

2. Managing Non-tariff Measures in ASEAN

Doan Thi Thanh Ha and Salvador M. Buban

May 2019

This chapter should be cited as

Doan, T. and S. Buban (2019), 'Managing Non-tariff Measures in ASEAN', in Intal, P. and M. Pangestu, *Integrated and Connected Seamless ASEAN Economic Community*, Jakarta, ERIA, pp. 21–33



Managing Non-Tariff Measures in ASEAN¹

**Doan Thi Thanh Ha,
Salvador Buban,**

Economic Research Institute for ASEAN and East Asia

1. Introduction

While tariffs have declined following disciplines instituted by the World Trade Organization (WTO), the number of non-tariff measures (NTMs) is on the rise worldwide. This increase is mirrored in the Association of Southeast Asian Nations (ASEAN) as a result of tariff liberalisation through regional and bilateral trade agreements. The trend is also reflected in the updated NTMs database of the Economic Research Institute for ASEAN and East Asia (ERIA) and the United Nations Conference on Trade and Development (UNCTAD),² where the number of NTMs in ASEAN has followed an upward trend. Since NTMs have the potential to restrict trade, this increase has raised concerns about returning to protectionism, which could hamper ASEAN's regional economic integration efforts.

¹ This chapter draws heavily on Doan, Rosenow, and Buban (forthcoming). The analysis of NTMs in this chapter is based on raw 2018 data on ASEAN NTMs from the forthcoming ERIA–UNCTAD NTM database.

² For information about the construction of this database, please refer to Ing, Cordoba, and Cadot (2015).

NTMs are neutrally defined as policy measures other than ordinary customs tariffs, which can have an economic effect on international trade (UNCTAD, 2013). As such, they include a wide array of policy instruments. Some NTMs are used as a commercial policy tool, such as quotas or price controls. These measures are often regarded as non-tariff barriers (NTBs), aimed at protecting domestic producers, and are against WTO rules. On the other hand, technical tools – such as sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBTs) – are designed to protect consumers' health and safety and the environment. In principle, these measures serve legitimate public policy goals, and thus are legal.

Given their legitimacy, the prevalence of NTMs is not necessarily a bad sign for the economy. As the economy grows and consumer wealth rises around the world, the demands on governments for health, safety, and environmental protection also increase. However, even good NTMs can incur significant costs because of poor design and implementation. Therefore, addressing NTMs is fundamental for ASEAN to further promote regional integration towards the realisation of the ASEAN Economic Community. As NTMs constitute the grey area where protectionism meets public policy goals, effective NTM management must take into account not only their trade-distorting effects, but also the potential benefits of these measures.

This chapter outlines the prevalence of NTM application in ASEAN countries based on the ERIA–UNCTAD database. We then discuss ASEAN's ongoing efforts in addressing NTMs and the way forward.

2. The Incidence of NTMs in ASEAN

This section presents a brief overview of the prevalence of NTMs in ASEAN Member States (AMS). Figure 1 compares the number and composition of NTMs in ASEAN in 2015 versus 2018. Two features stand out.

First, the total number of NTMs has increased by approximately 15% in the last 3 years. On the one hand, this upward trend reflects the dynamics of AMS in regulatory reform to respond to various policy needs – including consumer protection and competitiveness enhancement through the improvement of product standards. In addition, as a country becomes more integrated into the global economy, the need for appropriate trade regulations increases. From this perspective, low NTM count statistics could reflect national gaps in countries' consumer and environmental protection and thus potential under-regulation. On the other hand, the rise of NTMs in the context of tariff reduction suggests the possibility that NTMs could be used as a substitute for tariffs in certain cases. Regardless of the objectives, however, this increase could result in higher trade costs, thus inhibiting trade expansion in the region.

Second, the composition of NTMs remains relatively stable across the years. TBTs are the most prominent category of NTMs, followed by SPS measures. These two subgroups form the technical measures, accounting for about 70% of total NTMs. This pattern is largely in line with that of more developed countries, where technical measures are widely used to protect consumers, the environment, and animal welfare. However, it is worth noting that amongst nontechnical measures, export-related measures also constitute a non-negligible portion of NTMs in ASEAN. While, compared with NTMs on imports, it is less likely that these measures are used with protectionist intent, the prevalence of NTMs on exports could impose a substantial burden on exporters and, as a consequence, impede the competitiveness of an economy.

