

Chapter **1**

NTM in ASEAN Looking Ahead: From Protection to Precaution

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August 2019

This chapter should be cited as

Lamy, P. (2019), 'NTM in ASEAN Looking Ahead: From Protection to Precaution', in Ing, L.Y., R. Peters and O. Cadot (eds.), *Regional Integration and Non-Tariff Measures in ASEAN*. Jakarta: ERIA, pp.1–4.

CHAPTER 1

NTMs in ASEAN

Looking Ahead: From Protection to Precaution

Pascal Lamy

The relative importance of tariff measures (TMs) versus non-tariff measures (NTMs) is changing in the Association of Southeast Asian Nations (ASEAN) as it is elsewhere: less TMs, more NTMs. The evolving landscape of obstacles to trade entails major consequences that ASEAN will have to factor into the next stages of its trade integration.

According to conventional wisdom amongst many trade economists, this shift stems from a substitution process: NTMs are replacing TMs. TMs and NTMs are equivalent and tariff equivalents are the right way to measure their trade distorting impact.

I have a different view: most NTMs are not replacing decreasing TMs. If properly defined, they serve different purposes. In short: TMs are about protection; NTMs are about precaution. Their respective evolution originates in largely unrelated concerns. Addressing their trade distorting effect consequently does not belong to the same policies or instruments. This all the more important that these features are here to stay as the balance between protection related and precaution related obstacles to trade will keep tilting on the side of the latter.

To get the right picture, let us distinguish, at the risk of oversimplification, between three categories of obstacles to international trade, i.e. factors that make trading with foreign markets more expensive than trading with the domestic market.

The first category regroups measures the purpose of which is to protect producers from foreign competition: such as quantitative restrictions (quotas), tariffs, domestic subsidies, trade defence instruments (antidumping, safeguards, anti-subsidies), import licensing.

The second category is about measures the purpose of which is to protect consumers from risks: safety or security, norms, standards, certification, traceability, and packaging requirements. They do not discriminate between domestic and foreign production.

The third category is about costs related to transport, to logistical chains or to border crossing specific processes, some of which are related to the administration of the two previous categories.

Worldwide long-term trends of the average costs of trade related to each of these, which have been observed in the past and can be expected for the future, can be roughly summarised in Table 1.1.

Table 1.1: Cost of Trade

Category	Present	Future
1	5% ¹	1%
2	20% ²	15%
3	10% ³	5%

Source: Author's estimation, 2017.

Category 1: obstacles have been decreasing and will keep doing so as the expansion of international value chains will keep increasing the import content of exports, thus increasing the weight of the cost of imports in the competitiveness of exports. Increasing this cost makes less and less sense for competitiveness reasons.

Category 3: should also remain on a diminishing trend as technology keeps reducing the cost of distance, and as processing trade is facilitated by various improvements.⁴

The evolution of Category 2 is more uncertain as the cost of these measures will be shaped by two opposite trends. On the increasing side, the predictable growing concern about precaution. It stems from the changing collective preferences of the wealthier and aging populations as they become more risk averse. On the decreasing side, the various processes of levelling the international playing field by regulatory convergence towards similar or equivalent precaution levels to unlock the considerable potential for economies of scale.

In the ASEAN as elsewhere, the balance resulting from these two trends will depend largely on the capacity to effectively organise regulatory convergence, a challenge which differs quite radically from the traditional pattern of trade opening in several ways.

First, because of the way the playing field is levelled. Reducing tariffs or subsidies is a relatively simple exercise, the ultimate result of which is a 'zero'; it can be traded-off (less for less, leading to zero for zero). Reducing precaution related costs of trade works very differently as the name of the game is not about getting rid of the measure (precaution cannot decrease for obvious political reasons), but reducing and ultimately eliminating the differences in the measures. Regarding upwards convergence, for the same political reasons, such a process cannot take the shape of a negotiation. It is handled mostly by regulators and not by traditional trade experts.

Second, because the political economy of trade opening, which is about navigating between the interests of producers and consumers, is turned upside down: reducing protection is supported by consumers and opposed by producers; reducing differences in precaution is supported by producers and likely to be opposed by consumers who fear 'precaution dumping'. This difference impacts the legitimisation of trade opening, as consumer's sensitivities are much more widely spread amongst populations than producers vested interests. Hence, for instance, a growing insistence on transparency of precaution convergence processes.

¹ Worldwide trade weighted average tariff.

² Estimation of cost of adjustment to foreign regulations for an average exporter.

³ Estimation of logistics + border administration.

⁴ Such as, for instance, the 2013 Bali Trade Facilitation Agreement.

Third, because of the ‘forum’ issue. Reducing protection usually happens by a combination of different trade opening streams, whether bilateral, regional or multilateral. Reducing difference in precaution is inevitably more bilateral or regional as it has to start from the highest level which is the most trade constraining. Example of global standards such as those for food within Codex Alimentarius or those within the World Organization for Animal Health are rare and will take time to be established and implemented.

Fourth, because political principles applied to reducing protection such as special and differential treatment for developing countries cannot govern precaution as it is incompatible with variable geometry. Precaution is by nature ‘MFN’.

Fifth, because of the ‘grey zone’ between precaution and protection, i.e. when precaution is used for protection purposes. This area is under multilateral scrutiny in the WTO as per disciplines which its members have subscribed to⁵. It also leads to a growing tendency to establish a ‘Chinese wall’ to avoid conflicts of interest between domestic authorities in charge of trade and those in charge of consumer protection, starting with food and agriculture.

Looking ahead, ASEAN trade integration will have to move from the old world of protection to the new world of precaution. This implies a strategic focus in the two main areas it has been developing so far: regional and multilateral.

As far as regional trade integration is concerned, regulatory convergence should become the main priority, for goods (for example in food safety or in medicines authorisation), as well as for services (for example in air slots distribution or visas for tourists). A complex process that needs to be carefully organised, including in properly managing public sensitivities in getting convergence timelines which accommodate different levels of development, and in the provision of adequate technical assistance.

The only existing regional endeavor of this kind started in the European Union in 1985 when the ‘internal market’ process was launched. It used the two main available methodologies for regulatory convergence: harmonisation (i.e. adapting a regional single regulatory standard) and mutual recognition (i.e. regional partners accepting national standards as valid for all).

What the European Union experience tells is that such a convergence is easier for goods than for services: according to various estimations, 30 years later, the ‘zero regulatory difference’ has been met at 80 percent for goods and only 50 percent for services.⁶

Were ASEAN countries to adopt such a plan, proper consideration should be given to regulatory standards and international best practices, which are likely to remain the trendsetters in precaution related areas for the times to come.

⁵ Namely the TBT (Technical Barriers to Trade) and SPS (Sanitary and Phytosanitary) agreements.

⁶ Author’s estimation 2017.

The European Union experience also shows that the main force behind regulatory convergence lies in its attractiveness for producers, who are the ones pushing for intra-regional higher economies of scale. The main obstacle, on the other hand, is expected to come from consumer organisations, who, rightly or wrongly, fear 'regulatory dumping', i.e. business pushing for downward precautionary convergence. It is up to public authorities and regulators to organise the necessary transparency and public debate in order for these sensitivities to be adequately addressed.

As far as multilateral trade rules are concerned ASEAN should push for NTMs convergence, for strengthening TBT and SPS notification disciplines and review within WTO, for building similar instruments in the services area, and for pressing for more transparency of bilateral cooperation between developed countries.