A More Integrated ASEAN: Facilitating Trade in Goods

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Introduction

With 40% of world output in 2014 (up from 30% in 2000) and two-thirds of the world's economic growth in 2014, the East Asia and Pacific (EAP) region is becoming the world economy's engine in terms of size and growth, with the Association of Southeast Asian Nations (ASEAN) sitting at its core (IMF, 2015). However, the region's unprecedented rise exposes it to global economic and political challenges, while its deepening integration requires it to adapt young regional institutions to a rapidly changing economic environment.

Trade facilitation should be viewed as a strategic issue rather than a technical one. Whereas ASEAN has been successful in implementing key commitments, particularly regarding the phasing out of intra-regional tariffs, the regional trading environment remains vulnerable to many factors of entropy, including, amongst other things, a complex web of institutional arrangements that lacks coherence and a large stock of non-tariff measures (NTMs) subject to weak disciplines. ASEAN's trade facilitation should strive to reduce these vulnerabilities. However, in the absence of a robust supranational institutional framework, progress can only be achieved step by step and be based on consensual propositions. This chapter suggests a number of limited-scope moves to help promote goodwill and soft convergence.

Three key trade facilitation issues are identified to focus on: (i) rules of origin (RoO), and (ii) NTM transparency and streamlining.

In terms of RoO, we argue that the current evolution of the regional 'noodle bowl' poses a potential threat to balanced development, for example in the Greater Mekong Region that needs to be addressed by combining a preferential market access strategy with region-wide RoO streamlining. In terms of NTM transparency, we argue that, based on recent analytical and data collection efforts led by the United Nations Conference on Trade and Development (UNCTAD) and the Economic Research Institute for ASEAN and East Asia (ERIA), the ASEAN Secretariat today has the means to assess NTM transparency at the country level. The key problem faced by past efforts to promote transparency, whether at the regional or multilateral level, is one of incentives, as countries typically do not want to expose themselves to criticism for excessive – and possibly protectionist-minded – regulatory activism. Our third recommendation bears on the thorny issue of NTM streamlining and is the most ambitious. The underlying notion is that NTM streamlining should not be viewed as a trade negotiation issue because NTMs are not pure trade policy instruments; the idea of bargaining down, say, the stringency of pesticide residue limits in fruits and vegetables would make little sense, and in general there can be no 'formula' nor reciprocity in NTM streamlining. The regional dimension would resurface in a key way, however, and this is a central aspect of our proposal. The creation of similar bodies in all ASEAN member countries and the scope for setting up common training would promote the emergence of a common vision in terms of regulatory principles.

The chapter is organised as follows. Section 2 provides a brief review of some structural features of regional trade in the EAP region, including its potential vulnerability. Section 3 discusses the issue of RoO and market access; Section 4 tackles NTMs. Section 5 summarises the recommendations.

Out of the 'Shallow Integration Trap'

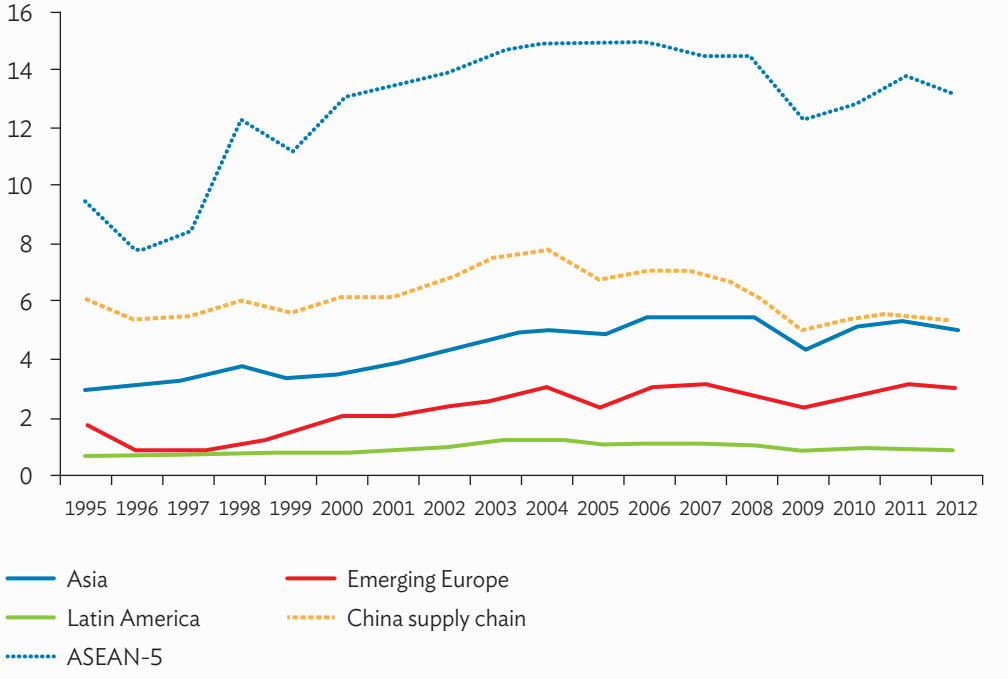
Regional Integration in Asia: A Success Story So Far

Intra-regional trade has been very dynamic in the EAP region, growing at an annual average rate of 10% from 1990–2012, twice as fast as in other regions of the world (IMF, 2014).[1] As a result, ASEAN, particularly its five largest economies, is now more integrated than many other regions of the world (Figure 1), and markets have worked effectively to create the 'single production base' that was at the heart of

[1] This section presents descriptive statistics that are available for only a few countries with less than perfect overlap from one statistic to the other. As a result, the sample is specific to each statistic; most statements refer to the EAP region to avoid loading the narrative with qualifiers, while figure legends specify what sample is being used.

the ASEAN Economic Community vision. This deepening of trade integration has profound consequences for policymaking, some of which go beyond mere trade policy. For instance, integration has markedly reinforced the synchronisation of business cycles across the region's major economies (IMF, 2015), underscoring the potential benefits that could be reaped from macroeconomic policy coordination.

