

Chapter 12

Non-tariff Measures in Viet Nam

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CHAPTER 12

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1. Introduction

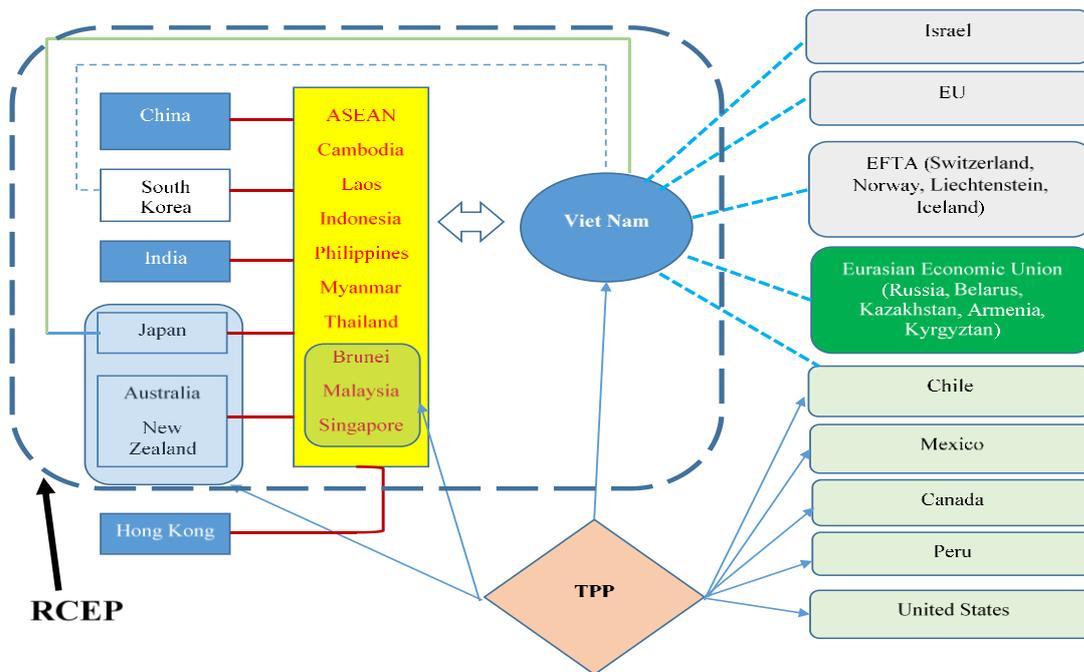
Viet Nam has embarked on comprehensive reforms since 1986, focusing on three pillars: (i) macroeconomic stabilization, (ii) market-oriented reforms, and (iii) pro-active economic integration. Since 2000, the economic integration process has accelerated.

Alongside increasing integration, Viet Nam has also phased out tariff barriers to trade, with import tariffs reduced under most integration arrangements. Under the World Trade Organization (WTO), average bound tariffs dropped sharply, from 17.4 percent in 2005 to 14.2 percent in 2007 and are set to remain stable at 13.4 percent until 2023. This is also the highest level of bound tariff rates for Viet Nam. Tariffs fell most sharply under the Association of Southeast Asian Nations (ASEAN) Free Trade Area (AFTA) framework, with the bound rate decreasing from 6.7 percent in 2005 to below 2.8 percent in 2007 and set to fall to 2.5 percent in 2023. Reduction of bound tariff rates was more gradual under the ASEAN–China FTA (ACFTA), the ASEAN–Korea FTA (AKFTA), and the ASEAN–Japan Comprehensive Economic Partnership (AJCEP), though the pace of reduction has been faster since 2015.

⁴⁵ This research was conducted as a part of the project of the Economic Research Institute for ASEAN and East Asia (ERIA) and the United Nations Conference on Trade and Development (UNCTAD) 'NTMs in ASEAN'. The authors would like to express appreciation to both ERIA and UNCTAD for constructive guidance and thoughts. The authors are deeply indebted to the members of this project for their invaluable suggestions. The opinions expressed in this paper are the sole responsibility of the authors and do not reflect the views of ERIA or UNCTAD or the Central Institute for Economic Management.