Table 1: NTMs by Type, 2015 and 2018

NTM Type	NTM Description	2015		2018	
		Number of NTMs	%	Number of NTMs	%
A	Sanitary and phytosanitary measures	2,577	31.3	2,795	29.4
B	Technical barriers to trade	2,924	35.5	3,443	36.2
C	Pre-shipment inspection and other formalities	266	3.2	325	3.4
E	Non-automatic import licensing, quotas, prohibitions, quantity-control measures, and other restrictions other than SPS measures or TBT measures	708	8.6	819	8.6
F	Price control measures including additional taxes and charges	389	4.7	438	4.6
G	Finance measures	13	0.2	18	0.2
H	Measures affecting competition	18	0.2	27	0.3
I	Trade-related investment measures	2	0	7	0.1
J	Distribution restrictions	5	0.1	8	0.1
L	Subsidies and other forms of support	0	0	1	0
M	Government procurement restrictions	1	0	1	0
N	Intellectual property	1	0	1	0
P	Export related measures	1,333	16.2	1,619	17
Total		8,237	100	9,502	100

NTM = non-tariff measure, SPS = sanitary and phytosanitary, TBT = technical barriers to trade.

Note: Sector as defined by HS 2017 at 2-digit levels. Rules of origin and anti-dumping measures are not included.

Source: ERIA-UNCTAD Raw NTMs in ASEAN Database, version 2018.

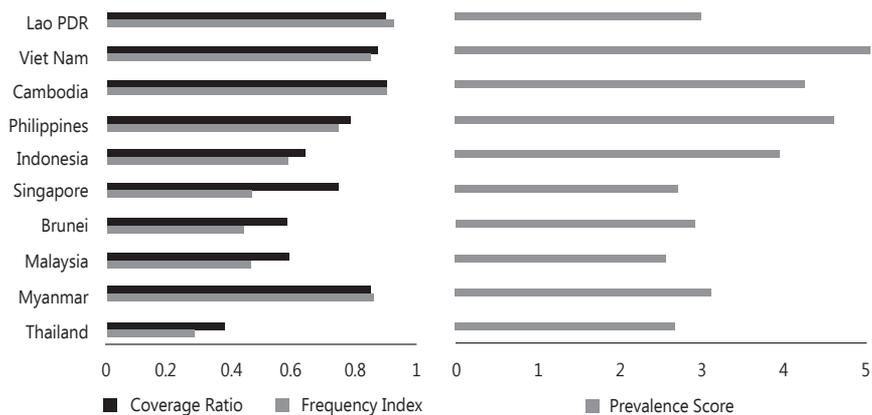
Figures 1 and 2 demonstrate the incidence of import and export NTMs, respectively. Three indices are presented: (i) the coverage ratio (CR), (ii) the frequency index (FI), and (iii) the prevalence score (PS). CR measures the share of trade value affected by NTMs. FI measures the ratio of traded products subject to at least one NTM. PS represents the average number of NTMs imposed on a product.

Figure 1 shows the pattern of import NTMs by country. The 10 AMS have significant differences in NTM prevalence. Imports tend to be more heavily regulated in the less developed economies. NTMs regulate more than 80% of imports – measured by both the number of products and import value – in Cambodia, the Lao People’s Democratic Republic, Myanmar, and Viet Nam. The Philippines also follows this pattern closely. In addition, there is little discrepancy in the CR and FI indicators for these countries.

For Singapore, Brunei Darussalam, Malaysia, and Thailand, on the contrary, NTMs are more concentrated. The FI in these countries is about 50% (30% for Thailand), while the CR is noticeably larger. The gap between the CR and FI suggests that NTMs focus on more trade-intensive products in these countries.

The regulatory distance can also be observed through the PS, where the average number of NTMs applied on one imported product ranges from 2.5 to 5.0.

