

Training of Trainers

Enhancing Capacity on

Trade Policies and Negotiations

Session 5: Standards and Conformity Assessment, Non-tariff measures/barriers and ASEAN Trade Repository

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Presentation structure

- **General concepts:**
 - Standards
 - Non-tariff measures/barriers
 - Conformity assessment measures
- **How are these dealt with in ASEAN?**
- **ASEAN Trade Repository**
- **Way forward**

STANDARDS

Standards

- In day-to day usage, the word “standard” has multiple meanings, all relating to the specification of qualities against which something may be measured or tested.
- The gist of findings of various studies show that standards, as a pool for technological know-how, can contribute positively to economic growth.
 - standards can promote innovation, technical progress and transfer of technology
 - Standards can be an important instrument to facilitate competition in markets

Standards (2)

- Countries may also have their own standard laws to identify the meaning of standard.
- Lao PDR gave the definition of standard in their Standard Law and notified to WTO:
“Standard is determined a specific characteristics of products, good, services, processes, the environment, and other matters relating to standards, which are established for valuation, classification, and quality ratings of these things.”

Standards (3)

- Based on ISO (2006, 2008), standards are divided into three types:
 - Product standards
 - Process standards
 - Management standards
- Commercial necessity

Standards (3a)

- The standards for products refer to characteristics of goods and services in particular with respect to aspects such as quality, safety, and fitness for purpose
- Example: the limit, set by the U.S. Food and Drug Administration (FDA), of one part per million of methyl mercury (a potential toxin) in fish marketed for human consumption

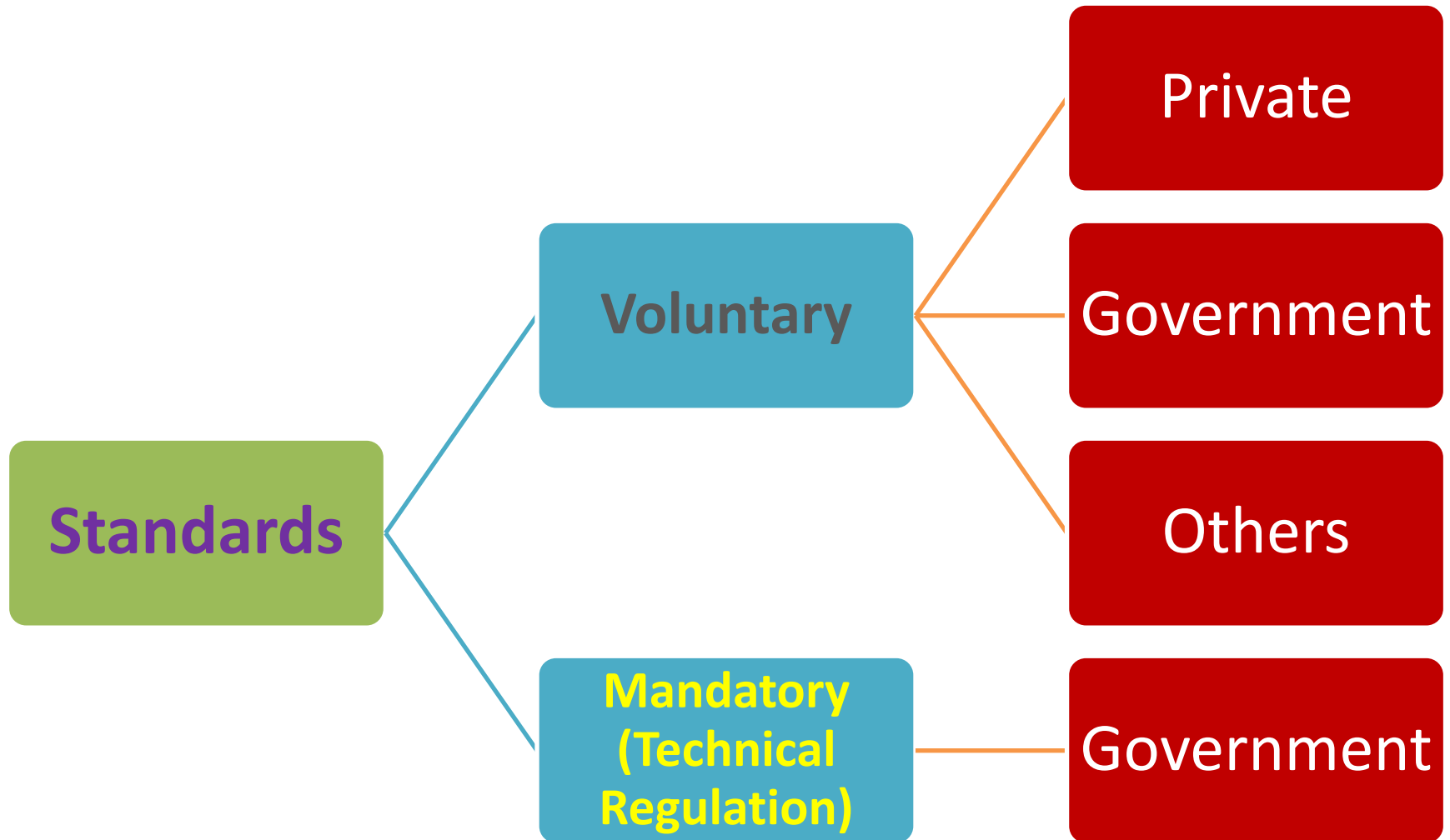
Standards (3b)

