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Trade issues affecting disaster response

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World Trade Organization
Economic Research and Statistics Division

Working Title:

TRADE ISSUES AFFECTING DISASTER RESPONSE

Michael Roberts and Nazia Mohammed

Manuscript date: March 2017

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Abstract

The frequency, severity and economic impact of natural disasters are growing. Import surges resulting from disaster-response efforts can highlight underlying structural failings in the border clearance regimes of disaster-affected countries. Relief supplies, specialized personnel and agencies often face regulatory barriers affecting their entry and practice in disaster-affected environments. Against that background, the purpose of this working paper is twofold: it sets out to explore trade issues that can undermine effective disaster response, and then outlines how these trade issues might be addressed, including through implementation of the WTO Trade Facilitation Agreement as well as through technology-enabled services and the expansion of disaster risk insurance. The merits of further discussion of trade and natural disasters are also discussed.

Keywords: *trade policy, disaster-response, WTO trade facilitation agreement*

JEL classification: F13, J60, K33

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Abbreviations and Acronyms

ATC	Agreement on Textiles and Clothing
ASEAN	Association of Southeast Asian Nations
CCRIF	Caribbean Catastrophe Risk Insurance Facility
CDRC	Central Disaster Relief Committee
EU	European Union
HS	Harmonized System (The Harmonized Commodity Description and Coding System is a standardized system to classify trade products)
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GFDRR	Global Facility for Disaster Reduction and Recovery
GSMA	Groupe Spécial Mobile Association
GSP	Generalised Scheme of Preferences
ICRC	International Committee of the Red Cross
IDRL Guidelines	Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance
ICT	Information and Communications Technology
IFC	International Finance Corporation
IFRC	International Federation of the Red Cross and Red Crescent Societies
IGO	International Governmental Organization
IMF	International Monetary Fund
INGO	International Non-Governmental Organization
INSARAG	International Search and Rescue Advisory Group
ISO	International Organization for Standardization
ITU	International Telecommunications Union
LDC	Least-Developed Country
MFN	Most-Favoured Nation
MRA	Mutual Recognition Agreement
NAMA	Non-Agricultural Market Access
NDRF	National Disaster Response Framework
NGHA	Non-Governmental Humanitarian Agency
NGO	Non-Governmental Organization
NTB	Non-Tariff Barriers
ODI	Overseas Development Institute
OECD	Organisation for Economic Co-operation and Development
OIE	World Organisation for Animal Health
SENDAI Framework	The Sendai Framework for Disaster Risk Reduction 2015-2030
SPS	Sanitary and Phytosanitary Measures
TFA	Trade Facilitation Agreement
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNISDR	United Nations Office for Disaster Risk Reduction (to facilitate implementation of the International Strategy for Disaster Reduction)
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
WB	World Bank
WCO	World Customs Organization
WFP	World Food Programme
WTO	World Trade Organization
WTO Agreement	Marrakesh Agreement Establishing the World Trade Organization

INTRODUCTION

In 2015, an estimated 98.6 million people world-wide were affected by 346 disasters.¹ The United Nations values economic losses from natural disasters, such as earthquakes, tsunamis, cyclones and flooding, at some US\$250-\$300 billion a year.² The World Bank puts this figure higher, suggesting that extreme weather alone is responsible for consumption losses of \$520 billion, and pushing 26 million back into extreme poverty annually.³ Regrettably, the frequency, severity and economic cost of natural disasters are predicted to grow with rapid urbanization and climate change.⁴ Against this background, this working paper explores the trade issues that can undermine effective disaster response, and outlines how these trade problems might be overcome.

Trade issues affecting food aid⁵ and medicine⁶ have been discussed at WTO, and actions taken. However, a range of other trade issues also affects the timeliness and efficacy of humanitarian response to disasters. Surveys conducted by the International Federation of Red Cross and Red Crescent Societies (IFRC) have identified three trade-related issues that impinge on the ability of humanitarian responders to respond in a timely and effective manner to natural disasters. These three issues are:

- customs requirements affecting the flow of relief consignments due to tariff and non-tariff barriers;
- measures affecting the entry of specialized health services personnel; and
- issues affecting the establishment and operations of relief agencies in disaster-affected countries.⁷

Import surges linked to disaster response can highlight underlying structural failings in the border clearance regimes of disaster-affected countries. Onerous inspection and documentation requirements can delay the entry of relief items. High import tariffs on relief items can push up costs for responders if they are not exempted. Where tariff exemptions are available, difficulties in applying them can add further delays to the clearance of relief goods. Specialized personnel can face regulatory barriers to work in their professional discipline due to issues related to the recognition of their qualifications and licensing or permit requirements. Responders in disaster-affected countries can face operational difficulties and find themselves operating in a legal

¹ "2015 Disasters in Numbers." The United Nations Office for Disaster Risk Reduction. Available at: <https://www.unisdr.org/we/inform/publications/47804>.

² "Global Assessment Report on Disaster Risk Reduction 2015: Making Development Sustainable: The Future of Disaster Risk Management", The United Nations Office for Disaster Risk Reduction (UNISDR), 2015.

³ "Breaking the Link Between Extreme Weather and Extreme Poverty", The World Bank, 2016. Available at: <http://www.worldbank.org/en/news/feature/2016/11/14/breaking-the-link-between-extreme-weather-and-extreme-poverty>

⁴ The World Humanitarian Summit in Istanbul on 23-24 May 2016 provides a further timely point of reference for this analysis. See more: <https://www.worldhumanitariansummit.org/>

⁵ Trade issues arising in the supply of food aid are discussed here: https://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd25_ph2foodaid_e.htm

⁶ Trade issues affecting medicine and public health are discussed here: https://www.wto.org/english/res_e/booksp_e/pamtiwhowipowtoweb13_e.pdf

⁷ International Federation of the Red Cross and Red Crescent surveys of law and legal issues in international disaster response: Available at: <http://www.ifrc.org/PageFiles/125735/113600-idrl-deskstudy-low-en.pdf>

grey zone, with their rights to offer services ambiguous under both domestic and international legal regimes.

With the burden of disasters increasing and a growing array of responders engaged in relief and recovery⁸, so too is the potential for trade measures to undermine effective and timely relief and reconstruction efforts.

Part I of the paper discusses in detail the three issues identified by the IFRC surveys. Part II then outlines policy solutions explored by the humanitarian community to address these trade issues, solutions made possible by technology-enabled services and trade policy measures taken to support post-disaster reconstruction.

The working paper concludes with suggestions as to how to better manage the trade issues arising in humanitarian relief and reconstruction. These ideas include using the Trade Facilitation Agreement to better address border clearance issues arising in humanitarian relief operations. The expansion of disaster risk insurance is another possibility explored. Lastly, the merits of a possible WTO Decision on trade and natural disasters are discussed. Such a Decision could potentially provide useful guidance to Members on trade measures that support relief and reconstruction efforts.

⁸ Jackson, Selina, and Michael Roberts. "Exploring the Nexus between Trade Policy and Disaster Response." The World Bank. The Trade Post, 13 Oct. 2015. Available at: <http://blogs.worldbank.org/trade/exploring-nexus-between-trade-policy-and-disaster-response>

PART 1: TRADE ISSUES AFFECTING TIMELY AND COST-EFFECTIVE HUMANITARIAN OPERATIONS

The United Nations Office for Disaster Risk Reduction (UNISDR) defines 'disaster' as "[a] serious disruption of the functioning of a community or a society causing widespread human, material, economic and/or environmental losses which exceed the ability of the affected community or society to cope using its own level of resources."⁹ Part I discusses how such serious disruptions can expose the inherent structural failings of import regimes of disaster-affected countries, both for the import of goods and also for the supply of humanitarian services. It examines how these failings all too often translate into delays that affect the ability of the humanitarian community to efficiently respond to disasters and mitigate the impacts of such events.

(i) Border clearance delays due to non-tariff and tariff barriers

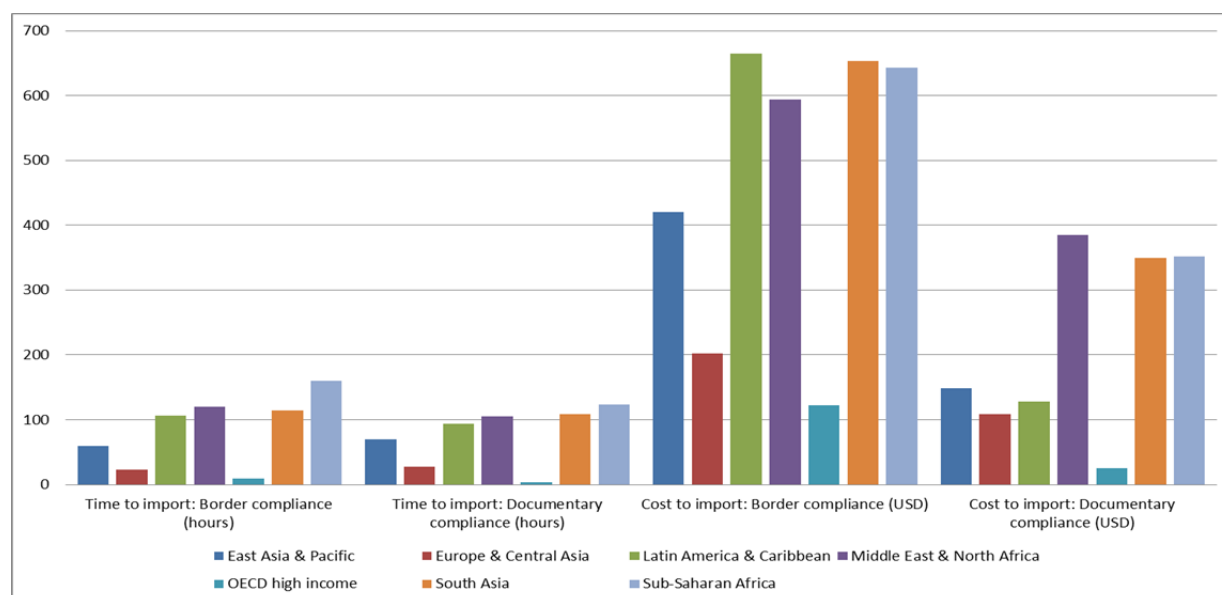
Customs clearance delays for disaster relief emerge for a variety of different reasons.¹⁰ Import surges associated with disaster response may expose underlying inefficiencies and bottlenecks in the border clearance of merchandise goods. These shortcomings are often related to documentary control and inspection. High import duties, tolls and taxes imposed by disaster-affected countries can also add significant cost to funding humanitarian operations. Import duties and other administrative charges may be liable even when relief items are not destined for commercial sale. Unless there is a derogation provided for in the national customs law or code to waive such charges, then humanitarian responders are faced with the choice either of paying sometimes high duties or requesting derogations- derogations that often have to be requested on a consignment by consignment basis. Acquiring these derogations or exceptions can add further delay to what often are already lengthy clearance procedures – and in the time-critical context of a disaster.

Since the early 2000s, a growing body of research has emerged on the negative impact of customs and other border agency delays. The development of indicators by the OECD, World Bank, the World Economic Forum and others has sought to quantify the economic costs of protracted customs and other border agency procedures – an agenda encapsulated in the term 'trade facilitation'. Figure 1 below estimates the time (measured in hours) that consignments can take to clear customs and other border agencies, together with the associated cost (measured in US\$).

⁹ See UNISDR 2009 definition: <https://www.unisdr.org/we/inform/terminology>.

¹⁰ Customs and border clearance are used interchangeably in this paper.

Figure 1: Time and Cost of Completing Border Compliance and Import Documentary Compliance Procedures ¹¹



Source: World Bank Doing Business Index 2016

Particularly striking in figure 1 are the costs associated with fulfilling border compliance procedures. These are costs incurred in addition to import tariffs and relate to charges such as cargo inspections, sanitary controls, port handling charges, storage, and inventory costs. The World Bank estimates that border compliance costs are 5 times higher in South Asia, Sub-Saharan Africa and Latin America and the Caribbean than in high-income OECD countries – a perhaps counterintuitive finding given the lower income levels of the former three regions as compared to the other regions surveyed.