Figure 1: The Share of Intra-regional Trade Is Particularly High in ASEAN's Largest Economies



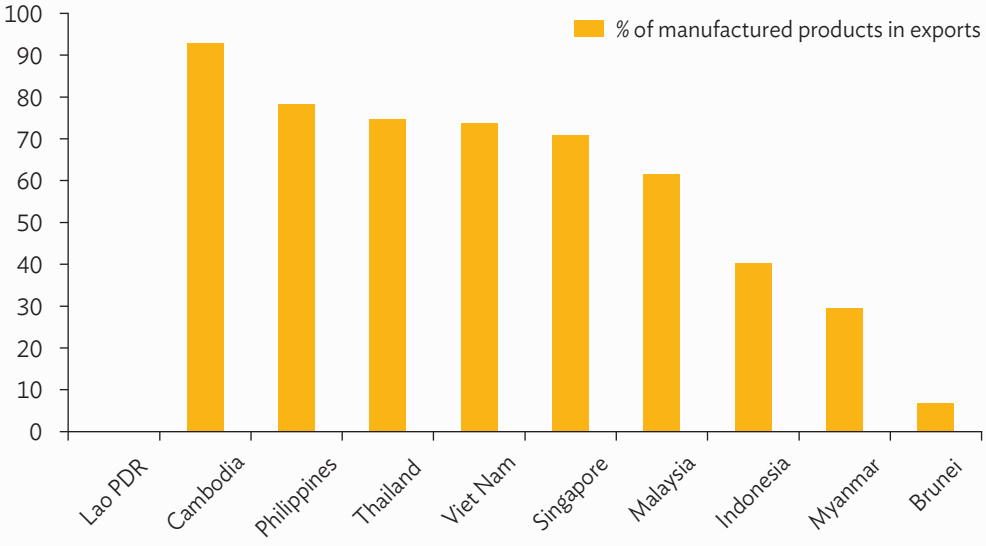
ASEAN = Association of Southeast Asian Nations; ASEAN-5: Indonesia, Malaysia, Philippines, Singapore, and Thailand. The 'China supply chain' category includes China, Republic of Korea (henceforth, Korea), Malaysia, Philippines, Taiwan, and Thailand.

Note: Share of intra-regional trade in total trade.

Source: Duval et al. (2014).

Regional integration in EAP has been largely driven by trade in manufactured products (Figure 2), as manufactured products account for over half of ASEAN member countries' exports except those with large hydrocarbon exports (Indonesia, Myanmar, and Brunei Darussalam).

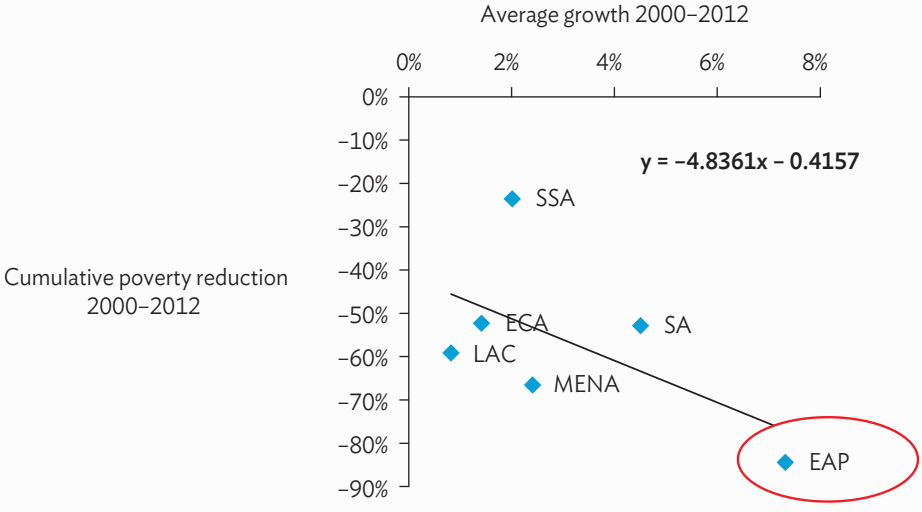
Figure 2: Manufactured Products Dominate ASEAN Exports



ASEAN = Association of Southeast Asian Nations.

Source: World Trade Organization (WTO) trade profiles 2015.

Figure 3: Growth and Poverty Reduction in EAP vs. Other Regions



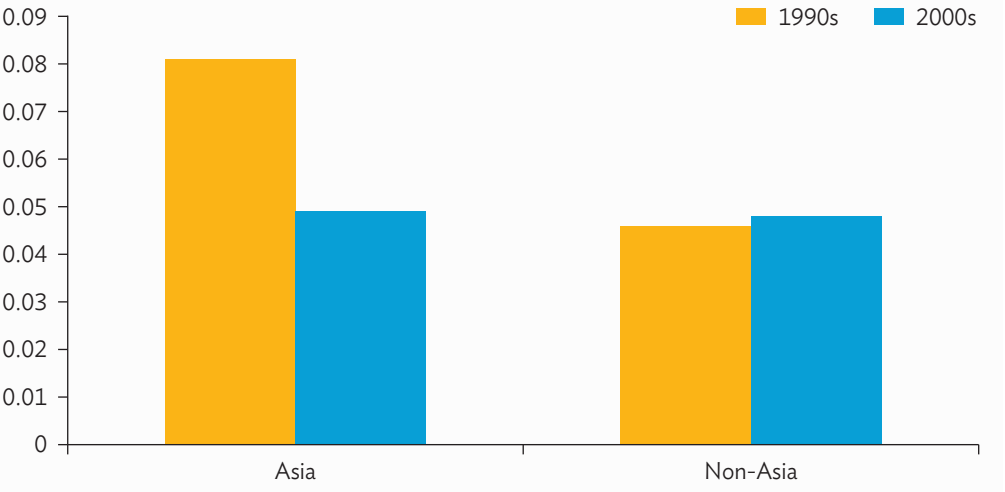
Note: Regions are defined according to the World Bank's classification: SSA = Sub-Saharan Africa; ECA = Europe and Central Asia; SA = South Asia; LAC = Latin America and the Caribbean; MENA = Middle East and North Africa; EAP = East Asia and the Pacific (Cambodia, China, Fiji, Indonesia, Kiribati, Korea, the Lao People's Democratic Republic, Malaysia, Marshall Islands, Federated States of Micronesia, Mongolia, Palau, Papua New Guinea, the Philippines, Samoa, Solomon Islands, Thailand, Timor-Leste, Tonga, Vanuatu, and Viet Nam.).

Sources: Cadot et al. (2015); original data from PovCalNet.