- **Process standards** apply to the conditions under which goods or services are produced, packaged, or refined.
- An example is the production of dairy products without hormones: milk from hormone-free cows is indistinguishable from milk from cows treated with hormones, but only farms that meet a particular set of production conditions can describe their milk as “hormone free.”

Standards (3c)

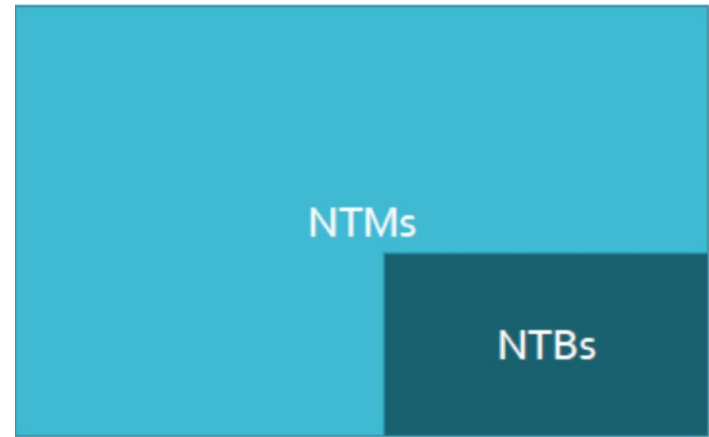
- **Management systems** assist organizations in running their operations and create a framework within which the requirements of product and process standards can be consistently met. Management systems are often referred to as meta-standards;
- An example is the ISO 9000 series of standards for quality management systems, the ISO 14000 series for environmental management systems, good agricultural practices (GAP), or ISO 22000 on food safety management systems.

Standards (4)



Standards (5)

- TBT Agreement Annex 1 defines a standard as a: *“document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.”*
- This definition is based on, but is not identical to, the definition given by the International Standardization Organization ISO in ISO/IEC Guide 2:2004. The ISO definition includes the specification that a standard must be *“established by consensus”* which is absent from the TBT definition. Both TBT Agreement and the ISO definition of a standard specify that it is a document *‘approved by recognized body’*, which raises the question of what constitutes a recognized body in a particular context.



NON-TARIFF MEASURES AND NON-TARIFF BARRIERS

NTMs and NTBs (2)

- Non-tariff measures (NTMs) are not easy to define and are interchangeable with the term Non-tariff Barriers (NTBs). NTMs are broadly defined **as any policy measure other than customs tariffs that can have influence on international trade flow.**
- As per WTO glossary of trade terms, NTBs/NTMs refer to all **barriers to trade that are not tariffs such as quotas, import licensing systems, sanitary regulations, prohibitions, etc.**
- Some of these instruments, in particular ***technical regulations, minimum standards and certification systems regarding health and consumer safety*** do not ipso facto constitute barriers to trade, as they are generally employed to **meet legitimate policy goals.** However, there is a perception that, in some circumstances these sorts of policy instruments are being misused.
- In general (rule of thumb) the measures which are WTO compliant are treated as NTMs and those which violate the WTO principles are termed as 'barriers'.