Costs are also appreciable in respect of the fees associated with assembling documentation required for import (see documentary compliance in figure 1). Here the gap is even wider with the cost being around 14 times more to collect the necessary import documentation in the Middle East and North Africa, South Asia and Sub-Saharan Africa, than among high-income OECD countries.

Various factors explain these delays. One of the more egregious examples is that many customs authorities continue to rely on paper-based, rather than electronic, systems and insist on original signatures for paper documentation and cash payments. Overly high rates of physical inspection of consignments can be another bottleneck. Long delays can build at customs points when officials seek to manually inspect all consignments. A lack of coordination at border entry points between different control agencies can further compound delays. A frequent problem is each border service operating strictly along the lines of its own legal mandate, undertaking its own inspection separately and not sharing results with colleagues in other services.

¹¹ "Trading Across Borders", World Bank, 2016. Available at: <http://www.doingbusiness.org/data/exploretopics/trading-across-borders>

One analysis found that such measures all too often result in complex and lengthy procedures associated with:

- Excessive documentary requirements;
- Limited information on requirements, forms and fees;
- Traceability, labelling and certification requirements;
- Multiple inspections by different services; and
- In some cases, arbitrariness and unpredictability.¹²

The result, as highlighted in figure 1, is that normal commercial imports are subject to long border compliance delays – delays that build quickly during an import surge generated in response to a disaster. World Bank data suggests that these delays amount to over 100 (working) hours in 35 of the 189 economies it surveyed – and above 200 hours in 12 cases.¹³ Furthermore, the indicator does not measure the time that exporters need to assemble the documentation required by customs officials - a process that can incur significant personnel time and cost especially if certification is required (e.g. sanitary certificates for food products).

Difficulties and delays in obtaining customs clearance and accessing customs procedures emerged as issues in IFRC surveys of agencies engaged in disaster response in 2007 and 2015. It was reported that "[i]n 2007, over 40% of all respondents reported difficulties in obtaining entry of relief personnel, goods and equipment into disaster-affected states, such as food, medications, ground vehicles and telecommunications articles. Such difficulties included delays as well as prohibitive duties and tariffs". Likewise, in the later survey [2015], respondents were invited to assess a list of six entry problems in international response operations. Among the three top problem areas identified were: (i) difficulties or delays in obtaining customs clearance or exemptions from duties, taxes or costs featured; (ii) difficulty in accessing information on customs; and (iii) delays or restrictions in the entry of relief personnel.¹⁴

An additional complicating factor is that many more actors are now involved in humanitarian operations. One high profile example is the response to the 2010 earthquake in Haiti. Relief aid was channelled through humanitarian agencies, a diverse range of NGOs, private contractors and other non-state service providers, numbering many thousands.¹⁵

Among the many actors that now respond to disasters, logistical and regulatory compliance capability varies, sometimes markedly. Goods arriving at borders without, for example, import licenses when required by customs regulations, or with incomplete documentation (such as no sanitary certificate or electrical compliance certificate) may create delays not just for those

¹² "Implementing SPS Measures to Facilitate Safe Trade", Standards and Trade Development Facility, 2015: p. 1. Available at: http://www.standardsfacility.org/sites/default/files/STDF_Briefing_No10_EN_web.pdf

¹³ World Bank op.cit.

¹⁴ "Report on the survey on disaster relief, regulation and protection", International Federation of Red Cross and Red Crescent Societies, 2015: p. 31-32. Available at: <http://www.ifrc.org/en/what-we-do/disaster-law/>

¹⁵ Ramachandran, Vijaya and Julie Waltz "Is Haiti Doomed to be the Republic of NGOs?", Centre for Global Development, 2012. Available at: <http://www.cgdev.org/blog/haiti-doomed-be-republic-ngos>

expediting the affected consignment, but also for other operators whose goods may also be delayed as a result (e.g. cargo on the same vessel or plane). It is not just relief goods that are subject to sometimes burdensome procedures. Box 1 explains how border compliance controls can affect the entry of dogs used in search and rescue operations.

Box 1: Restrictions on the entry of search-and-rescue dogs

Rabies is one of the most deadly zoonoses. It kills nearly 70,000 people annually - mostly children in developing countries. Over 95% of human cases are caused by the bite of a rabies-infected dog. The entry of dogs used by search-and-rescue teams to locate trapped persons or bodies are subject to animal health controls put in place to control the spread of rabies and other zoonoses. However, these controls can result in unfortunate delays.

The Terrestrial Animal Health Code of the World Organization for Animal Health (OIE Terrestrial Code) states that veterinary authorities should require the presentation of an international veterinary certificate attesting that animals being imported show no clinical sign of rabies "the day prior to or on the day of shipment". With time of the essence in search and rescue operations, securing a certificate can potentially be problematic. The International Search and Rescue Advisory Group has issued guidance and procedures for international urban search and rescue operations. Their guidelines suggest a valid rabies vaccination, but add that teams must have an "understanding of international border control processes associated with search dogs".

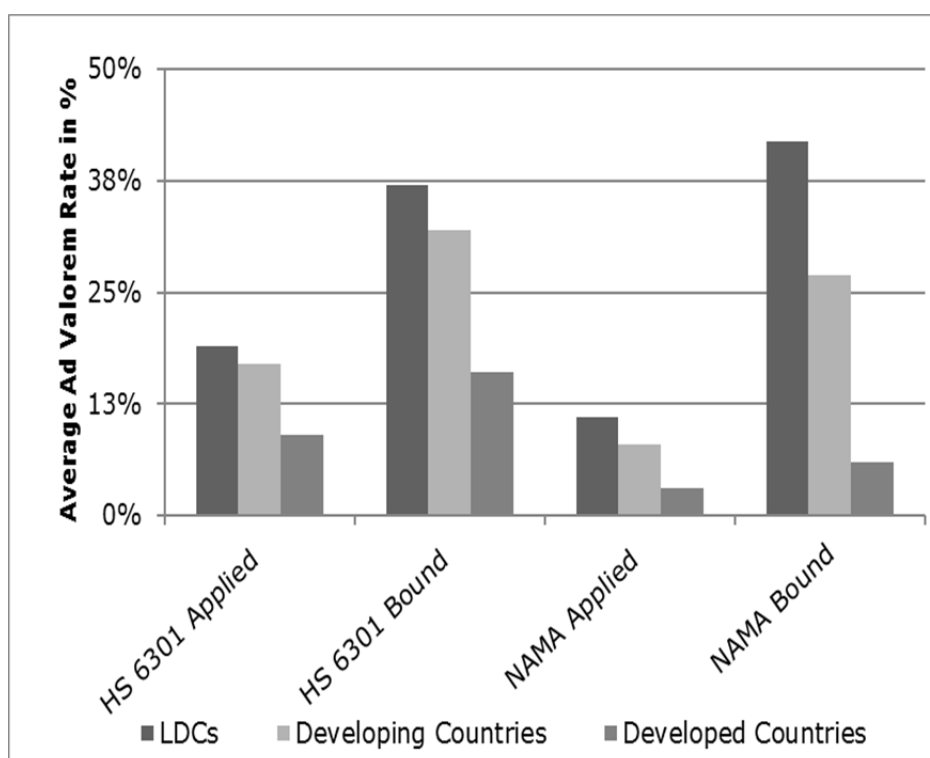
In practice, since the OIE code focuses on disease-freedom, not recognition of vaccination, rabies-vaccinated dogs may not be allowed entry in some jurisdictions. Even in countries that permit the entry of rabies-vaccinated search and rescue dogs, verification of vaccination status may result in delays to the deployment of search-and-rescue dogs. Dogs brought in after the Kobe earthquake in Japan were quarantined for several days, during which their rabies vaccinations and their disease-status were verified. The presence of rabies among search-and-rescue dogs pre-deployment is unlikely to go unnoticed given the training and close supervision of these animals. The efficacy of visual inspection of search-and-rescue animals immediately prior to their deployment as a rabies control method is perhaps open to debate – and could possibly be considered disproportionate to risk. Indeed, there are good reasons to suggest that search-and-rescue dogs may be the ones put at risk given the rabies status of many countries in which are likely to be deployed.

Non-tariff barriers are not the only factors impeding the entry of relief items. High import duties on relief items and various other charges on imports may be liable, even when the relief items are not for commercial sale. Such charges can add significantly to the administrative costs associated with delivering relief goods, if such charges are not exempted. While some responders, such as UN agencies, are normally able to import goods duty-free due to their legal immunities, this is not the

situation for many other responders.¹⁶ And even for the UN, delays may arise if exemptions or delays are made on a consignment by consignment basis – adding to the delays already described due to failings in import clearance systems.

Import tariffs can be surprisingly high on some basic goods used in disaster relief, particularly in low income countries. Figure 2 contrasts the import tariff rates applied on blankets (heading 6301 in the harmonised system code¹⁷) by Members at different levels of development (i.e. Least-Developed Countries (LDCs), developing and developed countries) and against comparable average tariffs for manufactured products (so-called non-agricultural market access (NAMA) goods).¹⁸

Figure 2: Average Applied and Bound Tariff Rates on Blankets (HS 6301)



Source: UN Comtrade Database *NAMA refers to Non-Agricultural Market Access – a basket of manufactured products for which the average tariff rates are shown. Figures are approximate.

Two main observations emerge from figure 2. Firstly, average applied tariff rates on blankets are markedly higher than those on other manufactured goods. In the case of LDCs, the average

¹⁶ Legal capacity, special privileges and immunities for the UN, its representatives and agencies are enshrined in articles 104 and 105 of the UN Charter. For further information, see: Conventions on the Privileges and Immunities of the United Nations; Conventions on the Privileges and Immunities of Specialized Agencies, 1946. The International Committee of the Red Cross and International Federation of the Red Cross and Red Crescent Societies, though not intergovernmental organisations, also benefit from international legal personality and privileges and immunities in carrying out their functions and activities. See more: "Tools to do the job: The ICRC's legal status, privileges and immunities", ICRC, 2016.

¹⁷ The Harmonized System refers to the World Customs Organization's system of code numbers for identifying products. The codes are standard and are composed of 2, 4 or 6 six digits. Beyond that countries can introduce national distinctions for tariffs and many other purposes. (Source: WTO website)

¹⁸ In WTO jargon non-agricultural market access (NAMA) broadly covers industrial, fisheries and forestry products.

applied tariff on blankets is 19% - 8% higher than the average applied tariff on other manufactured goods (11%). Among developed countries, the tariff on blankets (9%) is 3 times the rate applied on other manufactured goods (3%); and similarly for developing countries, the average applied tariff on blankets (17%) is more than double the applied tariff on other manufactured goods (8%).