The large share of manufacturing in trade and production is a portent of long-term development and poverty reduction, as research shows that manufacturing value added has a high poverty-reduction power compared with value added in mining and even in agriculture. It is also a uniquely powerful vehicle for upward productivity convergence (Rodrik, 2013). Indeed, poverty reduction has been massive in EAP compared with other regions of the world (Figure 3).

Regional integration has also led to increased specialisation in the region. ASEAN's trade in manufactured products is largely driven by cross-border value chains, with multinational companies distributing productive tasks across countries according to comparative advantage. As a result of this distribution of tasks, each country in the region tends to produce and export what the country located at the next node of the value chain will buy for further transformation. The resulting trade structure is not a traditional 'intra-industry trade' and had led to increasing industrial specialisation at the country level in the region, shown in Figure 4 as a decreasing correlation in the specialisation of national trade structures. This has made each Asian economy increasingly interdependent, economically, with its regional partners.

Figure 4: The Correlation of Industrial Specialisations Has Decreased in Asia

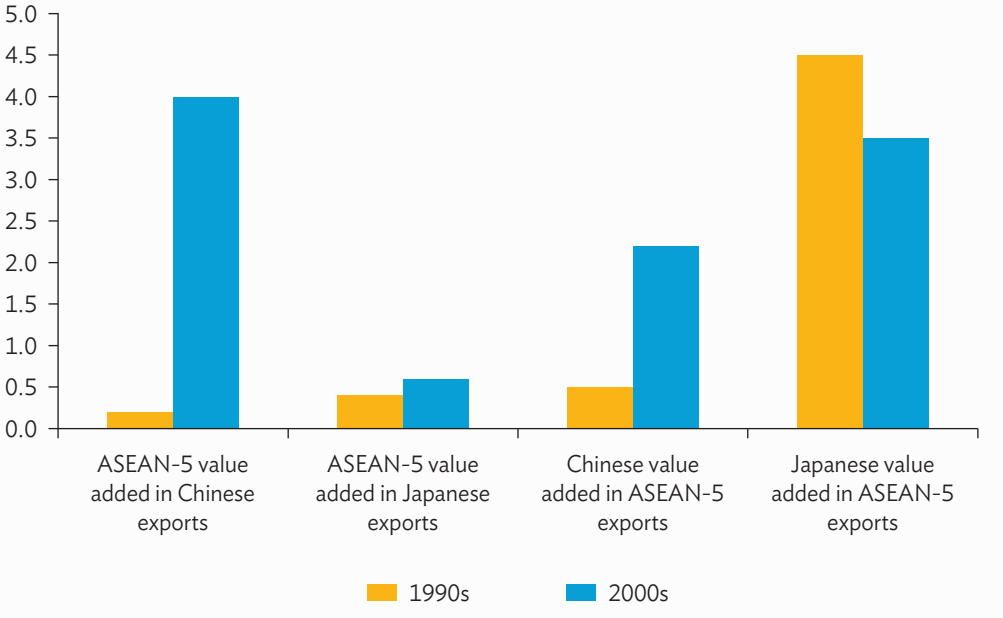


Note: Bar heights reflect a measure of the cross-country correlation of national export structures in terms of products. 'Asia' is according to the IMF classification (China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Philippines, Singapore, Taiwan, Thailand, Australia, and New Zealand).

Source: Duval et al. (2014).

This increasing specialisation has enhanced efficiency through the exploitation of comparative advantage. Whereas the distribution of productive tasks in manufacturing has taken the form of highly complex networks, the region's high-income countries (e.g. Japan) typically supply upstream capital-intensive and high-tech components. Low- or medium-income ones provide downstream assembly services, with a number of ASEAN countries in the middle of the value chains. The role of China in EAP value chains has been evolving in a non-conventional fashion. On one hand, the first two columns of Figure 5 show that it has established a very strong position as a downstream assembler of components exported by ASEAN-5 countries. On the other hand, the right-hand side of Figure 5 shows that it has also gained strength as an upstream component supplier, in particular relative to Japan. While the type of components and semi-finished products that China exports for assembly is clearly very different in terms of technology from what Japan exports, this trend is remarkable, reflecting the rise of China's technological and capital-intensive production capabilities. It is also quite relevant, as we will discuss further below in this chapter, for the textile industry where China is a large upstream producer.

Figure 5: Asia's Vertical Specialisation Patterns Reflect Comparative Advantage



ASEAN = Association of Southeast Asian Nations.

Note: The value added content in exports is expressed as a percentage of the exporter's GDP.

Source: Adapted from Duval et al. (2014), Figure 7.

This brief overview of some structural features of EAP trade highlights that regional integration in the EAP region has been efficient, driven by market forces; possibly as a result of this primacy of economics, it has delivered huge gains in terms of growth and poverty reduction compared with many politically driven South–South regional integration schemes. However, there is a flip side to the coin. Precisely because it has been, so far, largely driven by market forces, regional trade growth remains vulnerable to market shocks, which modern history shows can easily get out of hand in the absence of coordination mechanisms.

But Key Vulnerabilities Remain to be Addressed

For all the robust growth in EAP regional trade, further trade integration just cannot be taken for granted. First, world trade growth is structurally slowing down, a phenomenon called the 'Great Trade Slowdown' (Contantinescu et al., 2015). While the causes of this phenomenon are still poorly understood, statistical analysis suggests that, in many countries, each additional dollar of national income today generates less additional imports than in the 1990s (IMF, 2015).[2] The import slowdown is particularly marked for China, a key market for ASEAN exporters (Figure 6).

Second, in the absence of coordination arrangements for exchange rate and monetary policy, regional trade in the EAP region is also vulnerable to exchange rate shocks. For instance, between 2012 and 2014, under the effect of the Bank of Japan's monetary easing policy, the yen depreciated 40% against the dollar and 36% in nominal effective terms. While relieving pressure on the profit margins of Japanese exporters, the yen's depreciation negatively affected those of Korean firms exporting to Japan (IMF, 2014) and may well have affected, directly and indirectly, those of ASEAN exporters. Exchange rate shocks of such large magnitude create uncertainty for exporters and investors,[3] reducing incentives to invest in market penetration, and may even create a risk of competitive devaluations in the region.

