



Streamlining non-tariff measures for sustainable benefits

The preceding chapters highlighted that NTMs can have both positive and negative effects on trade, investment and sustainable development, depending on their nature, the product to which they are applied, the way they are implemented, and the social, political, economic and environmental context. The key to maximizing benefits are good regulatory practices and reducing the cost of compliance with legitimate NTMs. Surveys of private sector traders presented in chapter 2 (ESCAP and ITC, 2019) and analytical evidence (Knebel and Peters, 2019) clearly call for reducing regulatory distance between countries and streamlining procedural obstacles associated with NTMs.

“Streamlining NTMs is the key to maximizing their benefits for sustainable development.”

Many of the burdensome NTMs originate abroad. At the same time, lack of transparency and inefficient domestic procedures – regardless of whether the NTMs originate at home or abroad – remain key issues for traders. Both regional and multilateral cooperation as well as domestic efforts are therefore needed to reduce the burden associated with compliance with NTMs and to strengthen positive impacts. In this context, this chapter focuses on good practices to streamline NTMs, both at the national, subregional and regional levels.

A. STREAMLINING NON-TARIFF MEASURES AT THE DOMESTIC LEVEL TO LOWER TRADE COSTS

While most burdens may result from export partners' NTMs, most countries also have room for improving their own NTMs. This section highlights good practices which countries may consider implementing at the national level in NTM design, development and implementation.

1. Regulatory audits: reviewing existing NTMs

“Reviewing existing NTMs and, where feasible, adopting international standards can greatly reduce costs arising from variations in national regulations.”

A useful starting point for increasing net benefits from streamlining NTMs is through the review of existing NTMs to eliminate unnecessary ones, and to improve the design of existing and future measures.¹ Regulatory reviews can identify duplications or inconsistencies that can be streamlined to boost efficiency. In this regard, existing and evolving international standards can be used as benchmarks when feasible, as discussed in chapter 3. Reviewers should also ensure that the technical measures are non-discriminatory, i.e., they are fully consistent with related domestic policies and requirements applicable to domestic producers and products. Development and maintenance of a national NTM database based on the internationally agreed NTM classification (introduced in chapter 1) facilitates the

review.

For example, under the Eleventh Malaysia Plan: 2016-2020, Malaysia has drawn up comprehensive and specific actions to drive up productivity. It is specifically removing NTMs where costs outweigh benefits and that impede business growth, and is improving the logistics sector in an effort to forge a robust business ecosystem. As part of accomplishing this, NTMs, that were collected by UNCTAD and the Economic Research Institute for ASEAN and East-Asia (ERIA) together with Malaysia (ERIA, 2019), are profiled for data analysis and verified, possible and potential issues identified, industry engaged through public consultations, and recommendations validated with Ministries, agencies and experts. Moving forward, the process will establish a centralized NTM database, repeal acts and regulations that are no longer relevant, review redundant NTMs, streamline inter-agency export/import processes and procedures, and address cross-cutting issues faced by multiple ministries (Malaysia Productivity Corporation, 2018).

2. Regulatory impact assessment for newly proposed NTMs

At the domestic level, regulatory impact assessment of NTMs may be conducted to highlight areas for streamlining and explore the balance between potential costs and benefits. An increasing number of countries have established or strengthened assessments that must be conducted before new NTMs are issued.

“Impact assessment of newly proposed NTMs should be systematically conducted, including through stakeholder consultations which may be conducted online.”

For example, the Government of New Zealand has published guidelines on “Government expectations for good regulatory practice”.² These guidelines list expectations that it has of the regulatory system, noting that any regulatory system, including NTMs, should be an asset for New Zealanders, not a liability.

¹ Note that an NTM review is a post-enactment procedure that may include a performance evaluation assessing to what extent regulations deliver the intended outcomes, while regulatory impact assessment is generally undertaken pre-enactment. Both are important.

² <https://treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf>.

Some of the more pertinent provisions include the requirement that regulations must:

- Achieve those objectives in the least-costly way, and with the least adverse impact on market competition, property rights, and individual autonomy and responsibility;
- Be flexible enough to allow regulators to adapt their regulatory approach to the attitudes and needs of different regulated parties, and allow those parties to adopt efficient or innovative approaches to meeting their regulatory obligations;
- Have processes that produce predictable and consistent outcomes for regulated parties across time and place;
- Be proportionate, fair and equitable in the way it treats regulated parties;
- Be consistent with relevant international standards and practices in order to maximize the benefits from trade and from cross-border flows of people, capital and ideas (except when this would compromise important domestic objectives and values);
- Be well-aligned with existing requirements in related or supporting regulatory systems through minimizing unintended gaps or overlaps, and inconsistent or duplicative requirements;
- Conform to established legal and constitutional principles and support compliance with New Zealand's international obligations;
- Set out legal obligations and regulatory expectations and practices in ways that are easy to find, easy to navigate, and clear and easy to understand;
- Have scope to evolve in response to changing circumstances or new information on the regulatory system's performance.

As part of regulatory impact assessments, stakeholder consultation mechanisms are essential to gauging the necessity as well as the positive and negative effects of an NTM on different groups. Due to the transboundary nature of NTMs, this includes not just domestic stakeholders, but also trader partners' stakeholders. This is well-recognized in both the WTO

TBT and SPS Agreements, which require that draft measures be notified to the WTO membership before they are put in place. Rather than having to check constantly if there are any new notifications to the WTO, the ePing system is now available to ensure that as soon as any new or updated NTMs are notified, all stakeholders (from government and the private sector) receive a notification. The ePing³ is an online SPS and TBT notification alert system that enables timely access to evolving product requirements and facilitating dialogue among the public and private sectors in addressing potential trade problems at an early stage. More than 4,000 notifications on product requirements are circulated annually through ePing. If not already in place, similar systems may be established at the national level to facilitate consultation among stakeholders about newly proposed NTMs.⁴

B. TRADE FACILITATION AS THE KEY TO REDUCING THE COST OF NON-TARIFF MEASURES

As pointed out by traders (see chapter 2 section C), the procedural obstacles associated with an NTM are often more burdensome than the technical requirements it sets. Lack of risk-based inspections is also a major issue (STDF, 2019a). Trade facilitation is therefore the key to reducing the burden of NTMs for traders (see chapter 2, and ESCAP and ITC, 2019). The results of the United Nations Global Survey on Digital and Sustainable Trade Facilitation (United Nations, 2019) provide an overview of trade facilitation implementation in the region (figure 4.1).⁵ According to the survey, Asia-Pacific countries have, on average, implemented about 60% of a comprehensive set of measures, which includes the WTO Trade Facilitation Agreement (TFA) measures as well as more advanced digital trade facilitation measures, such as electronic issuance and exchange of SPS and origin certificates. South-East and East Asian countries are generally well above the regional average (70%), while Pacific islands lag far behind (35%). Therefore, despite the significant progress made over the past two years, the survey suggests that the region still has room for significant improvement.

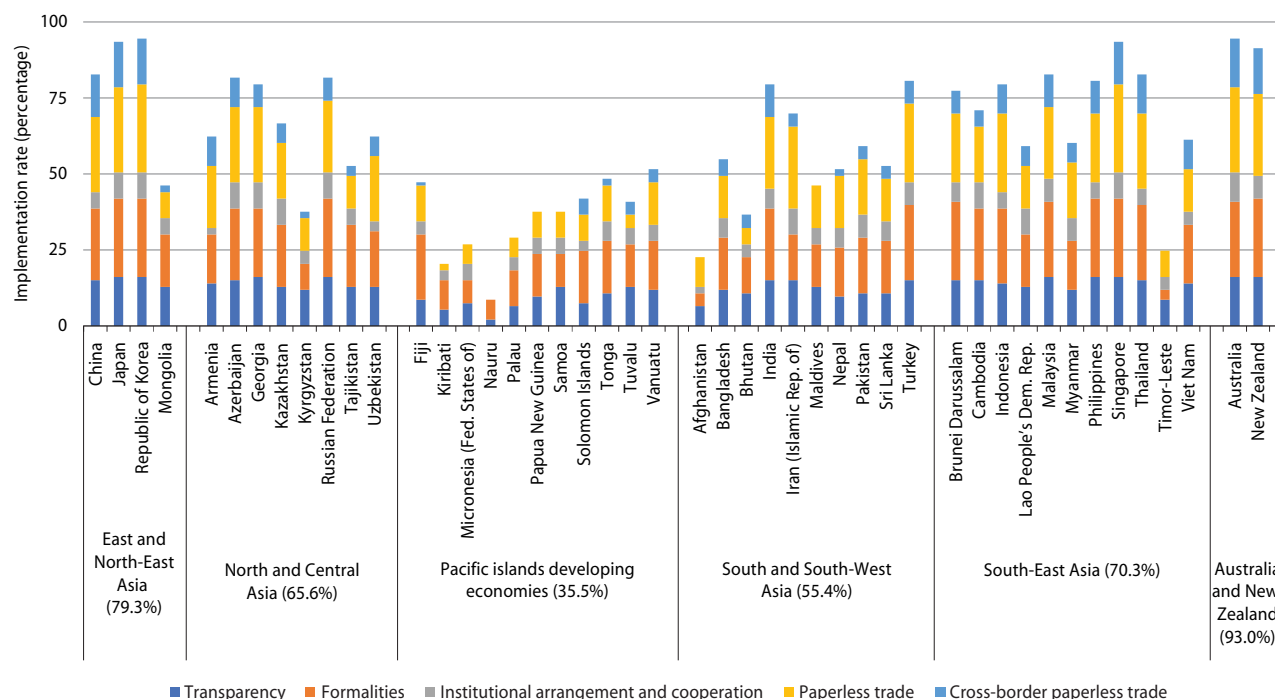
³ A joint effort by WTO, the International Trade Centre and the United Nations that sends notifications of newly-initiated SPS or TBT measures to subscribers when their product/and or country of interest is affected www.epingalert.org/.