Secondly, both average applied and bound tariff rates on blankets (HS 6301) increase as the level of income of WTO Members falls. From figure 2, it follows that importers in developed countries face a 9% tariff rate on blankets, significantly lower than blanket importers in developing countries (facing a 17% tariff rate), and less than half what importers in LDCs potentially face (a 19% tariff rate). A similar pattern emerges with regard to bound tariffs, where developed country bound tariffs (already high on blankets in comparison with the average paid on manufactured goods) are 50% less than in developing countries, and 56% less than in LDCs.¹⁹

UNHCR estimates that LDCs provided asylum to 3.6 million refugees or 25% of the global total in 2014. Looking at the imports of blankets by LDCs, UN Comtrade data suggests that LDCs imports accounted for some US\$231 million in 2014 – over 5.6% of global imports of blankets (US\$4billion). Applying the average applied tariff to all LDC imports (19%) suggests that importers could have been liable to pay somewhere in the region of US\$44million in tariffs on blankets in 2014.²⁰

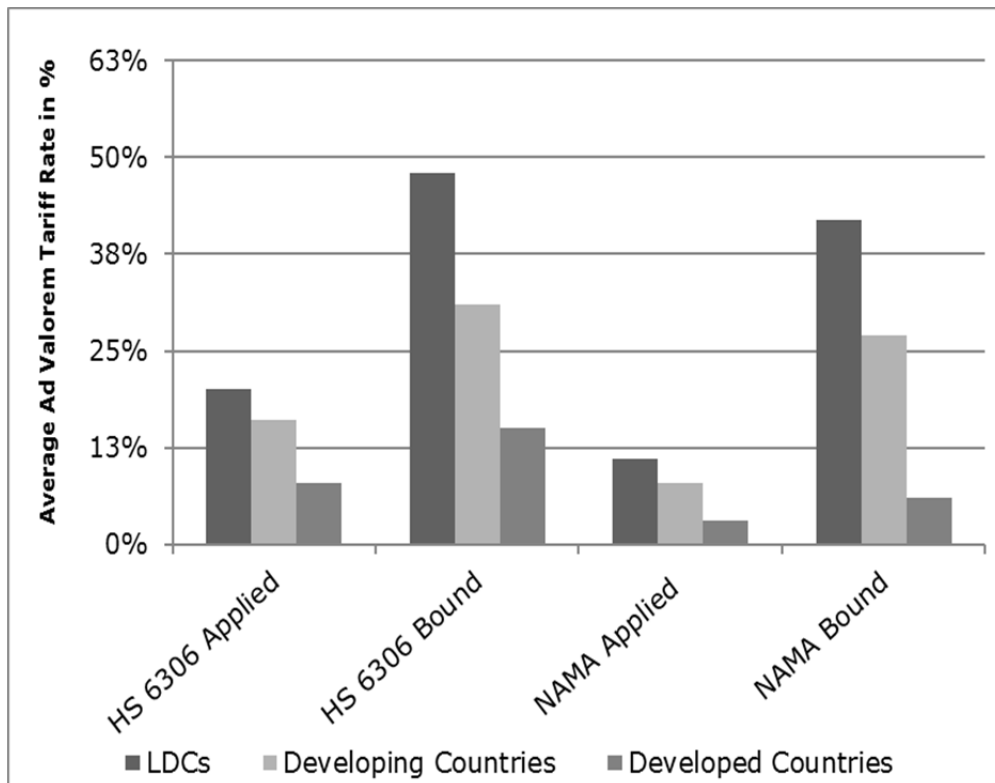
Important to note also that while these tariffs apply to the commercial trade in blankets, they would also be liable on non-commercial imports from relief goods providers, as long as a waiver or other derogation was not in place.

A similar picture of high tariffs also emerges from an analysis of another typical product category used in humanitarian response: tents (HS 6306). Figure 3 below demonstrates that average applied tariff rates on tents are also higher on average than other manufactured goods. Like blankets, average and applied bound tariff rates on tents also increase as the level of income of WTO Members declines. The applied tariff rates on tents of developed countries are around 50% higher among developing countries and some 60% higher among LDCs.

¹⁹ Furthermore, UN Comtrade Data shows that 26 developing country WTO Members (or 16% of WTO Members) have no tariff binding at all on blankets. This is because these Members have not scheduled a specific figure, usually expressed as an ad valorem value, but sometimes also as a certain monetary value by value or weight. The consequence is that they can set tariffs at the level they wish, and have no upper limit on the tariff that they can apply. Finally, there are some 71 WTO Members that apply tariff rates for the import of blankets that are over 20% of the value of the blankets themselves (i.e. tariffs applied on an ad valorem basis).

²⁰ Estimating the tariffs paid globally on trade in blankets is difficult with precision and the figures quoted are simple estimates. In some markets for instance, the tariff applied to blankets may be below the applied rate – and zero in some cases (depending on whether countries have a bilateral trade agreement; have agreed to some form of preferential market access; and are WTO members). Furthermore, amongst non-WTO Members or those with no tariff binding, the applied rate may be adjusted at the whim of the importing government. Hence, it is not possible to determine with precision the tariffs collected on the import of blankets globally, but with global exports in blankets worth some US\$5.4 billion in 2014, the global import tariff on blankets could conceivably run into the hundreds of millions of dollars.

Figure 3: Average Applied and Bound Tariff Rates on Tents (HS 6306)



Source: UN Comtrade Database * NAMA refers to Non-Agricultural Market Access – a basket of manufactured products for which the average tariff rates are shown. Figures are approximate.

Examining LDCs specifically again, the imports of tents by LDCs accounted for approximately 3.6% of global tent imports, worth US\$127 million in 2014.²¹ Applying the average applied tariff to all LDC imports on tents suggests that importers could have paid some US\$24 million in tariffs in that year.

²¹ Based on aggregate calculations including mirror data.

BOX 2: Why are tariff rates high on blankets and tents?

Given that blankets and tents are such basic humanitarian goods, it begs the question as to why tariff rates remain so high, particularly among the least-developed Members of the WTO. The answer lies in the tariff classification of tents and blankets within the customs chapter dealing with textiles and clothing. Up until 2005, global trade in textiles and clothing was characterized by a system of quantitative restrictions on exports. These restrictions were found in the Long Term Agreement Regarding International Trade in Cotton Textiles, successive Multi-Fibre Agreements, and finally the Agreement on Textiles and Clothing (ATC). The ATC finally phased out these quantitative export restrictions in 2005.

While quantitative restrictions have fallen away with the expiry of the WTO Agreement on Textiles and Clothing in 2005, various restrictive trade measures remain. These take the form of tariff escalation, tariff peaks and non-tariff barriers. Further liberalization of trade in textiles and clothing has proven controversial due to the contribution of this sector to employment, often in regions where alternative jobs may be difficult to find. On the other hand, textiles and clothing are also among the sectors where developing countries had the most to gain from multilateral trade liberalization.

High tariffs on blankets and tents due to their classification in the chapter on textiles and clothing is further underlined by a comparison with the tariff treatment of 'Flatpack' prefabricated emergency shelters. The IKEA Foundation, UNHCR, and a Swedish social enterprise, Better Shelter, have worked together to develop lightweight, modular emergency shelter for refugees composed of polyolefin panels.²² Flatpack shelters attract significantly lower import tariffs than those on tents. 24 fewer WTO Members maintain tariffs rates above 20% on prefabricated shelters than on tents. Average applied tariff rates in LDCs are still onerous, at approximately 15%, but are 5% lower than those for tents at around 20%. Prefabricated shelters fall within the customs chapter dealing with miscellaneous manufactured items, notably furniture. This customs chapter has not attracted the same attention as that of textiles and clothing – although bound tariff rates, notably for LDCs, remain substantial.

Import tariffs can be a considerable headache for responders. For those responders that do not enjoy legal rights and immunities that allow them to import goods duty-free, payment of import tariffs can raise the cost significantly of supplying relief items. While derogations or exemptions are often provided, particularly in the initial phases of response to a disaster, the administrative process to obtain such exemptions can be lengthy – even for those organizations that enjoy privileges due to their legal status as international organizations e.g. the UN and its specialized

²² See more: http://innovation.unhcr.org/labs_post/refugee-housing-unit/

agencies. These delays can add further delays to what are often already lengthy border clearance procedures, and can increase overhead and inventory costs.²³

An issue on which further consideration is needed is the operation of derogations from import tariffs. How such exemptions operate can potentially generate quite different market effects. Requiring payment of import tariffs and then permitting responders to claim back these charges at the end of the fiscal year on the basis of supporting documentation is one approach. Another is the granting of exemptions on a consignment-by-consignment basis on arrival. While the former approach streamlines the flow of relief goods, it passes the short-term financial burden onto the responder. The latter approach may reduce immediate costs to responders, but adds administrative delays on arrival, in the immediate post-disaster phase.

One concern that has arisen in disaster response is that local suppliers of goods and services may be pushed aside by a sudden surge of imports. This concern was articulated in the response to the Ebola crisis in Liberia. The government expressed concern that foreign suppliers were preferred over domestic producers of goods and services, leading to a situation where imports (of relief items) were undermining recovery as local suppliers could not compete (i.e. relief goods were being supplied below the cost of production in the exporting country).²⁴ In practice, it may not only be domestic suppliers that are affected, but also other commercial importers who may see their shipments displaced by relief aid. In addition, while offered initially as donations, relief items may be sold on though secondary markets once their utility has ended for the beneficiary and/or he or she seeks to monetize the value to purchase other goods. Economic theory would suggest that the longer import tariff derogations are in place, the more distortionary the impacts could be on local suppliers and other commercial foreign suppliers.

Further research may be needed as to how derogations or exemptions are operated in practice, including on such issues as: how long exemptions should ideally remain in place, whether derogations should be provided on a product or organizational basis, how quickly responders can transition from delivery of pre-positioned relief stocks to locally supplied goods (and services), how to avoid discrimination between local and imported sources and ensuring that derogations are operated on a most-favoured nation basis. The issues surrounding the granting of derogations or exemptions from high import tariffs also speaks to a growing trend in disaster relief, i.e. the provision of emergency financing instead of emergency relief goods (e.g. by providing free mobile airtime or mobile money). This issue is described in box 3 below and discussed further in section V.

²³ A further factor that can lead to delays in the release of goods is disputes over customs classification. The World Customs Organization's Harmonized Commodity Description and Coding System ("Harmonized System" or simply "HS") uses the heading 6301 for as the product nomenclature for blankets. This heading is further broken down into a series of five HS codes depending on the types of blanket traded. For example, different customs classifications apply depending on whether a blanket is made of wool or of fine animal hair (630120), of cotton (630130), of synthetic fibres (630140), or other blankets (630190). A specific HS code also covers electric blankets (630110). Determining the appropriate customs classification may require time to provide detailed information to the customs authority on the fibre composition of the blankets

²⁴ "Reducing Trade Costs for Inclusive, Sustainable Growth", WTO, 2015.

Box 3 : Storage and Spoilage Costs incurred by donated disaster relief

A 2016 report commissioned by the Australian Red Cross explains the difficulties, time and resources channelled into the management of unsolicited bilateral donations (UBDs). According to one example, some 70 shipping containers of donated relief goods were shipped from Vanuatu following Tropical Cyclone Pam in 2015. Almost a year after the cyclone, 18 containers remained uncollected and had attracted approximately US \$1.5 million in storage fees. More than half of the food items were had expired and needed to be destroyed at the expense of the Government. Other items shipped as humanitarian relief included high heels and handbags.

The entry and clearance of unsolicited bilateral donations are complicated by several issues including a lack of computerised systems at ports, and limited consignee and packaging information on UBDs. In an effort to avoid the logistical and financial burdens in managing such donations and given the challenges following Tropical Cyclone Pam, Vanuatu's Government has since urged donor agencies to favour cash donations.

