint Committee shall oversee the implementation of this Chapter, including:

- (a) holding emergency in-person or virtual meetings in the event of a humanitarian crisis situation, or in the event of an expected imminent humanitarian crisis situation, to the extent possible, no later than 15 days after such meeting is requested;
- (b) serving as an emergency communications channel to rapidly disseminate relevant information among the Member States during a humanitarian crisis situation;
- (c) facilitating co-operation on responses to a humanitarian crisis situation, including the actions described in Article 10.7 (Co-operation); and
- (d) convening, where necessary and possible, meetings to identify and resolve any unnecessary NTMs to trade in essential goods in an expedited and timely manner during a humanitarian crisis situation.

Article 10.9

Non-Application of Dispute Settlement

Dispute settlement mechanisms in this Agreement shall not apply to any matter arising under this Chapter