Chapter 1

Collecting and Classifying Non-tariff Measures in ASEAN

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1.1. Background

Many developing countries have greatly benefited from the integration in the global economy through international trade in goods and services. In the past, developing countries' integration in international markets was made possible by appropriate policies such as tariff liberalization, as well as initiatives related to trade facilitation and aid for trade. Today, deeper integration in the global economy depends not only on liberal tariffs and supportive policies but increasingly requires policy responses to various forms of complex trade-related regional economic integration. The rising specialization and fragmentation of production led increasingly to trade in intermediate goods and in particular regional value chains.

Tariffs on regional trade are generally low, as they have been progressively liberalized, first under the auspices of the General Agreement on Tariffs and Trade (GATT)/World Trade Organization (WTO) and subsequently in the context of regional and bilateral preferential trade agreements. The Association of Southeast Asian Nations (ASEAN) member countries have made significant progress in the lowering of intra-regional tariffs. The fact that tariff liberalization alone has proven insufficient in providing genuine regional economic integration for many developing countries has drawn further attention to non-tariff measures (NTMs) as major determinants in developing economies growth. The use of NTMs, especially complex technical, and sanitary and phytosanitary measures, has spread significantly. ASEAN member countries have resolved to work on the elimination of non-tariff barriers.

1.2. NTMs and NTM data collection

A country's participation in regional and international trade in goods and services is affected by the combination of policies such as tariffs, quantity control measures, sanitary and phytosanitary restrictions, or technical regulations. In recent years, countries have not only

significantly reduced tariff levels in most lines of products, but they have also been promoting trade facilitation, preferential market access, and aid for trade. Further attention is now drawn on non-tariff trade regulatory measures, or NTMs, which are considered to have an impact on the ability of countries to gain and to benefit from market access.

NTMs are 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 (UNCTAD, 2010). NTMs thus include a wide and diverse array of policies that countries apply to imported and exported goods. Some NTMs are manifestly employed as instruments of commercial policy (for example, subsidies and trade defence measures), while others stem from non-trade policy objectives for example, public heath, food safety, and environmental protection). However, even legitimate NTMs that have non-trade objectives are thought to have important restrictive and distorting effects on international trade.

NTMs are of particular relevance to developing countries, especially the implications that NTMs have on their market access. One concern is that developing countries often have a more limited capacity and incur higher compliancy costs for meeting NTM requirements in their export markets. This is due to less advanced production process technology, weaker trade-related infrastructure, and inadequate export services. Another concern is that NTMs are frequently applied to product groups of particular export interest to developing countries. Evidence shows that small and medium size enterprises and countries as well as less developed countries are disproportionately affected by NTMs. Access to information is a significant challenge, as many developing countries do not always have the resources to assess the nature and implications of the NTMs that their exports face as well as of the ones they apply to their own imports.

Understanding the uses and implications of these trade policy instruments is crucial for the formulation and implementation of effective development strategies.

1.3. The need for NTM data collection

Despite the widespread use of NTMs, there is a significant transparency gap. Systematic and comparable information about the use of NTMs are generally not available. Furthermore, NTMs are complex and their effect on regional and international trade is often indirect and very case-specific. The scarce knowledge of the implications of NTMs is particularly troubling for policymakers, trade negotiators, and development agencies, which need information and analysis so as to direct their efforts for maximum gains.

Relevant information on NTMs generally originates from various regulatory agencies and is often buried in legal and regulatory documents, which makes the gathering of relevant data difficult and costly. The United Nations Conference on Trade and Development (UNCTAD) classifies and collects NTM data together with its partners and regional organizations from all over the world. UNCTAD leads and coordinates the global effort on NTMs, the Transparency in Trade Initiative.[1] The collected data are based on a comprehensive set of mandatory and official regulations that are currently imposed by the country and that affect imported or exported merchandise products. Detailed information for each NTM comprises the sources of information, the measures, and the affected products and countries that have been gathered and translated into a qualitative and quantitative database for easier access to all policy measures that might have an economic impact on trade.

