



Economic and Social Commission for Asia and the Pacific
Committee on Trade and Investment**Sixth session**

Bangkok, 13–15 March 2019

Item 3 of the provisional agenda*

Navigating non-tariff measures towards sustainable development**Navigating non-tariff measures towards sustainable development****Note by the secretariat***Summary*

The use of non-tariff measures has risen sharply over the past two decades, in particular technical barriers to trade and sanitary and phytosanitary measures. These measures often have legitimate non-trade policy objectives. However, they should not be used as protectionist tools nor to unduly raise trade costs, as this would undermine trade as a key means of implementation of the 2030 Agenda for Sustainable Development.

Given the concerns expressed by member States of the Economic and Social Commission for Asia and the Pacific on this issue, the secretariat has initiated new research on the theme of navigating non-tariff measures towards sustainable development, to be published in the forthcoming *Asia-Pacific Trade and Investment Report 2019*.

The present document provides a summary of recent developments on the use of non-tariff measures in the region. It provides discussions on the following topics: (a) non-tariff measures in the Asia-Pacific region, including private sector perspectives; (b) the linkages between non-tariff measures, sustainable development and international standards; (c) the impact of non-tariff measures on foreign direct investment; (d) regional initiatives and good practices to streamline non-tariff measures; and (e) the emergence of non-tariff barriers to digital trade.

The Committee on Trade and Investment is invited to discuss the preliminary findings and issues presented in the present document. The Committee may wish to advise the secretariat on priorities for further research and of good practices in this area for consideration in the forthcoming *Asia-Pacific Trade and Investment Report 2019*.

* ESCAP/CTI/2019/L.1/Rev.1.

I. Introduction

1. Over the past two decades, applied tariffs in the Asia-Pacific region have nearly halved. At the same time, the pace of growth and stock of non-tariff measures have risen.¹ Member States of the Economic and Social Commission for Asia and the Pacific (ESCAP) are concerned that such measures may be used as protectionist tools and non-transparent barriers to trade.² Non-tariff measures are now believed to pose a greater impediment to trade and to be a more important cause of higher trade costs than ordinary customs tariffs.

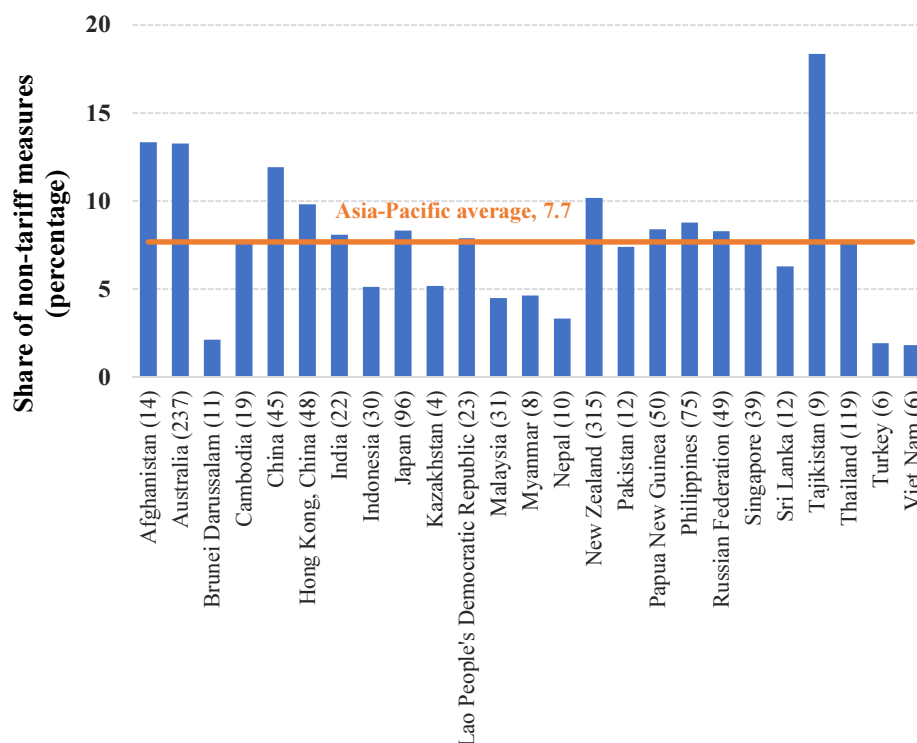
2. In that context, the purpose of the present document is twofold. First, it provides a summary of recent developments in the area of non-tariff measures in the Asia-Pacific region. Second, and perhaps more importantly, it provides an overview of the issues proposed to be covered by the secretariat in the forthcoming publication, *Asia-Pacific Trade and Investment Report 2019: Navigating Non-tariff Measures Towards Sustainable Development*, to be prepared in cooperation with the United Nations Conference on Trade and Development (UNCTAD) and the International Trade Centre (ITC).