More information in the full report²⁵

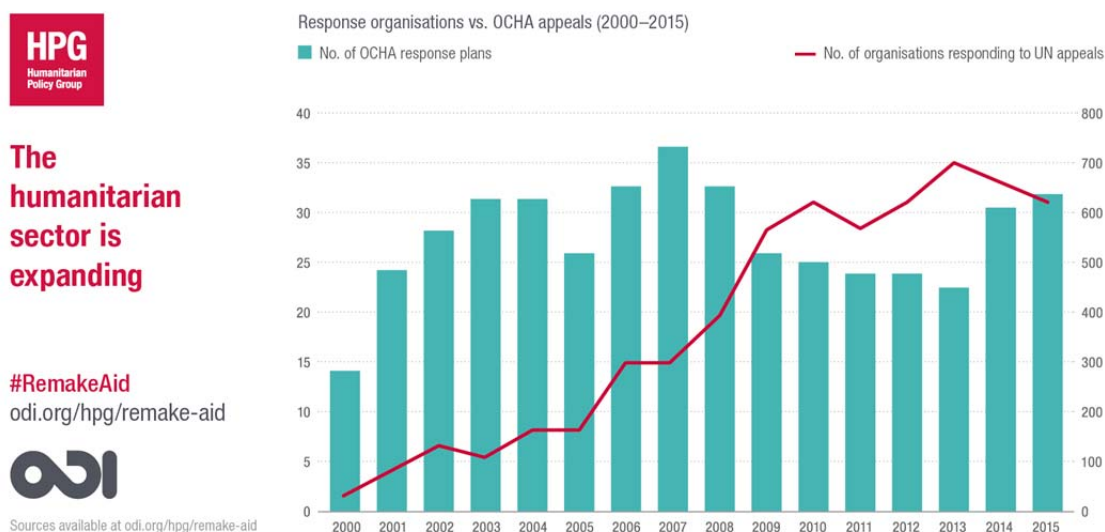
(ii) Barriers to the entry of Relief Professionals

Research shows that there are a growing number of responders participating in humanitarian relief operations (see figure 4). Among them are organizations which provide both relief goods and services, but do not benefit from special privileges and immunities available to organizations such as the UN, its agencies and its personnel. On the one hand, as seen in the graph below, response organizations work with and respond to UN appeals for support. On the other, these organizations and their personnel face a multitude of entry and operative barriers in disaster-affected countries. These include as the IFRC notes (i) difficulties and delays in obtaining and renewing necessary visas and permits for humanitarian personnel; and (ii) problems obtaining legal recognition of foreign professional qualifications for specialized personnel (particularly medical staff).²⁶

²⁵ "The Challenges of Unsolicited Bilateral Donations in Pacific Humanitarian Responses", commissioned by Australian Red Cross and prepared by Anna Young, 2016. Available at: http://www.redcross.org.au/files/161220_Report_-_Challenges_of_UBD_in_Pacific.pdf

²⁶ Source: "Introduction to the Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance" Available at: [http://www.ifrc.org/PageFiles/125652/1205600-IDRL%25252520Guidelines-EN-LR%25252520\(2\).pdf](http://www.ifrc.org/PageFiles/125652/1205600-IDRL%25252520Guidelines-EN-LR%25252520(2).pdf)

Figure 4: The expanding humanitarian sector



Source: Overseas Development Institute (ODI)

In that vein, the second set of difficulties examined in Part I concerns restrictions on the provision of services, and specifically those concerning the entry of medical professionals to perform services in a disaster-affected country.²⁷ Health services and the capacity to perform them are often tightly regulated areas across most jurisdictions. Following a disaster however, there is often need for additional health service providers to overcome shortages or provide specialized healthcare to victims.²⁸ Box 3 provides practical examples of regulatory barriers affecting the entry and work of health professionals as reported by the IFRC.

Within the WTO framework, the General Agreement on Trade in Services²⁹ (hereinafter GATS) establishes a framework of rules that govern trade in services. The movement of persons is one of the four "modes" through which services can be supplied internationally. Known in WTO jargon as "Mode 4", it covers the temporary "presence of natural persons"³⁰ and consists of persons of one Member entering the territory of another Member to supply a service.

²⁷ The analysis in this section does not refer to organizations that have special privileges and immunities and can benefit from an established waiver on entry for their medical professionals. This section also does not refer to services provided in the exercise of governmental authority i.e. supplied neither on a commercial basis nor in competition with one or more service suppliers.

²⁸ It is acknowledged that health services may be supplied in the exercise of governmental authority and function. This scope of our discussion excludes such services, as well as any government procured health services.

²⁹ The GATS entered into force in January 1995 as a result of the Uruguay Round negotiations. See https://www.wto.org/english/tratop_e/serv_e/gatsintr_e.htm

³⁰ Mode 4 or the temporary 'presence of natural persons' consists of persons of one Member entering the territory of another Member to supply a service. The Annex on the Movement of Natural Persons specifies, however, that Members remain free to operate measures regarding citizenship, residence or access to the employment market on a permanent basis, which is why mode 4 is often referred to as the "temporary" presence of natural persons.

Box 4: Issues surrounding the Entry and Practice of Foreign Doctors

On 26 December 2004, a tsunami in the Indian Ocean affecting millions of people along thousands of kilometres of coastline across 13 countries. Thailand was one of the countries worst affected. The IFRC reports that during the tsunami relief operation, "no formal exemptions were made to the requirements for the recognition of profession qualifications". The report explains that there is a requirement for all foreign doctors to register with the Thai Medical Council and meet certain qualification requirements in order to practice in Thailand, a process which can take approximately 2 years according to one applicant. Added to that is the requirement that foreign doctors must also pass Thai language tests to obtain a medical licence. One example described an agency seeking to establish a mobile clinic only to be told by an official that they "...would not be allowed to register their foreign doctors with the Thai Medical Council, and that only Thai Doctors could do such work." The report goes on to state that "no mention was made of the registration requirements...[a]s a result their doctors did not treat any patients but worked only as 'medical advisors', referring patients to hospitals." Legitimization of medical professional qualifications, were also discouraged by officials and applicable laws and regulations were found to be unclear.

Source: IFRC³¹

In disaster-affected countries, health service professionals are typically among the first responders. From a GATS perspective, the relevant sectors to consider, in terms of any liberalization commitments undertaken, are "medical and dental services", "services provided by midwives, nurses, physiotherapists and para-medical personnel" (falling under the "Business services" classification category), as well as health and social services, including "hospital services", "other health services", "social services" and "other health and social services" (hereinafter health services).³² Members' commitments in any given services sector are listed in its Services Schedule which can help in understanding some of the barriers to the entry of medical professionals in a disaster-affected country.

Members having opened their markets to foreign qualified medical professionals have included this as a commitment in their "Services Schedule" and specified any relevant sub-sectors as described above.³³ Where a sector has been scheduled, restrictions to market access are inscribed in a Member's Schedule under each mode of supply.³⁴ Members must also indicate any departures from national treatment under the four modes of supply in their Schedule. Additional undertakings such as registration with local authorities, licensing and quality control requirements in the sector

³¹ "Legal Issues from the International Response to the Tsunami in Thailand", IFRC, 2006. Available at: <http://www.ifrc.org/PageFiles/93720/report-thailand.pdf>

³² See more: https://www.wto.org/english/tratop_e/serv_e/health_social_e/health_social_e.htm

³³ Members have no obligations under the GATS to open up their market in a certain sector if the sector is not listed in their Services Schedule.

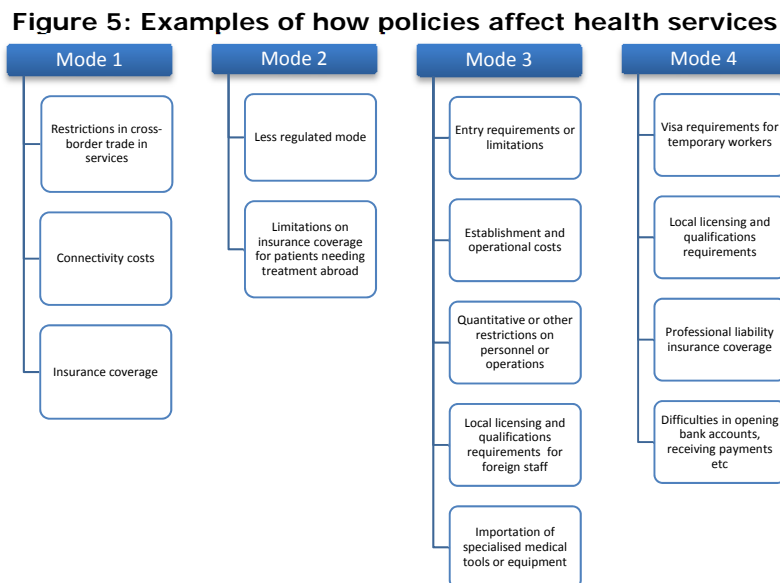
³⁴ The market access provisions of GATS Article XVI cover six types of restrictions that must not be maintained in the absence of limitations. The restrictions relate to (i) the number of service suppliers; (ii) the value of service transactions or assets; (iii) the number of operations or quantity of output; (iv) the number of natural persons supplying a service; (v) the type of legal entity or joint venture; (vi) the participation of foreign capital.

scheduled must also be inscribed in the Schedule, to the extent that they imply market access or national treatment restrictions. Finally, "horizontal" limitations are often included in Members' Schedules and describe limitations to the scope of application of all sector commitments.

In addition to commitments inscribed in a Member's Services Schedule, the GATS provides for "transparency" including the publication of all relevant measures affecting the operation of the GATS; the provision of updated information on changes in relevant laws which could affect trade in committed services; and also the establishment of enquiry points to provide specific information to other Members.

That said, on the one hand, health services are among the least committed GATS sectors, with the lowest level of "full" commitments in mode 4 – the movement of natural persons (see table 1). On the other, GATS commitments in health services also do not automatically override regulatory measures at the national level.³⁵ In particular, qualification requirements and lengthy and opaque procedures are recognized as discouraging to foreign services suppliers.³⁶

Research highlights that regulatory heterogeneity in services plays an important role in increasing trade costs and so affects the entry and establishment of foreign services providers. In this context, figure 5 explains how differences in regulatory environments can raise the costs for foreign qualified health professionals to enter and provide services in disaster-affected countries:



Source: Authors (adapted from Shepherd's model, 2015)³⁷

The GATS provides for treatment³⁸ accorded to foreign suppliers shall be no less favourable than that which is accorded to local "like services and service suppliers".³⁹ Yet it remains to be

³⁵ Regulatory measures that are not intended to serve protectionist purposes, under market access (GATS XVI) and national treatment (GATS XVII) may still be trade-restrictive. Source: WTO

³⁶ "Why are disciplines on domestic regulation required?" See more: https://www.wto.org/english/tratop_e/serv_e/dom_reg_negs_e.htm

³⁷ See "Aid for Trade at a Glance 2015", OECD/WTO, 2015, p. 49.

determined for example whether doctors with a foreign medical degree are "like" doctors with a domestic medical degree.⁴⁰ Foreign medical professionals may be, and usually are, required to apply for local licenses or meet equivalency requirements before they are legally recognized to practise, even in emergency situations. Hence, the requirement that a foreign qualification be recognized is not considered a national treatment limitation per se. It is rather the conditions to grant that recognition that may be discriminatory and thus trade-restrictive.

Table 1: Numbers of WTO Members with commitments on medical, hospital and other health services until July 2000⁴¹

		Medical and Dental Services	Nurses, Midwives, etc.	Hospital Services	Other human health services
Total of		54	29	44	17
Market Access					
Mode 1	Full Partial Unbound	16 (-2)* 11 27	8 (-1) 4 17	15 0 29	8 2 7
Mode 2	Full Partial Unbound	28 (-3) 24 2	10 (-1) 19 0	38 4 2	10 6 1
Mode 3	Full Partial Unbound	15 (-7) 33 6	6 (-2) 22 1	16 (-7) 26 2	10 (-4) 7 0
Mode 4	Full Partial Unbound	0 49 5	0 28 1	0 41 3	0 12 0
National Treatment					
Mode 1	Full Partial Unbound	19 9 26	8 (-1) 4 17	18 (-2) 0 26	10 (-2) 1 6
Mode 2	Full Partial Unbound	28 (-2) 22 4	10 (-1) 19 0	38 (-3) 4 2	11 (-3) 5 1
Mode 3	Full Partial Unbound	18 (-1) 31 5	9 (-1) 19 1	31 (-25) 10 3	9 (-6) 7 1
Mode 4	Full Partial Unbound	1 49 4	0 28 1	2 (-1) 39 3	0 17 0

Source: Adlung and Carzaniga, "Health services under the General Agreement on Trade Services", 2001.

Recognition is provided for in GATS Article VII⁴² and states that Members may deviate from their MFN obligation⁴³ (Article II) and may recognize foreign education, experience, requirements, or

³⁸ See GATS

³⁹ The terminology "like services and service suppliers" is found a total of 4 times in the GATS Agreement, once under Article II (MFN Treatment) and in all 3 provisions of Article XVII (National Treatment). The GATS does not provide a clear definition on what constitutes "like services and service suppliers".

⁴⁰ Bossche, Peter Van Den, and Werner Zdouc, "The Law and Policy of the World Trade Organization: Text Cases and Materials", 2013.