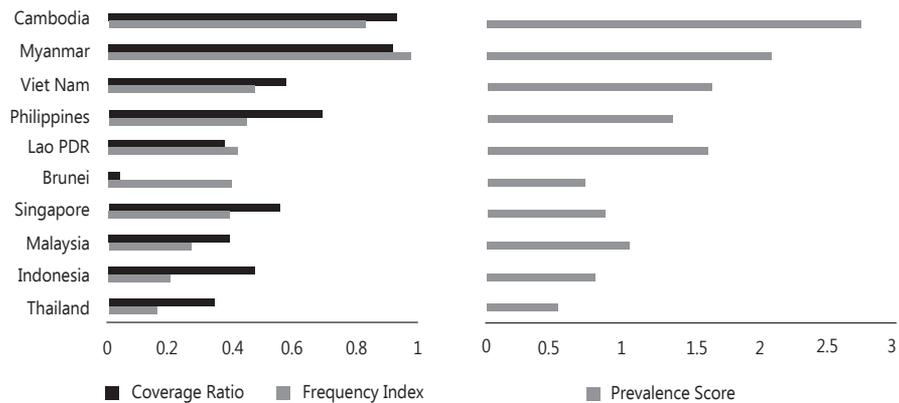
Figure 1: Incidence and Prevalence of Import NTMs, by ASEAN country, 2018



ASEAN = Association of Southeast Asian Nations, Lao PDR = Lao People’s Democratic Republic, NTM = non-tariff measure.
 Note: The trade year used is based on the latest available import data at HS 6-digit. United Nations, International Trade Statistics Database (UN-COMTRADE). <https://comtrade.un.org/> (accessed 27 February 2019).
 Source: Doan, Rosenow, and Buban (forthcoming).

Turning to exports, the pattern is quite different. While Cambodia, the Lao People’s Democratic Republic, Myanmar, the Philippines, and Viet Nam are still amongst the most rigorous users of NTMs, the extent of NTM application on exports across countries is more diverse than that of import NTMs. In addition, the CR is remarkably larger than the FI for most countries, suggesting that NTMs concentrate on export-intensive products. Brunei Darussalam shows a clear deviation, however, as about 40% of its export products are subject to NTMs but less than 5% of its export value is affected. This different pattern may be due to the structure of exports in Brunei Darussalam, where oil and gas are the largest exports, contributing to more than 90% of total export revenue. Since NTMs in this sector are small, the CR of export NTMs in Brunei Darussalam is relatively minor.

Figure 2: Incidence and Prevalence of Export NTMs, by ASEAN country, 2018



ASEAN = Association of Southeast Asian Nations, Lao PDR = Lao People’s Democratic Republic, NTM = non-tariff measure.

Note: The trade year used is based on the latest available export data at HS 6-digit. United Nations, International Trade Statistics Database (UN-COMTRADE). <https://comtrade.un.org/> (accessed 27 February 2019).

Source: Doan, Rosenow, and Buban (forthcoming).

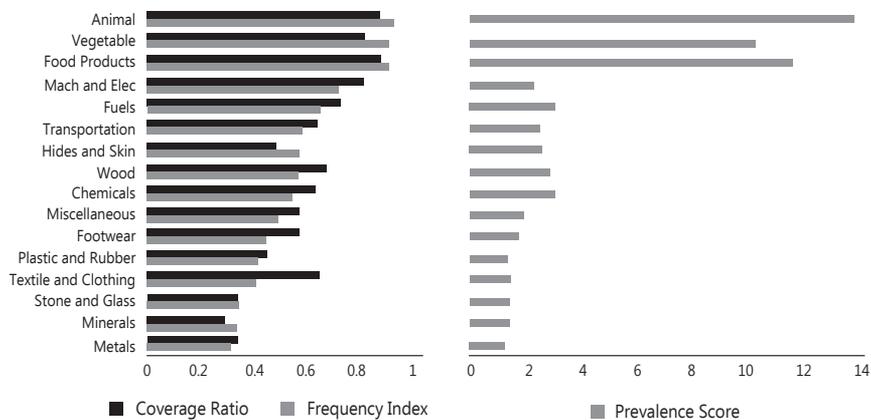
Figure 3 provides a snapshot of import NTMs by product group, producing three notable observations. First, animal, vegetable, and food products are the most regulated sectors, with NTMs affecting more than 80% of their imports. The average number of NTMs per product in these sectors is substantially higher than average – exceeding 10 measures each. The prevalence of NTMs in agriculture is probably due to the application of SPS measures for health and safety. Since the majority of

the AMS have a comparative advantage in agricultural products, it is not surprising that this category is leading in NTM utilisation.