NTBs and NTMs (3)

- Definition of NTMs by UNCTAD:
 - “policy measures other than ordinary customs tariffs that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both.”
- NTBs may mean all types of trade barriers other than tariff.
- NTMs/NTBs can be trade/welfare enhancing as well

UNCTAD Classification (2012)

Imports	Technical	A	SANITARY AND PHYTOSANITARY MEASURES
		B	TECHNICAL BARRIERS TO TRADE
		C	PRE-SHIIPMENT INSPECTION AND OTHER FORMALITIES
	Non-technical measures	D	CONTINGENT TRADE-PROTECTIVE MEASURES
		E	NON-AUTOMATIC LICENSING, QUOTAS, PROHIBITIONS AND QUANTITY-CONTROL MEASURES OTHER THAN FOR SPS OR TBT REASONS
		F	PRICE-CONTROL MEASURES, INCLUDING ADDITIONAL TAXES AND CHARGES
		G	FINANCE MEASURES
		H	MEASURES AFFECTING COMPETITION
		I	TRADE-RELATED INVESTMENT MEASURES
		J	DISTRIBUTION RESTRICTIONS
		K	RESTRICTIONS ON POST-SALES SERVICES
		L	SUBSIDIES (EXCLUDING EXPORT SUBSIDIES UNDER P7)
		M	GOVERNMENT PROCUREMENT RESTRICTIONS
		N	INTELLECTUAL PROPERTY
		O	RULES OF ORIGIN
	Exports	P	EXPORT-RELATED MEASURES

Selected points (summary)

- They can affect prices and quantities both.
- They can be discriminatory, even if applied horizontally.
- Most prevalent are Sanitary and Phytosanitary (SPS) measures and Technical Barriers to Trade (TBT).
- Private standards are now becoming more important and decisive.
- Extent of burden imposed by NTMs differs among export markets and products.
- Mixed response on whether NTMs are complementary or substitutes to tariffs.

CONFORMITY ASSESSMENT

Conformity Assessment Procedure (CAP)

- Any procedure used, directly or indirectly, to determine that the relevant requirements in technical regulations or standards are fulfilled.
- They include procedures such as sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations (WTO TBT Annex 1.3)

Conformity Assessment Procedure (CAP) (2)

- CAP demonstrate that a product being placed on the market complies with all legislative requirements and also ensure confidence of consumers, public authorities and manufacturers regarding the conformity of products.
- The assessment is carried out by the manufacturer. If the applicable legislation requires it, a conformity assessment body is involved in the conformity assessment process.
- The conformity assessment is complementary to market surveillance. Both procedures help ensure the smooth functioning of the internal market.
- Undergoing the conformity assessment process has a number of benefits: firstly, it provides consumers and other stakeholders with added confidence; secondly, it gives your company a competitive edge; thirdly, it helps regulators ensure that health, safety or environmental conditions are met.

Conformity Assessment (3)

