

# PERSPECTIVE

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## **The Rise of “Murky” Protectionism: Standard-Like Non-Tariff Measures in ASEAN**

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### **EXECUTIVE SUMMARY**

- There has been a rise in standard-like non-tariff measures (NTMs) with a dual purpose: non-trade policy objectives such as health, safety and environmental protection but with subtle elements of protectionism.
- Standard-like NTMs, sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBTs), dominate the portfolio of NTMs in ASEAN. They are used more intensively relative to other measures.
- Standard-like NTMs are presented as a package, and therefore the ‘harm’ in these measures is not visible since this originates from their application and administration.
- The complexity and restrictiveness of standard-like NTMs can only be appraised through the procedures that surround them; it cannot be detected through existing NTM databases.
- Procedural obstacles have shifted the motives for trade policy in ASEAN from precautionary trade to “murky” protectionism.

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## **INTRODUCTION<sup>1</sup>**

The recent decade has seen a marked shift in policy instruments motivated by non-trade objectives, such as health and safety, national security, environmental protection and culture, also referred to as a movement from precautionary to protectionist trade (WTO, 2012). The latter involves the expansion of domestic regulations to manage trade, otherwise known as non-tariff measures (NTM).<sup>2</sup> Typical examples of NTMs include standard-like<sup>3</sup> regulations, comprising sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBTs).

Though standard-like NTMs are used to address market imperfections such as information asymmetries and negative externalities, there are also many examples of these new regulations having subtle elements of protectionism (Vanzetti et al., 2018; ITC, 2015). In some instances, the NTMs have been designed to serve a dual purpose; which is to impart an intentionally protectionist effect while serving the above-mentioned public policy objectives. One reason some countries fall into the temptation of misusing NTMs for political reasons is that these non-traditional ‘behind-the-border’ policy instruments are qualitative, heterogeneous across products and countries, opaque (less visible), difficult to monitor and have an unclear impact.

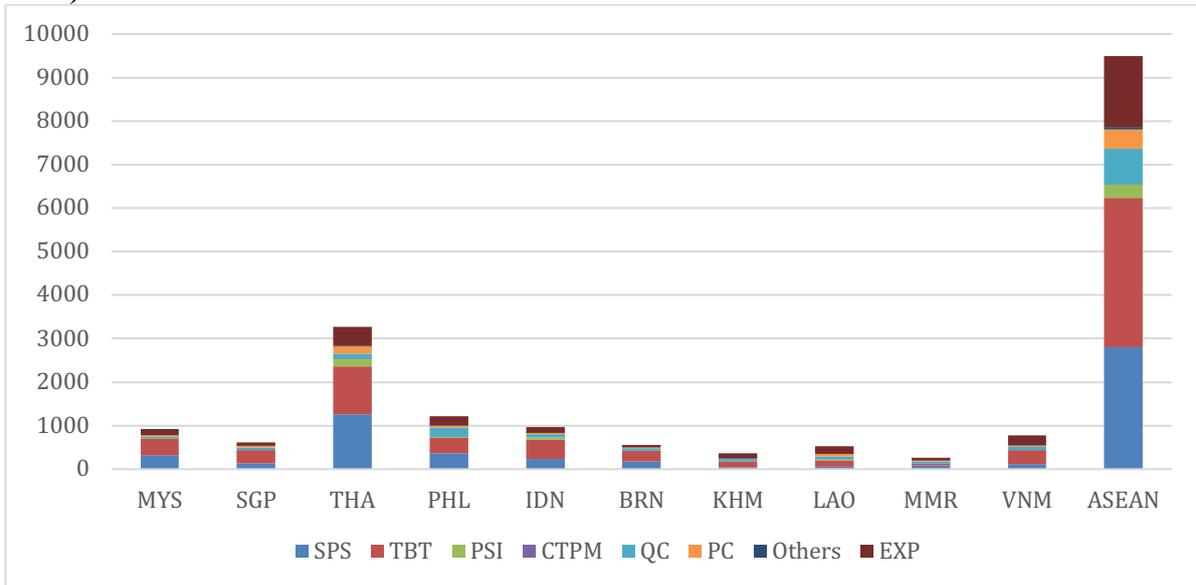
NTMs (and non-tariff barrier or NTB) have now emerged in the policy space of the Association of Southeast Asian Nations (ASEAN) agenda in recognition of the trade distorting, and even discriminatory and harmful effects, of some measures. ASEAN has set a target to reduce the transaction costs incurred by these NTMs by 10 percent by 2020.