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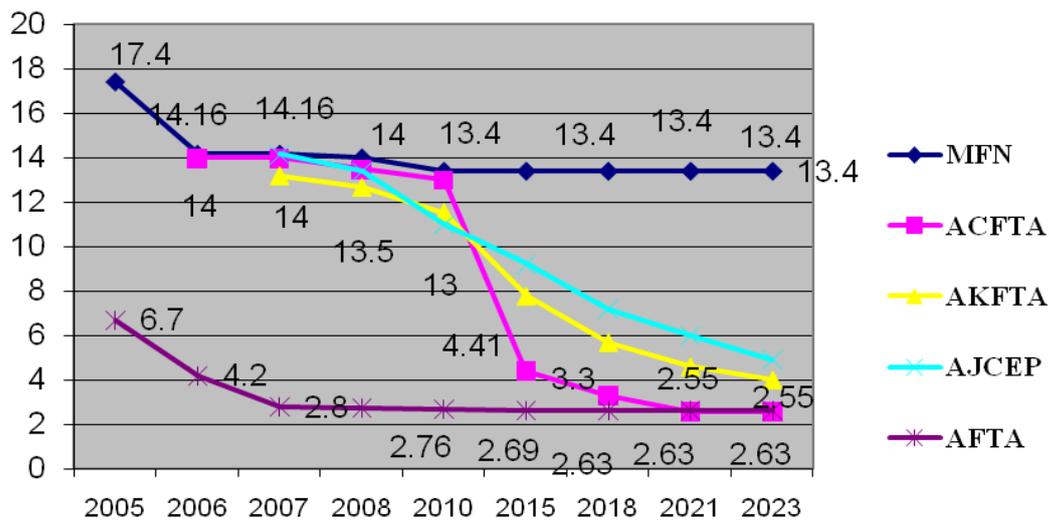
Figure 12.1: Signed and Pending Free Trade Agreements of Viet Nam



Note: ASEAN = Association of Southeast Asian Nations; EFTA = European Free Trade Association; EU = European Union; FTA = free trade agreement; RCEP = Regional Comprehensive Economic Partnership; TPP = Trans-Pacific Partnership.

Source: Central Institute for Economic Management (2015).

Figure 12.2: Tariff Reductions under Some Free Trade Agreements, Viet Nam



Note: FTA = free trade agreement; MFN = most-favoured-nation tariff (for all WTO members); ACFTA = ASEAN–China FTA; AKFTA = ASEAN–Korea FTA; AJCEP = ASEAN–Japan Comprehensive Economic Partnership; AFTA = ASEAN Free Trade Area.

Source: Truong et al. (2011).

As tariffs are gradually phased out, non-tariff measures are attracting more and more attention, alongside other issues such as trade facilitation and reducing unnecessary burdens

on business. This is because non-tariff measures (NTMs), given their incorporation into various regulations and policies that have implication for flows of goods both at-the-border and behind-the-border, may still restrict trade flows into Viet Nam from other countries. In turn, consumers may not be able to consume their preferred products from overseas and importers may face higher compliance costs when importing intermediate products for further processing in Viet Nam. Conversely, the presence of NTMs may also serve specific purposes that can be justified, such as protection of domestic consumers' health and local biodiversity.

NTMs are defined as '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, 2012). The definition of NTMs is thus quite broad. Unlike NTMs, non-tariff barriers (NTBs) refer to restrictions that '...result from prohibitions, conditions, or specific market requirements that make importation or exportation of products difficult and/or costly' (Nguyen and Dang, 2014). NTBs arise from different measures taken by governments and authorities in the form of government laws, regulations, policies, conditions, restrictions or specific requirements, and private sector business practices, or prohibitions that protect the domestic industries from foreign competition. Thus, NTBs constitute a subset of NTMs and the *a priori* distinction of NTBs from NTMs should be avoided.

This chapter revisits NTMs in Viet Nam, focusing exclusively on the types of NTMs that originate from Vietnamese regulations and policies. Such NTMs may have implications for imports of goods into Viet Nam, as well as for exports of goods by Vietnamese exporters. Hence, we ignore the possible NTMs in overseas markets that Vietnamese exporters may face when selling their products. As we focus only on the types of NTMs that are in force, we leave aside the possible trade effects of such NTMs.