⁴ The European Union has also put in place minimum standards for stakeholder consultation (e.g., see https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en), and facilitates online feedback for European Union citizens and other stakeholders at various stages of a law or regulation development process (e.g., see <https://ec.europa.eu/info/law/better-regulation/have-your-say>).

⁵ See <https://untfsurvey.org/>.

Figure 4.1

Implementation of trade facilitation and paperless trade in Asia and the Pacific



Sources: ESCAP (2019) and United Nations (2019); <https://untfsurvey.org>.

1. Enhancing transparency of NTMs and related procedures

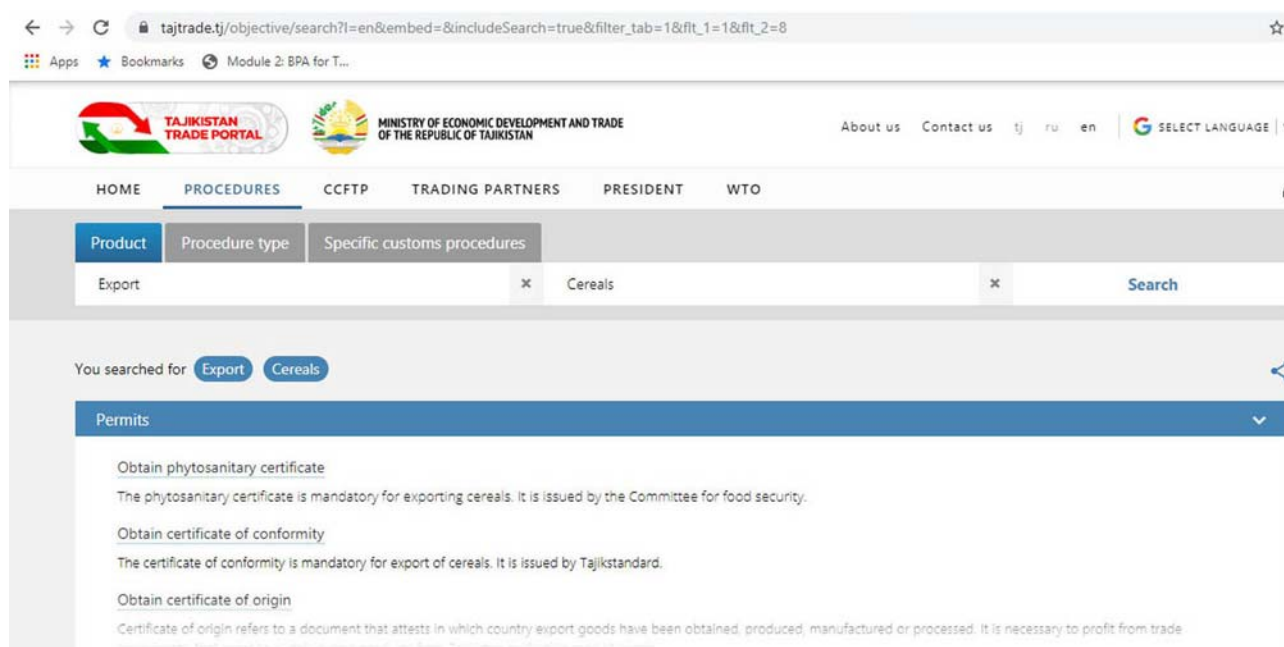
“NTMs and related procedures should be made available online, ideally through a national trade portal or repository providing comprehensive one-stop access to all relevant trade regulations.”

Enhancing transparency in NTMs and related procedures can go a long way towards reducing the costs associated with them. This may be done as part of implementation of transparency provisions under trade agreements including the WTO TFA, or the establishment of national trade portals, providing access to all trade-related laws, regulations and procedures in one place. The global initiative to map all NTMs, coordinated and supported by UNCTAD and ESCAP (trains.unctad.org), enhances transparency in trade regulations. Greater transparency can help reduce adverse effects on women producers and traders, small and medium-sized enterprises (SMEs) and other disadvantaged groups, while also expanding new trading opportunities.

For example, as part of the Association of Southeast Asian Nations (ASEAN)-wide initiative discussed later in this chapter, South-East Asian countries have already established National Trade Repositories (NTRs) linked to national NTM databases (Asian Trade Centre, 2019). Several other developing countries have also taken steps to establish such portals. Tajikistan, for example, recently launched its portal with the technical assistance of UNCTAD and the International Trade Centre. The portal is maintained by the Ministry of Economic Development of Trade and is designed in a pragmatic way, with the trader in mind. As such, the search for a procedure is based on specifying intent (import, export or transit) and the type of product (from a list of about 50 products) (figure 4.2). A review of portals across the region reveals that their design and the information they cover vary widely across countries. Responsible agencies should review them to ensure they include relevant and up-to-date information on NTMs and related procedures – and that the contact and enquiry points listed are responsive to requests for information.



Figure 4.2 Online user interface of the Tajikistan Trade Portal



The development of national trade portals may be done in collaboration with other trade partners. In fact, enhancing transparency may be easier when done as part of implementation of a regional trade agreement, as happened with the Pacific Agreement on Closer Economic Relations (PACER) Plus, for example. Enhanced transparency serves as a driver for reform and streamlining as well as a tool for capacity-building. Building trade portals in the PACER Plus Pacific island countries made government officials stocktake and review their trade regulations and procedures.⁶ In addition, it supports government officials to implement NTMs based on the rules – thus, they can reduce the gap between what is stipulated in regulations and what is practiced in reality. Finally, it facilitates private sector engagement in NTM streamlining, as traders or their representatives can easily find and reference the relevant regulations for discussions with regulatory authorities.

2. Accelerating digitalization of trade procedures

Complying with NTMs typically requires exchange of information between traders and trade control

agencies, both within and across borders. Moving to web-based applications and exchanges of information is expected to ultimately reduce trade costs by 25% on average in the region, generating savings, both for Governments and traders, that could exceed \$600 billion annually (ESCAP, 2017).

Among other developing regions globally, East and South-East Asia economies have made the most progress in this area. A good example of expanding trade digitalization is found in Thailand, where 26 trade control agencies have completed data linkage for all types of goods and customs information and formalities, increasing both speed and accuracy of information exchange (United Nations, 2019). In Malaysia, the Electronic Preferential Certificate of Origin system provides additional functions for users, including analytics and online inquiries. In a significant step towards e-payment of duties and fees, China has developed a new-generation online payment system for systematic networking involving customs, the state treasury and commercial banks. Singapore has recently launched its Networked Trade Platform, a “next-generation” trade information management platform incorporating national trade

⁶ See <https://pacific.tradeportal.org/>.

regulatory single window services, and providing for both business-to-government (B2G) and government-to-government (G2G) connectivity.⁷

“Digitalization of NTM-related procedures, such as by issuing and exchanging certificates of origin electronically, could significantly reduce compliance costs.”

Good practices are also apparent in cross-border paperless trade as related to laws and regulations.