3. Non-tariff measures in themselves are not inherently good or bad. They often serve legitimate and necessary purposes, such as protection of health and the environment, and can be important instruments in achieving the 2030 Agenda for Sustainable Development. Taking Sustainable Development Goal 12 (Responsible consumption and production) as an example, ESCAP analysis shows that in economies in the Asia-Pacific region, between 2 and 18 per cent of total non-tariff measures address this Goal (figure I).

¹ *Asia-Pacific Trade and Investment Report 2018: Recent Trends and Developments* (United Nations publication, Sales No. E.19.II.F.3).

² See ESCAP/74/44 and E/ESCAP/CTI(5)/6.

Figure I
Share of non-tariff measures that address Sustainable Development Goal 12, “Ensure sustainable consumption and production patterns”



Source: ESCAP calculations based on data from UNCTAD, Trade Analysis and Information System database.

Note: The number in the parenthesis represents the respective economy's total number of measures addressing Sustainable Development Goal 12.

4. Non-tariff measures, such as food standards, can potentially boost trade under certain conditions. When an exporting country has strict sanitary and phytosanitary measures in place, consumers in importing countries feel confidence in the quality of those food products and may demand more.

5. At the same time, costs are incurred for inspections and labelling to meet standards. Non-tariff measures are significant contributors to trade costs, which may inhibit trade. They are often more complex, less transparent and more difficult to monitor than tariffs. They, therefore, provide a convenient means for Governments to discriminate against imported products, if so desired, without appearing to breach the non-discrimination principle of the global trade regime.

6. In practice, the non-tariff measures themselves are often not the issue, but the associated procedures often are, including the time and cost involved in obtaining the required documents for importing or exporting a product. The burden of complying with non-tariff measures and associated procedural obstacles is especially felt in developing and least developed countries, where facilities to ensure compliance with technical measures are often lacking or inadequate. Developing economies consequently must resort to outsourcing services such as laboratory testing or certification to meet standards, which can erode any cost advantages in production they may have. Most notably affected are the agricultural and food sectors. This is particularly disadvantageous for

developing and least developed economies, which often have a comparative advantage in those sectors.

7. It is hard to quantify the net effect of non-tariff measures on sustainable development in general, or even on a case-by-case basis. Above all, protectionist and discriminatory non-tariff measures should be targeted for removal, whereas other non-tariff measures, subject to regulatory review, can either continue to exist or be replaced by more effective and efficient policy instruments.

8. The remainder of the present document is structured as follows. Section II contains a review of the state and trends of non-tariff measures in the Asia-Pacific region, including from a private sector perspective. Section III provides an update on the secretariat's work on linking non-tariff measures with sustainable development. Section IV provides a summary of the secretariat's ongoing work on the links between non-tariff measures and foreign direct investment (FDI) and preliminary findings from case studies. Section V provides a brief discussion of regional initiatives and good practices to streamline non-tariff measures, including in the Association of Southeast Asian Nations (ASEAN) and through regional trade agreements. Section VI highlights the emergence of new types of non-tariff measures in light of the rise in digital trade. The present document concludes with ways forward on the preparation of the forthcoming publication, *Asia-Pacific Trade and Investment Report 2019: Navigating Non-tariff Measures Towards Sustainable Development*, for consideration by the member States.