Being an economy in transition from a central planning regime to a market mechanism during the past three decades, Viet Nam has only had relatively limited experience with instruments of trade and trade-related policies. Most of this experience can be summarized with the use of three types of instruments: (i) trading rights, (ii) non-tariff barriers, and (iii) trade-related investment measures. More recently it has also included prohibitions and/or restrictions of trade of selected products due to Viet Nam's participation in various international conventions.

The remainder of this chapter is structured as follows. Section 2 summarizes the key aspects of NTMs in Viet Nam. Section 3 draws out some key lessons from identifying NTMs in

Viet Nam. Finally, section 4 makes some recommendations related to identifying and stocktaking NTMs in Viet Nam.

2. Key findings of non-tariff measures in Viet Nam

2.1. Classification of identified non-tariff measures by type

Table 12.1 describes the comprehensiveness of the NTM database for Viet Nam. Accordingly, all products at the 8-digit HS level are subject to some NTMs. The NTMs were sourced from 121 regulations, and just over one-third were actually in the WTO database.

Table 12.1. Comprehensiveness of Database

No.	Comprehensiveness	Number
1	Total number of coded regulations	121
2	Total number of NTMs reported to the WTO	142
3	Total number of coded NTMs	379
4	Total affected products (HS lines, national tariff lines)	
	a. Total number of affected products ^a	9,558
	b. Share of the number of affected products to the number of total products ^b	100%
5	Total number of 'regulatory agencies'	15

HS = Harmonized System; NTM = non-tariff measure; WTO = World Trade Organization.

Note: a. A product may be affected by more than one measure, but the same HS-coded product will be counted as one product, e.g., HS 840731 has three NTMs; it will be counted as 'one affected product'.

b. Viet Nam adopts the HS-8 digit at national tariff lines and has 9558 tariff lines.

Source: Authors' calculation based on the newly constructed 2015 NTM database ASEAN-ERIA-UNCTAD raw data.

Table 12.2 presents the documented NTMs by type. Viet Nam has completed phasing out all trade-related investment measures to attract foreign investment. Accordingly, there is no documented NTM under Chapter I – Trade-related investment measures (as per the UNCTAD classification). The NTMs under Chapters K to O are excluded from the analysis, so they are not documented in Table 12.2.

As can be seen, sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT) constitute the most popular NTMs in Viet Nam. Each of these codes accounted for almost 37.5 percent of NTMs that were identified in the process. Altogether, SPS and TBT measures already make up three quarters of NTMs in Viet Nam; export-related measures rank third with 63 measures (or 16.6 percent).

Table 12.2. Summary of Non-tariff Measures by Type

Code	NTM by Type	Number of NTMs	%
A	Sanitary and phytosanitary (SPS) measures	142	37.5
B	Technical barriers to trade (TBT)	142	37.5
C	Pre-shipment inspection and other formalities	5	1.3
E	Non-automatic licensing, quotas, prohibitions, and quantity control measures other than SPS or TBT reasons	9	2.4
F	Price control measures including additional taxes and charges	7	1.8
G	Finance measures	2	0.5
H	Measures affecting competition	8	2.1
J	Distribution restrictions	1	0.3
P	Export-related measures	63	16.6
Total		379	100

Source: Authors' calculation based on the newly constructed 2015 NTM database ASEAN-ERIA-UNCTAD raw data.

SPS measures account for 37.5 per cent of the coded NTMs. The most popular ones are authorization, testing, and certification. Once authorized, the relevant ministry will issue a document listing the products and/or breeds authorized for import and use in Viet Nam, which makes it easy to misunderstand that the NTM works under a positive-list approach. The reviews also show that there are frequent changes in the SPS regulations of the responsible ministries (in fact, some regulations received critical feedback from business and had to be amended/delayed, such as the ice-glazing ratio on fishery products).

2.2. Classification of non-tariff measures by issuing agency

Table 12.3 tabulates the number and share of NTMs by issuing agency.