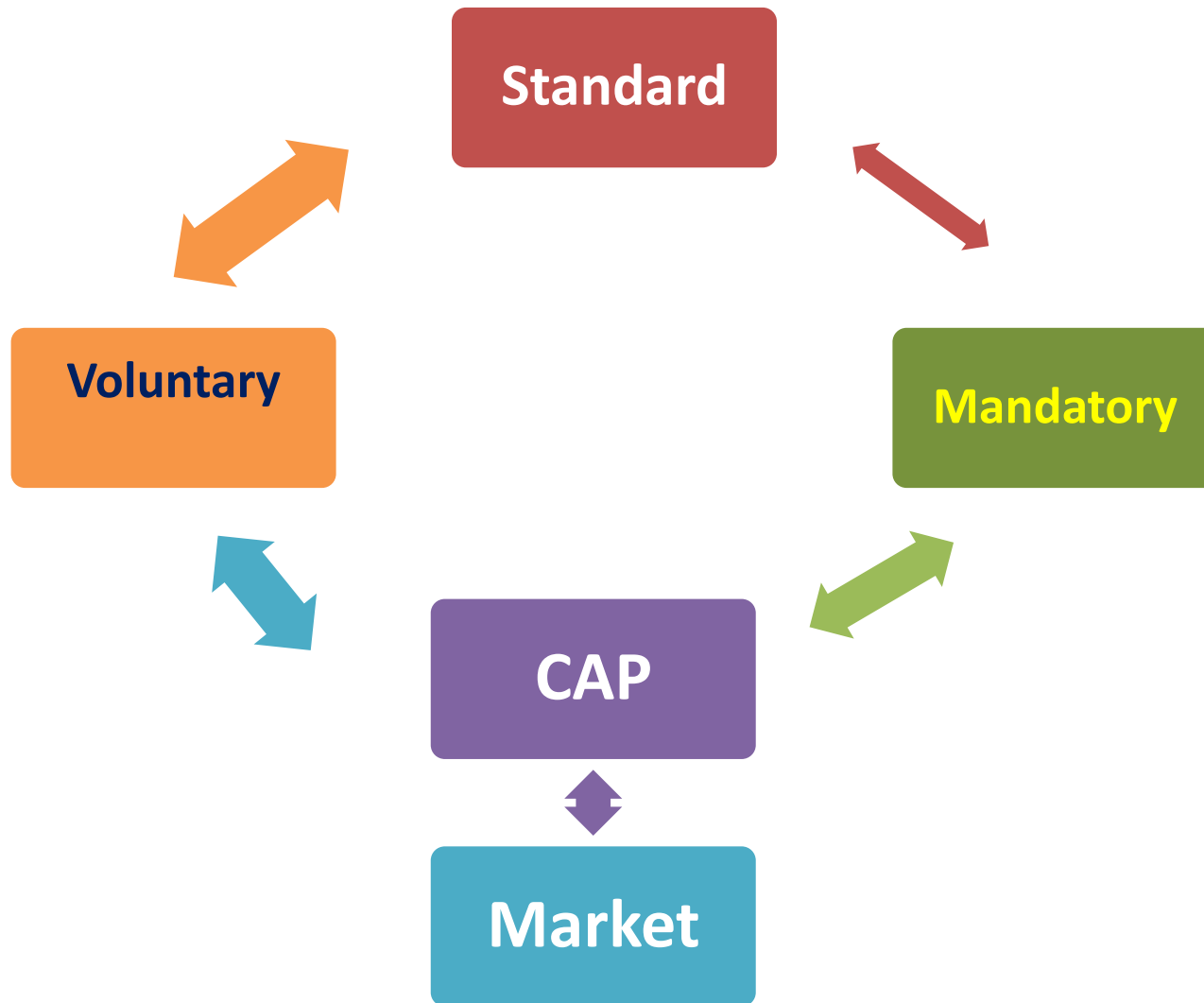
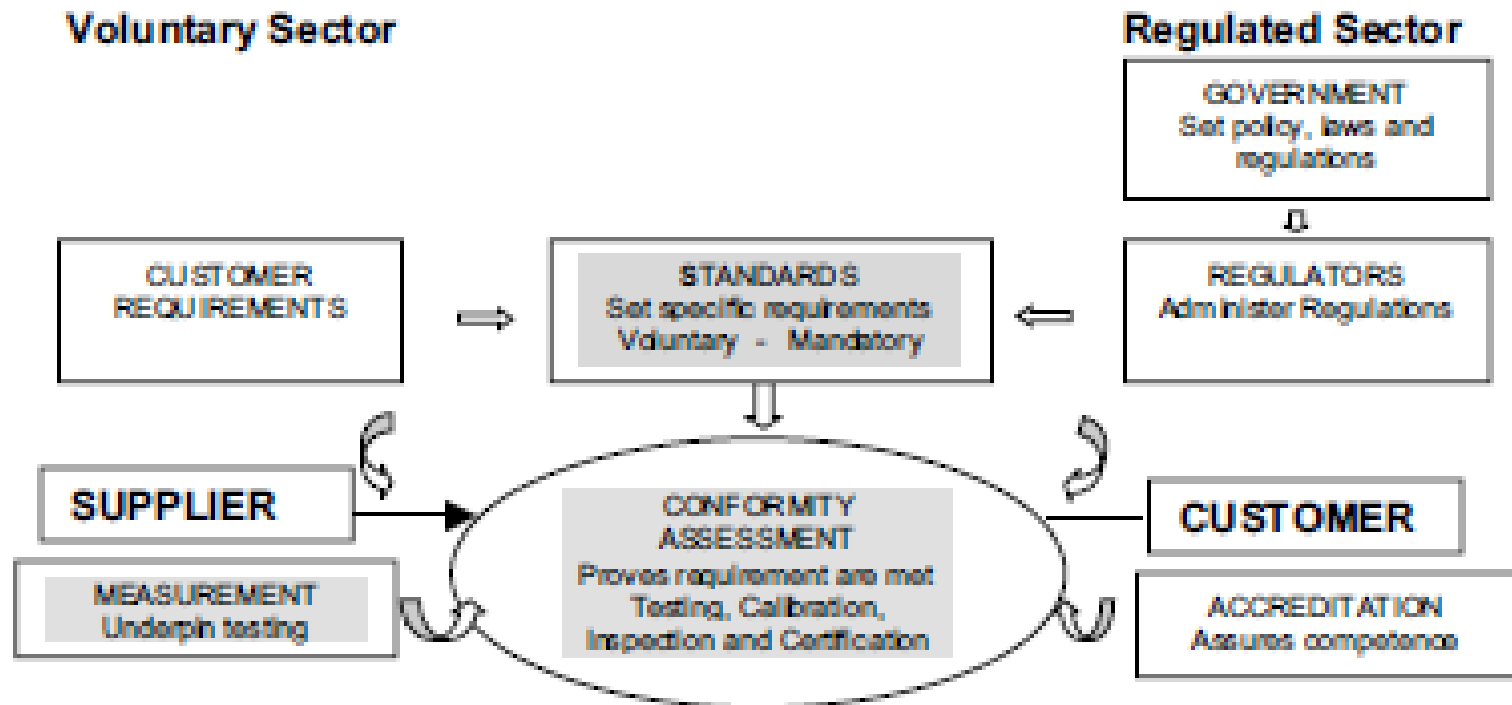