II. Non-tariff measures in the Asia-Pacific region

9. Non-tariff measures are broadly defined as “policy measures other than ordinary customs tariffs that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both”.³ The definition indicates that non-tariff measures are neutral. It provides no inherent assessment on their legality, nor on the direction of the impact of such measures on trade or welfare. A detailed classification of non-tariff measures is presented in the table.

³ UNCTAD, *Non-Tariff Measures: Evidence from Selected Developing Countries and Future Research Agenda* (New York and Geneva, 2010).

Classification of non-tariff measures

<i>Category</i>	<i>Chapter description</i>
Import measures	
Technical measures	A: Sanitary and phytosanitary measures B: Technical barriers to trade C: Pre-shipment inspection and other formalities
Non-technical measures	D: Contingent trade-protective measures E: Non-automatic licensing, quotas, prohibitions and quantity-control measures other than for sanitary and phytosanitary measures or technical barriers to trade reasons F: Price-control measures, including additional taxes and charges G: Finance measures H: Measures affecting competition I: Trade-related investment measures J: Distribution restrictions K: Restrictions on post-sales services L: Subsidies (excluding export subsidies) M: Government procurement restrictions N: Intellectual property O: Rules of origin
Export measures	P: Export-related measures

Source: UNCTAD, International Classification of Non-Tariff Measures; 2012 version (New York and Geneva, 2015).

10. The recent rise of protectionist measures, including steel and aluminium tariffs, as well as the tit-for-tat tariffs spat between the United States of America and China are not ordinary customs tariffs. According to the table, they are classified as contingent trade-protective measures (chapter D), which means the policy implications and remedy tools are different to those of ordinary customs tariffs.

A. Overview of non-tariff measures in the region

11. According to the Agreement on the Application of Sanitary and Phytosanitary Measures, members of the World Trade Organization (WTO) are required to provide advanced notice of new or changed sanitary and phytosanitary regulations. Similarly, member States are required to report new or changed technical regulations under the WTO Agreement on Technical Barriers to Trade. Since 2013, globally, about 3,000 new non-tariff measures have been reported to WTO every year – most of the reported measures have been technical barriers to trade and sanitary and phytosanitary measures. The number of new sanitary and phytosanitary measures and technical barriers to

trade initiated globally increased in 2017. The trend continued during the first 10 months of 2018. Asia and the Pacific represented about 28 per cent of sanitary and phytosanitary measures and 22 per cent of technical barriers to trade initiated globally in 2017. The region's contribution to those measures decreased to 26 per cent and 20.5 per cent, respectively, during the first 10 months of 2018.

12. Although it is required, WTO members do not always notify WTO of new or changed non-tariff measures. The lack of consistent notification and the fact that not all economies are WTO members prompted UNCTAD, in collaboration with other international agencies, including ESCAP, to collect data on non-tariff measures through systematically examining officially published national legislation. As of December 2018, nearly 60,000 measures from 86 economies have been classified and made publicly available. Nearly 24,000 measures came from 25 Asia-Pacific economies included in the database.⁴

13. The majority of measures in the database are sanitary and phytosanitary measures and technical barriers to trade. Globally, 41 per cent of measures in the database are sanitary and phytosanitary measures (28 per cent in the Asia-Pacific region), and 40 per cent are technical barriers to trade (49 per cent in the Asia-Pacific region). The third largest category, export-related measures, accounts for 9 per cent of measures globally and 12 per cent of measures in the Asia-Pacific region.