Table 12.3. Summary of Non-tariff Measures by Issuing Agency

Issuing agency	Number of NTMs	%
Ministry of Industry and Trade	32	8.4
Ministry of Transport	8	2.1
Ministry of Science and Technology	4	1.1
Ministry of Agriculture and Rural Development	130	34.2
Ministry of Finance	16	4.2
Ministry of Natural Resources and Environment	2	0.5
Ministry of Information and Communication	4	1.1
Ministry of Construction	6	1.6
Ministry of Health	63	16.6
Government	70	18.5
National Assembly	25	6.6
General Department of Customs	1	0.3
General Department of Quality Measures	2	0.5
Prime Minister	1	0.3
Standing Committee of National Assembly	15	4.0
Total	379	100

Source: Authors' calculation based on the newly constructed 2015 NTM database ASEAN-ERIA-UNCTAD raw data.

Table 12.4 goes into greater detail by summarizing the number and share of SPS, TBT, and export-related measures by issuing agency.

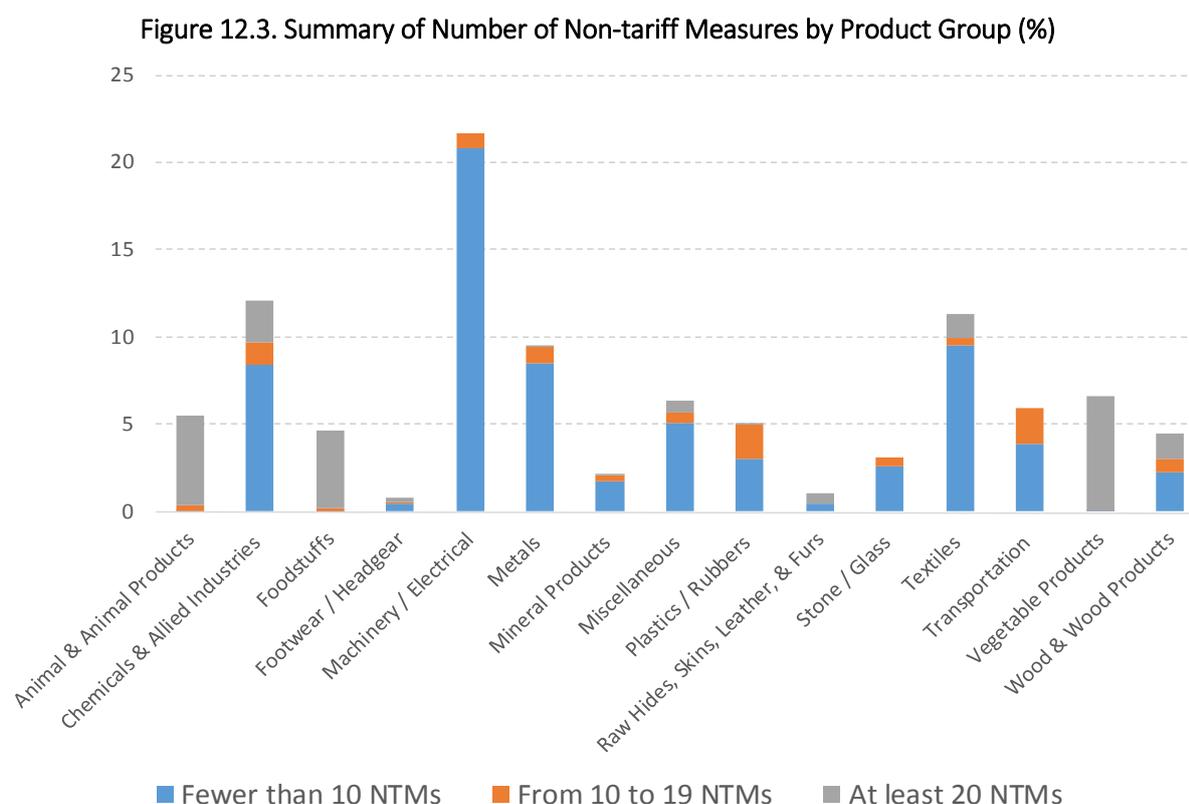
Table 12.4. Classification of Sanitary and Phytosanitary, Technical Barriers to Trade, and Export-related Measures by Issuing Agency