## **NTM PORTFOLIO IN ASEAN**

### *Incidence of Standard-Like NTMs*

ASEAN recorded a total of 9,492 public NTMs<sup>4</sup> as at August 2019. The types of NTMs in ASEAN are presented in Figure 1. Thailand recorded the highest number of NTMs (3,276), followed by the Philippines (1,222), Indonesia (971) and Malaysia (920). Approximately 83 per cent of NTMs in ASEAN relate to imports, though export measures are widely used by Thailand, Vietnam, and the Philippines. At 66 percent of total NTMs in ASEAN, SPS measures and TBTs dominate the portfolio of ASEAN. SPS measures generally apply to vegetable products (25 per cent), prepared foodstuff, beverages, spirits vinegar and tobacco (22 per cent) and live animals and products (21 per cent), while TBTs largely prevail in chemical and allied industries (16 per cent), prepared foodstuff, beverages, spirits vinegar and tobacco (14 per cent), and machinery and electrical equipment (11 per cent) (Figure 2).

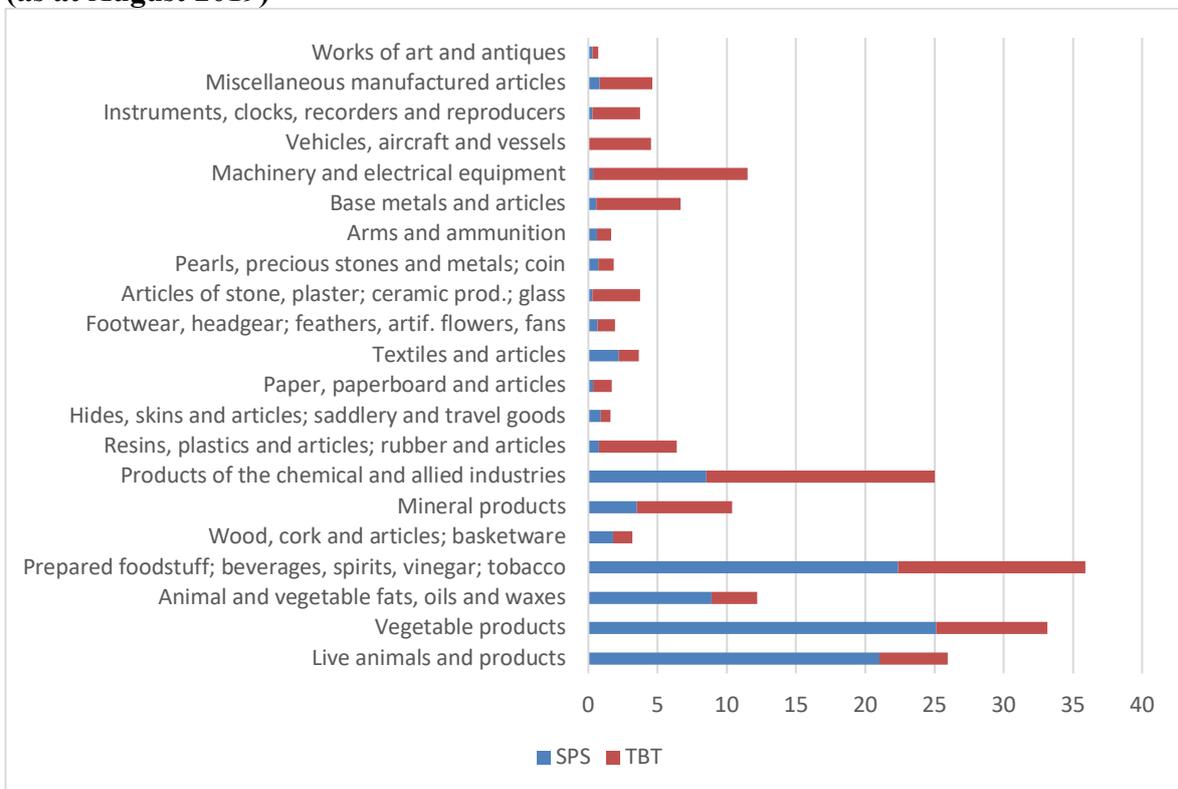
**Figure 1: ASEAN - Number of NTMs, by Country and NTM Types (as at August 2019)**



