

NTMs and Regulatory Governance

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Observations about Regulatory Quality during NTM inventory

- Recordkeeping by agencies was less than systematic; transparency was lacking
 - Most did not upload all regulations/issuances on their websites, despite the legal requirement for agencies to maintain registers and make these available to the public
 - Websites with relatively complete uploads did not provide information on the current effectivity of the issuance
 - Others described their procedures or requirements but did not provide the text of the issuance
 - Issuances meant to amend or revoke a previous one did not always specify which these were
 - The legally mandated official repository, the Office of National Administrative Registry (ONAR) is the ideal record keeper. This would be realized if agency submissions are made diligent, and the database is fully automated.
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Observations about Regulatory Quality during NTM inventory

- When contacted directly, agency personnel did not have full knowledge of the issuances
 - In most cases, only the assigned 1-2 personnel would know about the issuance
 - Most were not aware of the HS codes
 - Some issuances mentioned a prerequisite that was not in place yet, e.g. Import Risk Analysis for prohibited species of fish
 - Other provisions were not being enforced or were substituted by more practical arrangements, e.g. onsite audit/inspection of premises abroad, pet registry

 - Also, note that there is no NTM code for certifications required for exemptions, or licensing due to a tariff quota
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Observations about Regulatory Quality during NTM inventory

- The language in some provisions were unclear/circuitous, e.g. use of double negatives, exceptions to the rule, etc.
 - Product coverage was not explicit:
 - HS codes were not provided
 - vague/broad descriptions e.g. “machinery used in their production”
 - description “excludes” e.g. chemicals not in PICCS, all except products x, y, z
 - new products undefined, technical terms e.g. organic, chemical names, biomolecules, GMO seeds
 - products defined according to user e.g. imports of ecozones, ozone-depleting substances used by the airconditioning industry
 - Products covered by the issuance were delineated differently from that of the HS description, e.g. 5000 gross tons and above versus 500 gross tons
 - Some measures applied only to products with certain characteristics, e.g. non-endemic fish species, planted tree species, temperature sensitive drugs, goods whose duties are determined by weight
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Some recommendations then:

Systematization of NTMs is a must -

1. Remove obviously extraneous/redundant or dead measures
 2. Establish clear objectives for regulations first, e.g. is it to obtain information about the entity? control use of a product? raise revenue? protect health, environment, safety, national security? prevent fraud?
 3. Examine existing measures against the defined objective and rationalize the provisions to the barest minimum. If possible, perform a Regulatory Impact Assessment (RIA)
RIA is meant to improve the quality of regulations: (a) more transparency, rigour, accountability and consistency in regulations, (b) minimal unnecessary and excessive requirements.
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Some recommendations then:

Developing NTMs to protect health and the environment

- These are legitimate policy objectives, for which WTO members can adopt NTMs as long as they comply with WTO rules (not to create unnecessary obstacles to trade) or fall under the exceptions to the rule
 - Any trade restrictive measure to protect health and the environment must be based on science, including the use of risk assessment techniques
 - Trade measures are not considered effective for managing the environment. Multilateral agreements that set standards to be applied domestically are better.
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The Bigger Picture

- NTMs are one class of regulation
 - The quality (design and practice) of NTMs reflects the quality of regulations in general
 - Regulation is a key tool for governments to improve the functioning of economies
 - Poor regulations lead to poor outcomes – they increase the burden of compliance and are a drag on countries' growth potential
 - Regulatory efficiency calls for good regulatory management or governance
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Principles of Better Regulation (UK, 1997)

- Proportionality – intervene only when necessary; appropriate to the risk posed and costs must be identified and minimized
 - Accountability – regulators must be able to justify decisions, subjected to public scrutiny
 - Consistency – rules and standards must be joined up and implemented fairly
 - Transparency – regulators must be open, and regulations must be simple
 - Targeting – focused on the problem, side effects minimized
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8 Principles of good regulation (OECD, 2005)

- Serve clearly identified policy goals, and be effective in achieving those goals
- Have a sound legal and empirical basis
- Produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account
- Minimize costs and market distortions
- Promote innovation through market incentives and goal-based approaches
- Be clear, simple, and practical for users
- Be consistent with other regulations and policies
- Be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels

Regulatory Policy and Governance Framework (OECD 2014)

- **Core Policies:**

Strategic government statements of orientation that define the underlying principles of regulating and governing

- **Actors, Institutions, and Capacities:**

The functions and roles within different bodies and capacities that are responsible for implementing, monitoring, and enforcing the delivery of a high quality regulatory environment

- **Systems, Processes and Tools:**

Practices and procedures that are designed and implemented to ensure regulatory quality

Principles for governance of regulators (OECD, 2014)

- Role clarity
 - Preventing undue influence and maintaining trust
 - Decision-making and governing body structure for independent regulators
 - Accountability and transparency
 - Engagement
 - Funding
 - Performance evaluation
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Good Regulatory Practice (GRP)

- GRP is internationally recognized processes, systems, tools, and methods for improving the quality and cost-effectiveness of regulations
- OECD (2012) recommended this

3 areas at the core:

1. Internal coordination of rulemaking activity
 2. RIA
 3. Public consultation mechanisms to improve transparency
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Philippine Initiatives

- Anti-Red Tape Act or R.A. 9485 of 2007
 - Project Repeal (2015)
 - Philippine National Trade Repository (2015)
 - Interagency Business Process Interoperability (IABPI) (2016)
 - Regulatory Impact Assessment (2012)
 - Modernizing Government Regulations program (2016)
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Regulatory Management System (Llanto 2015)

- **Regulatory Policy** – present but need review and simplification
 - **Regulatory Institutions** – present but unable to translate regulations into efficient regulatory outcomes; need effectively functioning/competent institutions; no central oversight body to review the appropriateness and impact of regulations and promote whole-of-government regulatory reform (need political will and commitment, not just interest)
 - **Regulatory Processes** of policy dialogue, notification, consultation – present but are sectoral and not coordinated across regulators, no established protocol for review, no central unit mandated, no review methodology nor mechanism for national-local government coordination
 - **Regulatory Quality Tools** – no RIA which should be a whole-of-government policy, RIA capacity is still being developed
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Efficient regulation principles (OECD 2001; 2012)

- Transparency and openness
 - Non-discrimination
 - Avoidance of unnecessary trade restrictiveness
 - Use of performance-based regulation
 - Use of RIA
 - Administrative simplification
 - Use of internationally harmonized measures
 - Ensuring the quality of conformity assessment procedures
 - Use of competition principles in regulatory practice
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Master Plan on ASEAN Connectivity

MPAC 2025: Regulatory Excellence

Need to embed GRP in the preparation, adoption, and implementation of rules, regulations, and procedures in ASEAN. Support key policies such as standards harmonization, mutual recognition and technical regulations, NTMs.

Strategic Objectives and Key Initiatives

- Harmonization of mutually recognized standards, conformance, and technical regulations for products in key sectors: Complete harmonization in 3 priority groups
 - Reduce the number of trade-distorting NTMs across ASEAN: Increase transparency and strengthen evaluation
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ASEAN Principles for GRP

1. Serve clearly identified policy objectives, and be effective in achieving those objectives
 2. Have a sound legal and empirical basis
 3. Produce benefits that justify the costs
 4. Minimize costs and market distortions
 5. Be clear, simple, and practical for users
 6. Be consistent with other regulations and policies
 7. Be transparent to both regulators and those affected by regulation
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ASEAN Principles for GRP

8. Be based on international or national standards that are harmonized with international standards, except where legitimate reasons for deviations exist
 9. Reference only those parts of a standard that represent minimum requirements to fulfill the desired objectives
 10. Be least trade restrictive to achieve the desired objectives
 11. Be performance-based rather than prescriptive
 12. Accord equal treatment to products of national origin and like products imported from Member States
 13. Be subject to review to maintain flexibility and adaptability to changes
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Possible research topics based on MPAC 2025

- Sectoral data on: degree of standards harmonization, technical trade barriers
 - International best practice for standards and technical regulations, benefits to ASEAN members, likely concerns
 - Develop and monitor progress of ASEAN Trade Repository and ASEAN Solutions for Investments, Services and Trade (ASSIST)
 - Define scope of NTMs to evaluate; appropriate quantification and benchmarking methodology; conduct analysis
 - Develop GRP into the process of NTMs
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THANK YOU
