

# Chapter 8

## Good Practices in Dealing with NTMs in CLMV: How can they be leveraged?

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August 2019

**This chapter should be cited as**

Artuso, F. and A.D. Nguyen (2019), 'Good Practices in Dealing with NTMs in CLMV: How can they be leverage?', in Ing, L.Y., R. Peters and O. Cadot (eds.), *Regional Integration and Non-Tariff Measures in ASEAN*. Jakarta: ERIA, pp.157–181.

## CHAPTER 8

### Good Practices in Dealing with NTMs in CLMV: How Can They be Leveraged?

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#### 1. Designing and Implementing NTMs: The Tension between Facilitating Trade and Achieving other Legitimate Policy Purposes

With the global decrease of tariffs in international trade, policymakers have focused their attention on the role played by non-tariff measures (NTMs) in preventing countries from accruing the full benefits of globalisation. NTMs are defined as policy measures, other than tariffs, that can affect the quantity and/or value of international trade flows. NTMs include a large variety of trade regulations, including sanitary and phyto-sanitary (SPS) regulations, technical barriers to trade (TBT) regulations, rules of origin, licensing, price-control measures, and distribution restrictions (UNCTAD, 2013). Often, the primary objective of NTMs is not directly trade related but is about the achievement of ‘common goods’ for the broader population, such as the protection of the environment, human and animal health, and biodiversity. Nonetheless, this type of NTMs can also have restrictive or distortionary effects on international trade.

NTMs can affect trade volumes. Hoekman and Nicita (2008) conclude that cutting the ad valorem equivalent (AVE) of NTMs in half, from around 10 percent to around 5 percent, would boost global trade by 2–3 percent. Djankov, Freund and Pham (2006) indicate that a one-day delay caused by NTMs reduces the overall export value by 1 percent and by 7 percent for agricultural products specifically. Ven (2017) estimates that a 10 percent increase in non-technical NTMs (i.e. excluding SPS and TBT) faced by Cambodian exporters would reduce Cambodia’s agricultural exports by 2.7 percent.

Moreover, NTMs affect trade competitiveness and diversification. NTMs increase trade-related costs, including cost of compliance with technical regulations and bureaucratic procedures for permits and licenses. Such costs increase also in the absence of an information technology platform to facilitate submissions and approval of import-related licenses. In Lao PDR for example, rural traders have to incur time and resources costs to obtain the certificates since the system to grant such documents is centralised in Vientiane (World Bank et al. 2017). In turn, poorly designed NTMs can also affect poverty. NTMs increase the cost of food staples and basic commodities for the poorest. Cadot and Gourdon (2012) conclude that SPS measures increase the price of food staples by 13–15 percent in Africa; quantitative restrictions by an additional 20 percent.

NTMs can cause unnecessary problems both for the way they are designed and/or administered. Poor design is often due to lack of coordination across ministries on national trade policy. Line ministries, such as those for industry, agriculture, health, environment, etc., have limited interest in considering the negative trade consequences of regulations designed to achieve other policy objectives, such as protecting human/animal/plan health and preserving the environment. Poor design may also be due to the unjustified fear of asymmetric impacts of regulating, i.e. the costs of adverse events happening in the absence of regulations are considered larger and less tolerable than the community's compliance costs of regulations.<sup>1</sup> If the effect of a regulation on trade volumes or quantities is not appropriately documented and/or not considered, most likely this will result in a regime, which is more trade restrictive than necessary to achieve the legitimate policy purpose underpinning the regulation. Even when NTMs are properly designed, problems can be caused by the way in which they are implemented. In fact, border authorities and other enforcement agencies often have an incentive to interpret regulations in such a way that empowers them to expand their control over issuing certificates, permits, and authorisations. This is often linked to informal practices, whereby the extraction of unreported fees from traders is facilitated by overcomplicated import and export procedures.

Until recently, as an example in Cambodia, local regulations required exporters to obtain a certificate of origin also for consignments that could not benefit from preferential treatment in the country of destination, such as garments and apparel exported to the United States market. This requirement was justified by the Ministry of Commerce on the basis that the government needed to collect statistical data in real time, as they could not rely on late export statistics shared by the General Department of Customs and Excises. However, when the cost to exporters of this unnecessary requirement was quantified, the Ministry decided to drop this NTM, aiming to save a substantial amount of administrative fees otherwise originating from the certificates' issuance.

## **2. NTM Policies in CLMV (Cambodia, Lao PDR, Myanmar and Viet Nam)**

Despite the substantial reduction in tariffs over the last decade, intra-ASEAN trade increased slightly from 23.0 percent of member states' total trade in 2000 to 25.3 percent in 2014. Amongst the factors that cause underutilisation of preferences are the high costs in obtaining certificates of origin and the proliferation of NTMs, which contribute to increasing trade costs.

As discussed in Chapter 2, the NTMs surge in ASEAN could be a protectionist response to tariff liberalisation or it could be explained as a reflection of improved living conditions of a

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<sup>1</sup> For instance, Viet Nam applies some measures – which are excessively restrictive from businesses' perspectives – on imported fishery products, notwithstanding growing needs for imported inputs to support export-oriented processing. This application is partly justified by the need for quality control to avoid reputational costs to Viet Nam's fishery sector. See Vo and Nguyen (2017) for reference.

population requiring a more sophisticated protection against imported goods that do not meet socially accepted standards.

Notwithstanding the reasons for the recent NTMs proliferation, ASEAN Member States recognise the importance of nurturing regional policy dialogue on NTMs. Furthermore, some of the language used in official documents indicates the policymakers' awareness that trade regulations are often used as barriers to intra-regional trade and that common actions are necessary to overcome their negative effects on the regional integration process.

Chapter IV of the ASEAN Trade in Goods Agreement (ATIGA) regulates regional cooperation in this area. ASEAN Member States (AMS) agreed to refer to World Trade Organization (WTO) rights and obligations (Article 40, paragraph 1) and to ensure transparency of NTMs, which should not be 'prepared, adopted or applied with the view to, or with the effect of, creating unnecessary obstacles in trade among member states' (Article 40, paragraph 2). Moreover, AMS have undertaken the obligation to notify their NTMs to the Secretariat. The ASEAN Trade Repository (Article 13) will include web-links to the Member States' National Trade Repositories.

The ASEAN Economic Community (AEC) Blueprint called for the elimination of non-tariff barriers (NTBs) by 2015. The AMS were meant to review their NTMs and identify NTBs for elimination, in cooperation with the relevant committees. The Blueprint empowered the ASEAN Free Trade Area (AFTA) Council to take decisions based on recommendations from the Senior Economic Officials Meeting (SEOM) (Article 42, paragraph 1). The Coordinating Committee for the implementation of ATIGA (CCA) serves as a focal point for the notification and review of measures reported by AMS or by the private sector (Article 42, paragraph 3 and 4). The AEC 2025 Blueprint reaffirms these commitments requesting AMS to intensify their efforts in this area.

In October 2011, the AEC Council Retreat in Kuala Lumpur discussed the issue of addressing trade barriers that impede intra-ASEAN trade and tasked the SEOM with preparing a work plan for consideration by the ASEAN Economic Ministers (AEM). The ministers agreed that ASEAN should develop a mechanism and/or have standard procedures for recording all NTMs including a robust means of examining these for Non-Tariff Barriers effects and eliminating those with restrictive, discriminatory or disproportionate effects, and for officials to discuss with the business communities on the specific bottlenecks, and address the concerns on a case-by-case basis.