Notes: SPS – sanitary and phytosanitary; TBT – technical barriers to trade; PSI – pre-shipment inspection and other formalities; CTPM – contingent trade protection measures; QC – quantity control; PC – price control; others - other import-related measures; and EXP – export-related measures. MYS - Malaysia; SGP – Singapore; THA – Thailand; PHL – Philippines; IDN – Indonesia; BRN – Brunei; KHM – Cambodia; LAO – Lao; MMR – Myanmar; and VNM – Vietnam.

Source: Derived from the TRAINS database.

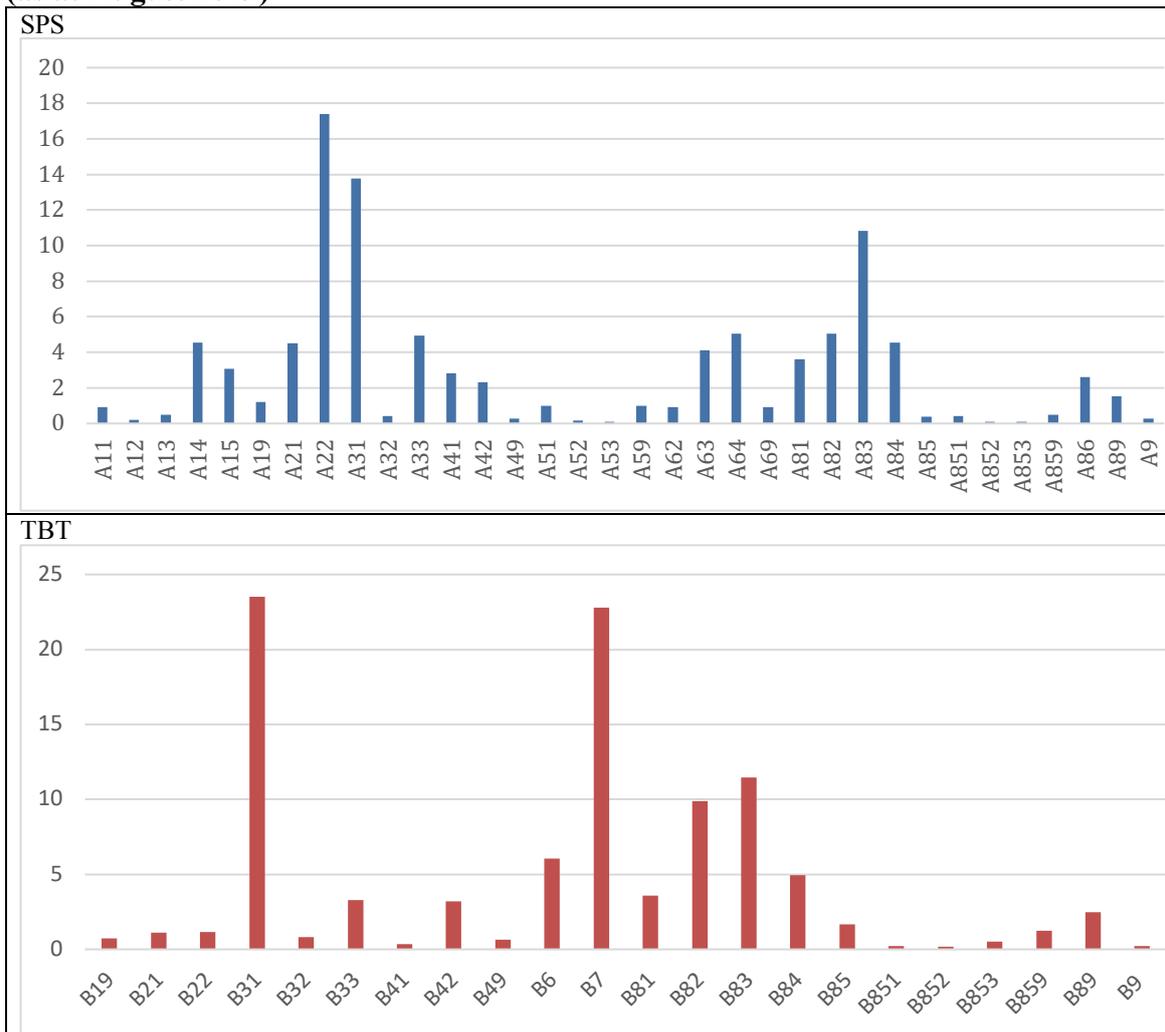
**Figure 2: ASEAN - Distribution of SPS and TBTs, Across Sectors (%) (as at August 2019)**