14. The count of measures alone, however, is a poor gauge of the pervasiveness of non-tariff regulations. Two descriptive indicators commonly used to quantify the intensity of non-tariff measures are coverage ratio and prevalence score.⁵ The coverage ratio captures an economy's share of trade subject to non-tariff measures, and the prevalence score indicates an economy's average number of distinct non-tariff measures applied on regulated products.⁶

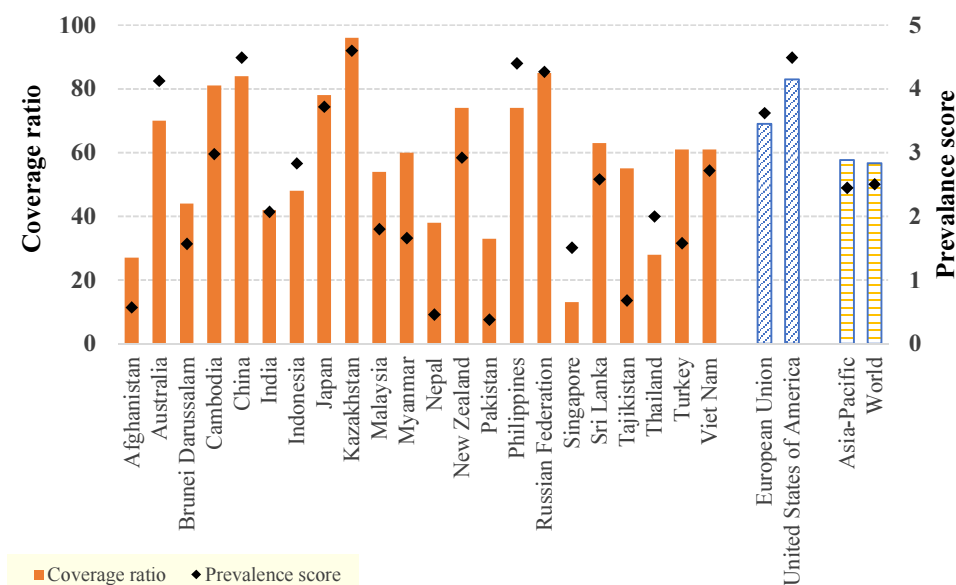
15. In general, less developed economies have lower coverage ratios and lower prevalence scores. Based on available data in the Asia-Pacific region, approximately 58 per cent of trade volume is covered by non-tariff measures, and each product faces 2.5 non-tariff measures on average (figure II). The region's coverage ratio and prevalence score are on par with the global average of 57 per cent for coverage ratio, and the prevalence score of 2.5.

⁴ UNCTAD, Trade Analysis and Information System database. Available at <http://trains.unctad.org/> (accessed on 1 December 2018).

⁵ UNCTAD and World Bank, *The Unseen Impact of Non-tariff Measures: Insights from a New Database* (Geneva, 2018).

⁶ Products are defined according to the Harmonized Commodity Description and Coding System.

Figure II
Coverage ratio and prevalence score of non-tariff measures in selected economies, Asia-Pacific and the world



Source: UNCTAD, Data on non-tariff measures. Available at <https://unctad.org/en/Pages/DITC/Trade-Analysis/Non-Tariff-Measures.aspx> (accessed on 1 December 2018).

Note: Averages are simple averages of the indicators.

16. Sector-wise, agri-food products are generally more heavily regulated, with nearly 100 per cent of trade volume subject to at least one non-tariff measure. Whereas other products are subject to fewer than two non-tariff measures on average globally, agri-food products are subject to approximately eight different non-tariff measures.⁷

17. While generally agreed to be the most comprehensive repository of non-tariff regulations currently in force, the UNCTAD non-tariff measure database is not continuously updated. As such, the database is an incomplete source of information on the most recent non-tariff measure trends.