Diagram 1: STANDARDS AND CONFORMANCE FRAMEWORK



ASEAN RULES AND PRACTICES

Standards, technical regulations and conformity assessment procedures

- ATIGA encourages members to adopt relevant international standards in developing their respective national standards.
- It provides for members' adoption of the Code of Good Practice for the Preparation, Adoption and Application of Standards of the Agreement on Technical Barriers to Trade under the WTO in defining national and regional standards.
- ATIGA instructs members to notify technical regulations.
- ATIGA requires members to impose and fulfill the minimum requirement necessary to meet the objective for imposing a particular technical regulation.

ASEAN: CLASSIFICATIONS OF NTMs

Classification of NTMs:

1. **Contingent trade protection measures** – e.g. anti-dumping, countervailing measures and subsidies.
2. **Export measures** – e.g. prohibition of exportation of minerals.
3. **Pre-shipment inspections** – e.g. requirement to conduct technical verification for each shipment of import of horticultural products.
4. **Quantity control measures** - involve import and export prohibition and restriction, requirement to obtain import permits and licenses, register or get approval from relevant agencies etc.

ASEAN: CLASSIFICATION OF NTMs (2)

5. Price control measures - may be understood as the measures taken by Government to stabilise the price of important and strategic goods,

– in the context of NTMs, has been consistently used to refer to

- internal taxation levied upon imports (such as value added tax and excise tax),
- fees and charges for services related to importation (such as administrative fee, processing fee, certification fee, inspection fee), and
- issuance of import licenses and permits.

ASEAN: CLASSIFICATION OF NTMs (3)

6. Technical barriers to trade – standards, technical regulations and conformity assessment procedures because of legitimate objectives

- E.g. labelling for pre-packaged food to contain certain minimum mandatory information including product name/name of food, use of brand name etc.

7. Sanitary and phytosanitary measures – measures to protect human, animal and plant life and health from: (1) food-borne risks, (2) risks from pests, and (3) risks from disease.

- E.g. dried salted vegetable that it shall not contain more than 8 per cent of water.

ASEAN: transparency, NTMs and NTRs/ATR

- ASEAN instruments refer to the three concepts of NTBs, NTMs and quantitative restrictions;
- Both the CEPT (Art. 1.2) and the ATIGA (Art. 2(k)) define NTBs as *“measures other than tariffs which effectively prohibit or restrict import or export of products within Member States”*;
- No definition of NTMs is provided, even though NTMs are explicitly mentioned in ATIGA (Articles 40 and 42) and the ATIGA clearly distinguishes between NTMs and NTBs; and
- AMSs have agreed that NTMs *“applied to CEPT products should be transparent and would be considered as a non-tariff barrier only if these have the effect of prohibiting or restricting trade”*.

ASEAN: transparency, NTMs and NTRs/ATR (2)

- NTMs therefore capture all measures other than “*ordinary customs duties*”, “*extra-ordinary duties and charges*” (i.e., AD, CVD, etc.) and “*other duties and charges*”;
- The ASEAN Trade in Goods Agreements (ATIGA) requires that an ASEAN Trade Repository (ATR) be established;
- In particular, Article 13 of the ATIGA provides that:
“*An ASEAN Trade Repository containing trade and customs laws and procedures of all Member States shall be established and made accessible to the public through the internet*”
... and that ...