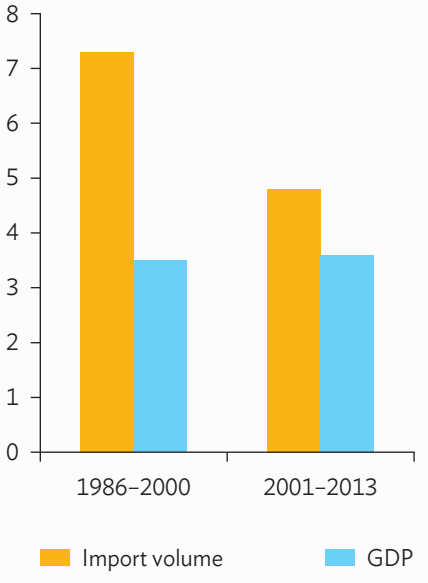
Third, in the (unlikely) event of a breakdown of goodwill in the region, World Trade Organization (WTO) disciplines could prove weak in the face of pressures for tit-for-tat trade protection measures. One reason is that most ASEAN countries have bound their tariffs at levels substantially higher than those currently applied, leaving room for discretionary changes (Baldwin, 2007). In addition to tariffs, NTMs can also play a substantial role as low-visibility trade barriers; as we will see further below, ASEAN has a stock of such NTMs that could potentially pose a threat to regional integration.

[2] In technical terms, the income elasticity of trade has shrunk from 1.59 on average for 1980–1998 to 1.16 for 2000–2014.

[3] On the effects of exchange rate volatility on trade and investment patterns, see Urata et al. (2008).

Figure 6: The Great Trade Slowdown

(a) Trade growth is slowing down globally



Note: Average annual growth of import volumes, by period, all countries.

GDP = gross domestic product.

Source: Adapted from Constantinescu et al. (2015).

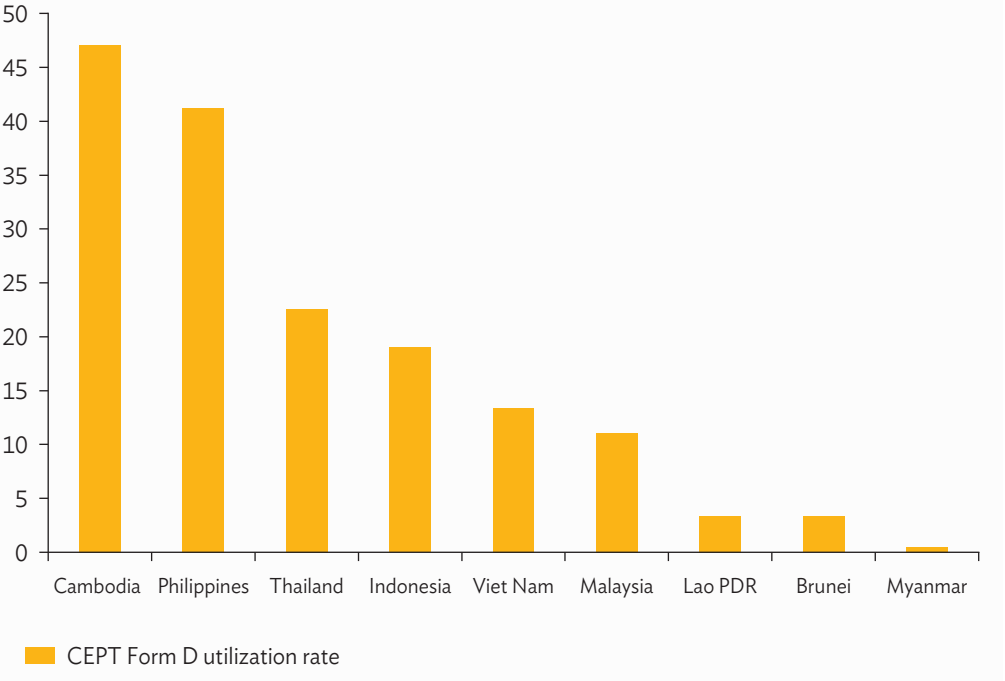
(b) China's absorption power for manufactured products is decreasing

Note: Share of manufactured product imports in GDP.

In the face of these economic vulnerabilities, EAP regionalism lacks a strong institutional anchor. In policy terms, regional integration in EAP is a relatively recent trend compared with other regions, dating back essentially to the post-2000 period (Baldwin and Kawai, 2013). Since then, trade agreements have proliferated, some with a number of so-called 'WTO+' features (features that go beyond multilateral commitments). ASEAN has emerged as the core of this complex web, with compliance with the main commitments of the ASEAN Trade in Goods Agreement (ATIGA) progressing on schedule – better than in many other regional blocs in the world, especially South–South ones – and intra-bloc tariffs largely eliminated since 2010. However, the 'noodle bowl' creates centrifugal forces, with competing integration arrangements such as the Trans-Pacific Partnership (TPP) and bilateral agreements with the European Union (EU), potentially creating policy or institutional inconsistencies to be sorted out.

In purely economic terms, despite progress in the implementation of its commitments, ATIGA's preferential trade regime does not seem to have been perceived by the private sector as very attractive, its utilisation rate appearing (on the basis of the limited data available) somewhat uneven (Figure 7).

Figure 7: ATIGA Preference Uptake Is Still Low in Many ASEAN Countries



ASEAN = Association of Southeast Asian Nations; ATIGA = ASEAN Trade in Goods Agreement; CEPT = Common Effective Preferential Tariff.

Source: Adapted from Das (2016), Table 4.2.

One must be careful in interpreting the low uptake of ATIGA preferences. To some extent, it reflects a rather desirable feature of EAP regionalism – that it is 'open regionalism' emerging against a background of openness to the outside world and generally moderate most-favoured-nation (MFN) tariffs. However, it also mechanically limits the possible depth of tariff preference margins and, therefore, their relative attractiveness. At the sectoral level, low uptake of preferences also reflects the already noted dominance of manufactured products, particularly high-tech ones such as electronics and machinery, where tariffs are typically moderate, in EAP trade. In other words, it reflects structural features of regional trade rather than simply ineffective design or implementation.

However, the low uptake of ATIGA preferences also reflects an unfinished trade facilitation agenda, with two issues sticking out. First, the EAP noodle bowl creates a conflicting and cumbersome environment in terms of RoO (Baldwin and Kawai, 2013; Ing and Cadot, 2016; Inama and Sim, 2016). Second, NTMs, on which information is sometimes difficult to find for private sector operators (especially small and medium-sized enterprises), fragment markets and generate a regulatory burden that raises production and distribution costs. We now turn to a more detailed analysis of these two key issues and to a discussion that could put forward practical initiatives to tackle them effectively.