Manufacturing sectors with deeper participation in global value chains, such as machinery and electronics and transportation, are also subject to heavy regulation. As the impact of NTMs is compounded when a semi-finished product moves back and forth across borders, the high incidence of NTMs in this sector implies larger trade costs for both exporters and importers at different stages along the supply chain.

Finally, NTMs are less prevalent in resource-based sectors such as stone and glass, minerals, and metals. One reason could be that minerals and metals are amongst the key inputs in important downstream manufacturing sectors, so regulations can be more relaxed.

Figure 3: Incidence and Prevalence of Import NTMs in ASEAN, by sector, 2018



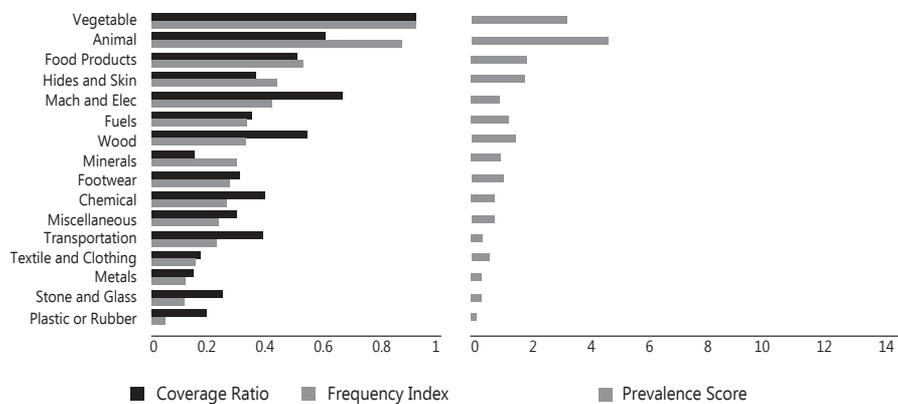
ASEAN = Association of Southeast Asian Nations, Lao PDR = Lao People’s Democratic Republic, NTM = non-tariff measure.
Notes:

1. The trade year used is based on the latest available import data at HS 6-digit. United Nations, International Trade Statistics Database (UN-COMTRADE). <https://comtrade.un.org/> (accessed 27 February 2019).
2. Sector follows the definition of HS (2017) 2-digit sections. United Nations, International Trade Statistics, Knowledgebase, Harmonized Commodity Description and Coding Systems (HS). <https://unstats.un.org/unsd/tradekb/Knowledgebase/50018/Harmonized-Commodity-Description-and-Coding-Systems-HS> (accessed 18 January 2019).

Source: Doan, Rosenow, and Buban (forthcoming).

Figure 4 illustrates the incidence of NTMs by export sector. Similar to imports, agricultural products are also subject to a large incidence of NTMs. In manufacturing, NTMs are prominent in machinery and electronics. However, the number of NTMs per export product and the ratio of exports affected by NTMs are, in general, smaller than those of imports. In addition, resource-based products such as fuels and woods also exhibit a large incidence of NTMs. This observation may reflect the need for the preservation of natural resources.

Figure 4: Incidence and Prevalence of Export NTMs in ASEAN, by sector, 2018



ASEAN = Association of Southeast Asian Nations, NTM = non-tariff measure.

Notes:

1. The trade year used is based on the latest available import data at HS 6-digit. United Nations, International Trade Statistics Database (UN-COMTRADE). <https://comtrade.un.org/> (accessed 27 February 2019).
2. Sector follows the definition of HS (2017) 2-digit sections. United Nations, International Trade Statistics, Knowledgebase, Harmonized Commodity Description and Coding Systems (HS). <https://unstats.un.org/unsd/tradekb/Knowledgebase/50018/Harmonized-Commodity-Description-and-Coding-Systems-HS> (accessed 18 January 2019).

Source: Doan, Rosenow, and Buban (forthcoming).