In the area of paperless SPS certificate exchange, China and the Netherlands can now issue health certificates electronically and have achieved full paperless exchange for dairy products. While initiatives for exchanging electronic SPS certificates remain mostly bilateral and at the pilot stage, the International Plant Protection Convention (IPPC) has developed an interesting initiative, enabling countries with limited paperless trade capabilities in issuing SPS certificates electronically, to exchange them with other participating countries through a hub (see box 4.1).



Streamlining SPS procedures: the IPPC ePhyto Solution

Since 2011, the Commission on Phytosanitary Measures (CPM) has encouraged the advancement of electronic certification, which resulted in the development of ePhyto (electronic phytosanitary certificate). The project was developed with, and is financed by, the Standards and Trade Development Facility (STDF), which has more generally drawn attention to SPS e-certification in the broader context of paperless trade (STDF, 2019b). An ePhyto is the electronic version of a phytosanitary certificate in XML format. All the information contained in a paper phytosanitary certificate is also in the ePhyto. ePhytos can be exchanged electronically between countries or the data printed out on paper.

The IPPC ePhyto Solution consists of three main elements aimed at supporting the exchange of ePhytos between National Plant Protection Organizations (NPPOs):

- A central server (Hub): To facilitate the transfer of electronic phytosanitary certificates between NPPOs, either from or to their own national electronic system, or by using the generic system described below;
- Generic ePhyto National System (GeNS): A web-based system that can produce and receive ePhytos to allow countries that do not have a national electronic system to produce, send and receive ePhytos;
- Harmonization: the structure and transmission of ePhytos will follow a harmonized format through the use of standardized mapping, codes and lists.

IPPC ePhyto is the type of paperless solution that, combined with national and regional electronic trade single windows and other facilities, could help the Asia-Pacific region reduce trade costs by up to 25% on average. STDF is also funding a similar but separate initiative addressing electronic veterinary certificates (eVet) involving OIE and a range of other partners (STDF, 2018). However, fully achieving cross-border paperless trade will require more intergovernmental cooperation to address and integrate a wider range of trade documents and procedures. The Framework Agreement on Facilitation of Cross-border Paperless Trade Facilitation in Asia and the Pacific may be particularly useful in this regard.

Sources: www.ippc.int/en/ephyto/; and ESCAP (2017); STDF (2019c).



⁷ See www.ntp.gov.sg.

3. Inclusive trade facilitation measures

As discussed in chapter 1, NTMs have an important role in helping to achieve SDGs. To maximize the sustainable benefits of NTMs, it is important that trade facilitation measures and efforts put in place benefit not only larger traders, but also groups and sectors that tend to be excluded or disadvantaged. The United Nations Global Digital and Sustainable Trade Facilitation Survey (United Nations, 2019) found that measures aimed at the food and agricultural sector are relatively well implemented, but that trade facilitation measures targeted at SMEs and women remain rare (ESCAP, 2019).

“Trade facilitation measures should be inclusive, including ensuring SMEs can benefit from Authorized Economic Operator schemes and that female traders have a say in trade facilitation reforms.”

Trade facilitation for SMEs is an extensive but fundamental area where the Asia-Pacific region has been developing and implementing a number of best practices. Viet Nam has been working closely with international partners by setting up an SME Partnership Group to support donor-government collaboration and consultation in formulating SME policies and regulations. Expedited Authorized Economic Operator (AEO) examinations are offered to SMEs in the Republic of Korea through multiple procedural preferential provisions, including a priority audit, with consultation fees available to firms demonstrating lack of personnel and financial resources. In addition, to reduce logistics costs of SMEs in the Republic of Korea, the Korean International Trade Association has established a rate discount and consulting service in conjunction with 22 logistics firms. A document service centre has been established in Singapore to help SMEs access its single window more easily and to submit documents on their behalf. ESCAP, ITC and UNNExT provide guidance and a regulatory review checklist for small business trade facilitation.⁸

In the area of agricultural trade facilitation, China's E-Cert system is open to all authorities of trading partners for verification of SPS certificates issued by local China inspections and quarantine authorities. In addition, it has built cold storage centres near the Khunjerab Pass along the China-Pakistan Economic Corridor, which help manage seafood imports to the Xinjiang region. The European Union-China Smart and Secure Trade Lanes pilot project (which facilitates customs-to-customs data exchange) is also expected to boost agricultural trade facilitation.

Good practices to enhance the role of women in trade facilitation have also been spreading. The Australian Trade Commission has established the Women in Global Business Programme to increase their participation in international trade and investment, delivering economic benefits and job creation with expanded diversity. In Malaysia, the National Trade Facilitation Cluster Working Group has already achieved equal gender representation. Capacity development experience in the region – such as the United Nations Economic Commission for Europe (UNECE) Workshop on Cross-Border Trade of Nuts and Dried Fruit that focused on quality, food safety, businesses processes and potential markets – reported that women participants outnumbered men, indicating that gender balance participation in capacity-building activities is attainable.⁹

4. Broad trade facilitation: addressing quality infrastructure gaps for NTMs

“Increasing availability of quality infrastructure, supported by mutual recognition of standards and accreditation, can reduce trade costs and duplication of compliance efforts.”

Effectively addressing procedural obstacles for NTMs will require a broader approach to trade facilitation than simply implementing border measures under the WTO TFA. The lack of quality infrastructure (e.g.,

⁸ See ESCAP and ITC (2016).

⁹ UNCTAD has produced an informative guide for exporting products produced by women in nine Pacific island countries to Australia and New Zealand markets, which significantly raises regulatory transparency (UNCTAD, 2019a). Similarly, the transparency provisions in the PACER Plus Agreement are expected to have significant gender implications in services, tourism, agriculture and fisheries as well as SMEs, as the provisions ease some of the difficulties faced by female producers and traders, but will require greater capacity-building and assistance for data collection and analysis (UNCTAD, 2019b).

domestic SPS testing labs and an accreditation system for such laboratories)¹⁰ is frequently cited as one of the greatest difficulties faced by exporters, particularly agricultural exporters. For example, some agricultural goods from Myanmar that are bound for Mae Sot District in Tak Province (Thailand border province next to Myanmar) have to first be tested in Chiang Mai Province (more than 350 km away), before being shipped back to Mae Sot. At the same time, in some cases there may not be sufficient demand to warrant a “national lab”, and sending samples abroad could remain the least costly option. As such, a lab assessment is often a useful first step.

In many countries, significant consolidation of lab activities may have to take place, i.e. aiming for one “state-of-the-art” central lab, while at borders all that may be needed is basic equipment to carry out some rapid tests.

A diagnostic study on SPS measures affecting exports from Nepal, also recommends establishment and upgrade of testing laboratory (see box 4.2). Providing and maintaining some of that infrastructure and to develop better (sub)regional infrastructure can benefit from the information exchange and economies of scale that arise through regional cooperation efforts.



NTMs and Nepal's efforts to diversify export markets

A recent national diagnostic study (ADB and SASEC, 2019) focusing on SPS measures affecting exports from Nepal indicates how more and better information and analysis in the context of a regional free trade agreement (FTA) can be applied to streamline or reduce NTMs. While Nepal trades extensively with India, its exports to other South Asia Subregional Economic Cooperation (SASEC) markets have been negligible, declining or stagnant, and limited to only a few products.

Focusing on products and markets that Nepal data indicate could be expected to have greater intra-SASEC exports, the study applied a gap analysis complemented by surveys of exporters and commodity association representatives for a wide range of products. The objective was to identify institutional deficiencies, infrastructural constraints and procedural obstacles related to SPS measures and TBTs in Nepal. Gaps in relevant standards and divergence from international best practices (such as limits on traceability, inadequate risk analysis and critical control points, rudimentary packaging and labelling rules, and lack of regulations regarding dangerous substances) highlighted areas for institutional improvement. Insufficient or inadequate testing and calibration laboratories with a lack of accreditation, and operating under outdated legislation with limited human resources have also constrained the country's trade performance.

To complement the Nepalese picture, the study also examined SPS- and TBT-related obstacles in the other SASEC markets for potential exports by Nepal. Inconsistent classification of products, extremely strict testing requirements, arbitrary behaviour and informal payments were found to limit exports to India, Sri Lanka and Bangladesh. Constraints on exports to Bhutan and Maldives were not identified, primarily due to lack of information and insignificant trade quantities.