In 2012, the report of the AEC Council to the 20th ASEAN Summit in Phnom Penh, Cambodia, mentioned that 'Despite the achievements in liberalising tariffs under the AFTA, NTMs continue to impede the free flow of goods in the region. To address the restrictive elements in these measures and look into the possibility of eliminating them, priority should be given to the development of the roadmap for putting in place a robust mechanism to ensure that border and behind-the-border measures do not negate the benefits of tariff liberalisation in the region. ASEAN Member States should also strictly adhere to the protocol on notification procedures, especially before adopting NTMs that could potentially affect intra-ASEAN trade and investment'.

In 2012, the Cambodian chairmanship tabled a draft 'NTM Work Programme'. The document was subsequently divided in two work programmes (national and regional) and was approved by the ASEAN Economic Ministers in 2013.

The work programme provides for the establishment of a National NTM Committee, which should be tasked with the following:

- Collect and classify all regulations on NTMs;
- Develop guidelines on operating procedures for each NTMs;
- Notify NTMs inventory to the ASEAN Secretariat;
- Publish NTMs in a web portal (National Trade Repository) to be connected with ASEAN Trade Repository (ATR);
- Collect and classify all regulations on NTMs;
- Develop guidelines on operating procedures for each NTM;
- Notify NTMs inventory to the ASEAN Secretariat

Based on existing legal commitments and practices,<sup>2</sup> the ASEAN approach to NTMs can be summarised as follows:

1. NTMs notification:

- Member States are expected to notify to the Secretariat existing and new NTMs;
- An NTM database is maintained by the ASEAN Secretariat;
- National NTM Committee and focal points are established at country level; and
- National Trade Repository (NTR) are made available online and they interoperate through the ASEAN Trade Repository.

2. NTMs classification and evaluation:

- Member States classify NTMs using the Multi-Agency Support Team (MAST) methodology;
- National NTM Committees establish capacity to evaluate NTMs; and
- Evaluation can be launched ex officio or based on complains by private sector or other Member States.

3. Identification of NTBs:

- Member States report actual cases of other Members' identified NTBs, which are discussed amongst Member States representatives for agreement;
- A Matrix of Actual Cases of identified NTBs is maintained by the Secretariat;
- Initiatives for Private Sector Dialogues are launched to identify NTBs; and
- An online complaint mechanism (ASSIST) is managed by the Secretariat in consultation with Member States.

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<sup>2</sup> For instance, see ASEAN (2015), ASEAN (2017a).

#### 4. Elimination of NTBs:

- NTMs can be streamlined and NTBs eliminated as a result of the National NTM Committee's review process;
- Consultations on actual cases are held bilaterally;
- Cases are discussed at CCA/SEOM level, if bilateral discussions are not conclusive;
- Member States can also make use of the Enhanced Dispute Settlement Mechanism.

As of September 2017, some of the ASEAN commitments in this area have been fulfilled better than others. Some countries have succeeded in establishing fully functioning National Trade Repositories, using the MAST methodology to classify NTMs. Others are still in the process of completing them. The system of notification and resolution of actual cases have worked patchily and do not appear to have sufficient strength to solve the ominous issues they are faced with. Some countries have established and staffed effective National NTM Committees, while others have not gone this far. In all cases, linkages between ATR and NTR require further efforts as currently they are very weak.<sup>3</sup>

The ASEAN national think tanks working together with the Economic Research Institute for ASEAN and East Asia (ERIA) and the United Nations Conference on Trade and Development (UNCTAD) have completed a comprehensive NTMs collection covering all 10 AMS in 2015, and recently updated in 2018.<sup>4</sup> This is an important step forward in the analysis of global and regional trends in trade policy and regulation, as it is now possible to compare NTMs regimes across countries and draw some conclusions and policy recommendations. Ideally, this collection should be regularly updated and reviewed by the relevant institutions of the ASEAN Member States and can be accessed at their national trade repositories (NTRs).

### **3. Entry Points in the Trade Facilitation Agreement to Crystallise into a Solid NTM Approach in ASEAN**

Under General Agreement on Tariffs and Trade (GATT) Article X, WTO members are bound to publish their trade laws in a prompt and accessible manner and to refrain from enforcing measures prior to publication. More specific guidance on NTMs' legitimacy is provided by the WTO only in the areas of SPS, TBT and licensing. In line with WTO commitments, members are also expected to ensure that regulations are publicly accessible, possibly online, and to review regularly their measures to make sure that the regulatory regime is effective in achieving its policy objectives. Moreover, members have to provide annual public notice of any relevant regulation that they reasonably expect to issue within the following 12-month period.

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<sup>3</sup> See ASEAN (2017b).

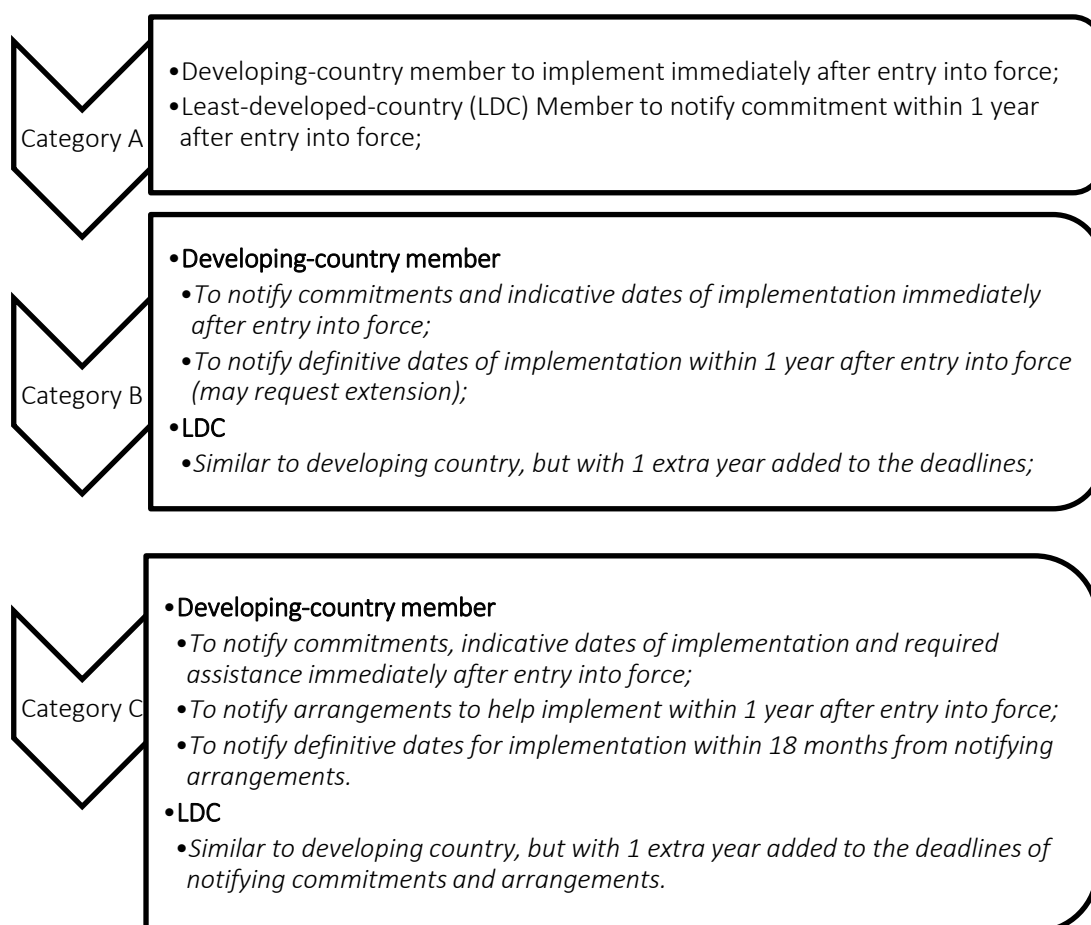
<sup>4</sup> The data on NTMs for the 10 ASEAN countries can be accessed at: <http://asean.i-tip.org/>

The WTO Trade Facilitation Agreement (TFA) went one step further by establishing a multilateral framework to facilitate trade, balance the facilitation of trade and compliance with trade-related regulations, and promote technical assistance and capacity building, amongst others. The TFA was endorsed on 14 July 2014 and entered into force on 22 February 2017. The TFA consists of three Sections: (i) provisions related to technical measures, in the aspects of accessibility and transparency of regulations, management of regulations related to trade, customs clearance, and transit; (ii) special and differential treatment for developing and least-developed countries, including technical assistance and capacity building; and (iii) institutional arrangements and final provisions.