Streamlining Rules of Origin in the EAP Region

Trade facilitation is not just about reducing cross-border transaction costs: it is about reducing the vulnerability of the region's unique network production structure to economic shocks and strengthening coordination, safeguards, and policy response mechanisms, particularly in the key areas of RoO and NTMs. We start with RoO and show that the issue of RoO streamlining must be considered jointly with that of market access.

ASEAN's Rules of Origin: Simple on Paper, Complicated in Practice

On paper, the ATIGA's RoO have a relatively simple structure compared with other systems such as the North American Free Trade Agreement (NAFTA) or Pan-Euro. ATIGA RoO rely primarily on a regional value content, and the importer can in some cases choose which rule to use amongst two alternative ones, like a value content or a change of tariff classification. The most prevalent combination of instruments is a choice between a 40% regional value content and a change of tariff heading (about a third of all products) or a change of tariff sub-heading (6% of all products).

However, in spite of their apparent simplicity, ATIGA's RoO seem to have substantial trade-inhibiting effects, with recent research putting their ad-valorem equivalent (AVE) at about 3.40% (Ing and Cadot, 2016). This means that RoO inhibit ASEAN's trade by an amount roughly equivalent to one quarter of its MFN tariffs. Put differently, RoO seem to 'nullify' one quarter of the effect of tariff-preference margins. The trade-inhibiting effect of ATIGA's RoO varies substantially across sectors (Table 1), with implications that differ across member states. Whereas effects are typically small in sectors such as electronics or capital equipment where MFN tariffs are low, they seem much larger in sectors like fats (6.7%), leather products (9%), textile and apparel (8.3%), or footwear (12.7%). An analysis by instrument confirms that the 'textile rule' appears to be the most penalising of all RoO (Ing and Cadot, 2016).

Table 1: Average AVEs for all RoO Instruments, by Section

Section	Summary Description	Average AVE (%)	Trade Weights a/
1	Live animals; animal products	–	
2	Vegetable products	1.91	2.61
3	Animal or vegetable fats	6.67	0.58
4	Food, beverages, and tobacco	1.73	3.05
5	Mineral products	1.52	19.59
6	Products of the chemical or allied industries	3.50	9.70
7	Plastics and articles thereof; rubber and articles thereof	1.87	4.63
8	Leather and leather products	9.05	0.60
9	Wood and articles of wood	–3.20	0.77
10	Pulp and paper	4.98	1.75
11	Textile and apparel	8.29	4.06
12	Footwear	12.67	0.77
13	Cement, glass, and stone	2.42	0.93
14	Precious metals and stones	3.81	2.97
15	Base metals and articles of base metal	–0.46	7.77
16	Machinery and electrical equipment	–0.36	25.89
17	Vehicles	6.89	8.99
18	Precision instruments, optics, watchmaking	3.34	3.33
19	Arms and ammunition; parts and accessories thereof	–	–
20	Miscellaneous manufactured articles	–3.37	1.99
21	Works of art, collectors' pieces and antiques	–	
Average (%)			
	Simple	**3.40**	
	Trade-weighted		**2.09**

AVE = ad-valorem equivalent; RoO = Rule of Origin.

Note: Trade weight calculated using world trade, following Leamer (1974), averaged over 2010–2011. Only Sections where RoD AVEs are significant used in their calculations; Section 1 omitted because entirely covered by 'wholly obtained' rule.

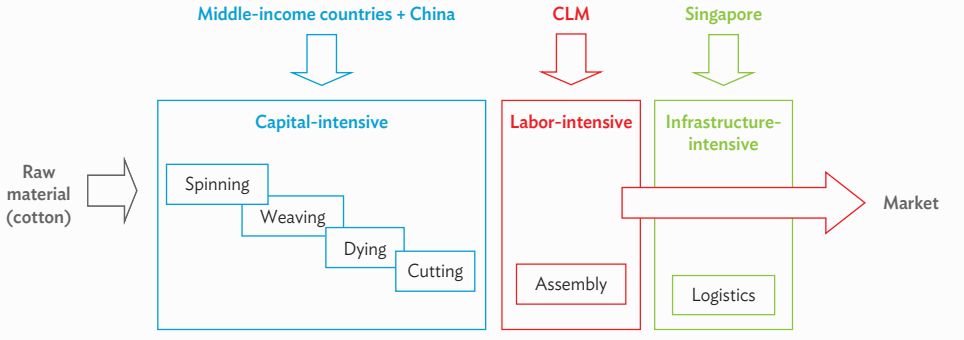
Source: Ing and Cadot (2016).

As discussed by Baldwin and Kawai (2013) and, more recently, by Inama and Sim (2015), RoO in the EAP region also suffer from fragmentation and a lack of consistency, part of the noodle bowl syndrome. In addition to its own syndromes, the EAP region's strong trade linkages with the global economy expose it to the inconsistency of RoO models in the world's big blocs. Irrespective of the inherent stringency of RoO, such inconsistencies will impose a burden on producers in terms of both production design and documentation that could be reduced by coordination and streamlining.

Going Forward

To identify the right direction where to push RoO streamlining, one must first understand how, in their current form, they risk distorting production and investment decisions in ways that could prove dangerous for the industrial development in developing countries. For that, one needs to go back to the issue of how production networks are designed. We saw in Section 1 of this chapter that the typical trade pattern in the region, based on comparative advantage, is one where medium- or high-income countries tend to specialise in the upstream (component manufacturing) part of value chains while low-income ones, which have the lowest labour costs, tend to specialise in the downstream (assembly) part. Figure 8 illustrates the generic value chain of a cotton shirt. Upstream operations such as spinning (which produces yarn) and weaving (which produces fabric) are intensive in capital and energy. They are best located in middle-income countries with strong access to capital markets and a good energy infrastructure; China has also positioned itself as a major player in that segment where its giant factories reap economies of scale. The same applies to dying and cutting, which is increasingly done with high-tech laser-guided machinery to meet the buyers' precise specifications. By contrast, assembly operations display little or no economies of scale and require competitive labour costs but little upfront investment or energy.