Domestic recommendations that emerged from the study are to: (a) establish and upgrade testing and calibration laboratories and a national accreditation body; (b) approve new legislation more quickly; (c) develop a more skilled workforce; and (d) share more information on SASEC markets with Nepalese traders. Within SASEC, benefits could be extended by harmonizing standards and establishing mutual recognition arrangements for major perishable items.

Source: ADB and SASEC (2019).

¹⁰ Note that quality infrastructure could also include mutual recognition arrangements (MRAs) between countries to facilitate assessment and acceptance of conforming standards, procedures and accreditations as well as physical and other institutional infrastructure. MRAs may also apply to human qualifications such as university degrees or technical credentials, which are particularly important for trade in services. Compliance of products with the standards of importing countries are assessed by recognized conformity assessment bodies (CABs). The lack of access to such a body may render any MRA ineffective in practice (Jusoh, 2017).

C. REGIONAL EFFORTS TO COORDINATE AND STREAMLINE NON-TARIFF MEASURES CAN ACCOMPLISH MORE

International efforts to reduce technical barriers and enhance market access through improving conformity to standards are long-standing in the region. Examples include the Asia-Pacific Economic Cooperation (APEC) Subcommittee on Standards and Conformance, participation by Asia-Pacific economies in the WTO SPS and TBT Committees, the ASEAN and Eurasian Economic Union (EAEU) experiences with integration as well as a multitude of other regional trade agreements that include efforts to address NTMs (Trivedi and others, 2019). Such efforts have made substantial progress, but still leave room for improvement in both targeting and implementation. This section discusses how regional economies are increasingly addressing NTMs through trade agreements, as indicated by the growth of provisions on NTMs in agreements signed in recent years, and provides case study examples of addressing NTMs through deeper levels of integration.

1. NTM provisions in regional trade agreements

Aside from gaps in hard infrastructure, significant gaps exist among subregions in Asia and the Pacific in the cross-border soft infrastructure of trade agreements, hindering both trade facilitation and regional integration. Figure 4.3 summarizes the bilateral relationships between Asia-Pacific economies, highlighting whether they are linked by at least one trade agreement already in force (■), under negotiation (▲), or signed and pending ratification (●). Individual subregions tend to be densely covered at times by overlapping trade agreements, whereas more diverse multilateral intraregional agreements are rarer. The Pacific economies in particular – apart from the developed economies of Australia and New Zealand – have no trade agreements with other Asia-Pacific subregions. To a lesser extent, the North and Central Asia subregion also demonstrates a lower incidence of intraregional agreements.

The lack of trade agreements can manifest itself, in part, through higher trade costs and relatively low trade volumes. While economies with less trade are less likely to seek trade agreements, the lack of trade

agreements itself can contribute to higher trade costs (tariff and non-tariff) that are, in turn, reflected in lower trade flows. Furthermore, close geographical proximity and formal trade agreements are no guarantee of a lower impact of trade restrictive NTMs and associated procedural obstacles.

An analysis of FTAs gives an idea of what countries/groups of countries are trying to do to alleviate negative impacts of NTMs. Trivedi and others (2019) examine provisions related to TBTs, SPS and government procurement practices in FTAs during the 10-year period from 2009 to 2018. It covers 58 regional trade agreements (RTAs), which are all the RTAs signed by at least one economy in Asia and the Pacific and/or in force in that period.

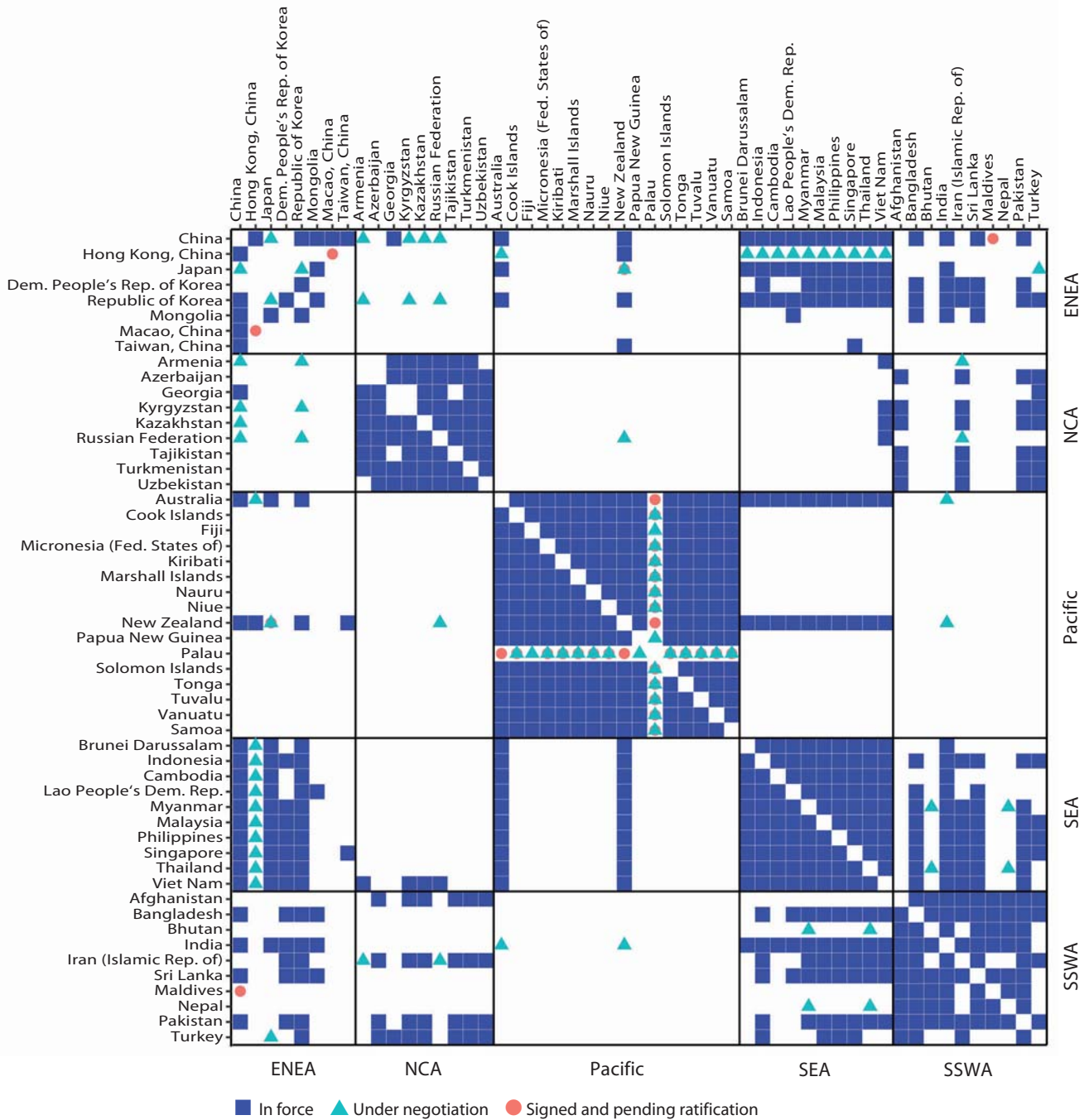
Significantly, reducing the negative impacts of NTMs is increasingly being pursued in a new generation of trade agreements. Agreements signed in the past four years included substantially more provisions on NTMs than those signed before 2014, indicating that economies are increasingly addressing NTMs through trade agreements (figure 4.4).

All, or almost all, of the RTAs examined contain a reference to the WTO TBT Agreement, and provisions on information exchange and cooperation, conformity assessment and mutual recognition of conformity assessment. Provisions on assigning contact points, establishing a TBT Committee, and using international standards are also common. While TBT provisions on dispute settlement and harmonization with international standards are less common, they become increasingly more common by the second half of the 10-year period (figure 4.5).

Similarly, all 58 agreements recognize the importance of SPS measures and promote actions in accordance with the WTO SPS Agreement as well as information exchange and cooperation, and assigning competent authorities and contact points (figure 4.6). Subjects deserving greater attention in SPS discussions include provisions on risk analysis and taking emergency measures. These would support achievement of SDGs, particularly through their protection of human, plant and animal life. As with TBT Chapters, greater efforts to promote harmonization with international standards would help to streamline NTMs and reduce processing obstacles.

