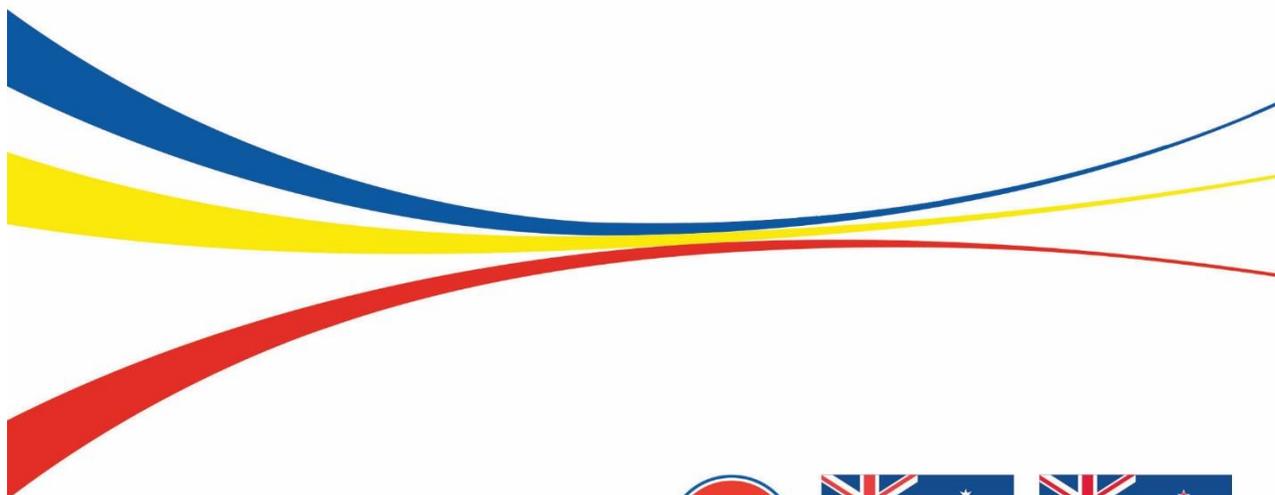


Report of the Committee on Trade in Goods on the Review of Non-Tariff Measures under AANZFTA

9 September 2017



ASEAN-AUSTRALIA-NEW ZEALAND FREE TRADE AREA
ECONOMIC COOPERATION SUPPORT PROGRAMME
(AECSP)

CTG's Report on the Review of Non-Tariff Measures under AANZFTA
(at the 22nd AEM-CER Consultations,
9 September 2017, Pasay City, Philippines)

1. As mandated by Article 7.4 of the Trade in Goods Chapter of the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), officials have been undertaking a review of non-tariff measures (NTMs) “with a view to considering the scope for additional means to enhance the facilitation of trade in goods between the Parties.” This report outlines progress in the review including recommendations for appropriate actions to better address NTMs.
2. To assist officials in carrying out the review, a Consultant was commissioned to undertake research and a business survey along the supply chain among AANZFTA Parties. The business survey involved consultations with 110 companies, mostly small-to-medium enterprises (SMEs), in six AANZFTA Parties. A majority of the companies were in the wood and timber furniture sector, or the seafood sector, but companies in other sectors and companies that provide trade services such as freight forwarders were also interviewed to test the robustness of the results for business generally. The Consultant undertook the business survey at arms-length from AANZFTA Parties to encourage business to provide confidential and frank input to the survey. The Consultant’s report focuses on presenting and analysing the perceptions of business, and the challenges identified by business, rather than seeking to verify the accuracy of the business input.
3. The Consultant’s report, considered in draft form at the meeting of the FJC and its subsidiary bodies in Auckland, New Zealand, 29 May-3 June 2017, identified a series of findings and insights from the business survey about the impact of NTMs, and made 11 recommendations for consideration by AANZFTA Parties. A copy of the Executive Summary to the Consultant’s report, which sets out the key insights and the 11 recommendations, is attached to this report (**Attachment A**).
4. The Consultant’s report confirmed businesses across the region have significant concerns that NTMs are affecting trade and investment. There was recognition by business that NTMs could be associated with important and legitimate public policy objectives, but business expressed concern that the design and implementation of NTMs could have a range of unintended consequences. The Consultant identified the following key impacts of NTMs:
 - a) Variations in customs clearance times and associated fees place undue burdens on companies and impact the demand for their products and their competitiveness in the international market.
 - b) Lack of clear information on NTMs creates uncertainty for exporters and impacts upon their competitiveness.
 - c) Poor awareness of regulation on the part of government officials prevents exporters from obtaining advice and support when it is most needed.