⁴¹ Figures in parentheses are the reduced number of full commitments if horizontal limitations, which apply to all sectors contained in the individual country schedules, are taken into account. EU Members are counted individually. Since July 2000, of the 26 countries that have become new WTO Members, none have made full market access commitments in mode 4 in the services identified in table 1. See WTO Accessions-Services Schedule: https://www.wto.org/english/thewto_e/acc_e/completeacc_e.htm

licenses or certifications, autonomously, through harmonization or establish mutual recognition agreements (MRAs).⁴⁴ Regional MRAs usually involve fewer countries and may facilitate the entry of medical professionals from one Member in another disaster-affected Member within the MRA, however, in general it is difficult to evaluate the effect of MRAs with precision. As demonstrated in box 4 below, MRAs may be just the first step in a lengthy process for medical professionals wishing to enter and practise in a disaster-affected country. For example, immigration authorities may still require a visa for entry, and health authorities, the procurement of a local medical license to practice medicine – procedures which can be lengthy and sometimes costly.

Box 5: MRA on Medical Practitioners within ASEAN

Association of South East Asian Nation (ASEAN) Member States have concluded MRAs for 8 professions including medical practitioners. The aim of the 2009 ASEAN MRA on Medical Practitioners is to "facilitate mobility among health practitioners within ASEAN". Medical qualifications however need to be recognized by the Professional Medical Regulatory Authorities in both the country of origin and the host country in order for the medical practitioner to perform services, and the MRA also does not ensure the actual movement of professionals "due to a lack of clear link with immigration regulations."⁴⁵ The 2009 ASEAN MRA on Medical Practitioners does not include provisions for the movement of health professionals during emergency situations, nor does it mention the protection of medical staff in disaster situations. In addition, the MRA does not include any waiver or derogation from local recognition processes following a disaster situation.

The IFRC points out that where there is no mechanism for an urgent assessment of credentials, there is a *de facto* impediment to foreign doctors providing assistance. Those medical professionals that enter disaster zones and perform medicine without formal recognition of their qualifications are practicing in technically illegal circumstances.⁴⁶ While the authorities may "turn a blind eye" to such situations, the professionals concerned may risk immigration offences, and, in the worst cases, may open themselves up to medical liability claims.

Added to that is the uncertainty surrounding professional liability insurance for medical practitioners, which tends to vary among countries, and can lead to concerns over civil or criminal liability. Indeed, professional insurance cover may not provide legal cover if the professional is working outside of the legal jurisdiction within which the insurance was provided. Following from the example in box 3, it was reported that there was some "concern about an absence of clear guidelines about the scope of activities which can be undertaken by a legally present but

⁴² GATS VII states that Members "may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country"

⁴³ MFN is a general obligation that applies to all measures affecting trade in services. When the GATS came into force, Members were allowed a once-only opportunity to take an exemption from the MFN principle. Only 1 MFN exemption is specified in the health and services sector. Source: WTO

⁴⁴ Provided that recognition is not accorded in a manner which may constitute discrimination among Members in the MRA

⁴⁵ See <http://www.eria.org/ERIA-DP-2015-21.pdf>

⁴⁶ "Law and Legal Issues in International Disaster Response: a desk study. Summary Version". IFRC, 2007: p. 15. Available at: <http://www.ifrc.org/PageFiles/125735/113600-idrl-deskstudy-low-en.pdf>

unregistered foreign doctor, and a sense of insecurity of some who fear that, despite being prevented from registering, there will be negative consequences for not doing so."⁴⁷

Nothing in the GATS prevents a Member who has scheduled health services commitments from being more liberal in an emergency situation. Nevertheless, the MFN obligation in Article II would in principle require that such openings be non-discriminatory, unless the relevant measures can be justified under the GATS exception provisions in Article XVI, notably as necessary to protect human life. Aside from that, the services of volunteer medical professionals providing services on a non-commercial basis and without competing with local service suppliers, will not be covered under the GATS and are thus not subject to any of the Agreement's obligations. In this case, the entry and legitimization of non-commercial and non-competing medical service providers (e.g. volunteers) would remain solely subject to the regulatory measures enforced by the disaster-affected country.

(iii) Difficulties faced by responders in operating in disaster-affected countries

Another related issue is the right of foreign responders (in this case foreign/international non-governmental organizations, hereinafter INGOs) to establish and operate in a disaster-affected country and provide relief services.⁴⁸ According to the UN definition, an NGO is "any non-profit, voluntary citizens' group which is organized on a local, national and international level"⁴⁹ Within the GATS framework however, there is no definition as to what constitutes an NGO and by extension whether measures affecting trade in services can be applied to the services supplied by foreign or international NGOs.⁵⁰

In that sense, measures in Mode 3 or "commercial presence" apply specifically to businesses or professional establishment supplying services either in competition or on a commercial basis.⁵¹ Furthermore, INGOs generally do not enjoy international legal personality, cannot conclude international agreements with States⁵², and usually do not enjoy any special privileges or diplomatic immunities in carrying out their functions in disaster-affected countries – unlike the UN and its specialized agencies.

⁴⁷ "Legal Issues from the International Response to the Tsunami in Thailand", IFRC, 2006: p. 17. Available at: <http://www.ifrc.org/PageFiles/93720/report-thailand.pdf>

⁴⁸ The analysis in this section does not refer to any organization that has special privileges and immunities and which can operate legally in a disaster-affected country by virtue of the government recognizing its rights and immunities.

⁴⁹ "What is an NGO?" UN Department of Public Information. Available at: <http://outreach.un.org/ngorelations/about-us/>

⁵⁰ In accordance with the GATS, service suppliers can be either a natural or a juridical person supplying a service which includes the "production, distribution, marketing, sale and delivery of a service." As mentioned earlier, however, GATS coverage excludes services provided in the exercise of governmental authority i.e. any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

⁵¹ Including through (i) the constitution, acquisition or maintenance of a juridical person and, (ii) the creation and maintenance of a branch or representative office. See GATS.

⁵² "International legal personality" can generally be derived from three criteria: (i) capacity to conclude treaties; (ii) capacity to enter into diplomatic relations (iii) capacity to operate and entertain claims in one's own right in the international legal order. See IFRC "Tools to do the Job" op.cit.

In essence, the dilemma that INGOs face is that they fall in a grey area between being an intergovernmental organization (e.g. UNHCR) and a private association or commercial entity (e.g. a private company, such as global logistics companies that donate services in disasters).⁵³ Some examples of issues are their initial registration, obtaining work permits for foreign personnel, and obtaining tax exemptions.

In addition, delays in registration and other formalities can create difficulties associated with opening bank accounts and entering into other legal agreements. Not to mention that establishing a juridical presence goes hand in hand with procuring and contracting local service suppliers for the urgent provision and distribution of services to disaster-affected persons. Granting access and protection to relief personnel attached to INGOs is another area for concern. Some existing international instruments urge governments to protect disaster relief personnel and goods⁵⁴, but not many apply to non-governmental actors.⁵⁵

Back in 1994, the ICRC and IFRC sought to specifically identify NGOs assisting in humanitarian efforts - Non-Governmental Humanitarian Agencies (NGHAs). This term, cited in the 1994 Red Cross Red Crescent NGO Code of Conduct⁵⁶ (hereinafter 1994 Code of Conduct) encompasses the components of the ICRC, the IFRC and its national societies, in addition to NGOs - defined therein as "organizations, both national and international, which are constituted separately from the government in which they are founded."⁵⁷ The 1994 Code of Conduct is still one of the most widely used voluntary codes and guidelines in the field, and within this context, useful in identifying agencies within the humanitarian sector.

The main text of the 1994 Code of Conduct contains 10 guidelines for "NGHAs", it also includes an important annex with recommendations for the working environment in host countries. For instance, it states that NGHAs in compliance with the humanitarian principles set out in the 1994 Code of Conduct "should be granted rapid and impartial access to disaster victims, for the purpose of delivering humanitarian assistance" and furthermore "[h]ost governments should facilitate the rapid entry of relief staff by waiving requirements for transit, entry and exit visas, or arranging that these are rapidly granted."

While the 1994 Code of Conduct remains an important reference tool within the humanitarian community, the policies of disaster-affected governments towards NGOs continue to raise difficulties. As successive IFRC reports [2011 and 2015] highlight, NGOs within the humanitarian community continue to face a range of restrictions related to their ability to establish and operate.

⁵³ For further information, see: <http://www.agility.com/EN/csr/pages/humanitarian-logistics.aspx>

⁵⁴ e.g. Tampere Convention and the ASEAN Agreement on Disaster Management and Emergency Response.

⁵⁵ See more: <http://www.ifrc.org/PageFiles/125735/113600-idrl-deskstudy-low-en.pdf>

⁵⁶ "The Code of Conduct for International Red Cross and Red Crescent Movement and NGOs in Disaster Relief", 1994. Available at: <http://www.ifrc.org/Global/Publications/disasters/code-of-conduct/code-english.pdf>

⁵⁷ Ibid.

The 1994 Code of Conduct while it may be widely used, still only contains non-binding guidelines and hence differs from the binding provisions of the GATS or UN Charter.⁵⁸

In light of some of these issues, the provision of services through information and communication technologies is increasingly available, and can relieve INGOs of some of the challenges associated with establishing a physical presence to provide relief services. Some examples of technologies will be further discussed in section V.

⁵⁸ In the event of armed conflict, its clauses are to be interpreted and applied in conformity with international humanitarian law. Source: 1994 Code of Conduct

PART II

(iv) Policy solutions explored by the humanitarian community to trade issues

Various initiatives have been taken to address the challenges faced by the humanitarian community in obtaining entry for relief goods and services. The Red Cross Red Crescent NGO Code of Conduct (1994), as discussed in the preceding section, provides non-binding 'guidelines' for both relief goods and services and also for recognition of humanitarian NGOs. By comparison, more attention has perhaps been devoted towards facilitating the entry of trade in relief goods rather than the entry of service providers and suppliers or NGOs. One explanatory factor might be the complex regulatory barriers associated with the supply of services i.e. on the international, national and sometimes sub-national levels.

When it comes to trade in goods, several international instruments have been sought to facilitate the entry and clearance of humanitarian relief goods. The first instrument is the 1990 World Customs Organization's Istanbul Convention on Temporary Admission. Annex B.9 of the Convention deals with goods imported for humanitarian purposes. The annex includes definitions of "goods imported for humanitarian purposes" and "relief consignments".⁵⁹ The Convention has been ratified by 67 WCO contracting parties. The Annex envisages relief from import duties and taxes, the waiving of import restrictions or prohibitions of economic character and the setting aside of customs documents or securities. However, relief from these duties is provided only for the *temporary admission* of relief items and the humanitarian goods must be "owned by a person established outside the territory and must be loaned free of charge".⁶⁰ The customs authorities can require a written undertaking to re-export – along with an inventory of the goods. The implication is that relief consignments intended for consumption in a disaster-affected country would still be liable to pay import tariffs and other border compliance charges.

The WCO took further action on relief consignments through Annex J.5 of the 1999 Revised Kyoto Convention⁶¹ on the Harmonization and Simplification of Customs Procedures. The annex further defines relief consignments, extending the definition to include "equipment, vehicles and other means of transport, specially trained animals, provisions, supplies, personal effects".⁶² It also establishes standards and recommended practice. It proposes that clearance of relief consignments for export, transit, temporary admission and import "shall be carried out as a matter of priority".⁶³ Furthermore, the annex recommends that a simplified goods declaration can be lodged, including prior to arrival. It addresses the issue of working hours, providing for clearance outside designated hours of business or away from customs offices and for examination and/or sampling of goods only in exceptional circumstances. The annex provides for clearance regardless of the country of origin and for the waiving of export duties or taxes otherwise payable. The annex

⁵⁹ See 1990 World Customs Organization's Istanbul Convention on Temporary Admission. Annex B.9.

⁶⁰ Ibid.

⁶¹ The revised Kyoto Convention entered into force on February 3, 2006.

⁶² See: http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/spanj.aspx

⁶³ Ibid.

is in the form of standards and recommended practice, meaning that compliance is voluntary, not mandatory.

On 30 November 2007, the state parties to the Geneva Conventions and the International Red Cross Red Crescent Movement unanimously adopted the "Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance" (or the "IDRL Guidelines"). The non-binding IDRL guidelines provide further direction as to terminology for such terms as disaster, disaster relief, goods, services, transit state, assisting humanitarian organization, eligible assisting humanitarian organization and assisting actor. The guidelines provide useful guidance on responsibilities: of Affected States and of Assisting Actors, on Early Warning and Preparedness, Initiation and Termination of International Disaster Relief and Initial Recovery Assistance.