Under the TFA, WTO Members have undertaken specific commitments in the area of NTMs, particularly on transparency. Section I, Section II and Section III are significantly relevant to Cambodia, Lao PDR, Myanmar and Viet Nam (Figure 8.1). Section I requires the prompt publication of: procedures for importation, exportation and transit; and import, export, or transit restrictions or prohibitions, amongst others. Procedures, practical steps and required forms needed for importation, exportation and transit shall be made available through the Internet. In addition, the amendment/introduction of laws and regulations related to the movement, release and clearance of goods should incorporate public provision of related information, and opportunity for the public to make comments. The section also provides for other measures to enhance impartiality, non-discrimination, and transparency of NTMs, such as notifications for enhanced controls or inspections.

Section II of the TFA includes provisions on special and differential treatments for developing and least-developed countries. Such treatments categorise commitments into three groups. The commitments under Category A are to be implemented immediately upon entry into force of the TFA. Commitments under Category B shall be implemented after a transition period. For commitments under Category C, developing and least-developed countries are allowed a transition period and supported with technical assistance.

Figure 8.1: Summary of Special and Differential Treatment to Developing and Least Developed Countries under TFA



Source: WTO (2014).

Section III of the Trade Facilitation Agreement foresees the establishment of a permanent committee on trade facilitation at the WTO. This Section also requires members to establish a National Committee to facilitate domestic coordination and implementation of the provisions of the agreement. Efforts to streamline NTMs in Southeast Asia are also consistent with commitments towards ASEAN integration, as summarised in the ASEAN Economic Community blueprints. The ASEAN Economic Community blueprint 2015 sets out a target of full elimination of NTBs by 2015. Actions to achieve this target include enhancement of transparency by abiding by the Protocol of Notification, enhancement of transparency of NTMs, and harmonising regional rules and regulations consistently with best practices, *amongst others*. The 2025 ASEAN Economic Community blueprint aims more specifically to minimise protection and compliance costs of NTMs.



Commitments include: increasing adoption of good regulatory practices in domestic regulations; strengthening coordination with the private sector in determining, prioritising, and reducing the unnecessary regulatory burden of NTMs on the private sector; and exploration of alternatives to deal with NTMs. The ASEAN Work Programme on NTMs also requires the establishment of a National NTM Committee in each AMS.

In addition, the draft text of the Trans-Pacific Partnership (TPP) foresees a detailed discipline to achieve regulatory coherence across member countries. In November 2017, the TPP was renamed as the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) agreement. As of November 2017, four out of the 10 ASEAN Members (Brunei Darussalam, Malaysia, Singapore, and Viet Nam) are already signatories to the CPTPP. By blending in a crystallised single approach to commitments originating in WTO, CPTPP, and AEC agreements, ASEAN countries could develop an effective system to ensure that NTMs are not an impediment to building an integrated trading block in South-East Asia.

CPTPP requires the establishment of a Regulatory Coherence Committee to ensure that NTMs are no more trade restrictive than necessary to achieve their legitimate policy objectives. However, the substantial overlapping between the mandate of this Committee and the National NTM Committee to be established under the ASEAN Work-Program on NTMs suggests setting up one single body responsible for reporting both to TPP and ASEAN Members. Moreover, consideration could be given to merging this body with the Trade Facilitation Committee to be established under the WTO Trade Facilitation Agreement. These various committees, in fact, have in common the overall objective of maximising trade flows in and out of the country while fulfilling, at the same time, specific policy objectives such as the protection of national security, human/animal/plants health, or the environment.

The Committee will be called upon to play a sensitive role in designing and implementing trade policy, to attempt to balance the interests of different economic players and consumers in general. It is important that a clear platform is established to ensure transparency of the process and inclusion in consulting the stakeholders involved. This Committee would essentially be tasked with a policy role, which would have to be underpinned by solid economic analysis to be carried out by a permanent Secretariat. The Secretariat would have to be equipped with the necessary skills and resources to carry out cost-benefit analysis of specific trade regulations, considering the impact on the overall economy of NTMs aimed at addressing a specific policy objective. Issues related to the implementation of specific import-export rules and procedures will also have to be considered to ensure the facilitation of trade by streamlining processes and removing unnecessary bureaucratic bottlenecks.

#### 4. Lessons Learned from CLMV

A number of ASEAN countries have taken important steps to increase NTMs transparency and to limit their adverse effect on consumers and producers. We will analyse in more detail efforts made by Cambodia, Lao PDR, Myanmar and Viet Nam, the less developed member countries in ASEAN, which received comprehensive assistance from the World Bank Group (WBG), with other specific but limited interventions by other Development Partners.

The WBG has addressed requests from several ASEAN countries, based on the following approach:

- Encouraging governments to address unilaterally the NTM agenda to improve domestic firms' competitiveness and reduce poverty, rather than from a mercantilist standpoint of concessions to trading partners;
- Shifting the focus from 'eliminating' NTMs without a comprehensive analysis (an objective that is often doomed because it does not take into account NTMs' multi-purpose nature) to identifying ways to reduce the trade-impeding effects of NTMs while ensuring that legitimate regulatory objectives are attained; and
- Promoting stronger governance over trade regulation through data transparency and improved institutional coordination, as well as capacity building through analysis and policy advice.

The WBG's toolkit 'Streamlining Non-Tariff Measures: A Toolkit for Policy Makers' helps policymakers navigate the maze of trade regulations when engaged in trade competitiveness and regulatory improvement agendas. It offers a novel approach to addressing NTMs by recognising the complexity and variety of NTMs in terms of their objectives, policy measures, procedures, and economic and societal impacts. It advocates for problems to be identified through consultations with the private sector, and technical solutions sought through careful analysis and private–public dialogue. The toolkit provides methodologies to assess the associated economic costs and benefits, and a framework for helping governments build an adequate institutional setup to address NTMs as a cross-cutting issue involving multiple government agencies and stakeholders.

The sustainability of the work supported by the WBG and other development partners relies substantially on the capacity and the political will of the government institutions to keep updating the NTMs collection and making sure new regulations are published regularly. This is challenging in countries with poor institutional resources. Chances for success would increase if development partners would align their efforts in support of the governments' policy in this area. A good opportunity exists, for example, to enhance synergies between development partners supporting the establishment and maintenance of Trade Portals or NTRs and development partners focusing on NTMs collection and classification.