- d) As costs associated with complying with NTMs are passed onto consumers, they impact the demand for products and the competitiveness of companies trading in the international market.
 - e) NTMs can negatively impact the development of key relationships and contracts, and inhibit the ability of traders to establish sustainable supply and value chains.
 - f) Uncertainty concerning the impact of NTMs influences where Medium-to-Large companies source products.
 - g) Where NTMs and trade regulations are neither transparent or consistent, widespread use of facilitation payments, and unethical and possibly corrupt practices, referred to as “S-11 Technologies”, are adopted to facilitate trade.
 - h) NTMs and the strategies employed by exporters to manage them tend to favour Medium-to-Large Enterprises over Small and Micro-Scale Enterprises.
5. Officials assess that the issues identified by the Consultant are significant and deserve continued work on NTMs as part of AANZFTA’s on-going work program.
6. Officials recommend that the following actions be taken by AANZFTA Parties to take forward work on NTMs:
- a) That work on NTMs become an on-going part on the work program of the Committee on Trade in Goods and its subsidiary bodies, with the following mandate:

“The Committee on Trade in Goods (CTG) and its subsidiary bodies should have, as a standing item on their agenda, consideration of Non-Tariff Measures (NTMs) with the aim of improving understanding of the impact of NTMs on business, examining particular measures raised by any Party, and developing recommendations on steps the Parties could take, individually and collectively, to facilitate trade and investment through initiatives to reduce or eliminate any unnecessary or unduly burdensome impacts of NTMs on business.”
 - b) That the CTG and its subsidiary bodies, as part of their on-going work on NTMs, further consider the recommendations put forward by the Consultant with a view to exploring the scope to implement these recommendations, while taking account of the need to avoid unnecessary duplication of any work they may already have underway or which is progressing in other forums.
 - c) That the Parties develop a set of initiatives to enhance engagement and outreach to business and other stakeholders, including through the holding of business engagement sessions in connection with the regular meetings of the FTA Joint Committee (FJC).
 - d) That the Parties give specific attention to the interests and concerns of SMEs through:

- i. Seeking to ensure SMEs are represented in business engagement sessions;
 - ii. Ensuring a strong focus on SME perspectives in the on-going work on NTMs; and
 - iii. Ensuring that SME perspectives are taken into account in the work of the CTG and its subsidiary bodies to administer their respective Chapters of the AANZFTA.
- e) That the Parties explore opportunities to enhance business access to information about AANZFTA and to improve AANZFTA's procedural requirements when claiming tariff preferences or taking advantage of other AANZFTA provisions to make these requirements more business-friendly. In particular, the Parties will explore options to enhance the effectiveness of the AANZFTA Chapter on Customs Procedures, including through ensuring that originating goods are cleared as fast as possible using the 'Verification Procedures of the Rules of Origin Chapter and applying appropriate risk management techniques such as the Post Clearance Audit. Parties should also ensure that the implementation of this Chapter has a stronger focus in the work program in the future, and takes account of the entry-into-force of the WTO Agreement on Trade Facilitation. As part of this, consideration should be given on how to ensure that an appropriate AANZFTA body – whether the CTG or a subsidiary body - takes forward work in relation to the implementation of the Chapter on Customs Procedures.
- f) That the Parties explore opportunities to enhance good regulatory practice (GRP) in their regulatory systems and strengthen cooperation through the FJC and its subsidiary bodies to exchange information and support the promotion of GRP across AANZFTA Parties, including in relation to:
 - i. improving transparency and stakeholder engagement during the development of new regulations and amendments to existing regulations;
 - ii. enhancing the use of regulatory impact assessments when developing proposed regulatory measures;
 - iii. promoting public access to information on regulatory measures;
 - iv. strengthening processes and mechanisms to facilitate effective interagency consultation and coordination; and
 - v. making greater use of periodic review of regulations to ensure their continued effectiveness and consistency with GRP.
- g) That the Parties review the effectiveness of the above work program on NTMs in 2022, including through business input, to ensure it remains relevant and effective in facilitating trade, while recognizing that NTMs may be associated with the pursuit of important public policy objectives.