Source: Derived from the TRAINS database.

Within standard-like NTMs, there is a high concentration of measures in specific sub-chapters, as shown in Figure 3. SPS measures are highly concentrated in the restricted use of certain substances in foods and feeds and their contact materials (A22), followed by labelling requirement for SPS reasons (A31) and SPS certification requirement (A83). Likewise, labelling requirement for TBT reasons (B31), followed by product-quality performance requirement (B7), certification requirement (B83) and testing requirement (B82) dominate the TBT chapter.

**Figure 3: ASEAN - Distribution of SPS and TBTs, by Sub-Chapters (%) (as at August 2019)**

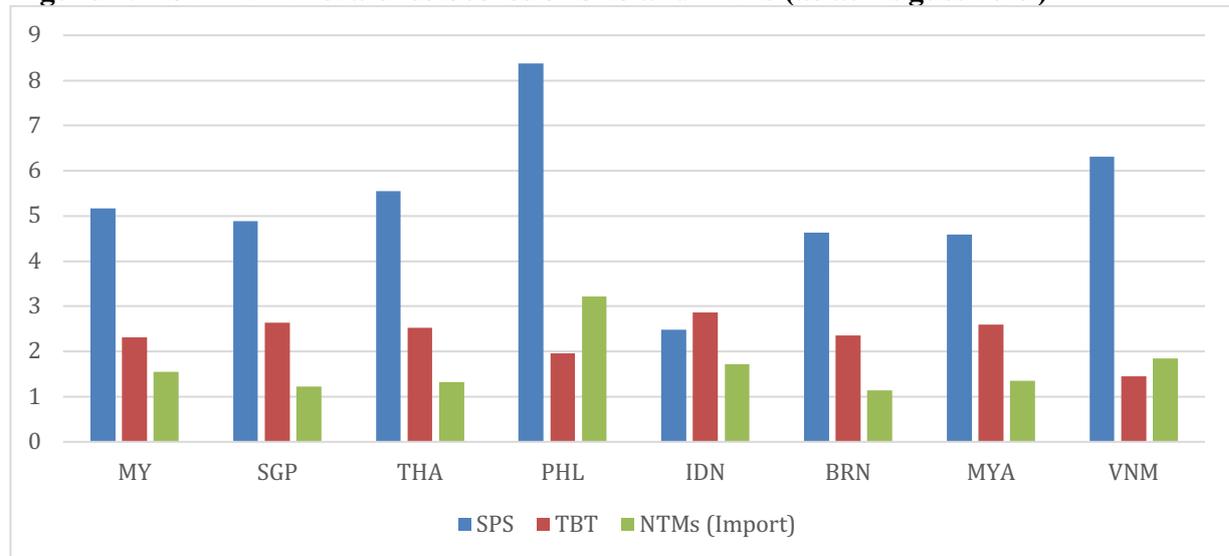


Note: Refer to the Appendix for the description of the sub-chapters of SPS and TBTs.

Source: Derived from the TRAINS database.

Furthermore, from the prevalence score (or the number of different measures that are imposed on any single product), the SPS measures are also found to have the highest values relative to the average for TBTs and the overall average for NTMs from the import side (Figure 4). There are more than eight measures on a product on average in the Philippines, more than six in Vietnam and more than five in Malaysia and Singapore. This suggests that SPS measures are used intensively in ASEAN and could pose supplementary difficulties for traders in complying to each of them (see also Ing et al., 2019).