Overall, the pattern of NTM application in ASEAN countries is largely in line with international practice, where the majority of NTMs fall into the SPS or TBT category. Agricultural products and manufacturing sectors with deep participation in global value chains – such as machinery, electronics, and transportation – are amongst the most heavily regulated sectors. On the one hand, the application of NTMs can be justified as previously discussed. On the other hand, given the large trade volume of the region in these sectors, it is suggested that managing NTMs to reduce the potential trade-restricting impact could contribute to trade expansion in the region.

3. Addressing NTMs in ASEAN – The Way Forward

Tariff reduction and the removal of NTBs are amongst key components of ASEAN's efforts to enhance intra-regional trade. In principle, commitments on NTMs have been explicitly stated in the ASEAN Trade in Goods Agreement (ATIGA), which came into force in 2010 (ASEAN Secretariat, 2010). In practice, however, the integration agenda so far has focused primarily on tariffs, which have been eliminated for 86% of national tariff lines.

As limited room has been left for further tariff liberalisation, ASEAN has recently taken bolder steps to address and manage NTMs. The ASEAN Economic Community 2025 Trade Facilitation Strategic Action Plan (SAP),³ in particular item 3, provides a strategic objective which 'Put in place an effective and responsive regional approach to efficiently address the trade distorting effect of NTMs with a view to pursuing legitimate policy objectives while reducing cost and time of doing business in ASEAN'.⁴

This strategic objective outlines several key measures that will help ensure the transparency and accessibility of information on the NTMs, support their streamlining and management, strengthen institutional capacity, and enhance private sector engagement.

First, updating of the ASEAN NTM database where AMS will verify NTMs in the ERIA–UNCTAD NTM database. This is in line with a key measure to make available export and import laws, regulations, and administrative procedures to the public – especially micro, small, and medium-sized enterprises. ERIA and UNCTAD are updating the ERIA–UNCTAD database to incorporate NTMs issued by AMS from 2015 to March 2018. ERIA will also share the updated data on NTMs to assist AMS in populating the NTM section of their respective national trade repositories. However, the

³ Adopted at the 31st ASEAN Economic Ministers–ASEAN Free Trade Area Council Meeting in 2017.

⁴ <https://asean.org/storage/2012/05/AEC-2025-Trade-Facilitation-SAP-FINAL-rev.pdf>.

willingness and capacity of AMS to validate or verify NTMs from various agencies, including the absence of a dedicated national institution to undertake the validation process, could delay public access to information and pose a challenge to updating the NTM section of national trade repositories. An efficient mechanism will have to be in place to sustain the continued updating of NTMs, so capacity building at the national level is necessary.

Second, ASEAN has adopted the Guidelines for the Implementation of ASEAN Commitments on Non-Tariff Measures on Goods, which provide a general framework to improve the transparency and management of NTMs in ASEAN. The recently adopted document, i.e. NTM guidelines, is a good step that will provide for the operationalisation of key elements and provisions of the ATIGA related to NTMs, such as Article 11 (Notification Procedures), Article 12 (Publication and Administration of Trade Regulations), Article 13 (ASEAN Trade Repository) Article 40 (Application of Non-Tariff Measures), and Article 42 (Elimination of Other Non-Tariff Barriers). However, the non-binding nature of the NTM guidelines may pose a challenge to their effectiveness for AMS adhering to their principles when implementing those commitments in ATIGA.

The current guidelines endorsed by AFTA Council pertain to new NTMs but may not sufficiently address the need to review the barrier effect of current NTMs. ATF JCC has requested ASEAN Secretariat to work with ERIA to develop the methodology or approach for determining the barrier effect of existing NTMs. Strengthening or complementing the current NTM Guidelines would minimise the trade-distortive effects of the NTMs while achieving legitimate policy objectives.

Third, enhancing private sector engagement through the establishment of the ASEAN Solutions for Investments, Services and Trade (ASSIST) mechanism – an internet-based platform and non-binding mechanism that allows the private sector to submit complaints regarding operational problems faced by ASEAN-based companies on cross-border issues related to the implementation of ASEAN economic agreements. Little information has been released on the utilisation and/or lodgement of complaints and the success rate of ASSIST in finding solutions to

complaints raised, as the information has been confined to the parties involved. Although complaints in ASSIST can be filed anonymously, companies may still fear reprisals from government agencies, which could prevent private companies from using this facility. Governments' failure to respond to such complaints does not help either, while public lack of awareness of the mechanism contributes to its low usage. Thus, the extent of the effectiveness of the ASSIST mechanism remains to be seen.