	SPS		TBT		Export-related Measures	
	Number	Share (%)	Number	Share (%)	Number	Share (%)
Ministry of Industry and Trade	8	5.6	11	7.7	4	6.3
Ministry of Transport	0	0.0	8	5.6	0	0.0
Ministry of Science and Technology	0	0.0	3	2.1	0	0.0
Ministry of Agriculture and Rural Development	66	46.5	31	21.8	32	50.8
Ministry of Finance	0	0.0	4	2.8	5	7.9
Ministry of Information and Communication	0	0.0	3	2.1	1	1.6
Ministry of Construction	0	0.0	5	3.5	0	0.0
Ministry of Health	30	21.1	30	21.1	1	1.6
Government	16	11.3	31	21.8	15	23.8
National Assembly	11	7.7	13	9.2	1	1.6
General Department of Quality Measures	0	0.0	2	1.4	0	0.0
Prime Minister	0	0.0	1	0.7	0	0.0
Standing Committee of National Assembly	11	7.7	0	0.0	4	6.3
Total	142	100	142	100	63	100

Source: Authors' calculation based on the newly constructed 2015 NTM database ASEAN-ERIA-UNCTAD raw data.

2.3. Products affected by non-tariff measures

Another aspect of NTMs that deserves attention is the scope of affected products. One way to do so is to calculate the number of NTMs applied in each product code/category. The proportion of NTM-affected products is calculated at the 8-digit Harmonized System (HS) level. Following that principle, Figure 12.3 summarizes the proportion of products at the 8-digit HS level that are subject to (i) fewer than 10 NTMs, (ii) between 10 and 19 NTMs (inclusive), and (iii) at least 20 NTMs. As a note, the NTM is identified at the highest disaggregated level, rather than at the chapter level (that is, A, B, C, and so on).