ASEAN: transparency, NTMs and NTRs/ATR (3)

- ... the ATR must contain the following trade-related information (indicative, non-exhaustive list):
 - i. Tariff nomenclature;
 - ii. MFN tariffs, preferential tariffs offered under the ATIGA and other Agreements of ASEAN with its Dialogue Partners;
 - iii. Rules of origin;
 - iv. Non-tariff measures;
 - v. National trade and customs laws and rules;
 - vi. Procedures and documentary requirements;
 - vii. Administrative rulings;
 - viii. Best practices in trade facilitation applied by each Member State; and
 - ix. List of authorised traders of AMSs.

ASEAN: transparency, NTMs and NTRs/ATR (4)

- Finally, *“The ASEAN Secretariat shall maintain and update the ASEAN Trade Repository based on the notifications submitted by Member States as set out in Article 11”*;
- Relevance of ATIGA Article 11 on *“Notification Procedures”* and rationale behind the *“Standard notification procedures and forms”* developed by ARISE; and
- Linkage with ATIGA Article 40 on *“Non-Tariff Measures”*: obligation of transparency (Art. 40.2); obligation of notification (Art. 40.3, connected to Art. 11.3, 11.4, 11.5 and 11.6, further linked to Art.13.3); and obligation to develop the NTM database (Art. 40.4) to be included in the ATR (see proposal of NTM database developed by World Bank in cooperation with ARISE).

The WTO: overarching obligations and structures

- GATT disciplines and interpretative guidance on NTMs and transparency;
- Relevant WTO language in SPS and TBT Agreements calling for measures to be notified when they have a *“significant effect on trade”*;
- Difference vis-à-vis ATIGA (Art. 11.1 thereof, which calls for the notification of any action or measure that AMSs intend to take that (a) *“may nullify or impair any benefit to other Member States, directly or indirectly”* under the ATIGA or (b) *“when the action or measure may impede the attainment of any objective”* of the ATIGA); and
- *“Presumption of Innocence”* vs. *“Presumption of Guilt”*.

The WTO: overarching obligations and structures (2)

- Art. X of the GATT and Art. 12 of the ATIGA on the “*Publication and Administration of Trade Regulations*”;
- Several WTO transparency and notification obligations are already complied with by AMSs, all of which are now WTO Members; and
- To avoid overlaps, duplication and additional costs relating to largely similar obligations under the WTO and the ATIGA, AMSs should (as much as possible) rely on the same mechanisms and authorities set up for the WTO or at least coordinate their WTO and ATIGA tasks.

Regulation of NTBs in ASEAN

- AEC Blueprint 2015 – ‘Elimination of Non-Tariff Barriers’ is part of the commitments of ASEAN Member States towards the establishment of the ASEAN Single Market.
- The focus: by 2015 there would be the full elimination of NTBs intra-ASEAN trade.
- Among the actions undertaken:
 - enhance transparency,
 - abide by standstill and roll-back on NTBs, and
 - removal of all NTBs by 2010 for ASEAN-5, by 2012 for the Philippines, and by 2015 with flexibilities to 2018 for Cambodia, Laos, Myanmar and Vietnam.

AEC Blueprint 2025

- Continues to recognise the relevance of AEC Blueprint 2015.
- Seeks to minimise trade protection & compliance costs in dealing with NTMs.
- But it mainly repeat what is in AEC Blueprint 2015 including the call for full elimination of NTBs.

ADDRESSING NTMS

How to respond to an NTM?

- Follow two approaches based on type of measures:
 - Approach to Contingent trade policy measures - CTPM (anti-dumping, countervailing duties and safeguards), or
 - Approach to other NTMs.

Approach to CTPM

- Anti-Dumping:
 - Anti-dumping regulates an exporter's pricing.
 - Any exporting businesses must be wary of pricing its exported product below costs or below its domestic market price.
 - The biggest challenge – if anti-dumping petition is filed against you, there is high probability that you will be found dumping and you will have to pay extra duties.
 - Regional monitoring of national AD agencies is minimal:
 - ATIGA affirm rights of AMS to take anti-dumping measures as well as other CTPMs.
 - It is a must to cooperate with a foreign AD agency (has wide discretion to “construct” a producer's export price or even costs).
 - But traders can apply for judicial review against decisions of a foreign AD agency in that country's court.