Executive Summary

Non-tariff measures (NTMs) have come into increasing focus for businesses as tariff levels have fallen over the past decades. In view of this, the report on NTMs is timely and provides an important step toward facilitating trade in the region.

NTMs can be defined as policy measures other than ordinary customs tariffs with the potential to have an economic effect on international trade in goods or services. These include laws and regulations that govern international trade directly (such as import and export regulations), and those that can affect trade indirectly through domestic policies (such as labelling and packaging requirements).

There are valid reasons why NTMs are imposed by governments. NTMs may support legitimate and necessary policy objectives, such as safeguarding public health and the environment. However, some NTMs act as unnecessary barriers to trade, or may have unintended consequences which distort trade.

This report outlines the findings of a study on the review of NTMs along the supply chain throughout the region of the Association of Southeast Asian Nations (ASEAN), Australia and New Zealand. It was commissioned by the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) Trade in Goods Committee to fulfil Article 7(4) of the agreement's Trade in Goods Chapter which mandates a review of NTMs. Given that the surveys were largely focused on the seafood and wood/furniture sectors, further work is recommended to confirm the extent to which the conclusions may be relevant to trade more generally, or reflect features of trade specific to these sectors. This would also enable the potential identification of other sector specific aspects to trade.

The study involved consultations with 110 companies, mostly Small-to-Medium Enterprises (SMEs), during in-country consultations conducted in Australia, Indonesia, Malaysia, New Zealand, Singapore and Thailand between August 2015 and March 2017. Of these companies, 44 participated in the Wood and Timber Furniture Sector and its supporting industries, while 28 participated in the Seafood Sector. A total of 19 trade forwarders and a further 19 companies operating in other sectors were also consulted. 83 of the 110 companies consulted are engaged in international trade.

At the conclusion of the consultations, qualitative and quantitative data collected throughout the study was analysed and seven key insights were identified:

- (1) **Lack of Transparency and Accessibility of Information** continue to present significant challenges for companies engaged in international trade. The inability to easily access clear guidelines on the documentary evidence required to demonstrate compliance, or to anticipate the costs and time required for shipments to clear customs, present significant risks for companies and may inhibit participation in international trade.

- (2) The **complexity and variability of regulations and procedures across the region** make it difficult for companies to determine whether or not they meet trade requirements, what documentary evidence they must produce to demonstrate compliance, and from which authorities this documentation must be obtained. This complexity creates uncertainty for traders and may discourage some companies, particularly small and micro-scale enterprises, from participating in international trade.
- (3) **Inconsistent implementation of NTMs** across the region creates confusion and uncertainty for traders. This uncertainty can inhibit the development of key relationships and contracts and prevents companies from establishing sustainable supply and value chains.
- (4) The **requirement that companies duplicate their efforts**, in order to comply with local and foreign rules and processes, places undue burden on exporting companies, both in terms of the time and fees associated with conducting international trade, and may be prohibitive for some companies.
- (5) Where NTMs and trade regulations are neither transparent nor consistent, **widespread use of facilitation payments, and unethical and possibly corrupt practices** commonly referred to as “S-11 Technologies” are adopted to facilitate trade.
- (6) NTMs and the strategies engaged to manage them tend to **favour Medium-to-Large Enterprises and disadvantage Small-to-Micro-Scale Enterprises (SMSEs)**, many of whom lack the resources to effectively navigate cumbersome or complex trade requirements through the engagement of dedicated staff to research requirements and ensure compliance, or the adoption of use of facilitation payments, and unethical and possibly corrupt trade practices.
- (7) Significant **capacity gaps** across the region both on the part of government officials and companies engaged in import and/or export activities exacerbate compliance issues and limit the potential benefits traders are able to derive from preferential trade agreements.