The IDRL guidelines suggest that originating, transit and affected States should exempt disaster relief and initial recovery goods and equipment from all customs duties, taxes, tariffs or governmental fees. The guidelines further recommend simplified or minimal documentation customs requirements for humanitarian consignments, no or reduced inspection requirements and the waiving of all export, transit, and import restrictions. Three UN General Assembly resolutions have been agreed encouraging states to make use of the IDRL guidelines, giving them additional weight, but again they remain non-binding guidelines.

IFRC and UNOCHA have sought to go further and build on the IFRC guidelines through the development of a Model Agreement between the United Nations and a disaster-affected state/government. The Model Customs Facilitation Agreement (The Model Act) concerns measures to expedite the import, export and transit of relief consignments and possessions of relief personnel in the event of disasters and emergencies. The model act covers the operations of the United Nations, UN Agencies and governmental, intergovernmental and non-governmental organizations certified by the UN as *bona fide* participants within the framework of a United Nations relief operation. Transport carriers contracted by the UN, a UN agency or a UN certified organization for transportation of relief consignment(s) are also covered. The model law provides definitions for specific terms such as disaster, disaster relief personnel, and relief consignment and sets out a series of facilitation measures for imports, exports and trans-shipments.

Concerning measures for import, the Model Act suggests that States should permit the entry of relief consignments (from UN or UN certified organizations) free of import duties and taxes and charges with equivalent effect and free of economic import prohibitions or restrictions (together with detailed information on relief consignments). It further recommends that equipment imported by relief organizations, but not directly involved in relief operations, should also be allowed in duty-free, and animals used for rescue operations should not be subject to import restrictions (such as the SPS controls mentioned earlier). Other provisions of the Model Act deal with arrangements for clearance outside normal working hours, allowing importers to submit manifest and entry details to customs prior to arrival, using sampling or selective inspections and permitting

provisional entry documents, subject to complete fulfilment of customs and other requirements within a specified time limit. To date, OCHA signed agreements with the governments of Belarus, Bhutan, Dominican Republic, Honduras, Liberia, Mali, Moldova, Nepal and Uzbekistan.⁶⁴

One point that emerges from Box 6 below is that while tax exemptions and relief from import restrictions are granted to relief consignments, these exemptions are not automatic, and still granted on a case-by-case basis - a process described as "painful" by relief operators.

Box 6: Import of building materials in Nepal

In Nepal, a significant proportion of building materials are imported, mainly from India and China. This includes an estimated 80% of all cement, as well as glass, aluminium, plaster, fixtures and fittings. Following a major disaster in Nepal, it is expected that the majority of the materials used for temporary and transitional shelter will need to be procured and imported from abroad. This is recognized in the Natural Calamity (Relief) Act, which requires the Central Disaster Relief Committee (CDRC) to manage and dispatch material received from both inside and outside the country, although no further details are given.

The government of Nepal has also concluded an agreement with the UN on "measures to expedite the import, export and transit of relief consignments and relief personnel in the event of disasters and emergencies", also known as the Model Customs Agreement. For the UN and other organisations working under its auspices, relief consignments, including tents, prefabricated houses and "other goods of prime necessity" may be imported tax-free without usual restrictions on quantities and value, and with fast track import procedures.

Other international organisations, such as the IFRC and ICRC, have also concluded their own Legal Status Agreements with the government which permit tax and duty-free import of relief supplies. The National Disaster Response Framework (NDRF) also confirms the application of the Model Customs Agreement and additionally states that: "the Government of Nepal shall facilitate and take appropriate action for the issuance of transit visas for IHC (International Humanitarian Communities) and port facilities for relief and rescue materials coming to Nepal via India with the Government of India during the disaster."

The IFRC has subsequently reported that "[i]n practice, administrative requirements are relaxed and the process for importing relief materials and goods relating to relief operations expedited. Almost all relief goods are tax-exempt and free from import restrictions on a case-by-case basis."

Source: IFRC

A further problem that complicated the entry of import of relief and reconstruction items into Nepal was a four-month-long border crisis that began in September 2015. The border crisis led to an acute shortage of fuel and construction materials and aggravated logistical difficulties and delays associated with relief and reconstruction activities.

⁶⁴ See more: <http://www.unocha.org/what-we-do/coordination-tools/logistics-support/customs-facilitation>

The entry of medical staff has not attracted the same attention internationally as the entry of relief goods. Service provision in the medical field remains a highly regulated issue in domestic laws. The IDRL recommendations guide governments on how to prepare their disaster laws and plans in order to address common regulatory problems in international disaster relief operations, including the access of relief personnel, but it remains up to local policy-makers to write these guidelines into their local laws and enforce them in emergencies. It is worth keeping in mind though that unilateral implementation of the IDRL guidelines does not resolve the issue surrounding the lack of internationally recognized and enforced standards for the entry and protection of medical service professionals.

(v) Technology solutions sought by the humanitarian community to trade issues

Another approach that the humanitarian community is using to resolve some of these trade issues is technology – and specifically the use of ICT-enabled services. Web-based services may offer opportunities to overcome some of the issues related to the provision of services and the right to establish and operate. Two avenues discussed here are tele-health services and mobile money transfers.

The introduction and proliferation of new ICT technologies has made some previously domestically-focused services now internationally accessible through the internet (e.g. tele-health or tele-education services). The International Standardization Organization (ISO) defines telehealth as "use of telecommunication techniques for the purpose of providing telemedicine, medical education, and health education over a distance."⁶⁵ In the health sector, while there may be stringent restrictions placed on mode 4 (presence of natural persons), Members may be more liberal in mode 1. This is pertinent given the rapid growth in tele-health.

For example in Sierra Leone, a country previously affected by Ebola, there is currently no limitation on market access in health related and social services under mode 1 (cross-border supply). However, under mode 4 (presence of natural persons) Sierra Leone is "[u]nbound except as indicated in Horizontal Commitments". Sierra Leone's horizontal commitments show that it imposes restrictions on the presence of health personnel (mode 4) "except for senior management personnel and technical experts not available in the local labour market (and) prior to a natural person working in Sierra Leone, a Work Permit must be obtained". No limitations on market access or national treatment are listed under mode 1 – and so there are no market access barriers to providing cross-border health services. In short, while Members may limit the ability to provide health services in-country, in Sierra Leone there are no restrictions to providing the same or similar services though tele-health services.⁶⁶

⁶⁵ Telemedicine refers to the "use of advanced telecommunication technologies to exchange health information and provide health care services across geographic, time, social and cultural barriers". See ISO/TR 16056-1:2004(en). Available at: <https://www.iso.org/obp/ui/#iso:std:iso:tr:16056:-1:ed-1:v1:en>

⁶⁶ The possibility of health services being provided electronically was perhaps not anticipated by some Members at the time of services scheduling. Some schedules even included footnotes to explain that a non-commitment in mode 1 would have been due to its infeasibility. See Adlung and Carzaniga, 2001, op.cit.

One example through which cross border tele-health has been operating is through professional to professional services.⁶⁷ The 2005 resolution on e-health adopted by WHO Member States provides for the integration of eHealth in health systems and services, including in the deployment of telemedicine infrastructure in countries where medical coverage is inadequate, in the training of health-care professionals, and in capacity building, in order to improve access to, and quality and safety of, care.⁶⁸ In 2013, the WHO resolution on eHealth standardization and interoperability recognized issues arising in this context such as the lack of a seamless exchange of data within and between health information systems hindering care and leading to fragmentation of health information systems.⁶⁹ It follows that in addition to policy barriers, tele-health is also affected by data privacy, security issues and limited access to appropriate and affordable internet infrastructure in developing countries.

Similar cross-sectoral issues arise in digital payments. Cross-border digital flows are today making it possible to reach disaster affected communities faster without having to physically move persons or entities across borders. Recent humanitarian literature suggests that there is sufficient accessibility to the physical infrastructure (e.g. sim cards) necessary for digital money transfers. The United Nations World Food Programme for example is increasingly delivering assistance such as scratch cards or "e-vouchers" delivered to mobile phones by text message.⁷⁰ Mercy Corps also notes that e-cash and e-vouchers⁷¹ are frequently used to transfer money, and e-vouchers in particular "...can be used anywhere offering minimum infrastructure requirements [and] does not rely on, or link to, local financial institutions and services..."⁷²

Many mobile phones are now simultaneously able to serve financial purposes when used for cash-outs, payments or money transfers. Using mobile networks for cash transfers is one of the ways that relief operations are seeking to harness connectivity for humanitarian relief. This approach is quick, convenient and affordable. Physical distribution is not always practical in a disaster-affected country where financial and transport infrastructures may be limited. Mobile money which, in this context of this paper, refers to payment transacted through a mobile device that is linked to either a bank account or a mobile operator or both, can bring large scale relief. Box 6 outlines three methods of digital financing currently operating in the market.

The liberalization of trade in telecom services was one of the early successes of the WTO with commitments first being undertaken during the Uruguay Round and leading to the establishment of a specific Annex on Telecommunications to the GATS and a later extension of the negotiations

⁶⁷ See "Tonga's High Speed Revolution", Asian Development Bank, 2016. Available at: <https://www.adb.org/results/tonga-s-high-speed-revolution>

⁶⁸ Source WHA58.28: "eHealth", Fifty-Eighth World Health Assembly, 2005.

⁶⁹ Source WHA66.24: "eHealth Standardization and Operability", Sixty-Sixth World Health Assembly, 2013.

⁷⁰ See: <https://www.wfp.org/cash-and-vouchers-old>

⁷¹ Mercy Corps defines e-cash as cash replaced with mobile money, prepaid debit/ ATM cards or other forms of digital cash and e-vouchers as digital replacements of paper vouchers. See: <https://www.mercycorps.org/sites/default/files/E-TransferGuide.pdf>

⁷² See <https://www.mercycorps.org/sites/default/files/E-TransferGuide.pdf>

on this sector.⁷³ To date, the WTO reports that a total of 108 members have made commitments to facilitate trade in telecommunication services.⁷⁴

Box 7: Digital Financial Methods

Mobile Banking: banking services delivered through a mobile phone. The principles of banking and the products offered remain the same as does the provider of the service (the bank). However, the channel for delivery is different.

Mobile Money: the use of information and communication technologies (ICTs) and non-bank retail channels to extend the delivery of financial services to clients who would not be reached profitably with traditional branch-based financial services. Customers can sign up for the service without an existing bank account; customers get money into and out of the service by going to a network of transactional agents outside of bank branches; and customers initiate transactions using an interface that is available on basic mobile handsets.

Mobile Wallet: a data repository that houses consumer data sufficient to facilitate a financial transaction from a mobile handset, and the applicable intelligence to translate an instruction from a consumer through a mobile handset/bearer/application into a message that a financial institution can use to debit or credit bank accounts or payment instruments.

Source: Groupe Spécial Mobile Association (GSMA)⁷⁵

Telecommunications and financial services regulations still vary among countries. In some jurisdictions, mobile banking can only be provided through a bank-based model i.e. through joint ventures in which the mobile operator acts a channel for providing bank services. In others, non-bank companies may provide mobile banking services following approval from the Central Bank.⁷⁶ Another example is the possibility of branchless mobile money services, for example, mPesa stored value accounts were construed to not constitute a 'banking activity' under the Banking Act of Kenya.⁷⁷

Mobile money transfers have also been used to make payments to humanitarian workers. Box 8 below describes the use of mobile wallets for response staff in Sierra Leone during the Ebola outbreak. It is worth mentioning that the 2030 Agenda for Sustainable Development recognizes that "the spread of information and communication technology and global interconnectedness has great potential to accelerate human progress, to bridge the digital divide and to develop

⁷³ The Annex on Telecommunications, GATS. Available at: https://www.wto.org/english/tratop_e/serv_e/12-tel_e.htm

⁷⁴ Telecommunication Services, WTO. Available at: https://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_e.htm

⁷⁵ Available at: http://www.itu.int/en/ITU-D/Regulatory-Market/Pages/Events2016/Abidjan/Ses3_5%20Muthiora_GSMA_DFS.pdf

⁷⁶ Source: <https://sustainabledevelopment.un.org/post2015/transformingourworld>

⁷⁷ "The Regulatory Landscape for Mobile Banking", ITU, 2011: p.8. However, the ITU notes that "Safaricom invests an amount equal to M-PESA's net deposits in commercial banks in order to ensure the safety of customer deposits."

knowledge societies".⁷⁸ Though mobile money services still remain poorly harmonized internationally, there is scope for discussion on how to learn from experience and to examine what could constitute best practice to enable the development of mobile money operations and to resolve the growing complexities arising in the provision of cross-border digital financial services.