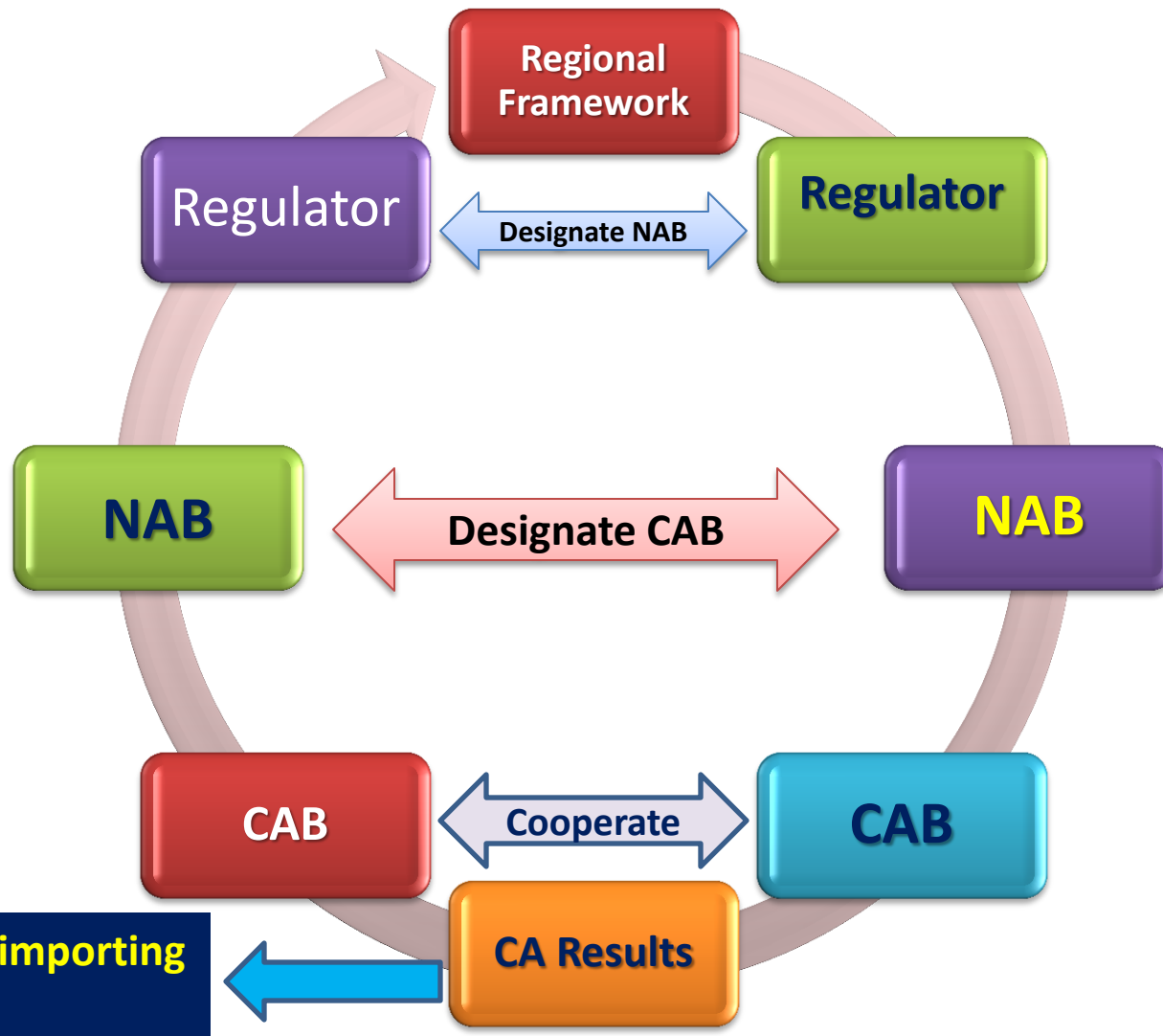
Approach to other NTMs

- Know your product's tariff code.
 - Important to consult the ASEAN Harmonized Tariff Nomenclature (AHTN).
 - But it is also important to consult each AMS's national tariff nomenclature (normally in 10 digit, rather than WTO's 6)
 - The tariff code will determine the procedures, permits, certificates required.
- Know the legislative origin of the NTMs and the national regulatory agency responsible for its registration:
 - ASEAN Trade Repository -
http://atr.asean.org/links/search/?level=1&id_topic=44&src=home
- Look for Harmonisation, CAP, MRAs etc.