1.4. The methodology and process of NTM data collection

The collection of data on NTMs requires the classification of legal documents (regulations, directives, and rules, among others) to appropriate predefined NTM codes. These codes are provided in the UNCTAD publication on the *Classification of Non-tariff Measures* (UNCTAD, 2013).

The classification of NTMs was developed and agreed by several international organizations in the context of a multi-agency initiative on NTMs led by UNCTAD. The classification is designed to facilitate the collection, analysis and dissemination of data on NTMs, with the final objective of increasing transparency and understanding about the subject.

The data that are collected are official measures currently imposed by the country and that affect imported or exported products. As a rule of thumb, such measures would be checked at the customs point to allow entry or exit of the product. Every measure stemmed from the official mandatory regulations is to be collected and classified.

1.5. Scope, coverage, and disaggregation of measures

From the text of all official mandatory regulations, any policy measure, other than ordinary customs tariffs, which can have an economic effect on international trade, is collected and classified. The measures cover all topics and sectors such as Agriculture, Arms and Ammunition, and Pharmaceutical, of all Harmonized System (HS) codes ranging from

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[1] Joint multi-year programme launched and implemented by UNCTAD, the World Bank, the International Trade Centre, and the African Development Bank.

Chapters 01 to 97, and of groups of products that are covered in international conventions such as the Rotterdam or Stockholm Conventions.

The NTM classification categorizes measures into 16 chapters (A to P) based on the purposes of the measures. Each chapter is further differentiated into groups and subgroups, with most chapters reaching the 2-digit level of disaggregation and others reaching the 3-digit level.

The last chapter, Chapter P, describes the measures imposed on exported products. Chapters A to O reflect the requirements of the importing countries for their imported products. Chapters A to C comprise technical measures: sanitary and phytosanitary measures (SPS), technical barriers to trade (TBT), and pre-shipment inspection as well as other formalities. Chapters D to O cover non-technical measures such as licensing, price control, subsidies, and rules of origin.

Box 1 presents the list of chapters with their brief descriptions.

Box 1. Description of Each Chapter in the Classification

Chapter A on SPS measures refers to measures affecting areas such as restrictions for substances, hygienic requirements, or other measures for preventing dissemination of diseases. It also includes all conformity assessment measures related to food safety, such as certification, testing and inspection, and quarantine.

Chapter B on technical measures refers to measures such as labelling and other measures to protect the environment. It also includes conformity assessment that relates to technical requirements such as certification, testing and inspection.

Chapter C classifies the measures related to pre-shipment inspection and other formalities performed in the exporting country prior to shipment.

Chapter D refers to contingent measures, which are measures implemented to counteract particular adverse effects of imports in the market of the importing country, including measures aimed at unfair foreign trade practices. They include antidumping, countervailing, and safeguards measures.

Chapter E includes licensing, quotas, and other quantity control measures, group measures that have the intention of limiting the quantity traded, such as quotas. It also covers those licences and import prohibitions which are not SPS or TBT related.

Chapter F includes price control measures, which are those implemented to control or affect the prices of imported goods in order to, *inter alia*, support the domestic price of certain products when the import prices of these goods are lower; establish the domestic price of certain products because of price fluctuation in domestic markets, or price instability in a foreign market; or to increase or preserve tax revenue. This category also includes measures, other than tariff measures, that increase the cost of imports in a similar manner (para-tariff measures).

Chapter G concerns finance measures, referring to measures restricting the payments of imports, for example when the access and cost of foreign exchange is regulated. This chapter also includes restrictions on the terms of payment.

Chapter H concerns measures affecting competition. These measures grant exclusive or special preferences or privileges to one or more limited group of economic operators. They refer mainly to monopolistic measures, such as state trading, or sole importing agencies, or compulsory use of national services or transport.

Chapter I concerns trade-related investment measures, group measures that restrict investment by requiring local content or requesting that investment should be related to export to balance imports.

Chapter J includes distribution restrictions, referring to restrictive measures related to internal distribution of imported products.

Chapter K concerns restriction on post-sales services, for example, restrictions in the provision of accessory services.

Chapter L contains measures that relate to subsidies that affect trade.

Chapter M containing government procurement restriction measures, refers to the restrictions bidders may find when trying to sell their products to a foreign Government.