**Figure 4: ASEAN – Prevalence Scores of SPS and TBTs (as at August 2019)**

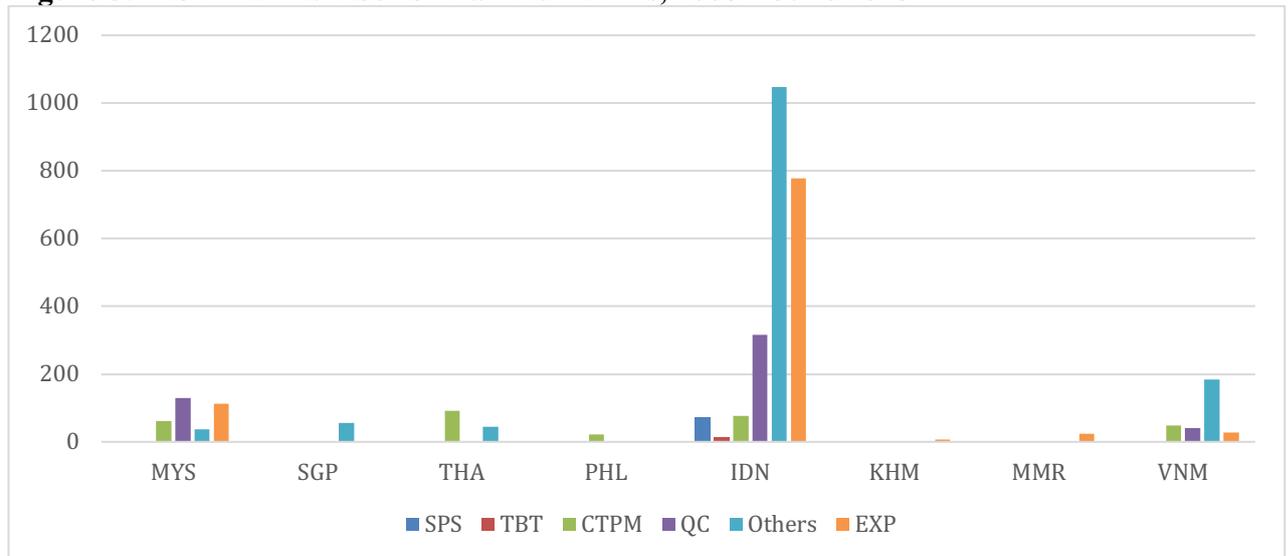


Note: All acronyms are defined in Figure 1.  
Source: Derived from the TRAINS database.

### *Harmful Standard-Like NTMs*

Standard-like NTMs are reported to be harmful only for Indonesia, according to the Global Trade Alert database (Figure 5). Indonesia was the main ASEAN member state (AMS) that is subject to specific trade concerns, recording a total of 35 cumulative SPS and TBT concerns raised from 1995 to 2018 (derived from the SPS-IMS and TBT-IMS databases). The reported concerns centre on the complexity and lack of transparency and trade-impairing effects of Indonesia’s import licensing and labelling requirements, especially with respect to horticultural products, animal and animal products, electronics, ready-made clothes, toys, footwear, food and beverages. The database is not complete in that it is not able to detect the less visible ‘harm’ embedded in the procedures linked to NTMs.

**Figure 5: ASEAN - Number of Harmful NTMs, 2008 – June 2018**



Notes: ‘Harmful’ refers to the red measures in the GTA database, described as: “the intervention almost certainly discriminates against foreign commercial interests”. It only includes announcements made by national-level agencies and those that are currently in force. For consistency with Figure 1, the types of NTMs in the GTA database are matched with the UNCTAD (2012) classification of NTMs. QC – quantity control; EXP – export related measures. All other acronyms are defined in Figure 1.

Source: GTA database.

### **PROCEDURAL OBSTACLES IN STANDARD-LIKE NTMs**

Standard-like NTMs are presented as a package and not as single stand-alone measures. The ‘harm’ in standard-like NTMs is not visible when it is not directly related to the measure or requirement itself but originates from the application and the administration of the NTMs. They are derived from national regulations that involve specific procedures for complying with a given regulation. The complexity or restrictiveness of the NTMs can only be assessed through the procedures that surround those NTMs. Since obstacles may lie in the compliance procedures, the burdensome NTMs are detected only through country-specific business surveys, such as those conducted by the International Trade Centre (ITC 2017; 2016a; 2016b; 2014).