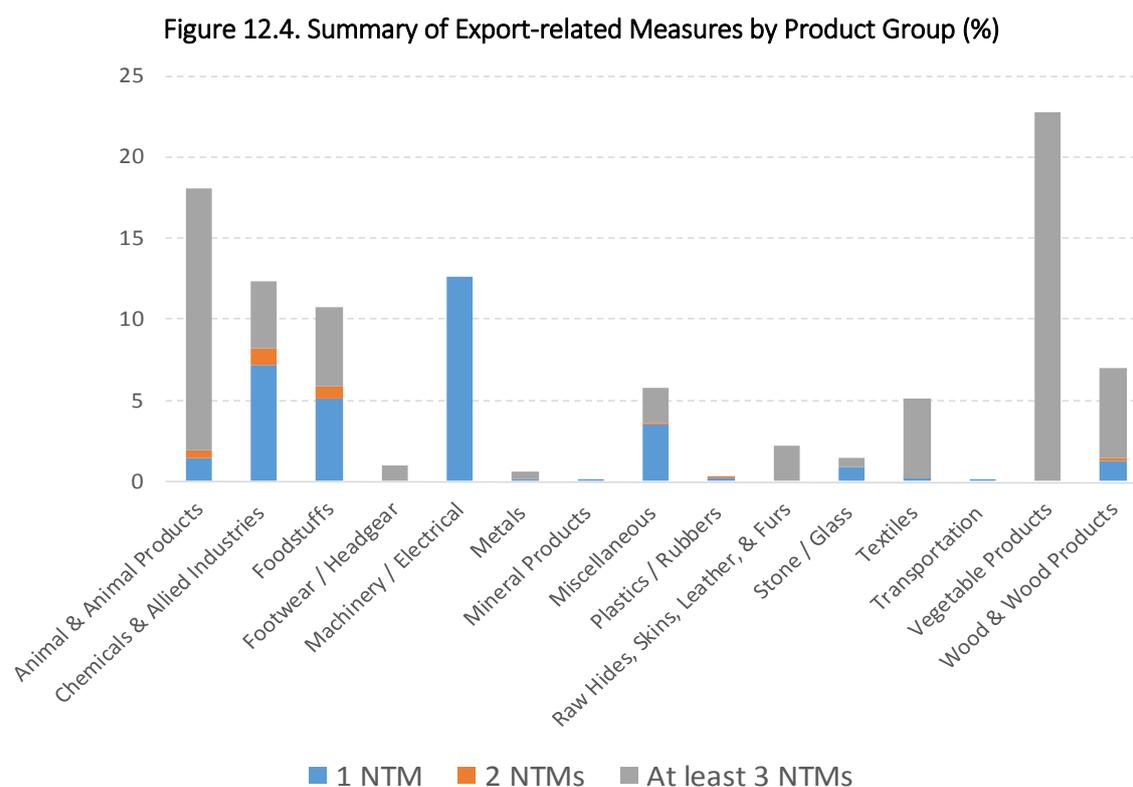


Source: Authors' calculation based on the newly constructed 2015 NTM database ASEAN-ERIA-UNCTAD raw data.

It should be noted that no products in Viet Nam are free of NTMs. In fact, there are two NTMs that apply horizontally to all products. First, under Circular 28/2012/TT-BCT issued by the Ministry of Industry and Trade, traders with no presence in Viet Nam have to register rights to imports. This regulation affects all products. Second, following Decision 10/2010/QD-TTg of the Prime Minister, importers are required to obtain a Certificate of Free Sale (CFS) from the relevant authority of the exporting country for their products. Underlying this requirement is the need to ensure that imported products are eligible for free sale in Viet Nam. If the goods and products were to be exported to Viet Nam, the requirements under Chapter 3 (CFS requirements for products and goods imported into Viet Nam) are such that businesses that import the products and goods listed under the regulations should duly submit CFS to the Vietnamese competent authority (Article 17). However, if the competent authority so requires, the aforesaid CFS issued by the exporting country or region should undergo 'consular legalization' at the Vietnamese consulate or embassy in the exporting country, except where it is exempted pursuant to international pacts of which Viet Nam is a member nation or where it concerns the goods of exporting countries that have signed a mutual waiver of consular requirements with Viet Nam.

One should recall that a sizeable portion of NTMs in Viet Nam is applied to export products. Notable examples of such products are fishery and agricultural products. In many cases, the NTMs are applied on a voluntary basis, not because of a request by partners. There are several reasons to this. First, Viet Nam has to comply with commitments under international conventions (for example, prohibitions, conditional exports, among others). Second, Viet Nam applies voluntary export measures to ensure quality control of exported products.

Similar to Figure 12.3, Figure 12.4 depicts the prevalence of export-related measures across products at the 8-digit HS level that are subject to (i) one measure, (ii) two measures, and (iii) at least three measures. Again, the export-related measures are identified at the highest disaggregated level, rather than at the chapter level (i.e. A, B, C, etc.). Moreover, the share is calculated based on the number of 8-digit HS products that are subject to export-related measures (rather than all 8-digit HS products). As can be seen, exports of machinery and mechanical products are all subject to only one NTM. A large share of products under chemical and allied industries, foodstuffs, and wood products are subject to only one export-related measure, and export of vegetable products and animal-animal products are largely subject to at least three NTMs.



Source: Authors' calculation based on the newly constructed 2015 NTM database ASEAN-ERIA-UNCTAD raw data.

2.4. Objectives of non-tariff measures

There have been no clearly indicated reasons for the NTMs. Table 12.5 shows that almost 99 percent of NTMs are not accompanied by a specific objective. Only a couple of NTMs serve the explicit objective of protecting human life and health, and another two aim to protect the life and health of plants. In some cases, one can infer the objectives of NTMs, such as whether they seek to enhance food safety, protection of domestic industries (though the effect is not clear), and the quality control of imported products as they will at a later stage become inputs for export-oriented processing industries. Nonetheless, the ambiguity of NTM objectives casts doubt on the systematic use of such measures in trade.

Table 12.5. Reasons Cited for Non-tariff Measures

Measure Objective	Number of NTMs	%
No objective specified	375	98.9
Protection of human life and health	2	0.5
Protection of life and health of plants	2	0.5
Total	379	100

Source: Authors' calculation based on the newly constructed 2015 NTM database ASEAN-ERIA-UNCTAD raw data.