The study found that the NTMs in place had significant implications. There is one set of implications related to the building of, participation in and efficiency of operation of value chains. Further implications included those for the competitiveness of exporters, the costs of uncertainty in international transactions, the difficulties created in providing support for exporters, the use of other unethical measures to facilitate trade and the barriers to the participation of SMSEs in world trade.

The following 11 recommendations have been developed to respond to these findings:

- (1) **Develop an online application through which traders can access information about trade regulations, requirements and step by step guides via smartphone technology. This will guide traders in understanding requirements, and how to move through the process of meeting these,**

including how to complete necessary applications for permits, licences or other documentation. It will link to a repository of official documents as references, allow companies to register to receive email alerts for updates or regulatory changes, and provide business matching, networking and e-commerce services.

AANZFTA member countries would develop a single regional (AANZFTA) business friendly, non-technical trade education portal that can be used by companies throughout the AANZFTA to easily identify and access instruction on how to adhere to general trade regulations and take advantage of the benefits of preferential trade agreements throughout the region. The portal should be linked to existing websites or portals, and embed opportunities for business matching and networking, including e-commerce functions.

- (2) **Share information on a continuing basis among government and the business community** to increase transparency and accessibility of trade related information. Where new regulations or changes to existing legislation are proposed, improved means of consulting with and communicating changes to the business community must be adopted, including early public consultation and review of proposed regulations.
- (3) **Increase automation of documentation approvals**, including self-declaration and Certificates of Origin (COOs).
- (4) **Develop a pre-shipment assurance portal**, including for illegal logging regulations, where traders can submit completed documentation for review prior to despatching their goods to international destinations in order to increase trader confidence that their goods will be cleared by customs, meet post-entry requirements such as quarantine protocols, and/or meet domestic requirements in the importing country and thereby encourage greater participation in international trade.
- (5) **Develop an AANZFTA members Trusted Trader Network** which recognises companies that trade regularly and consistently meet NTM requirements, and rewards them with certification which provides them with access to a range of trade facilitation benefits such as access to simplified and streamlined documentary processes and express clearance of goods through customs.
- (6) **Review trade regulations and practices of each AANZFTA member to identify, replicate and implement best practice across the region.**
- (7) **Assess the costs and benefits of proposed regulations** for all stakeholders to ensure that the views of SMSEs are considered in the design of new or revised regulations.
- (8) **Collaborate among government and industry associations to build the capacity of companies**, through the facilitation of access to information and

provision of training to assist them in understanding regulatory requirements and develop effective systems to help them comply with these.

- (9) **Improve training and education programs for government officials**, including regular refresher courses to ensure they remain informed on the most recent developments in trade and best practices across the region. This should be supported by a central administrator who would also be responsible for reviewing decisions made by officers in the field, promoting consistency in the application of regulatory requirements, disseminating best practice, and providing precedents to inform front-line decision-making.
- (10) **Reduce quantitative restrictions and improve automatic licensing arrangements to facilitate trade**, to mitigate potential trade diversion that could undermine a company's relative competitive advantage and a country's comparative advantage.
- (11) **Ensure consistent application of Harmonised System editions** throughout the region to lower the possibility of additional costs for exporters in cases where inconsistent editions of the Harmonised System have led to a rejection of certificates of origin and preferential tariffs not being eligible.