A tremendous opportunity exists, moreover, to explore the possibility of involving private sector organisations and individual legal firms in keeping regulatory information updated. This can be done by using innovative technologies including by offering the possibility to a selected group of stakeholders to access the online repositories, under a clearly defined memorandum of understanding establishing tasks and responsibilities. It could be envisaged, for example, that business associations and law firms could upload directly new regulations, which would then have to be validated by the government authorities with the responsibility of managing the Trade Portals. Information uploaded by authorised private parties could be displayed online immediately, as long it is clear that it has not yet been validated by the authorities. This mechanism would contribute to keeping the regulatory information relevant and up to date. It would also help to facilitate the work and increase the accountability of those who are mandated to maintain the Trade Portals.

## **Cambodia**

Since 2012, the Cambodian Ministry of Finance has intensified efforts to formulate and implement the ASEAN Work Programme on NTMs. About 120 laws and regulations have been collected and analysed, resulting in the compilation of a database with almost 400 NTMs, which have been classified according to the MAST nomenclature.

In the absence of a legal basis supporting the process, regulations were collected by the Ministry of Finance with the support of one local and one international expert funded by the WBG. A 5-day training was provided to officials from the Ministry of Economic and Finance (MEF) and all line ministries with the objective of developing their capacity to identify and classify NTMs. Those officials cooperated in the following months to collect legal texts, which were translated when not available in English, with the support of the Royal University of Law and Economics in Phnom Penh.

In 2015, after intensive consultation across all interested ministries, the Prime Minister signed two Sub-Decrees establishing the National NTM Committee and National NTR Committee.

The National NTM Committee is chaired by the Director of Department of Economic Integration and ASEAN of the Ministry of Economy and Finance, with co-chairs from the Ministry of Commerce and the Ministry of Agriculture, Forestry and Fisheries. Its members include: Council of Ministers, Ministry of Interior, Ministry of Defense, Ministry of Foreign Affairs and Cooperation, Ministry of Planning, Ministry of Environment, Ministry of Industry and Handicraft, Ministry of Mine and Energy, Ministry of Post and Telecommunication, Ministry of Health, Ministry of Culture and Arts, General Secretary of Civil Aviation, Cambodian Development Council, General Department of Customs and Tariffs, Trade Assembly of Cambodia.

The National NTM Committee was provided with a legal mandate to carry out the following tasks:

- Collect, classify, analyse, and formalise all NTMs.
- Present, publish, and maintain all NTMs.

- Prepare all necessary operational guidelines to guarantee proper and effective NTMs implementation.
- Evaluate and streamline NTMs to promote trade and investment.
- Cooperate with line ministries to ensure compliance of new NTMs with international and regional agreements (the Committee has to provide an answer within 90 days). NTMs could be enacted by line ministries without prior consultation with the Committee only in case of emergency. In any case, the Committee should be informed promptly of any new NTMs.
- Cooperate on notification to the WTO through the Ministry of Commerce and to the ASEAN Secretariat through the Ministry of Economy and Finance.
- Develop operational procedures and yearly work plans, including for use of official development assistance.
- Issue recommendations and a yearly report to the government.

According to the Sub-Decree, the National NTM Committee is supported by a Secretariat, whose duties are performed by the General Department of Economic Policy and Public Finance of the Ministry of Economy and Finance.

The NTR Committee has a similar composition and it is tasked with collecting and publishing all relevant trade information, including NTMs, collected in cooperation with line ministries. The Committee can report delayed submissions of information from line ministries and it can object to the publication of NTMs, which are not compliant with regional or international agreements. Line ministries are expected to inform the Committee of any plan to publish new trade rules and to ensure full communication on new and existing NTMs.

In 2015, using this legal basis, the Ministry of Finance hired a team of about 10 junior professionals who are now staffing the NTM Secretariat and the NTR Secretariat on a full-time basis. In the same year, the National Trade Repository was published, using an off-the-shelf software solution made available by the WBG.<sup>5</sup>

The NTM Committee is currently engaged in a training programme aimed at developing sufficient analytical skills to assess the impact of NTMs on the welfare of the population or the competitiveness of specific production sectors. The training programme foresees a mix of frontal teaching with hands-on practical exercises using real cases and real data. This has resulted so far in the production of two notes focusing on: a) the need to eliminate unnecessary requirements to obtain certificates of origin also for consignments imported by destination countries on a most-favoured nation basis; b) the need to eliminate a quota system to license importation of meat and fish. Additional work is ongoing in the attempt to institutionalise the review process and make it sustainable over time.

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<sup>5</sup> The NTR is currently available at <http://cambodiantr.gov.kh/index.php?r=site/index>.

The NTM Secretariat has also compiled a detailed document describing its working procedures, including modalities to receive and deal with complaints from various sources, including the private sector and civil society organisations. The working procedures are expected to be made public soon, after their official adoption.

## **Lao PDR**

The Lao Government was the first in ASEAN to develop a National Trade Repository ([www.laotradeportal.gov.la](http://www.laotradeportal.gov.la)) substantially compliant with the ATIGA's requirements. The Lao Trade Portal was developed by the Department of Import and Export of the Ministry of Industry and Commerce (MoIC) with support from the Trade Development Facility, a multi-donor trust fund established by the European Union, GIZ (Germany), and AusAID (Australia) and administered by the World Bank. The portal currently lists about 300 legal documents and about 400 NTMs. The Lao Trade Portal was launched in 2012. NTMs and other trade-related information were collected with the assistance of a team of consultants who developed the capacity of a unit in the MoIC's Department of Import and Export (DIMEX) to maintain and update the system on a regular basis.

With the Lao Trade Portal, Lao PDR succeeded in improving transparency of regulatory information and it enabled traders to get better and faster access to information they need to import and export. In addition to making available in English all relevant regulations (indexed by HS code), the portal describes step-by-step procedures required to import and export. With the development of the portal, the Lao PDR government fulfills the requirement of Article 13 of ATIGA to establish an ASEAN Trade Repository (ATR), although a full set of weblinks to the ATR is still being developed.

Before the portal was launched, NTMs were collected and classified according to the MAST nomenclature and training was also provided to review and streamline NTMs. As compared to Cambodia, Lao PDR's MoIC decided to proceed with the compilation and the publication of NTMs without an explicit and dedicated legal basis. This enabled them to complete the work more speedily. However, in the absence of a strong mandate, the NTM Unit in DIMEX could not be staffed with resources similar to those mobilised in Cambodia. Currently, three professional staff are devoting half of their time to the Trade Portal's maintenance but they have limited time and capacity to focus also on reviewing and streamlining NTMs. They successfully carried out Regulatory Impact Assessments (RIAs) on Vehicle Import Licenses and Petroleum Import Licenses, but efforts will have to be intensified to enable a systematic approach across different agencies and ministries.

With assistance from the WBG, DIMEX organised two workshops in 2015 and 2016 with the objective of reaching consensus amongst the main stakeholders on how to improve the institutional infrastructure to ensure coordination across ministries and agencies with responsibility to design and implement NTMs. The latest workshop concluded that there was merit in considering the overlap between the NTM Committee foreseen under the ASEAN NTM Work Programme and the Trade Facilitation Committee foreseen under the WTO's Trade Facilitation Agreement.

The proposal is to set up a Steering Committee for Trade Competitiveness Promotion, chaired by the Deputy Prime Minister, to guide the implementation of reforms both in the areas of trade facilitation and NTMs. The Steering Committee will be supported by the Secretariat of Trade Facilitation and NTMs, chaired by the Vice-Minister of Commerce, and it will consist of two separate working groups, for trade facilitation and NTMs. The NTMs Working Group is expected to be split into three sub-working groups with responsibility, respectively, for Import and Export Licensing, Technical Measures, and Non-technical Measures.