2.5. Countries affected by non-tariff measures

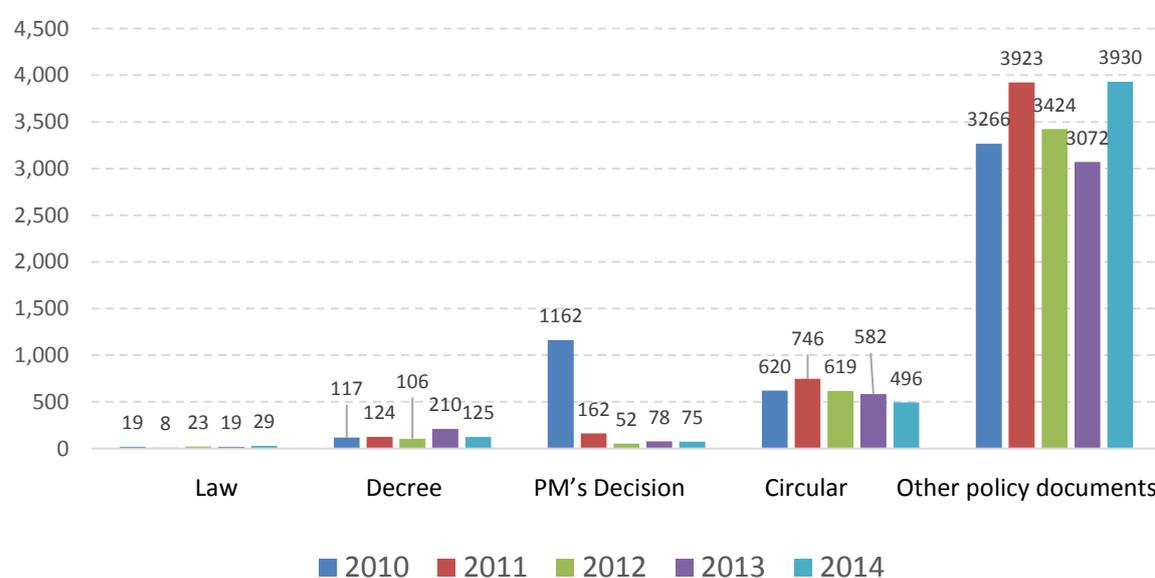
From the identification of NTMs, it emerged that 368 measures (or 97.1 percent of NTMs) applied to trade with all countries/territories. Only a few measures affected a group of countries/territories. The most notable measures are those pertaining to the trade of rough diamonds under the Kimberley process. In another instance, Viet Nam has a specific measure to control the quality of fishery exports to Japan. Viet Nam has not made use of NTMs on an MFN or discriminatory basis.

TBT measures are popular for the remaining products. Again, a significant proportion of the NTMs are with permits, testing, and authorization. Full prohibition also applies for some selected products, such as dangerous goods, chemical products, or arms. Unlike SPS measures, TBT can be found in regulations of a wide range of agencies, such as the Ministry of Industry and Trade, the Ministry of Agriculture and Rural Development, the Ministry of Information and Communication, and the Ministry of Transport. TBT mainly affects consumer products, motor vehicles, and dangerous goods. This is mainly because they aim to protect domestic industries and ensure quality control for the benefit of consumers.

3. Key lessons

From the identification of NTMs in Viet Nam some key lessons emerge. First, Viet Nam needs to frequently monitor the regulations that may have NTM implications. This is because documents are frequently amended, replaced, or nullified in the country (Figure 12.5). The issue is hard to avoid, as Viet Nam continues to improve its legal framework and internalizes its commitments under international conventions and/or free trade agreements (FTAs). The online database can help with this process: new regulations will be promptly published in the indicated sources for data collection. In most cases, it takes 4–5 working days for new regulations to be posted online (from their date of publication). Still, all the current laws governing trade remain in effect and, notwithstanding a few comments/suggestions for partial revision, a major change in the legal system governing trade is not expected in 2016.