Aside from the key activities mentioned above, over the next 2 years (2019–2020) as indicated in the SAP, AMS will also work on strengthening their respective national trade facilitation coordinating committees to provide a regulatory oversight function for undertaking a review of existing NTMs. For this to work effectively, the national trade facilitation coordinating committees should be given a clear legal mandate to manage and coordinate different regulatory agencies, with these agencies asserting their respective authorities and mandates. Another initiative that AMS will undertake as part of the SAP is to establish a mechanism that will provide the opportunity for AMS to comment, to a certain extent, on proposed new or revisions of laws and regulations on border measures before their adoption. The enhancement of this consultation process is consistent with WTO and ATIGA commitments, and in line with good regulatory practice.

4. Conclusion

Over the past years, NTMs have been growing globally, including in ASEAN, as manifested in the key findings drawn from the raw updated data in the ERIA–UNCTAD NTMs in ASEAN database. The increase has been attributed to legitimate objectives, such as concerns for the safety and protection of consumers as well as natural resources and the environment. However, given their complexity, the global experience indicates that, in certain circumstances, NTMs have also served as a disguised barrier to international trade. As such, NTMs have become a convenient tool to provide undue protection to certain products or industries. As a result, the compliance cost on the private sector for these NTMs has increased and become burdensome – affecting trade.

Managing NTMs has been an ongoing and continuing pursuit all over the world, including ASEAN, which endorsed guidelines on how to manage NTMs in August 2018. These guidelines may not sufficiently address the current NTMs, however, as they prioritise managing and addressing future NTMs, where they are subject to certain guiding principles, such as necessity and proportionality, transparency, non-discrimination, and impartiality. Tools such as ex-ante regulatory impact assessments to determine the barrier effects, regulatory and non-regulatory options, and implementation arrangements will also be used. In short, the NTM guidelines focus on addressing future NTMs rather than current ones, which may require a different approach.

Solutions to manage NTMs have been elusive, as there are related issues that needed to be addressed as well. Addressing NTMs requires first and foremost knowing the true and updated extent of NTMs in place. In ASEAN, it has been quite difficult to ascertain the extent of NTMs available as most AMS do not have an updated official NTMs database. Although AMS are in the best position to populate their national NTM databases – and have an obligation under the ATIGA to build such databases through the NTM section of their national trade repositories – this process has been difficult for them. Populating the NTMs in the AMS national trade repositories is a tedious and cumbersome process, and governments may need support and assistance to do so. To provide such support, as well as ensure the transparency and sustainability of NTM database maintenance in ASEAN, an in-country capacity building programme has been identified by AMS as a crucial activity to be pursued.

Addressing and managing NTMs will require more than one solution, approach, strategy, or measure, as shown in the ASEAN Economic Community 2025 SAP on NTMs. Although identifying an appropriate solution or approach may be difficult, starting with a reliable NTM database would be the appropriate way forward. To have a sustained and updated NTM database in the AMS will require capable regulators who will undertake the collection, validation, and analysis of the NTMs that are being issued. Another related area which would support, address, and manage NTMs is the implementation of good regulatory practice

core principles, which would help ensure a good regulatory management system to make better regulations.

References

ASEAN Secretariat (2010), *ASEAN Trade in Goods Agreement*.

Jakarta: ASEAN. <http://agreement.asean.org/media/download/20140119034633.pdf> (accessed 12 March 2019).

Doan, H.T.T., S. Rosenow, and S.M. Buban (forthcoming), Addressing Non-tariff Measures in ASEAN – Insights from the updated NTMs in ASEAN database, in H.T.T. Doan and S. Rosenow (eds.), *Non-tariff Measures in ASEAN – An Update*. Jakarta: ERIA.

Ing, L.Y, S. Cordoba, and O. Cadot (eds.) (2015), *Non-tariff Measures in ASEAN*. Jakarta: ERIA.

UNCTAD (2013), *Non-Tariff Measures to Trade: Economic and Policy Issues for Developing Countries*. Geneva: United Nations.