Figure 4.3

Bilateral matrix of economies covered by trade agreement relationships

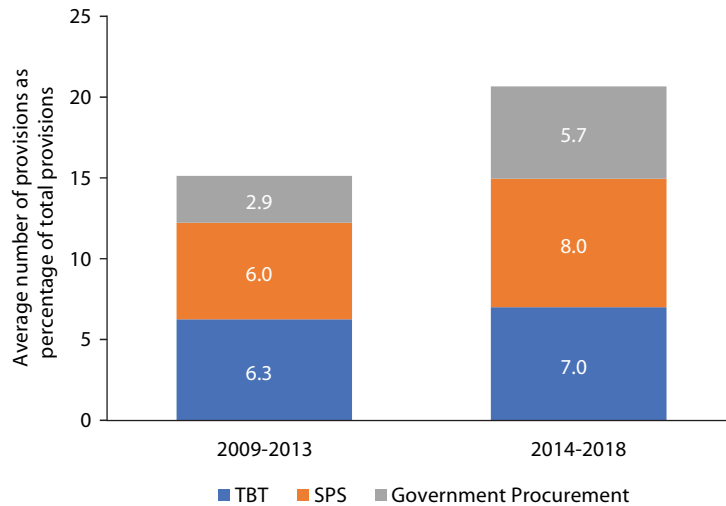


Source: <https://artnet.unescap.org/databases/aptiad-noodlebowl>.

Notes: ENEA – East and North-East Asia; NCA – North and Central Asia; SEA – South-East Asia; and SSWA – South and South-West Asia.

Figure 4.4

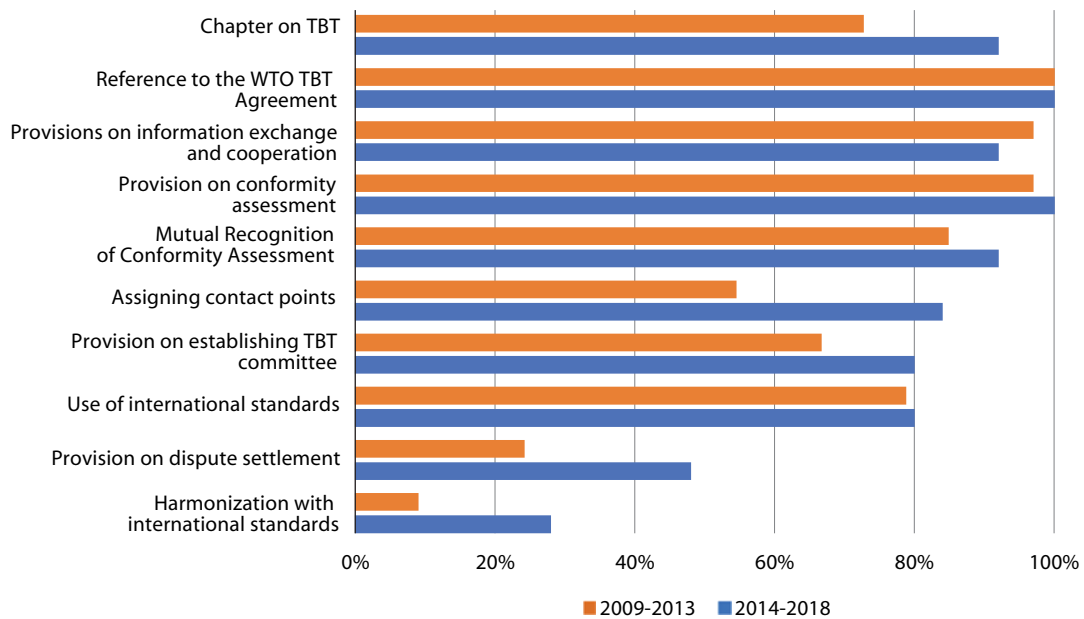
Average number of provisions on NTMs in RTAs in Asia and the Pacific, 2009-2018



Source: ESCAP calculations, see Trivedi and others (2019).

Figure 4.5

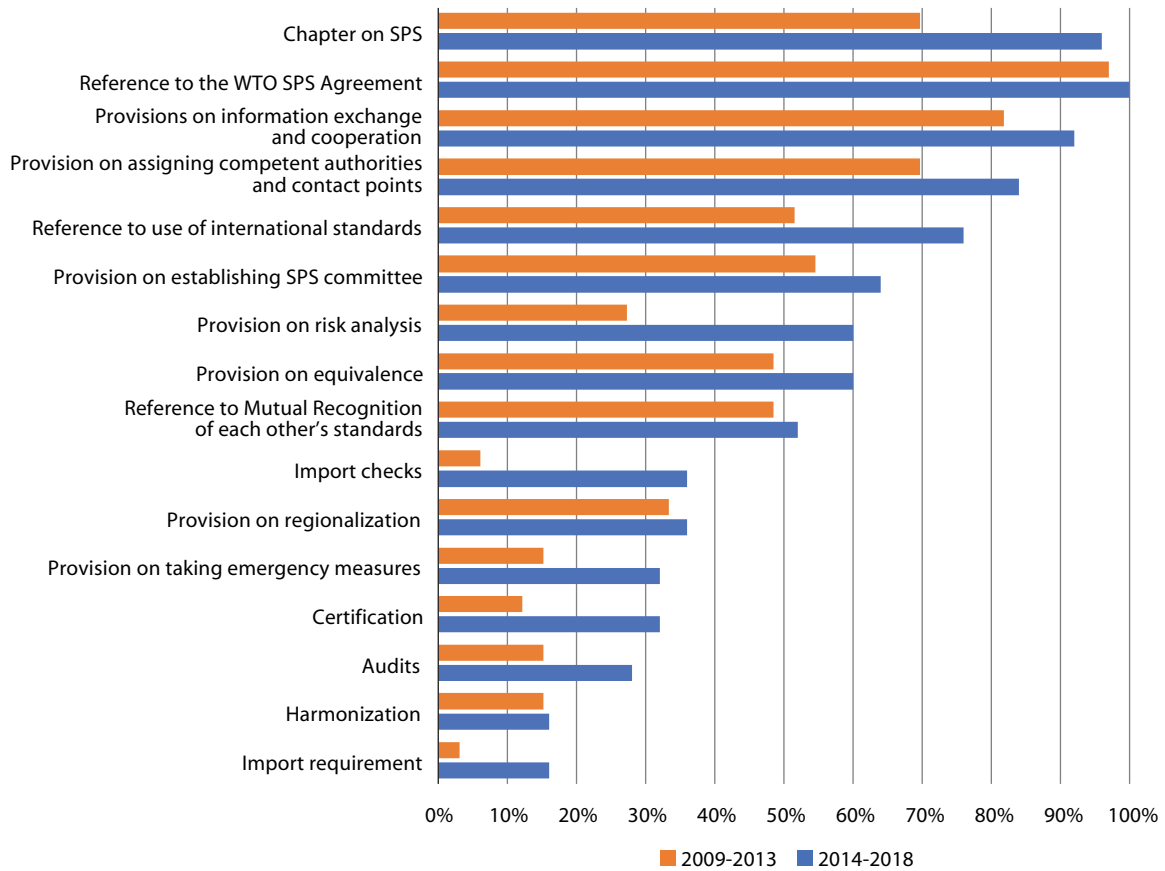
TBT provisions in RTAs in Asia and the Pacific



Source: ESCAP calculations, see Trivedi and others (2019).

Figure 4.6

SPS provisions in RTAs in Asia and the Pacific



Source: ESCAP calculations, see Trivedi and others (2019).

“Contingency-related measures that may take effect following risk analysis or in response to emergencies should be considered as integral parts of FTAs.”