Figure 8: Comparative Advantage Along a Cotton Shirt's Value Chain



CLM = Cambodia, the Lao People's Democratic Republic, and Myanmar.
Source: Author.

China has a very large garment assembly activity; it is strong at both ends of the value chain due to its size and internal diversity. However, rising labour costs are rapidly eroding its cost competitiveness in the downstream segment of the value chain, generating incentives for producers to offshore production to low-income countries with

lower labour costs. Southeast Asian countries stand to benefit massively in terms of jobs, growth, and poverty reduction from this opportunity, but wrong incentives could also thwart their ability to reap those benefits.

To be attractive as assembly platforms to investors, countries in the downstream part of the value chain need not only competitive labour costs: They also need (i) preferential access to developed markets and (ii) unrestricted access to the semi-finished products to be assembled, which they must import from countries that produce them competitively. This is where the combination of complex regional arrangements and RoO can play a possibly perverse role.

To see this, consider the problem of an investor wanting to export garments from Viet Nam to the United States. For the garments to be eligible for preferential access to the United States market, the investor must be able to procure eligible yarn, then fabric, to produce the garments. Chinese-made yarn will not be eligible, so one possible alternative will be to set up integrated textile-garment production (all the way down from the yarn to the garments) in Viet Nam. Such a business decision can make sense, irrespective of RoO, to facilitate coordination and quality control all along the value chain; what matters for us is that it is a largely irreversible one, as capital-intensive spinning–weaving operations cannot be moved easily.

Consider now the CLM countries (Cambodia, the Lao PDR, and Myanmar) as an alternative platform for garment assembly. Without preferential access to either United States or EU markets – beyond the shallow preferences of the General Scheme of Preferences (GSP) – their attractiveness is limited. Thus, the CLM countries are likely to remain dependent on imported yarn and fabric for a while; but then, under current RoO, even if they had preferential access to United States or EU markets, eligibility would be a problem. Thus, the CLM countries are doubly penalised: (i) by lack of strong, preferential access to Organisation for Economic Co-operation and Development (OECD) markets; and (ii) by RoO that are, de facto, more penalising for them than for Viet Nam given their economic environment. In other words, the combination of current market-access arrangements and RoO could result in the agglomeration of an increasingly powerful and concentrated textile-garment cluster in Viet Nam (already a powerhouse in that sector), at the expense of CLM countries left 'in the dark', with potentially adverse consequences for the balanced development of the Mekong subregion.[4]

[4] This syndrome could be even amplified under a Viet Nam–EU Free Trade Agreement involving cumulation with Korea, i.e. granting eligible treatment to garments assembled in Viet Nam from Korean fabric.

To promote a better and more balanced trade-led development strategy for the region, policymakers should focus on two key issues: forward and backward linkages. In terms of forward linkages, as the CLM countries are, by their comparative advantage, the ones located downstream in the textile-garment value chain, they have the most to gain from preferential access to EU markets, beyond the current GSP's shallow preferences. In terms of backward linkages, ASEAN needs RoO to allow for the export of garments assembled from fabric produced in countries where they can be produced at competitive costs. This requires so-called 'cumulation' rules to allow fabric produced, say, in Viet Nam, to be assembled into garments in CLM countries and exported to OECD markets under substantial tariff-preference margins.

From Trade Facilitation to Deep Integration

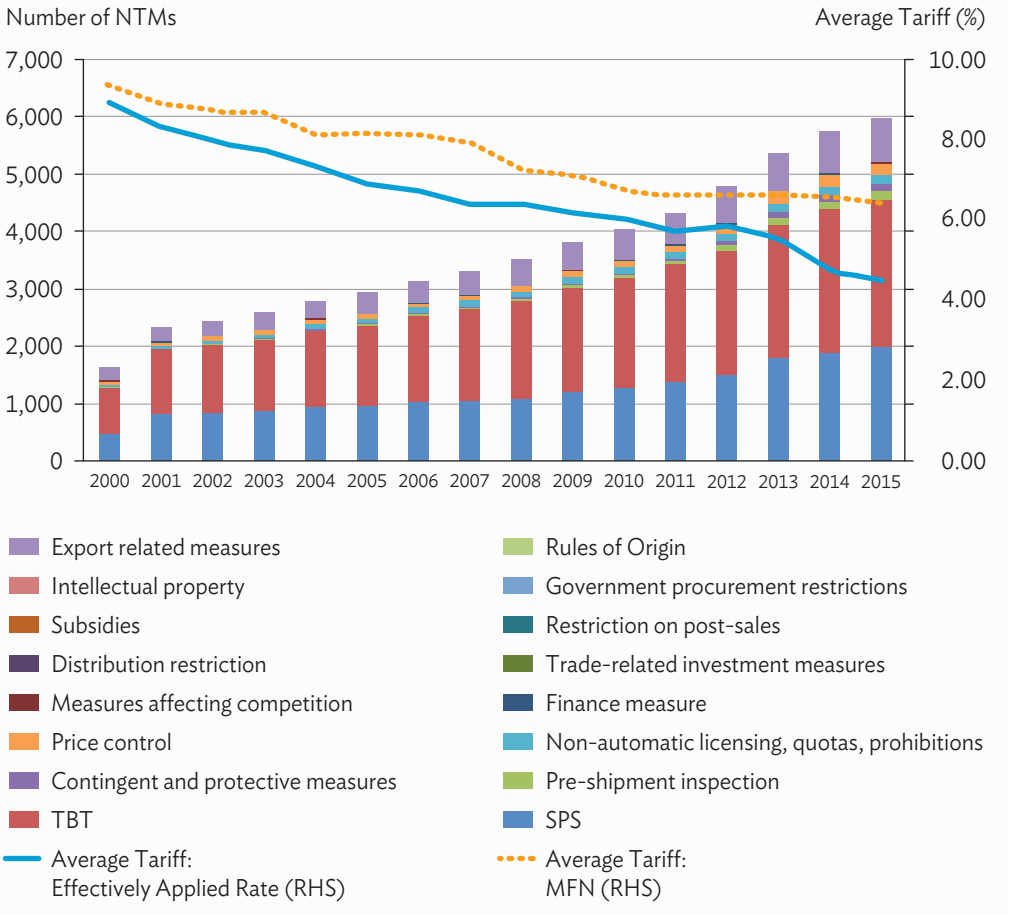
We now turn to the second key trade-facilitation issue faced: non-tariff measures (NTMs). While many NTMs stem from non-trade policy objectives (for example, food safety or environmental protection), they can also be used as instruments of commercial policy; even NTMs pursuing legitimate, non-trade objectives can have restrictive or distortionary effects on international trade. Thus, they are at the core of ASEAN's trade-facilitation agenda.