One common barrier identified by the ITC is overlapping, complicated cross-bureaucracy and somewhat conflicting responsibilities of regulators in ASEAN. This is not surprising, as standard-like NTMs are motivated by various policy objectives, involve multiple regulators beyond the Ministry of Trade/Commerce (agriculture, fisheries, health and environment) in the respective AMS. In Indonesia, the problem is more complex as some national regulations for imports are in conflict with local by-laws. Though national regulations dictate import policies, regional governments issue additional requirements for imports to enter their jurisdiction, as in the case of imports of alcoholic beverages. Delays for fumigation procedures and export inspection combined with high fees and charges for the waiting time, arbitrary behaviour by officials (in terms of informal payments for the issuance of certification for heat treatment and classification and valuation of the product) and the requirement for a large number of different/redundant documents are cited as additional obstacles to comply with technical requirements (including conformity assessment procedures) for Indonesia’s food and agro-based products.

Redundancies in obtaining certifications for public health and environment safety, and procedural obstacles, in the form of technical compliance, are also cited as major NTMs in the Philippines. Specific problems for exporters are inadequate product-testing (lighting, electromagnetic compatibility and interference) facilities, high costs of fumigation to obtain SPS certificates for agro-based products and pallets for automotive, as well as discrepancies in export procedure policies between Customs or port authorities and in the provinces, thereby causing delays, additional informal payment and more paperwork. From the import perspective, abuse in the form of informal payments is rampant for obtaining the license for regulated chemical imports. Importers attribute such discriminatory behaviour of government officials as favouring local suppliers. The procedural obstacles identified in the Philippines are similar to those in Thailand.

For the newer ASEAN Member States (AMS), the procedural obstacles are even more serious due to capacity constraints and lack of information. For example, in Cambodia, the SPS legislation is still weak. The lack of accredited laboratories for testing and certification remain a critical issue, affecting not just exports but also imports of food, cosmetics and drugs. Some medicine samples must be sent abroad for testing and certification. Cambodia is also saddled with other barriers such as multiple and duplicate documentation, long processing times, problems with classification and valuation of imported products and corruption.

Finally, the protectionist intent of NTMs can be grasped through the stringency of national-level regulations in comparison to globally accepted standards. For example, in the case of nutrition labelling (though not mandatory in all AMS), some countries in ASEAN have gone ahead to make the measure more restrictive than the legitimate goal of providing information to consumers (Devadason and Govindaraju, 2019) requires. Through a business survey conducted with the Food Industry Asia in 2017 (Devadason and Govindaraju, 2018), it was identified that elements of nutrition labelling in ASEAN, namely nutrition (and function) claims, nutrient reference value, nutrition information panel and tolerance and compliance level, to be more complex than the Codex Alimentarius<sup>5</sup> guidelines. The reason for this divergence is the unique national (rather than regional or international) standards.

## **CONCLUDING REMARKS**

Standard-like NTMs should be the focus of the NTM agenda in ASEAN for the following reasons: First, they are the frequent forms of NTMs in the region, and they are intensively used and generally applied on a multilateral basis. Second, they apply mostly to agriculture and foodstuff, two priority integration sectors of the ASEAN Economic Community (AEC). Third, the concentration of SPS and TBT measures in labelling, certification, testing and product characteristics (mainly restricted substances and product quality), involves compliance with procedures that are evidently regarded as harmful, discriminatory and burdensome.

Procedural obstacles in standard-like NTMs that have been identified through business surveys can be classified into the following: regulation related to administrative burdens, information/transparency, discriminating behaviour of officials, time constraints or delays, informal or unusually high payment, lack of sector specific facilities (for example testing

and storage) and lack of recognition/accreditation. Procedural obstacles, a result of poorly designed standards and technical measures, have indeed shifted the motives for trade policy in ASEAN from precautionary trade to “murky” protectionism.