Chapter N concerns restrictions related to intellectual property measures and intellectual property rights.[2]

Chapter O on rules of origin, groups the measures that restrict the origin of products, or their inputs.

Chapter P includes export measures, grouping the measures a country applies to its exports. It includes export taxes, export quotas, or export prohibitions.

Source: UNCTAD (2013).

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[2] Please note that those trading activities involving imitations or copies are classified in Chapter E, under E315 for prohibition of copies or imitations of patented or trademarked products.

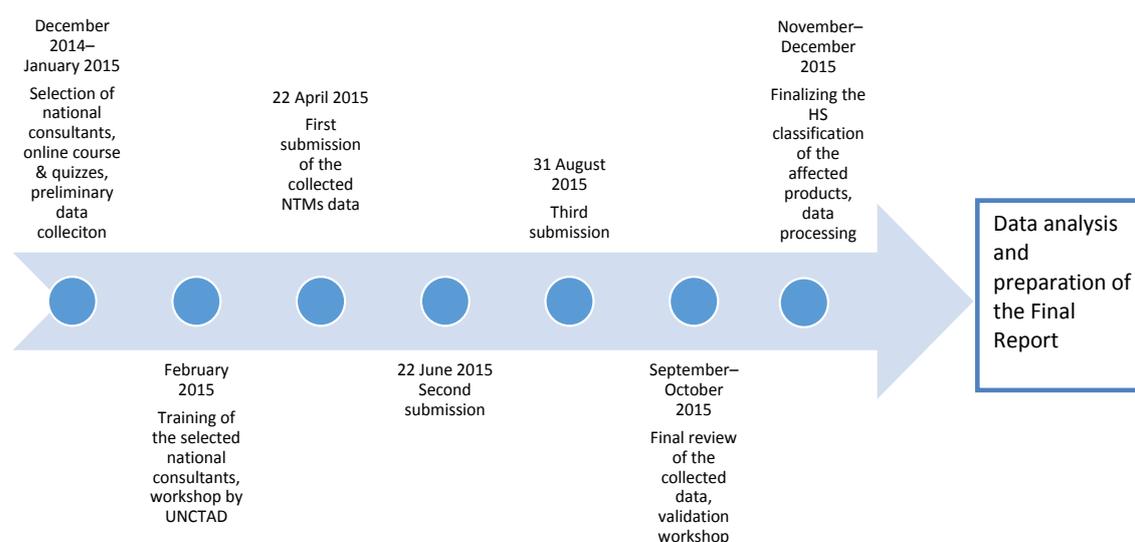## 2. ASEAN NTM data collection and analysis project

The ASEAN NTM data collection and analysis project (the project) is an ambitious yet fruitful team effort initiated by UNCTAD and the Economic and Research Institute for ASEAN and East Asia (ERIA). The project aims to conduct thorough studies of the trade-related legislation of all 10 ASEAN countries (Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (Lao PDR), Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam), to collect the NTM data and to classify the identified NTMs based on the aforementioned methodology. A rather unique nature of the project was predetermined by its scope, the diversity of the legal systems under consideration, accessibility of legal texts, as well as by tight deadlines targeted by ERIA and UNCTAD.

2.1. Project's timeline

The project was initiated in late 2014 through the signing of a memorandum of understanding between ERIA and UNCTAD with a desire to complete the undertaking by the end of 2015. The project was finished according to the schedule (Figure 1.1), while its active stage, including the collection and classification of the NTMs, took only 9 months, and successfully progressed into the data analysis stage.

The first 2 months were dedicated to the selection of national consultants and their training by UNCTAD experts. Over the next 7 months the local consultants were able to collect and register NTM data in three consecutive batches, while the UNCTAD team was engaged in reviewing the submissions and guiding the national consultants in incorporating UNCTAD comments and improving the quality of data collection. Over the last 3 months, the collected data were reviewed in their entirety, and multiple submissions were consolidated. Both the UNCTAD team and national consultants worked on ensuring legal comprehensiveness (including cross-checking of countries' international obligations under conventions and elimination of overlaps and duplication across multiple submissions by national consultants). A meticulous work of HS classification of the affected products was also accomplished in this stage.