Government procurement provisions are less common in RTAs (figure 4.7). Twenty-one of the 58 agreements analysed do not contain any mention of government procurement, although there has been a noticeable increase in its presence in recent years. The Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) Agreement is the most extensive in its coverage, containing provisions on conditions for participation by suppliers, qualification of suppliers, technical specification on conformity assessment procedures, documentation of tender,

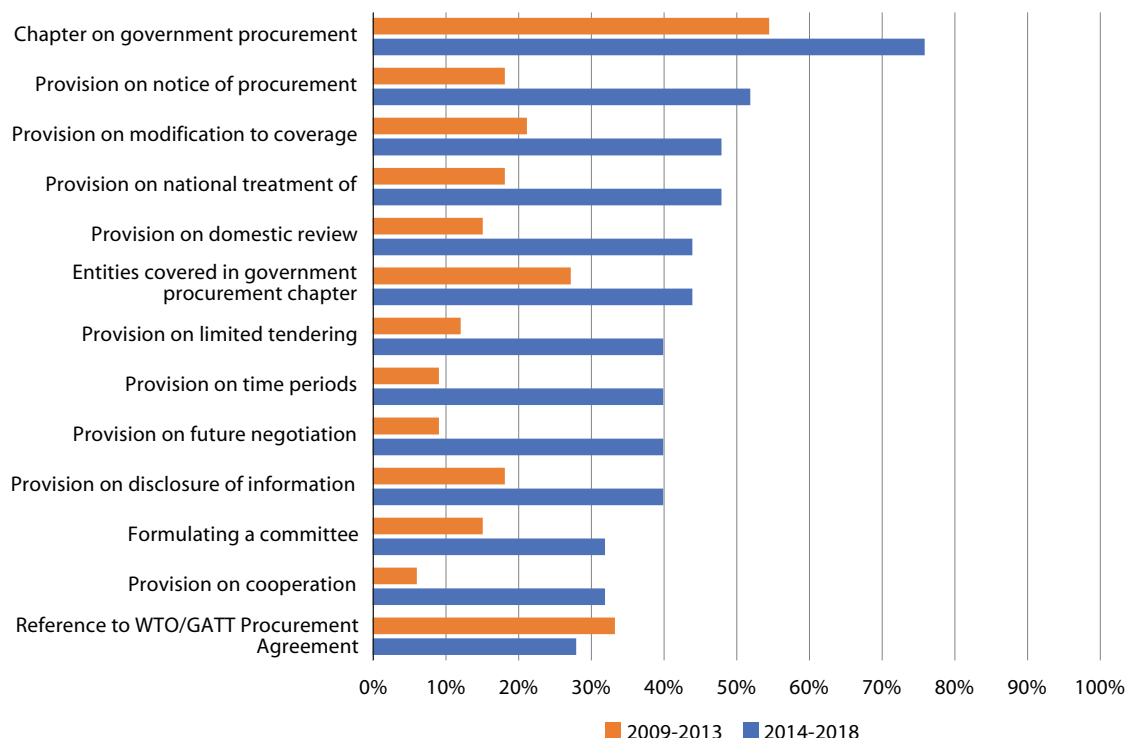
post award notification and facilitation of participation by SMEs. In general, provisions on cooperation and government procurement committees need greater attention in government procurement discussions for trade agreements.

Overall, the CPTPP Agreement is the most comprehensive Asia-Pacific agreement in terms of provisions on technical barriers to trade and government procurement. The Singapore-European Union and Singapore-Sri Lanka Free Trade Agreements, the Pacific Agreement on Closer Economic Relations Plus, and the CPTPP Agreement have more extensive provisions related to SPS measures than other agreements that are in place.¹¹ While many of the provisions on NTMs in most

¹¹ The PACER Plus Agreement only obliges the participating non-WTO member countries to fulfil SPS commitments to the extent possible. For these countries, the scope is rather WTO minus.



Government procurement provisions in RTAs in Asia and the Pacific



Source: ESCAP calculations, see Trivedi and others (2019).

agreements remain rather generic, a more detailed review of those found in the most comprehensive agreements identified here may provide useful guidance on how to further streamline NTMs in the Asia-Pacific region.

The average number of provisions of NTMs is greatest in trade agreements between two high-income countries while their occurrence tends to fall with income levels. However, average number of provisions on technical barriers to trade and government procurement are highest in agreements between higher-income economies, while the number of provisions on SPS measures are higher in agreements between higher income and lower

income economies. This suggests that the growth and development process itself, in which countries’ comparative advantage changes over time as their incomes rise, can be expected to influence the evolution of NTMs, their impacts and their success in achieving SDGs in coming years. Overall, it is safe to assume that future RTAs will continue the trend of addressing NTMs; as such, it is important to ensure that best practices, based on what has worked or has not, are employed during the negotiations (see box 4.3).

“RTAs can help to reduce protectionism and compliance costs while facilitating transparency and adoption of international standards.”



Best practices for addressing NTMs through RTAs

Stoler (2011) analysed SPS and TBT provisions in various RTAs around the world. Looking at RTAs that included the European Union, he noted that provisions often required for the partner countries to harmonize their SPS and TBT regulations with those of the European Union. On the other hand, RTAs involving Asia-Pacific economies or the United States typically address NTMs through provisions on using international standards or through the use of mutual recognition arrangements. The author noted that both approaches may leave some developing countries behind, as they often have no capacity and resources to employ either approach. The study concluded with the following best practices to address SPS and TBT issues in RTAs:

- Use international standards whenever possible;
- If the harmonization approach of standards and conformity assessment procedures is taken, it should be limited only to essential health and safety standards, with the rest being under mutual recognition and equivalence arrangements;
- Technical assistance and capacity-building should be provided for less developed partners of RTA;
- For non-harmonized regulations, multiple or duplicate measures or mandatory tests for the same product should be removed;
- SPS standards should be transparent;
- The agreement should be “live”, and include a work plan on dispute resolution, harmonization, mutual recognition, equivalence measures, etc;
- RTA provisions on technical regulations should be legally binding;
- RTA members must agree for technical regulations and conformity assessment procedures to be always applied on a national treatment basis.

Source: Stoler (2011).

2. Other regional mechanisms and initiatives for NTMs

An RTA is not a precursor for bilateral or plurilateral cooperation on addressing NTMs. For example, while there is no FTA between New Zealand and the European Union (one is being negotiated), both economies enjoy a Mutual Recognition Agreement in sectors such as medical devices and automotive products. At the same time, an RTA does help, sometimes leading to deeper cooperation in addressing NTMs, as illustrated by examples from ASEAN and the Eurasian Economic Union (EAEU).

(a) ASEAN initiatives

ASEAN economies have long recognized the need to streamline NTMs as part their pursuit of a more

integrated ASEAN Economic Community (AEC). The ASEAN Trade in Goods Agreement (ATIGA) signed in 2009 includes a chapter dedicated to NTMs (Chapter 4), as well as another dedicated to trade facilitation (Chapter 5). The AEC Blueprint 2025 provides a guide to member states towards the next level of ASEAN integration and includes a list of strategic measures to be implemented in 2016-2025. As detailed in box 4.4, reducing the cost of NTMs is a core component of ASEAN trade facilitation strategy in the Blueprint. The strategy also includes cooperation on the effective operationalization of the National and ASEAN Trade Repositories for enhanced regulatory transparency and certainty for the private sector in the region. Indeed, an important starting point in reducing the costs of NTMs is to make related regulations and measures easily accessible to all.



Streamlining NTMs in the ASEAN Economic Community Blueprint 2025

The AEC Blueprint 2025 emphasizes issues and actions related to NTMs. Trade is seen as an essential means of achieving a highly integrated and cohesive ASEAN economy, starting with trade in goods. Streamlining NTMs is an integral part of the push by ASEAN economies for implementation of trade facilitation measures. The Blueprint identifies “Accelerate and deepen the implementation of trade facilitation measures” as one of three strategic measures under “trade in goods”, as follows:

“Accelerate and deepen the implementation of trade facilitation measures – ASEAN played a leading role in the conclusion of the World Trade Organization (WTO) Agreement on Trade Facilitation (ATF) in 2013. Beyond ensuring the smooth implementation of the ATF in ASEAN Member States, ASEAN aims towards convergence in trade facilitation regimes among ASEAN Member States and to move closer to global best practices. The ASEAN Trade Facilitation-Joint Consultative Committee (ATF-JCC) comprising representatives from the public and private sectors has been established to accelerate work on trade facilitation and ensure expeditious movement of goods within the region. Among the key measures are the following:

- a. Complete measures initiated under the AEC Blueprint 2015;
- b. Fully roll-out the National Single Windows in all ASEAN Member States, and widen the scope of the ASEAN Single Window project to include more documents and stakeholders in all ASEAN Member States;
- c. Cooperate on the effective operationalisation of the National and ASEAN Trade Repositories for enhanced regulatory transparency and certainty for the private sector in the region;
- d. Streamline and simplify administrative regulatory regimes, documentary requirements, as well as import and export procedures, including customs procedures;
- e. Deepen regional implementation of trade-facilitative ASEAN initiatives such as Authorized Economic Operators (AEO) programme and Self-Certification programme;
- f. Strengthen public-private sector cooperation, collaboration, and partnership in improving the process, institutional and infrastructural foundations of efficient and effective trade facilitation within the region;
- g. Minimise trade protection and compliance costs in dealing with Non-Tariff Measures (NTMs).