NTMs Generate Business Costs but Respond to Societal Demands

While tariffs were successfully phased out in ASEAN, NTMs tended to proliferate (Figure 9), creating a risk that one type of barrier substitutes for another with little net gain in terms of trade facilitation.

The costs imposed by NTMs on businesses are of three sorts: enforcement, sourcing, and process adaptation. First, enforcement costs relate to the effort that private companies must expend to show compliance with NTMs. Because these costs are largely fixed, they weigh more heavily on small firms than on larger ones. They might also weigh more heavily on foreign firms less familiar with local administrative processes, although foreign firms tend to be larger ones that can purchase legal and/or consulting assistance locally. Thus, through enforcement costs, NTMs may affect differentially local vs. foreign firms and small vs. large ones. Second, sourcing costs are generated by the switch from low-grade intermediate sources to high-grade ones to meet NTM standards. A given standard can have different effects depending on products and users. Last, process-adaptation costs relate to changes in capital equipment needed to meet NTM standards. For instance, dairy standards force farmers to buy expensive equipment to ensure that milk is not contaminated by bacteria before being pumped

Figure 9: NTM Proliferation in ASEAN



ASEAN = Association of Southeast Asian Nations; NTM = non-tariff measure; RHS = right hand side; SPS = sanitary and phytosanitary; TBT = technical barriers to trade.

Source: Ing et al. (2016).

into tank trucks. Investment in compliant capital equipment typically also requires the upgrading of operator skills. Process-adaptation costs are essentially fixed costs and, therefore, affect small firms more than larger ones.

These costs are compounded when NTMs lack transparency, as uncertainty or lack of understanding can lead to costly business decisions, in particular when choices of machinery and capital equipment, which are typically irreversible, are involved. Beyond direct trade-facilitation gains, better transparency in NTMs is the best guarantee against capture by special interests. In the following section, we propose a feasible approach to promote progress in NTM transparency.

Striving for NTM Transparency

Transparency rests on two pillars: accurate data and open dissemination. In the area of NTMs, both have been lacking until recently, but the landscape is rapidly changing, in particular in the EAP region, under the impulse of a cooperative project led by ERIA in collaboration with UNCTAD, WTO, and the World Bank. In the last decade, UNCTAD has led a conceptual effort to classify all NTMs according to a clear and exhaustive nomenclature, the Multi-Agency Support Team (MAST), which was adopted in 2012 by the WTO for sanitary and phytosanitary measures and technical barriers to trade notifications and is, therefore, now the authoritative international NTM nomenclature (Table 1).

Based on this, UNCTAD has since then led, together with the World Bank, an effort to encourage all countries to collect NTM inventories based on it. While coverage and collection approaches were initially haphazard, they have progressively converged to a uniform template. In ASEAN, ERIA in 2015 took the responsibility of an exhaustive and consistent NTM data collection project that has now produced data for all 10 ASEAN member countries. The data take the form of national inventories of all NTMs and all products covered by each NTM, at the most detailed level (up to 64 types of measures and national tariff lines at HS-8 digit for most of ASEAN countries, HS-9 digit for Malaysia, and HS-10 digit for Indonesia).

Table 2: The MAST NTM Classification

Imports	Technical measures	**A** Sanitary and Phytosanitary Measures **B** Technical Barriers to Trade **C** Pre-shipment Inspection and Other Formalities
	Nontechnical 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

MAST = Multi-Agency Support Team; NTM = non-tariff measure; SPS = sanitary and phytosanitary; TBT = technical barriers to trade.

Source: UNCTAD (2012).

National NTM inventories are all based on legal texts and can be exploited statistically to understand what sectors are affected and what trade or non-trade purposes are pursued by NTMs (for a preliminary analysis, see Ing et al., 2016). Most importantly, they can serve as entry points to more detailed regulatory information, including business-relevant provisions, processes, workflows, and relevant official forms. For this, two conditions must be met. First, the data must be updated as frequently as possible (if possible in real time, and at the very least once a year). Second, the data and deeper regulatory information must be made readily available on each country's trade portal. The WTO's Trade Facilitation Agreement (TFA) mandates that all WTO members must maintain trade portals with the basic information that importers need. A 'WTO+' reading of the TFA would make the trade portal the natural repository of all information on NTMs, based on the data that was initially collected by ERIA. For this, countries should designate focal points in charge of updating regulatory information from the various ministries and agencies involved.

The key challenge facing past transparency efforts at both multilateral and regional levels is one of incentives, as countries typically do not want to expose themselves to criticism by betraying excessive and possibly protectionist regulatory activism. While the WTO's notification mechanism has not been very successful in ensuring compliance, regional groupings such as ASEAN could be more successful in overcoming incentive problems through a permanent 'beauty contest' whereby countries are scored in terms of transparency. Recent research (Ing, Cadot, and Walz, 2016) provides a conceptual blueprint of how to rank countries formally in terms of their transparency to reward the most transparent and expose the least ones.

From Transparency to 'Dynamic Disciplines'

As discussed earlier in this chapter, beyond transparency and direct trade costs, NTMs, left unchecked and subjected to limited multilateral disciplines, pose a potential threat to the stability of EAP's regional trading environment. Yet, at the same time, NTMs are not just trade-policy instruments that can be negotiated down like tariffs; in fact they should not, as they often serve legitimate non-trade objectives. Negotiating down the stringency of pesticide residue regulations in fruits and vegetables to facilitate trade would not only be doomed politically: it would make little sense.

Although NTM streamlining at the regional level could easily be viewed as a key part of any trade-facilitation agenda, paradoxically the issue should not be approached through a trade angle. There are two reasons for this. First, as already mentioned, watering down consumer protection for the sake of more trade makes little sense. There is a second reason as well. If governments see NTM streamlining as concessions to their

partners, they will strategically wait for reciprocal concessions to be made. But there can be no simple 'formula' to negotiate down NTMs, which are often both indivisible and multiform, and their socially optimal stringency varies according to income levels; so there can be no real reciprocity. Regional bargaining on NTMs is doomed by design, and the most likely outcome is deadlock; for instance, recent attempts in East Africa (Common Market for Eastern and Southern Africa [COMESA], East African Community [EAC], and South African Development Community [SADC]) have failed to translate into action, while Mercosur has also had limited success in eliminating NTBs (Kreinin and Plummer, 2002).