Box 8: Mobile Wallets in Sierra Leone during the Ebola Crisis

At the height of the Ebola crisis, Sierra Leone turned to mobile wallets to make payments to Response Workers. Before digitization, cash payments were said to be slow, inaccurate, and open to graft and theft. The Better than Cash Alliance reported that:

"Digitization cut payment times from over one month to around one week, putting an end to payment related strikes. Digital payments therefore strengthened Sierra Leone's capacity to contain the Ebola disease, treat those infected, and ultimately save lives. In the process, digitizing payments also delivered cost savings of more than US\$10 million by eliminating double payment, reducing fraud, removing the costs of physical cash transportation and security, and cutting travel costs for Response Workers."

Source: The Better than Cash Alliance⁷⁹

This section has highlighted some technological solutions used by the humanitarian community to streamline their operations and get around the regulatory issues they face in providing disaster relief and reconstruction assistance. It highlights that while technology offers significant operational advantages (tele-health, mobile money, and the expansion of insurance as discussed later), such approaches may still risk running into a range of regulatory and other barriers. The various guidelines and codes of conduct share the same weakness in that they are non-binding on the disaster-affected states in which the humanitarian community faces difficulties in operating.

(vi) Trade policy measures to support disaster recovery

Section vi of this working paper examines trade policy measures to support disaster recovery. The section discusses the WTO's most recent multilateral trade agreement, the Trade Facilitation Agreement (TFA), highlighting provisions of particular interest for the humanitarian community. It provides suggestions as to how the TFA could be leveraged to resolve issues identified in Part I of the paper. Lastly, the section concludes with a discussion of the expansion of disaster risk insurance, a mechanism being discussed in the humanitarian community as possibly a more sustainable solution than the current system of *ad hoc* disaster funding appeals.

In December 2013, WTO members concluded negotiations on the TFA at the Bali Ministerial Conference, as part of a wider "Bali Package".⁸⁰ The TFA entered into legal force on 22 February

⁷⁸ See:

<https://sustainabledevelopment.un.org/index.php?page=view&type=20000&nr=579&menu=2993>

⁷⁹ "Saving Money, Saving Lives: A Case Study on the Benefits of Digitizing Payments to Ebola Response Workers in Sierra Leone", 2016.

⁸⁰ After a legal review of the text, and in line with the decision adopted in Bali, WTO members adopted on 27 November 2014 a Protocol of Amendment to insert the new Agreement into Annex 1A of the WTO Agreement.

2017. It contains provisions for expediting the movement, release and clearance of goods, including goods in transit, many of which should go some way to resolving some of the issues cited as problematic by humanitarian relief organizations. It also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues.

Table 2: Key Provisions of the WTO Trade Facilitation Agreement

Article	Key provisions
Article 1	Publication and Availability of Information. Requirement to publish and make available on the internet all forms and procedures for importation, exportation, and transit (including information on applied duty rates, fees and charges and import and export restrictions). Enquiry points to answer questions.
Article 2	Opportunity to comment, information before entry into force and consultations. Border agencies to engage in regular consultations with traders or other stakeholders
Article 3	Advance rulings. Issuance of binding advance rulings on tariff classification and origin. Encouragement to provide advance rulings on relief or exemption from customs duties.
Article 4	Procedures for appeal or review. Any person to whom customs issues an administrative decision has the right to request a review and to appeal the decision.
Article 5	Other measures to enhance impartiality, non-discrimination and transparency. Disciplines governing enhanced controls and inspections. Notification of detention of goods. Procedures for laboratory tests and retesting.
Article 6	Disciplines on fees and charges imposed on or in connection with importation and exportation and penalties. Publication of information on fees and charges and how to make payments. Limitation of fees and charges to the approximate cost of the services rendered. Penalties for customs laws breaches imposed only on the person(s) responsible and commensurate with the breach.
Article 7	Release and clearance of goods. Pre-arrival customs processing to allow release on arrival. Electronic payment for charges. Procedures allowing the release of goods prior to final customs determination of duties and use of risk management systems for customs control. Streamlined measures for Authorized Operators. Procedures for expedited release (in particular air cargo). De minimis shipment values for which customs duties and taxes will not be collected. Perishable goods to be released within the shortest possible time and prioritized for inspections.
Article 8	Border agency co-operation. Obligation to cooperate with other border agencies, e.g. through coordinated procedures along common borders with respect to working hours, procedures, facilities, joint controls and one stop border post control.
Article 9	Movement of goods intended for import under customs control Allow goods to be moved from one customs office to another before clearance.

Table 2: Key Provisions of the WTO Trade Facilitation Agreement cont.

Article	Key provisions
Article 10	Formalities connected with importation and exportation and transit Minimize the incidence and complexity of formalities to allow rapid release and clearance of goods, particularly perishable goods, and use the least trade restrictive measures, including accepting paper or electronic copies. Use of single window, enabling traders to submit documentation through a single entry point. Discontinue preshipment inspections and mandatory use of customs brokers. Apply common customs procedures and documentation throughout its territory. Permit the return the rejected goods. Allow goods relief from import duties and taxes if they are brought into its customs territory for a specific purpose, are intended for re-exportation within a specific period, and have not undergone any change except normal depreciation and wastage.
Article 11	Freedom of Transit. Regulations or formalities shall not be applied as a disguised restriction or conditioned upon collection of fees, or subject to voluntary restraints. Products in transit shall be accorded no less favourable treatment. Formalities and customs controls not overly burdensome and not subject to any customs charges nor unnecessary delays or restrictions. No application of technical regulations and conformity assessment procedures on goods in transit. Allow advance filing and processing of transit documentation prior to arrival. Allow comprehensive guarantees which include multiple transactions from the same operator.
Article 12	Customs Co-operation. Members allowed to engage in bilateral, plurilateral, or regional agreement for sharing or exchange of customs information and data.

Source: Trade Facilitation Agreement⁸¹

From table 2, it is clear that the legal disciplines outlined in the TFA may be useful in addressing the border clearance issues that humanitarian agencies face in relief operations. Particularly noteworthy might be the provisions on advance rulings, release and clearance of goods, trade facilitation measures for authorized operators, border agency cooperation and freedom of transit, and the temporary admission of goods. These various provisions are discussed in more detail below:

Advance rulings: The TFA provides that "each Member shall issue an advance ruling in a reasonable, time-bound manner to the applicant that has submitted a written request containing all necessary information." The advance ruling shall be valid for a reasonable period of time after its issuance and binding on that Member in respect of the applicant that sought it. Article 3 also encourages advance rulings on the applicability of the Member's requirements for relief or exemption from customs duties. Advance rulings may help humanitarian organizations to move from the current ex post waivers (often provided on a consignment by consignment basis) to an ex ante system of authorizations. Important to note is that the utility of advance rulings will depend on the rapidity of their issuance. Long delays issuing advance rulings could actually add to delays.

Release and clearance of goods: Article 7 of the TFA makes provisions for advance processing and the electronic payment of duties, taxes, fees, and charges collected by customs. Where advance processing is not possible, the TFA obliges Members to adopt or maintain procedures

⁸¹ Agreement on Trade Facilitation, World Trade Organization, WT/L/931, July 2014. Available at: https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm

allowing the release of goods prior to the final determination of customs duties, taxes, fees, and charges, albeit with the provision of guarantees.

Trade Facilitation Measures for Authorized Operators: Another provision of Article 7 provides for additional trade facilitation measures related to import, export, or transit formalities and procedures for authorized operators. Such additional measures are described as encompassing at least three of the following seven procedures: low documentary and data requirements; low rate of physical inspections and examinations, rapid release time, deferred payment of duties, taxes, fees, and charges use of comprehensive guarantees or reduced guarantees; a single customs declaration for all imports or exports in a given period; and clearance of goods at the premises of the authorized operator or another place authorized by customs; use of comprehensive guarantees or reduced guarantees; a single customs declaration for all imports or exports in a given period; and clearance of goods at the premises of the authorized operator or another place authorized by customs.

Border agency cooperation and freedom of transit: Article 8 on border cooperation provides for collaboration on such issues as alignment of working days and hours, procedures and formalities, development and sharing of common facilities, joint controls and establishment of one stop border post controls. Article 10 in turn covers the formalities connected with transit – of particular importance for landlocked economies. Article 10 on freedom of transit prevents the collection of any fees or charges imposed for transit, except to recover the cost of administrative expenses associated with transit clearance and the use of voluntary restraints or any other similar measures on traffic in transit. Other provisions include comprehensive guarantees which include multiple transactions by the same operators.

Temporary Admission of Goods: Article 10 on formalities connected with importation, exportation and transit, provides for the temporary admission of goods, inward and outward processing. In particular, this article provides for goods to be imported for a limited period of time, for defined purposes, with partial or no payment of import duties and taxes "if such goods are brought into its customs territory for a specific purpose, are intended for re-exportation within a specific period" and subject to certain conditions.

In addition to the specific measures identified above, other provisions relating to the acceptance of copies in place of original declarations, online publication of measures, enquiry points and comment periods before legal entry into force should also benefit humanitarian relief operators.

The TFA may increase the already strong incentives for the humanitarian community to cooperate with governments and the private sector. The skills and scale required to undertake complicated logistical operations, often to remote locations, present a significant challenge, even for the most established humanitarian agencies. Designation of logistics firms as "authorised operators" for normal commercial operations could further enhance the "comparative advantage" of such commercial entities in relief operations. Furthermore, one key factor in designating an entity as an

authorised operator is a record of compliance with customs processes and procedures – experience that a humanitarian agency may only develop during the course of relief operations in a disaster-affected country. A number of logistics firms already collaborate with the humanitarian community through Logistics Emergency Teams and support the Logistics Cluster led by United Nations World Food Programme - a partnership facilitated by the World Economic Forum since 2005.⁸²

The TFA also provides for the establishment of a Committee. The Committee, which will take over from the existing Preparatory Committee, will provide a forum for Members to raise questions on issues related to TFA implementation and is charged with maintaining close contact with international organizations, including the World Customs Organization. Another possibility in this regard could be that Committee observer organizations could update the Committee on how they may be using the TFA in the context of disaster-relief and reconstruction efforts.

While the WTO's Trade Facilitation Agreement does not explicitly address humanitarian emergencies, nor market access issues, its provisions and their implementation should smooth many of the border clearance issues that humanitarian responders face in relief operations.⁸³ This is an area that could merit further attention by both the humanitarian and trade communities.

A further area being discussed actively by the humanitarian community is that of expanding disaster risk insurance. The Centre for Global Development argues that "insurance and insurance-type contracts that create incentives for risk reduction and pay out quickly are the key missing market in disaster response."⁸⁴ In 2007, the World Bank worked with governments across the Caribbean to set up an insurance pool - the Caribbean Catastrophe Risk Insurance Facility (CCRIF). Through this insurance facility, US \$8 million was provided to the Government of Haiti less than 24 hours after the 2010 earthquake—a more rapid response than the IMF, donors, or the World Bank. The CCRIF⁸⁵ announced in 2016 that Haiti will receive around US \$20 million from the fund as a result of the passage of Hurricane Matthew.⁸⁶

One concern relates to the affordability of disaster risk insurance. One suggestion here might be to lower insurance premium costs based on a risk assessment of the disaster-affected country. For example, countries which have streamlined border clearance processes through implementation of TFA provisions or other trade facilitation initiatives would presumably be able to make lower claims, and could thus benefit from lower insurance premiums.