Most NTMs address regulatory objectives such as environmental, health and safety, security or cultural considerations, but they can also significantly impede trade inadvertently or by design. Addressing NTMs involves the following: (i) accelerating work towards full elimination of nontariff barriers; (ii) standards and conformance measures, e.g. equivalence in technical regulations, standards harmonization, alignment with international standards and mutual recognition arrangements (MRAs); and (iii) streamlining procedures and reducing requirements for certificates, permits and licenses to import or export.

Measures that give rise to a trade facilitative regime in ASEAN include the following:

1. Explore imposing stringent criteria and sunset clause on trade-protective NTMs such as quotas and other quantity restrictions in imports and exports;
 2. Embed good regulatory practice (GRP) in implementing domestic regulations and practices and thereby minimize compliance cost of meeting NTM requirements;
 3. Strengthen coordination with the private sector in determining, prioritising and minimising the unnecessary regulatory burden of NTMs on the private sector; and
 4. Explore alternative ways to addressing NTMs such as sectoral or value chain approaches to deal with NTMs.
- h. Work towards facilitative standards and conformance. This involves accelerated implementation of harmonisation of standards and technical regulations, improvement of quality and capability of conformity assessment, enhanced information exchange on laws, rules, and regulatory regimes on standards and



(continued)

conformity assessment procedures. This also involves regional cooperation and agreement on measures to facilitate MSME upgrading towards regionally and/or internationally agreed standards to facilitate exports. Relevant measures include the following:

1. Complete and deepen initiatives begun under the AEC Blueprint 2025;
2. Undertake concerted regional and national programmes to upgrade the technical capacity and physical infrastructure for effective and efficient conformity assessment regime in the region;
3. Establish effective measures for transparency and communication on country-specific requirements;
4. Expand coverage of sectors under standards and conformance beyond the priority integration sectors;
5. Embed GRP in the preparation, adoption, and implementation of standards and conformance rules, regulations, and procedures;
6. Strengthen public-private partnership and enhance contribution of the private sector in designing, monitoring, reviewing, and updating of standards and conformance regime in the region; and
7. Strengthen cooperation with Dialogue Partners in the implementation of technical barriers to trade (TBT) Chapters of ASEAN+1 FTAs, and future economic partnership and free trade agreements.”

(b) EAEU initiatives

Article 46 on NTMs of the Eurasian Economic Union Agreement, 2014, notes that member States of the Union shall use of the same NTMs in:

- Import or export bans;
- Import or export quantitative restrictions;
- Exclusive rights to import or export goods;
- Automatic licensing of export and import of goods;
- Permit procedure for the import and export of goods.

In addition, the Article stipulates that NTMs are to be introduced and applied on the basis of the principles of transparency and non-discrimination. SPS and TBT provisions are covered by separate Sections (Section X on technical regulations (meaning TBT), and Section XI on SPS measures). Since coming into effect in 2015, new SPS and TBT measures notified to WTO by the WTO members of the Union are all based on EAEU regulations. Notably, the development of these measures requires consensus by all EAEU member States, highlighting the advantages of

coordinated policymaking provided by a deep level of integration.

The EAEU Agreement does not preclude members from imposing temporary measures for SPS reasons (or, indeed for other reasons, such as cultural, moral or national security). As noted previously, these may sometimes appear as discriminatory measures to some traders – there is room for interpretation on what is necessary/trade restrictive or not – and as such, conflicts arise. The Eurasian Economic Commission works as a moderator between relevant government bodies and complainants (typically the private sector) of member States. Their web portal¹² provides a functionality to report a potential obstacle to ensuring a single internal market of the EAEU member States (see box 4.5 for a similar example from Africa). As of August 2019, 71 such obstacles were identified in total, with 14 removed/addressed. A parallel can be drawn with the WTO SPS and TBT Committees and Specific Trade Concerns notification, with the EAEU Secretariat providing intra-EAEU moderation of disputes arising from one party claiming that a legislation is in violation of the EAEU Agreement.

¹² <https://barriers.eaeunion.org/>.

Box 4.5

TradeBarriers.org – a Tripartite Free Trade Area initiative (Africa)



Member States of the Tripartite Community^a prioritize addressing NTBs, identified as one of the main reasons for high interregional trade costs since many tariffs have been successfully removed. The Secretariats of the three regional economic communities established monitoring, reporting and elimination of NTMs mechanisms, with concrete timelines for the removal of identified NTBs. To facilitate these actions, a reporting mechanism includes both an online portal at www.tradebarriers.org, where complaints can be submitted by traders encountering issues, and dedicated phone numbers for sending complaints via SMS messages in each country. As of August

2019, more than 600 complaints have been resolved and 50 remain open. A succinct example of a resolved NTB complaint is presented below:

Issues related to the rules of origin	
Complaint	Denial of market access to sunflower oil.
Resolution status note:	During the 27 th Regional Monitoring, Uganda reported that Tanzania accorded Uganda sunflower originating status therefore this NTB had been resolved.

Source: tradebarriers.org.

^a Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC) and Southern African Development Community (SADC).

D. LOOKING FORWARD AND EMERGING ISSUES

This chapter has focused on good practices to streamline procedures associated with the implementation of NTMs. It also reviewed some national, subregional and regional initiatives on addressing NTMs and identified opportunities for enhanced regional cooperation. The chapter also highlighted the need for regional quality infrastructure development, and transparency and capacity development as well as the importance of enhanced digital trade facilitation implementation to drive down costs associated with NTMs. This final section outlines future considerations related to NTMs and their impact on sustainable development.

1. International standards

As per the findings in chapter 3, the potential of international standards to overcome costs related to the variance of national regulations has not been fully exploited. Countries conducting regulatory reforms or introducing new regulations to strengthen the protection of health, safety and the environment should make more use of international standards. The incentives to use international standards would be higher if there was leadership by the major trading countries. If the 5 to 20 of the largest traders would strengthen their regulatory cooperation and use or develop international standards, the incentive for all other countries to follow would be high.

“International standards should be publicized to traders and their adoption encouraged, and areas for convergence identified and facilitated.”

The international standards organizations may consider developing coherent types of regulations at different levels of protection. For this, it is important for developing countries to actively participate in the standard-setting process. Low-income countries require technical assistance to introduce and implement technical regulations. The analysis in chapter 3 has shown significant under-regulation in many countries. Developing the necessary quality infrastructure is important to adequately protect health, safety and the environment in those countries. Due to the significant increase in the number and strength of linkages to SDGs, it is a decisive moment.

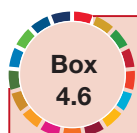
2. Digital trade facilitation

Trade facilitation and process automation/digitalization remain extremely important to lower implementation costs of NTMs, together with addressing governance impediments.¹³ Electronic single window facilities where all agencies come together, are particularly relevant in streamlining NTMs and the ability to reduce their burden.

Good progress has been made in trade facilitation implementation, particularly on the WTO TFA measures, and there has been acceleration of implementation in the Asia-Pacific region between 2015-2017 and 2017-2019. However, there is still potential to nearly double trade cost reductions from the WTO TFA implementation by fully digitalizing trade procedures (ADB and ESCAP, 2019). The implementation of cross-border paperless trade remains very challenging and more regional cooperation is needed including through the Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific.¹⁴

3. Trade in services

Trade in services now represents nearly a quarter of international trade in the region. Services are at the core of several SDGs, and are also important for goods trade, in particular the GVC-related trade, for example, ICTs, financial, transport and logistics services. Even more than trade in goods, trade in services is also affected by regulatory measures (see box 4.6). Services trade openness and services-dependent SDG indicators are positively correlated, suggesting that facilitating trade and investment in services supports sustainable development (Fiorini and Hoekman, 2018). Reducing NTMs affecting trade



**Box
4.6**

Restrictions in trade in services

In 2017, trade in services comprised 29% of total trade globally, and 23% in Asia and the Pacific. Like trade in goods, international trade in services is not immune to barriers, although the nature of barriers affecting trade in services can be different from those affecting trade in goods. When compared to trade in goods, one distinguishing feature of the trade in services is that it is predominantly affected by “behind the border” measures, which are not necessarily trade policies. Capturing this fact, the Services Trade Restrictiveness Index (STRI) of OECD evaluates five categories that hinder trade: (1) barriers to competition and public ownership; (2) regulatory transparency and administrative requirements; (3) restrictions on foreign ownership and other market entry conditions; (4) restrictions on the movement of people; and (5) other discriminatory measures and international standards. These categories are evaluated across 22 services sectors in 45 economies globally (10 of them in Asia and the Pacific). The STRI index is defined over 0 and 1, where 1 is most restrictive and 0 is least restrictive.