Instead, what we propose here is to approach NTM streamlining through the angle of national regulatory-improvement agendas. Even when NTMs are not hijacked by special interests for protectionist purposes, NTMs are often poorly designed because authority over them is fragmented between agencies and ministries with narrow mandates and no formal mechanisms to internalise 'spillovers' from one area to another (say, from consumer protection to industrial competitiveness). As a result, conflicts between ministries tend to be resolved by political horse-trading with outcomes that are not socially optimal.

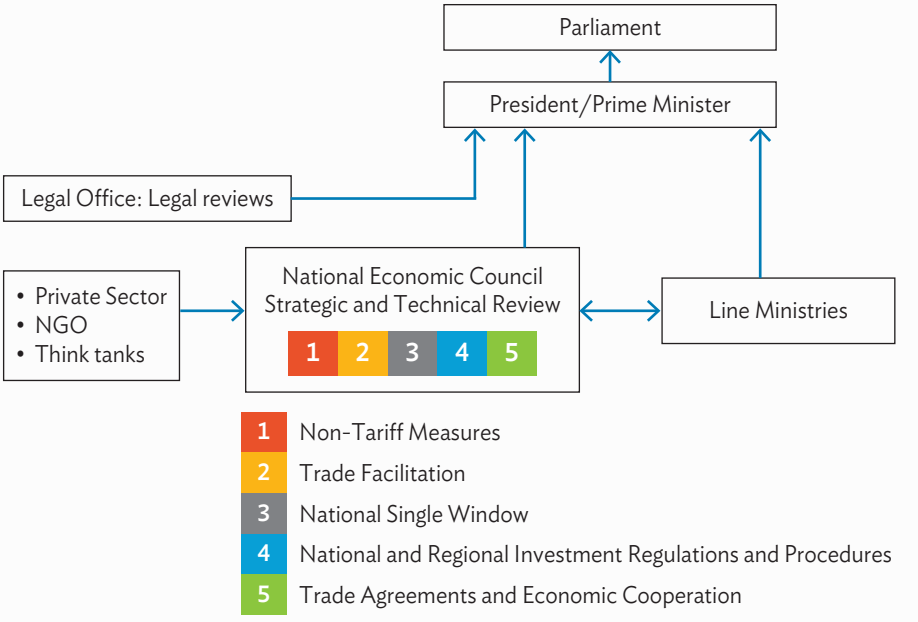
What we propose here could offer a blueprint for an ASEAN-wide approach to regulatory improvement. Taking a 'WTO+' reading of the TFA, depending on national circumstances, these NTM committees are divisions of trade facilitation, NTMs, national single window, investment procedure and regulations, or free trade agreements and/or economic cooperation committees, bringing together representatives of relevant line ministries. Crucially, the committees are endowed with technical staff capable of performing analytical reviews and producing recommendations for regulatory reforms to be submitted to high-level arbitrage. The analytical work of NTM committees has already produced very substantial reforms, such as Myanmar's major overhaul of its import-licensing regime.

The proposed set-up is illustrated in Figure 10, taken from Ing et al. (2016), where the proposed regulatory supervision body is called a 'National Economic Council' (the name can vary according to national circumstances). The left-hand side of the figure shows the entry points into the process, which may include private-sector complaints, non-governmental organisations' petitions, and other segments of civil society. It is also important that the National Economic Council be allowed to seize cases on its own initiative, particularly in the early stages of its life where it may have low visibility and private-sector complaints may be slow to come. The upper part of the figure shows higher levels (for example, the office of the president or prime minister), which may be where all reviews and decisions on trade and investment policy and

regulations will be agreed and set. Colour codes illustrate possible areas of National Economic Council competence, although more can be included.

Although our proposal means taking back the issue of NTM streamlining at the country level, there could be tremendous gains in terms of regional trade facilitation if it was promoted as an ASEAN-wide approach. Similar regulatory-supervision bodies created in all 10 ASEAN member countries could share staff training (with assistance from the ASEAN Secretariat and development partners), leading to soft regulatory convergence based on shared review methods and concepts. This would facilitate regulatory cooperation between member countries at the technical level, with technical staff sharing information and resolving issues below the media-political radar screen before they become friction points. Such informal technical cooperation was the hallmark of Franco-German cooperation in the early days of European integration and proved a powerful engine of convergence and reduction of friction, something that is lacking in ASEAN and could be particularly beneficial given the relative lack of political drive for integration compared with post-war Europe.

Figure 10: Proposed Institutional Setup



NGO = non-governmental organisation.
Source: Ing et al. (2016).

In the medium term, regulatory supervision bodies could and should be merged with antitrust bodies. There are conceptual, practical, and political reasons why such a merger would make sense. First, at the conceptual level, monopolies often need regulatory-sanctioned barriers to entry to persist, while economically toxic NTMs are often those that create monopolies, so the issues are largely intertwined and should be examined jointly. Second, at the practical level, the skills needed to perform regulatory and antitrust reviews are the same, essentially law and industrial economics; so there is a clear case for 'economies of scope' in terms of staff skills and use. Third and lastly, at the political level, both regulatory and antitrust supervision necessarily involve battles that can be won only with credibility and clout. Our third recommendation is to promote the simultaneous creation of a regulatory supervision body as an original and innovative road map to the thorny issue of NTM streamlining at the regional level.

Summary of Recommendations

To sum up, this chapter recommends:

- The creation of an RoO task force at the ASEAN level with a mandate to review the 'noodle bowl' of RoO and formulate recommendations for its streamlining, taking into account the crucial linkages between the region's market-access strategy with major developed country markets and the needs of balanced regional development;
- The creation of an institutional mechanism at the ASEAN Secretariat to foster NTM transparency through continuous NTM data collection and dissemination and the setting up of a 'stick and carrot' mechanism, which could perhaps be linked to trade facilitation fund allocation, in terms of NTM transparency based on methodologies proposed in recent research;
- The promotion of regulatory supervision bodies in all ASEAN member countries, each with a mandate to review and improve key business-relevant regulations.

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