Procedural obstacles can be addressed through regulatory reform in the individual AMS to tease out the concealed objectives (if any) and discriminatory application in those standard-like NTMs. Removing discriminatory/harmful procedures and simplifying burdensome/complex procedures will not reduce the number of legitimate standard-like NTMs. However, removing those “hidden” barriers in standard-like NTMs and having a coherent regulatory framework that reduces the differences and conflicting standards (Devadason, 2016; 2019), will lower the costs of doing business in the region.

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#### Appendix: Description of SPS and TBTs, by Sub-Chapters

SPS	Definition
A11	Temporary geographic prohibitions for SPS reasons
A12	Geographical restrictions on eligibility
A13	Systems approach
A14	Special authorization requirement for SPS reasons
A15	Registration requirements for importers
A19	Prohibitions/restrictions of imports for SPS reasons, not elsewhere specified (n.e.s.)
A21	Tolerance limits for residues of or contamination by certain (non-microbiological) substances
A22	Restricted use of certain substances in foods and feeds and their contact materials
A31	Labelling requirements
A32	Marking requirements
A33	Packaging requirements
A41	Microbiological criteria of the final product
A42	Hygienic practices during production
A49	Hygienic requirements, n.e.s.
A51	Cold/heat treatment
A52	Irradiation
A53	Fumigation
A59	Treatment for elimination of plant and animal pests and disease-causing organisms in the final product, n.e.s.
A61	Plant-growth processes

A62	Animal-raising or -catching processes
A63	Food and feed processing
A64	Storage and transport conditions
A69	Other requirements on production or post-production processes, n.e.s.
A81	Product registration requirement
A82	Testing requirement
A83	Certification requirement
A84	Inspection requirement
A85	Traceability requirements
A851	Origin of materials and parts
A852	Processing history
A853	Distribution and location of products after delivery
A859	Traceability requirements, n.e.s.
A86	Quarantine requirement
A89	Conformity assessment related to SPS, n.e.s.
A9	SPS measures, n.e.s.
TBT	Definition
B11	Prohibition for TBT reasons
B14	Authorization requirement for TBT reasons
B15	Registration requirement for importers for TBT reasons
B19	Prohibitions/restrictions of imports for objectives set out in the TBT agreement, n.e.s.
B21	Tolerance limits for residues of or contamination by certain substances
B22	Restricted use of certain substances
B31	Labelling requirements
B32	Marking requirements
B33	Packaging requirements
B41	TBT regulations on production processes
B42	TBT regulations on transport and storage
B49	Production or post-production requirements, n.e.s.
B6	Product identity requirement
B7	Product-quality or -performance requirement
B81	Product registration requirement
B82	Testing requirement
B83	Certification requirement
B84	Inspection requirement
B851	Origin of materials and parts
B852	Processing history
B853	Distribution and location of products after delivery
B859	Traceability requirements, n.e.s.
B89	Conformity assessment related to TBT, n.e.s.
B9	TBT measures, n.e.s.

Source: UNCTAD (2012).

<sup>1</sup> This article is based on her seminar entitled ‘Non-Tariff Measures in ASEAN: Is Protectionism on the Rise?’ at the ISEAS – Yusof Ishak Institute, 27 August 2019. She gratefully acknowledges the financial support provided by the ISEAS – Yusof Ishak Institute and the University of Malaya under the Equitable Society Research Cluster (ESRC) research grant GC003C-13SBS.

<sup>2</sup> NTMs are regulatory tools, other than standard border tariffs, that can have potential economic effects on trade – either a decrease in quantities traded, an increase in their price, or some combination of both.

<sup>3</sup> The term ‘standard-like’ is used to describe SPS and TBTs as they often take the form of standards to be met by imports as well as their domestic counterparts. SPS measures correspond to standards and procedures to protect human, animal and plant health from diseases, pests, toxins and other contaminants. TBT features technical regulations, product standards, environmental regulations, labelling and other related measures that have bearings on human health and animal welfare.

<sup>4</sup> The number of NTMs is not a reflection of the restrictiveness or stringency of the regulations.

<sup>5</sup> Codex Alimentarius is relevant for international food trade, as the food standard (both product and process) issues cover specific raw and processed materials characteristics, food hygiene, pesticides, residues, contaminants and labelling and sampling methods.

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