¹³ For example, there are reports that some countries are facilitating border crossing but then asking for large penalty payments during the post-clearance audit process years later, with weak justifications. Companies are afraid of self-certification/declaration schemes because of what they might have to pay later on during unreliable audit processes.

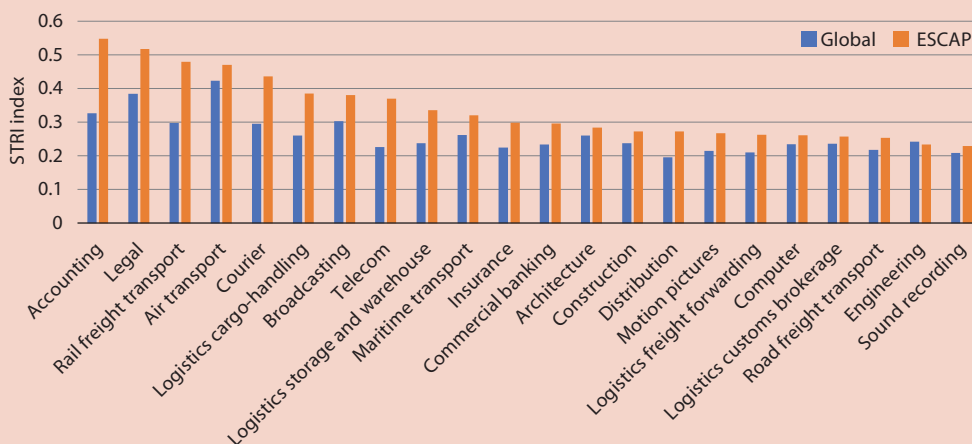
¹⁴ www.unescap.org/resources/framework-agreement-facilitation-cross-border-paperless-trade-asia-and-pacific.



(continued)

The Asia and the Pacific region has an average 0.34 overall trade restrictiveness index score across all sectors (compared to 0.26 globally) and, in general, has higher trade restrictiveness in all sectors but engineering (figure A). This may, in part, explain why trade in services as a share of total trade lags behind the global average.

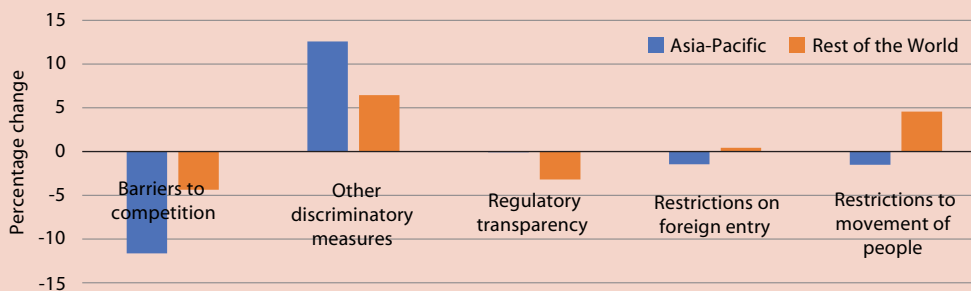
Figure A. Services trade restrictiveness index in Asia and the Pacific and globally, 2018



Source: ESCAP calculations based on the OECD Services Trade Restrictiveness Index dataset (accessed August 2019).

Encouragingly, on average since 2014, the STRI score in Asia and the Pacific across all sectors has decreased by 0.44%, whereas in economies outside of the Asia-Pacific region it has increased by 0.77%. The decrease in restrictiveness has been mainly driven by barriers to competition (an 11.7% decrease in Asia and the Pacific) and restrictions to movements of people (a 1.5% decrease in Asia and the Pacific), which saw decreases across most services sectors (see figure B). The other discriminatory measures subcategory, however, saw the largest increase in restrictiveness in the region, increasing by 12.6%. Notably, the key services sector experiencing the largest increase in restrictiveness in Asia and the Pacific was Telecom (overall increase by 28.6%), excluding which would see overall trade restrictiveness of the region fall by 1.8% (as opposed to a 0.44% decrease across all sectors mentioned earlier). Services sectors in the Asia-Pacific region that saw the highest reductions in restrictiveness include “sound recording” (8.7% decrease), “engineering” (6.1% decrease), “computers” and “logistics customs brokerage” (both experiencing 4.2% decreases).

Figure B. Average services trade restrictiveness change for all sectors, between 2014 and 2018, in the Asia-Pacific region and the rest of the world



Source: ESCAP calculations based on the OECD Services Trade Restrictiveness Index dataset (accessed August 2019).

in goods should be accompanied by streamlining regulatory measures on services.

4. NTMs and digital barriers

Sharing data electronically together with the digitalization of trade and investment information can reduce the costs of implementing NTMs, and of trade and investment in general. However, some policy measures that hinder the cross-border transfer of data and services have been increasing, such as privacy protection regulations and digital taxation policies; while some measures affecting trade in financial services have been easing, others have been increasing. Information and communications technology standards have also been rising with mixed costs and benefits. With increasing growth in network technologies and declining trade costs for transfer of non-physical products, a range of security, competition and revenue issues arise. NTM efforts to address these concerns raise their own efficiency and distributional considerations.

One of the largest issues currently being debated is taxation of international Internet sales, in which traditional revenue collection efforts in the jurisdiction where a business is established or headquartered, may mean that the bulk of a firm's sales generate little or no tax revenue where its goods or services are consumed. The lack of consistency or consensus in treatment of Internet sales, and the inefficient multiplication of tasks, both for businesses and Governments involved, points to an important area for regional cooperation; however, the global reach of such sales also calls for a multilateral agreement with commensurate powers of enforcement.

5. NTMs and FDI

Sustainable FDI, which can be thought of as a “commercially viable investment that makes a maximum contribution to the economic, social and environmental development of host countries and takes place in the context of fair governance mechanisms” (Sauvant and Mann, 2017), is equally affected by NTMs (see chapter 2 section B). FDI for production purposes is particularly affected by technical standards, intellectual property rights (IPRs) and local content requirements, but may also be

influenced by seemingly indirect regulations such as movement of natural persons (WTO mode 4 of services trade). When foreign or domestic private investors face an uneven playing field resulting from NTMs, competition policy can be important. It may also come into play for addressing state owned enterprises' (SOEs') preferential treatment in credit provision, subsidies or tax deferrals.

In a manner analogous to the Authorized Operators provision of the WTO TFA, creating a category of “Authorized Sustainable Investors” could allow qualified international investors to access preferred investment facilitation benefits. To qualify, investors might need to commit to creating backward linkages, contributing to community development, reducing their carbon footprint, engaging with specified stakeholders, maintaining supply chain standards or other commitments sought by host Governments for sustainable development (Gabor and Sauvant, 2019). In return, host Governments may offer pre-establishment national treatment.

6. Other considerations

A useful step to help address NTMs and related procedural obstacles would be to establish a regional NTB reporting, monitoring and elimination mechanism similar to tradebarriers.org in which countries must reply and suggest solutions (online or via SMS).¹⁵ This type of mechanism would be more effective if underpinned by an intergovernmental agreement, at least at a (sub)regional level.

As noted in the chapter, to achieve greater efficacy in the use of NTMs for sustainable net benefits, attention needs to be given to their design, development, and implementation. It would be beneficial for guidelines on sustainability impact assessment of new and existing NTMs to be developed in close consultation with Governments. Such guidelines should cover all three dimensions of sustainable development, namely social, environmental and economic.

Capacity-building in, and retention of, expertise needs to be intensified and strengthened, both at the domestic and the regional levels, supported by sharing of best practices. An integrated approach

¹⁵ As part of the African Continental Free Trade Agreement, member States recently launched a similar initiative, see www.tradebarriers.africa.

involving producers, officials, exporters and other affected parties may ensure more effective capacity-building with longer-lasting results. More emphasis on training of trainers may also help sustainability of knowledge at a local level.

In conclusion, in the Asia-Pacific region, actions and policies to streamline and reduce NTMs to shift the balance of their positive and negative impacts towards greater sustainable net benefits have been

put in place, and many are still ongoing. More needs to be done by all actors. Several recommendations were put forward in this report. A good guiding principle for underlying NTM design and implementation should be “compliance should be easy to do, but hard to avoid”. Learning from the advances (and mistakes) of others can simplify and speed up the progress, highlighting the need for greater domestic, bilateral, plurilateral and multilateral communication and cooperation in this area.

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