Figure 1.1. Timeline of the Project

December 2014–January 2015

Selection of national consultants, online course & quizzes, preliminary data colleciton

22 April 2015

First submission of the collected NTMs data

31 August 2015

Third submission

November–December 2015

Finalizing the HS classification of the affected products, data processing

Data analysis and preparation of the Final Report

February 2015

Training of the selected national consultants, workshop by UNCTAD

22 June 2015 Second submission

September–October 2015

Final review of the collected data, validation workshop

HS = Harmonized System; UNCTAD = United Nations Conference on Trade and Development.
Source: Prepared by the authors.

2.2. Methodology of the project

Selection of local consultants and training

As mentioned above, the project was a collective effort by ERIA, UNCTAD, and selected local consultants in each of the 10 ASEAN countries. From the inception of the project, both UNCTAD and ERIA shared a common understanding that the selection of highly qualified national consultants was the key to the project's success. Therefore, the best national trade think tanks and research institutions in ASEAN countries were contacted in order to identify suitable candidates. At the same time, ERIA and UNCTAD were also keen on obtaining support from the respective governments. The assistance from the authorities of each country proved to be a valuable asset for the project's comprehensiveness, which will be elaborated below.

The selected candidates of each ASEAN country had to take the UNCTAD online course on NTM data collection and pass an online exam. The objective of the course was to provide participants with the knowledge and tools required to identify, classify, and collect information about NTMs in their respective countries. The course included the following five modules: 'Introduction to NTMs and data collection', 'Classification of NTMs', 'Product classification', 'Guidelines for the collection of data on official NTMs', and 'Data classification and storage template'. The candidates with passing grades were invited to join the project and participate in the workshop conducted by UNCTAD.

Data collection

Upon the formation of the national teams, national consultants began the actual NTM data collection, which they submitted to UNCTAD for review in three batches over the span of 7 months. Each submission contained an Excel template, in which consultants registered all the identified NTMs with their appropriate NTM codes respectively, as well as the legislation containing those NTMs. For each submission the UNCTAD team provided thorough feedback, identified the shortcomings and revised the wrong entries. The identification of the relevant legislation as sources of NTMs, and the NTMs from the identified legislation was conducted through several methods: (i) research in the publicly available sources, trade portals, legal databases, and official gazettes, among others; and (ii) queries to the relevant government authorities.

Scope of the project

The scope of consultants' work was limited to Chapters A-I (SPS and TBT measures; pre-shipment inspection and formalities; non-automatic licensing, quotas, prohibitions, and quantity-control measures other than for SPS and TBT reasons; price-control measures, including additional taxes and charges; finance measures; measures affecting competition; trade-related investment measures); and Chapter P (export-related measures). UNCTAD used its own resources to cover Chapter D (contingent trade protective measures).

Difficulties encountered

The quality of submissions varied from country to country. However, the major obstacle in achieving uniformity, coherence, and comprehensiveness of the collected data often lay beyond the control of the national consultants. While supervising the consultants, UNCTAD encountered the following difficulties:

1. Limited access to implementing regulations

In some countries, a general regulation may be governed further by a few implementing regulations, which might not be readily available in the public domain or not available to the public at all. This situation implies difficulty to collect and register corresponding NTM data. Such situations revealed the importance of the established cooperation between ERIA, local consultants, and national government authorities.

2. Development level of legal systems

The legal systems in the 10 ASEAN countries are not equally developed. In the case of Myanmar, for example, the country is currently in the process of revision and reconstruction of its whole legal system. Presently, its legal system is a combination of laws from several different epochs of state development, that is, British rule, those from the time of military rule, and the most recent democratic transition periods. Accordingly, the laws are available both in English and Burmese. Those in Burmese are often a mere translation of the previous English written laws. Though such 'translated' laws could introduce certain addenda to the British Burma legislation, the former does not necessarily revoke the latter. Such a situation creates an obstacle for the project, as it is not clear what scope of laws the consultant needs to collect and analyse (legal comprehensiveness).