Because of the high level of administrative decentralisation, DIMEX is also planning to establish focal points at the provincial level. They would be charged both with distributing information and collecting complaints and data to be reviewed by the Secretariat at the central level, to obtain faster and more informed decisions by policymakers.

This new structure is expected to link formally to the Lao Business Forum, which will be considered one important source of complaints to identify issues on which the Secretariat should focus its review. Private sector representatives, including from the Lao National Chamber of Commerce and Industry and the Lao International Freight Association, are also expected to be members of the sub-working groups. This institutional arrangement is expected to be established under a Decree signed by the Prime Minister, followed by a Decision by the Deputy Prime Minister.

Evidence-based trade policy measures are difficult to shape in Lao PDR, where data availability is scarce and where administrative responsibility is spread across several ministries and authorities. The establishment of a dedicated structure focused on collecting and reviewing data is a necessary step towards designing and implementing NTMs in a less trade restrictive manner. Specific technical skills are necessary to analyse the impact of trade measures. These can be built only if adequate staffing is secured once a solid institutional set up is formalised by law.

Recent developments in Lao PDR, moreover, provide evidence of the importance of linking the NTM agenda to the Trade Facilitation agenda. Very often, the real impact of an NTM is determined by the way this is implemented by border authorities, which makes it necessary to adopt an approach that cuts across these two trade reform areas.

## **Myanmar**

In 2016, Myanmar also completed its work on establishing a National Trade Repository, which is currently available online at [www.myanmartradeportal.gov.mm](http://www.myanmartradeportal.gov.mm). The Myanmar trade portal was developed with assistance from USAID, using the software platform of the Lao Trade Portal, based on a bilateral agreement between Myanmar and Lao PDR. The website lists about 40 laws and regulations, but only 20 NTMs have been published so far as approval from line ministries on the publication of other NTMs is still pending.

At the end of 2016, the Government of Myanmar was engaged in an effort to streamline platforms for inter-agency coordination on trade and economic matters. A Trade Facilitation Committee is likely to be established in compliance with the WTO's Trade Facilitation Agreement (TFA) and responsibility to cover NTMs is likely to be assigned to a technical team reporting to the Committee.

Training has been provided both on classifying and streamlining NTMs. The main constraint in Myanmar is the scarcity of professional staff in the Ministry of Commerce, including officials versed in English. Similarly to Lao PDR, however, Myanmar is currently considering the establishment of a joint institutional mechanism to overlook both trade facilitation and NTMs. This reform would go in the right direction to promote the allocation of adequate human resources who could receive more training specifically on carrying out RIAs.

Currently, the Ministry of Commerce is embarked in a comprehensive effort aimed at reducing the number of licenses required to import goods into Myanmar. Licenses for each and every imported item used to be issued by the Ministry of Commerce with the alleged purpose of collecting trade data. In 2012, under the new economic policy, the Ministry of Commerce replaced a universal non-automatic licensing requirement for all merchandise imports with a hybrid system in which a 'positive list' of products was designated for automatic licensing. In April 2013, import licensing requirements were abolished for 166 products and in 2015 the Ministry successfully compiled a negative list.

With the assistance of the WBG, the reform is still underway and attempts to decrease as much as possible the number of products subject to automatic licenses. The reform's overarching principle is that with an adequate toolbox of WTO-consistent trade-policy instruments (including the safeguard clause), licenses should be fully decoupled from trade concerns and imposed only (i) on the basis of safety (health and environmental) concerns, and (ii) when they provide effective enforcement tools for SPS or TBT measures.

Work is still ongoing to make sure all products in the 'negative list' are chosen based on rational consumer protection criteria. This is an area where inter-ministerial coordination is fundamental. It has been proven that ad-hoc institutional arrangements are hardly ever effective in achieving sustainable results in these difficult reform areas. A strong coordinating mechanism, supported by a clear legal mandate, would support the Ministry of Commerce in achieving agreement across line ministries on the criteria to be used to compile the negative list.

## **Viet Nam**

In the period from 1986 to 2016, NTMs in Viet Nam were drastically simplified. After Doi Moi (Renovation) in 1986, Viet Nam abolished monopoly in trading rights, and has since 1988 permitted foreign invested enterprises to undertake trade activities. Since 1998, all enterprises have been allowed to export and import goods described in their business license without having to ask for additional product-specific licenses to trade (except for four groups of the special goods).

Non-tariff barriers (NTBs) were introduced when Viet Nam shifted from a centrally controlled economy to market trade from the late 1980s to the early 1990s, and they quickly became a key component of Viet Nam's trade policy (Figure 8.2). However, in the late 1990s and early 2000s, with bolder moves towards trade liberalisation, Viet Nam made significant progress in reducing the use of NTBs, largely by replacing NTBs with tariff rates (i.e. the so-called 'tariffication' process). Only for a few selected products did Viet Nam retain limitations by using tariff-rate-quotas, which was consistent with WTO rules.

As Viet Nam was preparing for WTO accession, improving transparency of NTMs became an important policy drive. The country accordingly established an inquiry point on SPS under the Ministry of Agriculture and Rural Development, and an inquiry point on TBT under the Directorate for Standards, Metrology and Quality (STAMEQ), under the Ministry of Science and Technology. Responsibility for other types of NTMs is scattered across various agencies in Viet Nam.

Since 2008, Viet Nam has resumed the use of NTMs to restrain imports. As tariffs have diminished, NTMs have become a trade policy tool with the undeclared objective of restricting trade, although most of them have been developed to serve specific purposes, such as protection of domestic consumers' health, local biodiversity, etc.