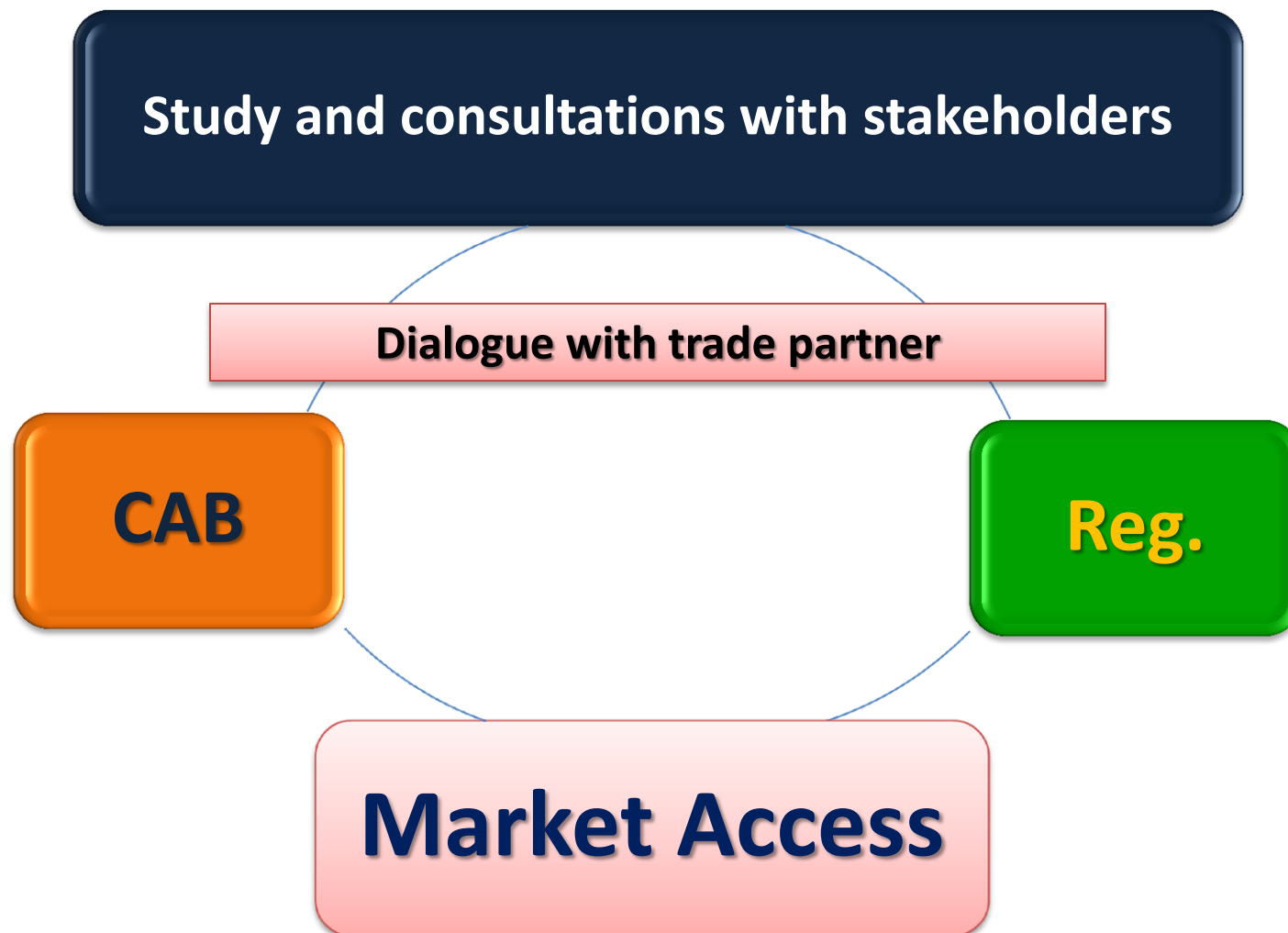
Way forward

- Study and identify items
 - Non sensitive: supplier's declaration
 - Least sensitive: Accredited exporters
 - Sensitive: CAB
- Explore Regionalization provisions
- Build infrastructure – Labs, NABs, CABs.
- Then only look for:
 - Harmonisation
 - Equivalence

How does it work?



Future Work



Q&A

Thank you

Diagram 2: ACCSQ STRUCTURE