3. Structure of legislation

Depending on the level of legal development, the legislation in the ASEAN countries vary from non-systemized and scattered collections of legal acts to well-codified and coherent systems of norms. While this project did not aim to evaluate legal systems or suggest any improvements, the aforementioned diversity often does not fit into the system of measures/regulations/documents registration developed by UNCTAD. This system implies that certain NTMs are to be found in a regulation, which forms a part of an issued government document (code and/or decree, among others). This model, common among many countries around the world, is not necessarily the same in certain ASEAN countries, where an NTM can be a single measure established under a decree enacted specifically for this NTM. In such a situation, the terms 'measure', 'document', and 'regulation' may overlap, which does not provide for the technical ease of registering NTMs and corresponding documents and regulations.

Ensuring legal comprehensiveness

Legal comprehensiveness, that is, the entirety of collected laws and regulations, including international obligations of each country containing NTMs, was a pivotal point in conducting the project. The UNCTAD team, together with national consultants, used several tools in order to ensure the comprehensiveness of the data collected. These tools included:

- Trade Policy Reviews (TPRs) of the WTO: WTO TPRs are useful tools to identify the scope of the relevant regulatory framework. They were the starting point of research for all ASEAN countries except Lao PDR, for which no TPR has been conducted to date.

- Generally regulated product groups: Based on the experience of UNCTAD experts, a list of generally regulated products was established. This list includes the following product groups: food products, animals and animal products, plants and plant products, endangered species, controlled and hazardous chemicals, pharmaceutical products, medicines and drugs, narcotics and psychotropic substances and precursors, biological materials, ozone depleting substances, pesticides, fertilizers, motor vehicles, radio-transmitting equipment, diamonds and other precious stones and metals, tobacco products, alcoholic beverages, hazardous wastes, arms, ammunition, explosives, nuclear materials, and dual use products. If, while reviewing the collected data, an UNCTAD expert did not find any NTMs imposed on one of the products in the list, a national consultant conducted additional research regarding the uncovered product.

- International conventions: All of the ASEAN countries are members to several international conventions imposing certain restrictions/requirements on importation/exportation of certain products/substances. Depending on the legal system, ASEAN countries either recognize direct application of those treaties domestically, or incorporate them by passing domestic legislation that gives effect to the treaties. Some countries chose an intermediate approach. Regardless of the type of the particular legal system, the project's task was to identify all NTMs deriving from a country's international obligations. Among such treaties, special attention was paid to the Montreal Protocol, the Chemical Weapons Convention, the Basel Convention, the Rotterdam Convention, the Stockholm Convention, the Kimberly Process, the CITIES Convention, the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, and the Convention against Illicit Traffic on Narcotic Drugs and Psychotropic Substances.
- Finally, the UNCTAD team conducted thorough cross-checking in order to eliminate all the possible duplications of similar measures and double counting.

Data processing and dissemination

The last step in the ASEAN NTM data collection methodology relates to data processing and dissemination. Before they can be made public, the collected NTM data are further processed and normalized by UNCTAD experts and then loaded in a central SQL server database, the UNCTAD Trade Analysis Information System (TRAINS). This process ensures the coherence of submitted NTM data between all worksheets. It is also needed to guarantee the referential integrity with existing data in the central database and to make sure that all dimensions conform to reference tables such as country codes or national product classifications. Any inconsistency causes a failure in the uploading of the data into the TRAINS database and consequently requires another review of the data.

The NTM data are then disseminated from the TRAINS database to several web applications, *inter alia*:

1. World Integrated Trade Solution (WITS)
    WITS is a web application developed by the World Bank to provide access to several international databases on merchandise trade, tariffs, and NTMs such as the United Nations (UN) Commodity Trade Statistics Database (COMTRADE), UNCTAD TRAINS, and the WTO Integrated Data Base (IDB). WITS is accessible at wits.worldbank.org/.

2. Integrated Trade Intelligence Portal (I-TIP)
    I-TIP is a WTO application that has been shared with UNCTAD to provide comprehensive information on official NTMs applied in merchandise trade as well as analytical tools. WTO I-TIP and UNCTAD ITIP are available at www.i-tip.org/ (the UNCTAD version was launched in early 2016). The ASEAN NTM data are available at http://asean.i-tip.org/.

References

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