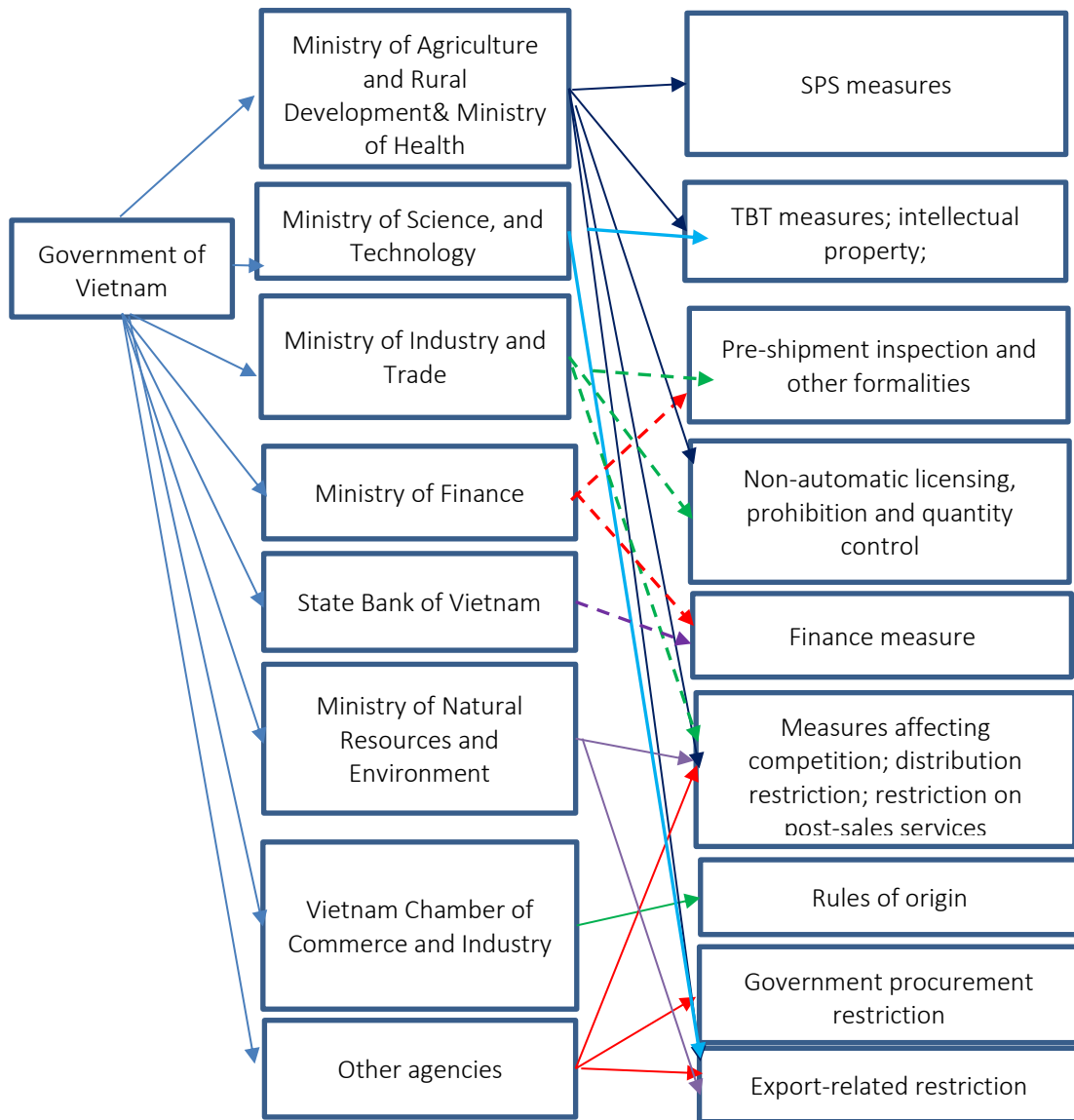
Up until July 2017, Viet Nam did not have any official programmes specifically targeting NTMs streamlining. Nor has there been an official classification of NTMs in the country. Most legal documents are widely and freely accessible in Viet Nam through legal portals. Only in early 2016 the first comprehensive database on NTMs in Viet Nam was set up as part of the ERIA–UNCTAD project. There are a couple of reasons for this slow process in terms of NTM documentation. First, there has been no formal agreement or consensus on the scope of NTMs. References are generally made only to SPS and TBT in the NTM-related discussion. Scoping the NTMs is also difficult because regulations in Viet Nam are multi-levelled<sup>6</sup> and lack explicit introduction of regulatory objectives. Second, notwithstanding emphasis on further pro-active reforms to support economic integration after the WTO accession, most regulatory changes were only meant to conform to existing commitments. In particular, during 2007–2013, few efforts were made to promote trade liberalisation in general and NTM reduction beyond commitments on a unilateral basis.

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<sup>6</sup> Including Laws, Ordinances, Decrees, Resolutions, Circulars, etc.



Figure 8.2: NTMs and Authority of Vietnamese Agencies



SPS = sanitary and phyto-sanitary; TBT = technical barriers to trade.

Note: The arrows show the objects under authority of different Government agencies. Dash and color of arrows are for illustrative purpose only.

Source: Authors' compilations.

Devising a strategy to streamline NTMs in Viet Nam therefore has to rely on a more indirect approach. Since 2014, the government of Viet Nam has prioritised a programme to improve the ease of doing business. Amongst the measures adopted was the reduction of unnecessary regulatory burden on businesses. In early 2015, the Central Institute for Economic Management (CIEM) reviewed business conditions stipulated in various ministerial regulations.<sup>7</sup> Out of the 5,850 business conditions, more than 3,000 were previously

<sup>7</sup> Viet Nam's laws require Decrees and Circulars for details on implementation.

introduced in regulations at the Circular level. All these conditions were to be abolished from 1 July 2016 according to the (amended) Investment Law. Indeed, according to this law, these 3,000 conditions should no longer apply from 1 July 2015.

Moreover, some business conditions have recently been the topic of debates. Circular 20/2011/TT-BCT of the Ministry of Industry and Trade (MOIT) in 2011 offered the most controversial case. In 2011, judging that parallel imports of completely built automobiles were amongst the main cause of widening trade deficits, the MOIT stipulated additional conditions for the import of such automobiles, such as a certificate of post-sale services and a certificate of authorised imports issued by the headquarters of the carmakers. Similarly, a formaldehyde test was required on imported textile products – which accounted for a large share of Viet Nam’s imports. Due to their adverse implications for trade, these regulations on conditions – amongst others – have been identified by the CIEM and the Viet Nam Chamber of Commerce and Industry as creating unreasonable additional costs for businesses and undermining market competition without adequately considering the forgone benefits for consumers. The promulgations of such documents were also criticised for not abiding by good regulatory practices, in that there were no regulatory impact assessments, no efforts to consult with business in advance, and no appropriate consideration of feedback from importers.

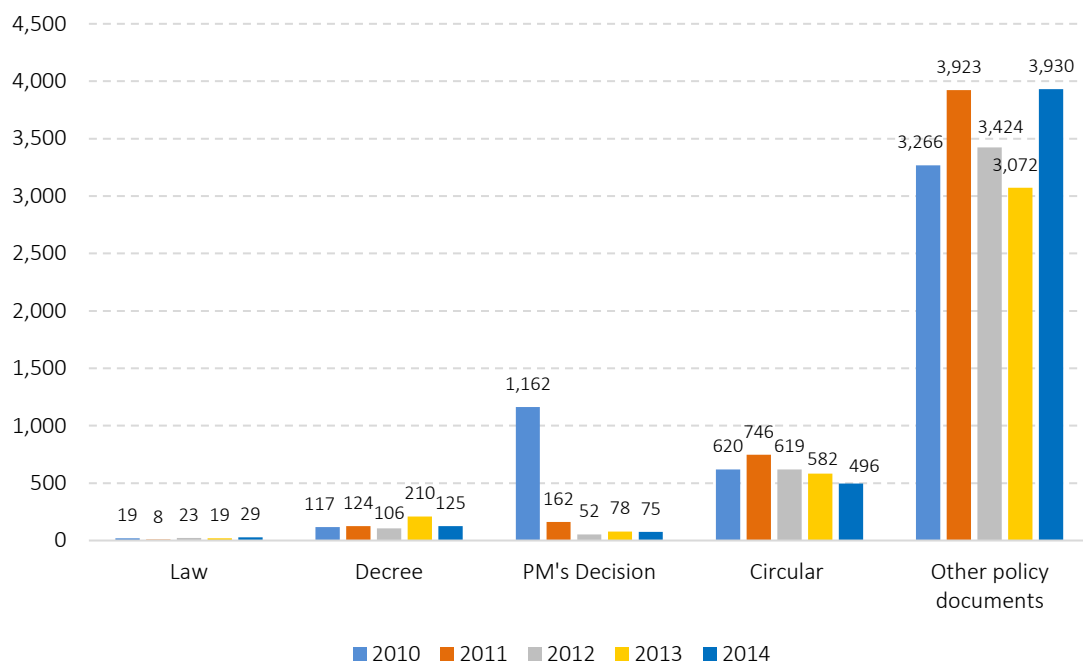
Following various debates at the government, ministerial, and expert levels, the MOIT had to amend these regulations. The requirement of a formaldehyde test on imported textile products was abolished in October 2016. The conditions for imports of completely built automobiles were partially amended, lifting the obligation to include submission of a certificate of post-sale services.