Figure 12.5. Number of Issued Documents, 2010–2014



PM = Prime Minister.

Source: Government of Viet Nam Portal. <http://chinhphu.vn>

Second, there should be greater investigation into the trade effects of NTMs, for several reasons. On the one hand, the measures tend to apply to all countries and territories, but only some have current trade transactions with Viet Nam. On the other hand, the measures apply to broad product categories, whereas only a few HS products in such categories are actually affected. Of course, it may be argued that the absence of trade transactions for some products and/or with some countries actually resulted from the impact of NTMs. Still, in this regard, analysing the trade effects of NTMs attains even greater importance.

Third, we need to constantly check the consistency of NTMs from root documents (that is, laws and ordinances, among others) with those under guiding documents (such as decrees and circulars) to avoid duplication. In many cases, the NTMs at the decision or circular levels are only elaborated from the laws, without adding more effect. Looking at the root documents ensures that the affected products are captured comprehensively, but the period of effects and exemption of effects may be better presented in the guiding documents.

Finally, given the proliferation of FTAs in Viet Nam (Figure 12.1), one should keep track of all those FTAs. At this stage, FTAs do not affect NTMs as Viet Nam continues to apply them equally to all partners. That is, preferential treatment under FTAs is not done significantly by means of NTMs. Still, the large number of bilateral and plurilateral FTAs now does not exclude the possibility that some NTMs are effective towards selected countries only. In addition, rules of origin may have more implications under those FTAs, but are excluded from this analysis.

4. Recommendations

On the basis of the above identification of NTMs and the key lessons that emerged, we present some recommendations for Viet Nam. First, the country needs to frequently update the database of the government's inquiry points (SPS, TBT). The websites are accessible, but sometimes regulations are already ineffective or have been amended. Also, the documents are available in only in Vietnamese, so an English translation should be added to ensure it can be understood by foreign as well as domestic traders.

Second, Viet Nam needs to promptly construct a national trade repository, which would provide more consistent, transparent, and easily accessible information on NTMs. It may also help prepare the country for implementing commitments under various international frameworks (such as the work on the ASEAN Trade Repository under the ASEAN Economic Community).

Third, the regulations should also clearly identify HS codes for affected products in NTM regulations. Having worded descriptions of affect products is insufficient, given the inadequate harmonization of product groups in Viet Nam and in other partners. Listing the HS codes can help traders in making customs declarations and improves the quality of custom data on trade.

Fourth, trade effects of NTMs should be well documented. This will give more insight into the types of NTMs that are relevant and/or can be phased out. In addition, given the complexity of regulations that might have NTM implications, analysing the trade effects can actually help in avoiding unnecessary burdens on trade activities.

Fifth, Viet Nam should continue to apply NTMs equally to all partners. In other words, Viet Nam should avoid particular NTMs for imports from certain countries or territories, except under special circumstances or for a short period. Using NTMs on a discriminatory basis is likely to divert trade away from the partners concerned and increase administrative costs for managing NTMs in Viet Nam.

Finally, Viet Nam should aim for better more transparent justified NTMs. This will help reduce the unnecessary burden of NTMs on traders and businesses. In various cases, *ex ante* consultation might help collect relevant insight from traders and businesses, which would improve the quality of the regulation itself – when the business community is confident NTMs are legitimate, this will improve their actual effectiveness.

References

- Central Institute for Economic Management (2015), Impacts of FTAs and BITs on Viet Nam's Long-term Development Goals: Case Study of Food Processing and Electronics Sectors. *Funded by ActionAID International Viet Nam*. In Vietnamese and English.
- Truong, D.T., Vo, T.T., Bui, T.G., Phan, V.C., Le, T.D., Nguyen, A.D. and Pham, S.A. (2011), *Impacts of Market Access Commitments under WTO and FTAs on Production and Business in Viet Nam*. Hanoi: Multilateral Trade Assistance Project. In Vietnamese.
- United Nations Conference on Trade and Development (UNCTAD) (2012), NTM Classification. February 2012 Version. Online. Available at: http://unctad.org/en/PublicationsLibrary/ditctab20122_en.pdf (accessed 24 January 2015).