⁸² More information at: <http://www.logcluster.org/logistics-emergency-teams>

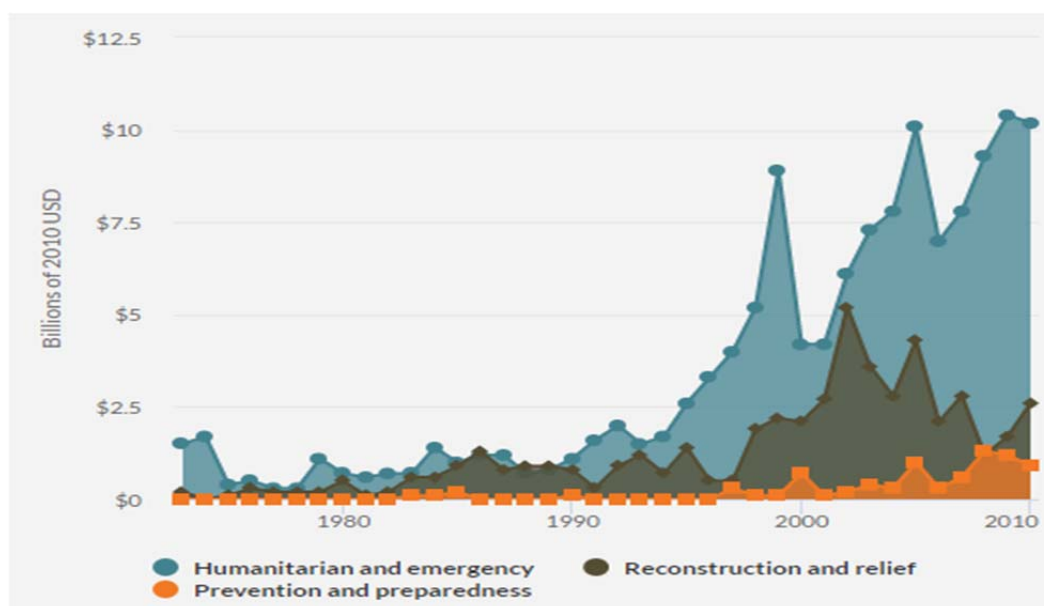
⁸³ "Trade and Humanitarian Emergencies", The World Bank and the Global Facility for Disaster Reduction and Recovery. Available at: <http://siteresources.worldbank.org/WBEUROPEEXTN/Resources/268436-1322648428296/8288771-1453462012900/9871283-1463682297629/trade-humanitarian-emergencies-final-web.pdf>

⁸⁴ Barder, Owen and Theodore Talbot, "Payouts for Perils: Why disaster aid is broken, and how catastrophe insurance can help to fix it", Centre for Global Development, 2016. <http://www.cgdev.org/>.

⁸⁵ Now known as the CCRIF SPC

⁸⁶ "CCRIF ready to pay Haiti a little over US\$20 Million following Passage of Hurricane Matthew", 2016. Available at: <http://www.ccrif.org/news/ccrif-ready-pay-haiti-little-over-us20-million-following-passage-hurricane-matthew>.

Figure 6: Aid for Reducing Losses is a Small Fraction of Disaster-Related Aid



Source: Center for Global Development⁸⁷

Another example highlighted by Stephen Dercon and Daniel Clarke is Mexico's National Disaster Fund, FONDEN, that operates a rules-based system to reconstruct public infrastructure such as roads, hospitals, and schools after a disaster hits. It brings in the federal government, state governments, and the private sector, with clarity existing pre-disaster as to who pays for what in the event of a catastrophic event. The importance of financial mechanisms for recovery is increasingly receiving attention within the international development community.

Financing for development in the context of natural disasters, forms part of the 2015 Addis Ababa Action Agenda (the Agenda) which recognizes the need for the coherence of developmental and humanitarian finance to ensure timelier, comprehensive, appropriate and cost-effective approaches to the management and mitigation of natural disasters and complex emergencies. The Agenda includes commitments to promote innovative financing mechanisms to allow countries to better prevent and manage risks and develop mitigation plans. The Agenda states that: "[w]e will invest in efforts to strengthen the capacity of national and local actors to manage and finance disaster risk reduction, and to enable countries to draw efficiently and effectively on international assistance when needed."⁸⁸

In addition, the Sendai Framework for Disaster Risk Reduction 2015-2030 also provides for promotion mechanisms for disaster risk transfer and insurance, risk-sharing and retention and

⁸⁷ See more: <http://www.cgdev.org/blog/insurance-fix-broken-emergency-aid-new-cgd-paper-working-group-0>

⁸⁸ Addis Ababa Action Agenda of the Third International Conference on Financing for Development endorsed by the General Assembly in its resolution 69/313 of 27 July 2015. See more: http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf

financial protection, as appropriate, for both public and private investment in order to reduce the financial impact of disasters on Governments and societies, in urban and rural areas.⁸⁹

At a more micro level, the ability to expand the provision of disaster insurance to protect against disaster risks may be constrained by the low level of commitments to open the provision of insurance services up to foreign suppliers (see table 3). Insurance⁹⁰ is a financial service covered by the GATS. Levels of commitments in insurance services are however low across all modes, with the highest percentage of "unbound" rates in mode 1 – cross border supply and the lowest rates of "full" commitments in mode 4 – presence of natural persons.⁹¹ Even in mode 3 – commercial presence, most Members have chosen to make only "partial" commitments (see table 3).

Table 3: Level of Market Access Commitments in insurance service, by mode of supply

Sector	Mode 1			Mode 2			Mode 3			Mode 4		
	Full	Partial	Unbound	Full	Partial	Unbound	Full	Partial	Unbound	Full	Partial	Unbound
Life	12	33	56	27	31	42	19	80	1	5	88	7
Non-Life	12	58	30	24	52	23	18	80	2	4	88	7
MAT	50	20	30	50	27	23						
Reinsurance and Retrocession	41	39	19	48	32	19	19	69	12	7	77	16
Insurance Intermediation	12	32	56	23	24	53	12	49	38	2	54	44
Services Auxiliary to Insurance	23	32	44	32	26	41	18	57	25	3	65	32

Source: WTO: S/FIN/W/73 (2010)

Disaster risk insurance can be an important safety net for SMEs in urgent need of financing to recover business operations. In 2013 the IFC reported that on average, only 5 to 10% of estimated SME losses are covered after disasters. Following the 2010 earthquake in Haiti for example, there was a funding gap of \$1.2 billion in coverage for SME losses, and a funding gap of \$1.9 billion for SME losses in Thailand following the floods in 2011.⁹² Low levels of bound commitments in insurance could act as a constraint on the development of affordable disaster-risk insurance services. With the frequency of natural disasters predicted to rise, the availability of disaster-risk insurance services could help complement other aid flows in helping disaster prone countries, firms and individuals in the recovery process.

Consideration by WTO Members of how disaster risk insurance schemes could help address the financing needs of disaster-affected countries is an action that could be envisaged. Consideration

⁸⁹ The Sendai Framework for Disaster Risk Reduction 2015-2030, adopted at the Third UN World Conference in Sendai, Japan, on March 18, 2015. See more: http://www.unisdr.org/files/43291_sendaiframeworkfordrren.pdf

⁹⁰ Which are not provided in the exercise of governmental authority or function.

⁹¹ See tables 16 and 17 in S/C/W/312. Does not take account of horizontal limitations.

⁹² "Natural Disasters: Impact on SMEs and Role of Insurance in Mitigating Shocks", IFC FinNet, 2013.

of how the cross border provision of insurance services is being addressed through regional trade agreements is another step that could be envisaged.⁹³

⁹³ See: http://ita.doc.gov/cafta/key_benefits/financial_services.asp

CONCLUSIONS

Regrettably, natural disasters are predicted to become more frequent. As the economic burden and social cost associated of disasters increases, the delays and costs associated with trade obstacles to relief goods and services may also be more evident, and unacceptable. This working paper has highlighted that international trade policies, and the way in which they are implemented both by a disaster-affected country itself and by its trading partners, can make a considerable difference to the effectiveness of humanitarian response. It has identified how trade measures can slow, and even stop altogether, the entry of relief goods and services, relief personnel (such as health professionals) and humanitarian relief organizations. Trade restrictions can reduce the timeliness and the effectiveness of relief operations, driving up their cost both for the organizations involved and for those affected by disasters.

High import tariffs imposed by many disaster-affected countries on key humanitarian goods necessitate requests for derogations from customs authorities. The consignment-by-consignment processing of such exemptions can add further delays to the release of relief goods already slowed by often archaic clearance systems and the uncoordinated actions of multiple border agencies. Measures taken by the humanitarian community, such as the integration of model laws into national legislation, may streamline this process. Effective implementation of the WTO Trade Facilitation Agreement is another approach that offers significant promise. The WTO's 2015 World Trade Report highlighted that the TFA has the potential to reduce trade costs by an average of 14.3%, with African and LDCs expected to see the biggest reductions in trade costs from full implementation of the TFA (in excess of 16%).⁹⁴ These gains would also be felt in the efficiency of customs and other border clearance in the event of natural disasters – assuming of course that they are not directly affected themselves.

Import surges as humanitarian agencies respond to fast-onset crises tend to highlight underlying structural weaknesses in border clearance systems. A range of TFA provisions, in particular those dealing with advance rulings, release and clearance of goods, trade facilitation measures for authorized operators and border agency cooperation and freedom of transit, may go some considerable way to addressing the current failings in import systems. The enactment of the IFRC's model laws as part of trade facilitation reforms is another step that could be considered. With the entry into legal force of the TFA, the WTO Trade Facilitation Committee could also provide a valuable forum for tracking how the TFA is ironing out the border clearance delays experienced in the delivery of humanitarian relief – and, if Members are so minded, in highlighting problems as they arise.

Often less visible, but equally restrictive, are the barriers that affect the entry of specialized personnel and the right of relief organizations to establish and operate. The provision of services via the presence of persons and establishments within disaster-affected countries remain areas

⁹⁴ "Speeding Up Trade: benefits and challenges of implementing the WTO Trade Facilitation Agreement", World Trade Report 2015, World Trade Organization.

where humanitarian organizations experience a range of obstacles. One specific issue here is that most NGOs do not have international legal personality and as such cannot benefit from established waivers to operate. Thus NGOs in disaster-affected countries face obstacles in registration, operations, and cost-effectiveness. One reason is the lack of binding international regulations governing the presence, work and non-profit status of NGOs and their personnel. Combined with that is regulatory discordance with respect to the credentials of health professionals in general, coupled with unclear and burdensome local regulatory procedures, the result is that qualified medical professionals may be working in a legal grey zone in disaster-affected countries.

Humanitarian relief agencies are increasingly looking to digital solutions to streamline operations and overcome their operational difficulties. Tele-health and mobile money transfers are among the various digital solutions gaining traction among humanitarian agencies. While such services offer new ways to deliver relief and reconstruction services and may circumvent some operational issues that agencies experience, these services too may also run into trade barriers –in some cases a growing burden of red tape as regulators try to catch up with the technological change in the global market place.

One difficulty that the humanitarian community faces in interacting with the trade community is the scale of the commercial injury inflicted on them. Global trade in tents and blankets was worth some US\$9.6 billion in 2014. Humanitarian purchases are "anecdotal" in the context of the regular commercial trade in these products. Nevertheless, the "injury" experienced by both responders and disaster-affected populations from the late or non-arrival of assistance is real. Furthermore, the trade community has demonstrated leadership on comparable issues in the past: the Decision on TRIPs and Public Health is a case in point. As the frequency and magnitude of natural disasters increases, so too may the visibility of the economic welfare losses from trade restrictions, so prompting action to help make the humanitarian relief dollar go further.

One final suggestion with which this working paper concludes is consideration of the merits of a WTO "Decision on Trade Measures for Disaster Response". A decision might contain three elements:

- preambular text recognizing the burden of natural disasters and elaborating general principles;
- a second section dealing with trade measures taken by disaster-affected Members; and
- a final section that deals with trade measures taken in support of the disaster-affected Member.

Such a WTO decision could provide useful guidance for both governments and for the humanitarian community, with the aim of ensuring that trade measures support disaster relief and reconstruction.

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