In August 2017, the Ministry of Planning and Investment tabled a proposal to the government to remove or simplify about 2,000 business-related conditions (or nearly a half of all business conditions in Viet Nam’s regulations), many of which are effectively NTMs. Amongst them are 302 conditions related to financial aspects, 85 conditions related to business premises, 1,336 conditions related to production capacity, 127 conditions related to business modality, and 80 conditions related to master planning. These measures aim to reduce the unnecessary obstacles to market entry and/or business operations, which would strengthen the microeconomic foundations for more sustainable productivity growth.

Looking ahead, efforts to further reduce NTMs in Viet Nam may encounter some challenges. First, so far there has not been sufficient consensus in Viet Nam on the rationale for and scope of NTMs. While some regulations serve non-economic purposes and certainly have NTM implications, others are considered necessary to indirectly target import flows of goods without violating international agreements. Second, Viet Nam still fails to effectively manage its regulatory system, which is hampered by the proliferation of regulations at various levels. Efforts to review NTMs in existing regulations must be an ongoing process, therefore, but it never ends as some NTMs may have already been incorporated in new draft regulations.

Finally, Viet Nam has only barely established a fully detailed and functioning national trade repository (NTR) as per the measure towards ASEAN Economic Community in July 2017.<sup>8</sup> Although this could be explained by the slow consensus on a technical design for the ASEAN trade repository with which the NTR will have to integrate, the failure to promptly establish the NTR has burdened trade activities, especially related to the identification of requirements vis-à-vis a specific HS code.

**Figure 8.3: Number of Issued Documents in Viet Nam, 2010–2014**



PM = Prime Minister.  
Source: CIEM (2015).

<sup>8</sup> In July 2017, the World Bank and General Department of Customs of Viet Nam launched the Trade Information Portal. This Portal is an attempt by Viet Nam to comply with the requirement of the Trade Facilitation Agreement under the WTO. It aims to help traders comply with regulatory requirements associated with imports and exports of goods. However, this information portal is not sufficiently interactive, as certain topics such as business opportunities, lists of partners, etc. will still require traders to directly consult the Ministry of Industry and Trade, the Ministry of Planning and Investment, etc.

## Summary of lessons learned from CLMV for other Developing and Least Developed Countries

Although the experiences of Cambodia, Lao PDR, Myanmar and Viet Nam (CLMV) in dealing with NTMs described above are only a selection, they provide some important lessons:

1. It is essential to have a strong political commitment at the highest level of government. The political will should thus be anchored to the understanding of the potential impact that badly designed NTMs can have on the country's competitiveness, on the population's welfare, and on the government's effort to decrease poverty.
2. An independent group of regulatory reformers should be identified to staff a team of researchers capable of absorbing training on NTMs impact assessment. Where government staff is not available or lacks minimal capacity to enroll into a training programme, it is advisable to draw external resources from local think tanks, research institutes, and universities.
3. The institutional setup to deal with NTMs is of critical importance, since cross-ministerial coordination and consultation are typically less than optimal. The local NTM Committee should function based on a clear and formal description of responsibilities and it should be provided with staff and financial resources commensurate with the volume of work it is expected to perform. In addition, having some capable think tanks and institutions to publicly review the NTM implications under existing regulations may help leverage attention and support streamlining.
4. A distinction is made between the tasks and responsibilities of the Committee and the Secretariat. The Committee should be inter-ministerial and its members of the highest possible political ranking (no lower than Secretary of State or Director General). The Secretariat could also be hosted in one single agency and it should comprise of technically sound professionals capable of reviewing NTMs and presenting policy options on how they could be streamlined.
5. A set of clear and consistently applied criteria to review regulations should be developed by the analytical team, in order to increase accountability and transparency of the streamlining process. When the consultation rules are transparent and made available also to the private sector, they can more easily provide the necessary inputs to make sure their interest is taken into consideration in reviewing existing NTMs.
6. New NTMs should be designed in a transparent regulatory policy development process, which includes consultation with stakeholders and, ideally, a Regulatory Impact Assessment at least for those regulations that are more likely to cause problems.
7. NTMs should be notified early to the ASEAN Secretariat (ASEC) and other AMS. They should be classified and uploaded into the NTRs/ATR as soon as they are adopted, triggering a process of peer review stimulated by private sector complaints.

8. A long-term capacity building programme should be designed and funded to ensure the necessary skills are available to carry out the mandate of the local NTM Committee. A mix of frontal training and on-the-job training should be tailored to the specific needs of the targeted administration.

## 5. Suggested Course of Action to Deal with NTMs in ASEAN Member Countries

### NTMs collection, classification and publication

Several ASEAN countries have delivered or are delivering on their commitments towards increased transparency of their NTMs. By September 2017, all countries had launched online NTRs (also known as Trade Portals), and are working on linking such NTRs with the ASEAN Trade Repository (ATR). A close look at the content of the published regulations suggests that the preparatory work in some countries has been more intensive than in others, with reference made to existing websites or NTMs databases that sometimes are not user-friendly or easy to consult for traders.

The ASEAN Secretariat would have to fulfil its mandate of reviewing the content and structure of the existing websites, outlining best practices and formulating a standard template for all ASEAN member countries to consider in view of improving their NTRs and increasing consistency across countries. The use of a similar information technology platform would also help to promote inter-operability across national trade portals and support ease of use for traders.

There are also differences between countries in terms of their capacity to identify, collect and identify NTMs. The database developed by ERIA/UNCTAD in 2015/16 offers a tremendous opportunity to institutionalise this process and make it sustainable over time. Similar to what has been done in Cambodia, Lao PDR, and Myanmar, each country would have to give one institution the task of officially validating the list of NTMs collected. Countries should consider also supporting the institution with a dedicated team of officials to identify and collect NTMs across ministries. This is only possible if the team is supported by a legal instrument giving it an official mandate to request cooperation of line agencies issuing new NTMs. Legal mandates could go as far as ensuring that NTMs could not be lawfully enforced unless they are previously communicated to the team in charge of classifying and publishing them.

The validation process would have to be done in close cooperation with line ministries, ideally under the coordination of a National NTM Committee, which would have to be formally established and convened where this has not been done yet.

It is critical that regulations are classified according to the MAST classification system and that they are searchable by product and HS code to improve usability for traders. Listing the HS codes can help traders in making customs declarations and improves the quality of customs data on trade. Failure to precisely identify the scope of affected products in the regulation would increase the difficulty for traders, or could create inconsistencies and leave the decision about whether the traded products are compliant or not at the discretion of the trade and custom authorities. This would mean transparency in the NTM process cannot be fully guaranteed.

Whenever necessary, the training delivered to officials in Cambodia, Lao PDR, Myanmar, and Viet Nam could be offered also to other ASEAN members, benefiting from existing manuals and training materials.<sup>9</sup> These countries could also seek assistance to set up and operationalise the National NTM Committees, taking into consideration good practices and experience from other countries in the region and beyond.

### **NTMs streamlining**

Efforts to develop capacity of the team staffing the NTM Secretariats, however, should focus on methodologies and techniques to measure the impact of NTMs and recommend options for streamlining. Analytical methodologies have been developed to quantify the impact of NTMs (i) on firm competitiveness using sector-level and firm-level data, and (ii) on poverty using household data. Elements of Regulatory Impact Assessment could also be included in the training programme targeting the staff of NTMs Secretariats.

More importantly, as the CLMV are all in the transition process with emphasis on improving economic institutions, efforts to streamline NTMs should thus be integrated into the broad programme to enhance the ease of doing business. Designing a stand-alone programme to target NTMs specifically may not help produce desirable impacts. Instead, such a programme may encounter difficulty gathering enough supports to attract attention of regulators – which often come from a wide range of agencies. In this regard, ensuring sufficient political will is necessary, but not enough to prioritise NTM simplification over other issues for reforms in the CLMV.

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<sup>9</sup> The first day covers an overview and definition of NTMs in the WTO and ASEAN contexts. Once NTMs are defined, database structures used to facilitate the classification of NTMs are introduced and a series of classification exercises in breakout groups are conducted. Over the next 3 days, the training elaborates on specific NTM classification categories and provides opportunities to apply the knowledge gained from the presentations in breakout groups supported by plenary reporting and discussions. The last day of the training includes presentations on the general principles and operating procedures relating to government notification of NTMs, introduction to criteria and strategy for streamlining NTMs (including international experiences with these), and brainstorming on institutional follow-up support to implement the ASEAN NTM Work Program, including on the details of setting up and operationalise National NTM Committees.

The CLMV should unilaterally and jointly work to increase the adoption of good regulatory practices in the rulemaking process. The process should ideally start with regulations that may have potential NTB effect and that potentially affect a large range of stakeholders. That is, debatability in the NTMs that set the early examples for adopting good regulatory practices should be encouraged. It should be borne in mind that these practices do not alter the role of regulators; instead, they just improve how the regulators interact with the stakeholders to arrive at the NTMs that best meet the economy-wide interest.

From CLMV perspectives, improvement of the laws and regulations is still an ongoing need. Nonetheless, the need for such an improvement should not and must not constitute a ground for quickly issuing regulations just to be in line with the pre-set lawmaking agenda. In many cases, the cumulative burdens of formulating and enforcing a low-quality regulation, which would unavoidably trigger future amendments, may simply exceed the costs associated with more time and effort to have a good enforceable regulation right from the beginning. Accordingly, it may be worthwhile to patiently prioritise compliance of NTM-related regulations with good regulatory practices.

Specifically, the CLMV should aim for better and more transparent justification of NTMs. Awaiting precedent simplification of NTMs in trade partners, or citing similar NTMs in trade partners should no longer justify the NTMs enforced by the CLMV. In particular, regulations should not be formulated solely or overwhelmingly for the purpose of restricting trade just on the ground of trade balance. Explicit elaboration of regulatory objectives is important, but not enough without weighing those objectives and associated cost–benefit analysis. This will help reduce the unnecessary burden of NTMs on traders and businesses. In various cases, ex ante consultation might help collect relevant insights from traders and businesses, which actually improves the quality of the regulation itself. That is, having affirmed the confidence of the business community regarding the legitimacy and neutrality of NTMs will improve the actual effectiveness of such NTMs.

In particular, trade effects of NTMs should be well documented and, at best, disaggregated to the sectoral level. This will give more insights 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. At the same time, the need for documenting such trade efforts will induce further development in the statistical system – which is an ongoing need for the CLMV.

Both the stock and flow of NTMs should be subject to examination. A process of review and impact evaluation should be put in place for new NTMs proposed for adoption to ensure that their policy objectives are justified and that they will not be overly trade restrictive in achieving these. Governments will need to introduce regulatory impact assessment principles when designing new rules and regulations. For example, the ministry/agency issuing a new regulation, especially if it is projected to restrict trade, should communicate the rationale for the regulation, its objectives, justification, WTO compliance, alternative measures considered and reasons they were dropped, affected groups/products/industries, and end date.

The proposed training will have to be adapted to the experience and technical expertise of the audience. It could cover the following issues:

1. Measuring the impact on NTMs. NTMs are complex legal instruments, including sanitary and technical regulations. Yet they can have major impacts on the economy. How can we make them amenable to economic analysis? How can we measure the effect they have on the cost of living? Can we measure the similarity of national regulatory systems? What data can we use? The worldwide database on NTMs to analyse national regulatory systems in a systematic, quantitative analysis could be introduced.
2. Streamlining NTMs: Policy perspectives. NTMs can impose costs on businesses and hamper trade. Should they be eliminated through international or regional negotiations? Alternatively, do they play a useful role in a modern economy? Can we think of systematic ways of making them better? What are the 'disciplines' imposed by the WTO on the way countries make use of NTMs? Would it be desirable for a country to go beyond those disciplines? This module could propose a formal, systematic method to analyse the effects of NTMs on country's trade and economy.
3. Toward cost–benefit analysis: Estimating regulatory gains. Regulations are typically imposed for non-trade objectives, amongst which public health is one of the most important. To carry out a full cost—benefit analysis of regulatory decisions, a government needs to be able to put a value on health. How can we do this? This module could introduce some of the best-practice methods used to put a monetary value on the avoidance of disease outbreaks through SPS regulations.
4. NTM streamlining: Case studies. This final session could focus on real-life NTMs to streamline taken from the experience of other countries. Participants could be asked to analyse three regulatory reviews in groups and propose and defend publicly a recommendation (to uphold the regulation, to modify it, or to eliminate it).

The above proposal is by no means exhaustive. The CLMV should also take advantage of the development cooperation chapters under various FTAs to build its capacity for streamlining NTMs, particularly via broader efforts for regulatory coherence. For instance, Viet Nam benefited a lot from actively participating in the range of activities related to building capacity for regulatory impact assessment, public consultation, etc. under the framework of the Asia–Pacific Economic Cooperation (APEC) forum. Looking forward, Viet Nam may also use the provisions under Cooperation and Capacity building chapter under EU–Viet Nam FTA to seek relevant capacity building programmes to support trade, including the NTM-aligned regulatory coherence. In this regard, the recently concluded chapter of the Regional Comprehensive Economic Partnership (RCEP) may offer an opportunity for CLMV to jointly build capacity to formulate regulations that may have NTM implications, supported by more advanced trade partners.



## NTM institutional mechanisms

The need to set up inter-ministerial mechanisms to review NTMs and to assess their impact is therefore evident. It is also clear that private sector organisations should be consulted sooner rather than later as they are in the best position to assess the compliance cost of new bureaucratic requirements. Regulatory impact assessments (RIAs) would have to be performed ex ante, but the same principles would also have to be employed to assess the potential negative effect of existing regulations. This can hardly be performed by line ministries and agencies, particularly in developing countries with relatively limited governance and research capacity. Inter-ministerial mechanisms, tailored to the specific needs of each country, could be given a detailed mandate to perform these tasks. The staff of the inter-ministerial institutions could be easily targeted with capacity development interventions, which would otherwise risk being less sustainable.

As mentioned above, a number of ASEAN countries are considering simplifying the institutional structure to manage their NTMs by establishing one single mechanism to comply with the WTO's TFA, ATIGA and TPP commitments. This is a difficult process as it needs to fit within existing political and administrative structures, meaning that each country will have to adapt this general concept to the specific local circumstances.

Mandates and responsibilities of the Committee will have to be clearly formulated in a high-level official mandate, establishing also a technical secretariat responsible for preparing evidence-based political decisions to be taken by the Committee. Each agency issuing NTMs would have to be represented in the Committee by a focal point at senior level, so that it could take important decisions.

Countries could consider the possibility of establishing sub-committees with more specific mandates, whenever this is justified in the local circumstances. Sub-committees or specific secretariats could be charged with establishing and maintaining the Trade Portal, or reviewing NTMs' impact, or focusing on enforcement issues linked to trade facilitation, etc. In any case it is important to make explicit provision for the participation of private sector representatives as their views are keys to identify problematic NTMs and fully assess their impact.

Last, the CLMV should continue to apply NTMs equally to all partners. In other words, they should avoid particular NTMs for imports from certain countries/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.

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