18. According to the Global Trade Alert database, there was a drastic global increase in new trade measures introduced in 2018. Asia and the Pacific followed a similar trend, with the introduction of 33 discriminatory measures and 15 liberalizing measures per month, on average, in the first 10 months of 2018.⁸ About 28 per cent of the discriminatory measures were subsidies provided to producers, and another 12 per cent were subsidies to exporters. Import tariffs accounted for only 17 per cent, while contingent trade-protective measures represented about 16 per cent.⁹

⁷ UNCTAD and World Bank, *The Unseen Impact of Non-tariff Measures*.

⁸ A measure is classified as liberalizing if liberalization occurs on a non-discriminatory basis or improves the transparency of a relevant policy. A discriminatory measure is defined by the Global Trade Alert as an intervention that almost certainly discriminates against foreign commercial interests. See Simon J. Evenett and Johannes Fritz, *The Global Trade Alert database handbook* (2018).

⁹ *Asia-Pacific Trade and Investment Report 2018*.

19. The effect of non-tariff measures on trade is difficult to estimate, although non-tariff measures have been estimated to be three to four times more restrictive than tariffs and are the main contributors to trade costs. Their impact is sector specific: they have been estimated to add more than 20 per cent to the price of agricultural imports, and just under 5 per cent to the cost of manufacturing imports.¹⁰ As noted above, while the implementation of non-tariff measures raises costs, they have also been found to also be trade enablers. Deeper insights on the trade-offs at play would be useful to design more effective policies and non-tariff measures, including from the private sector in developing economies.

B. Private sector perspective on non-tariff measures

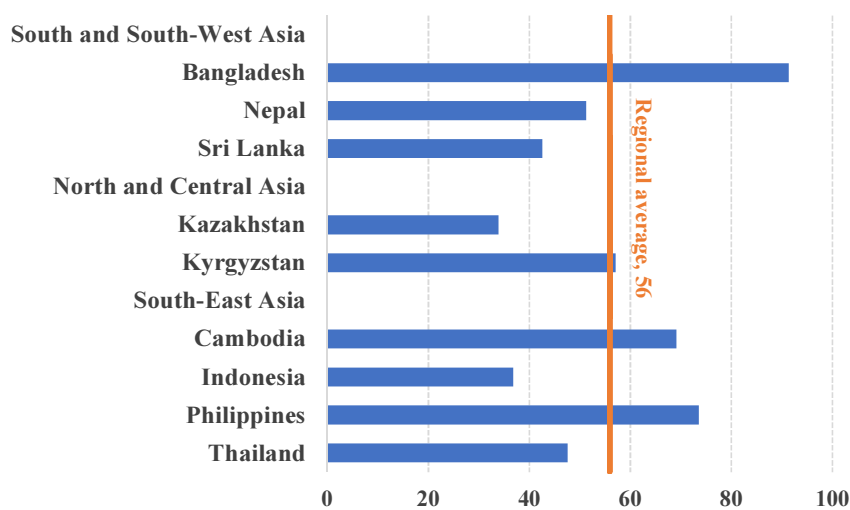
20. To provide a private sector perspective on non-tariff measures related to trade obstacles, ITC conducts non-tariff measures business surveys among businesses involved in international trade. This section provides a brief summary of the findings from those surveys in nine Asia-Pacific economies.¹¹ Conclusions are drawn from two types of data: direct country-level data on non-tariff measures from business surveys, and mirror statistics on export partners derived from data covering 44 Asia-Pacific economies at the regional level. The analysis concentrates on exporters' perspectives, with the aim of identifying commonalities across five Asia-Pacific subregions.

21. In surveyed Asia-Pacific economies, a regional average of more than half (56 per cent) of all interviewed companies (comprising both exporters and importers) report facing burdensome non-tariff measures imposed either by export partners or domestically by their home country (figure III). The "affectedness rate" for Asia-Pacific economies is higher than the 44 per cent regional average reported by Arab States, but lower than the average reported in African subregions such as West Africa (73 per cent) and East Africa (64 per cent). However, the typology of non-tariff measures encountered may be sector or economy-specific depending on the surveyed economies (for example, the Bangladesh garments sector mostly has rules of origin issues).

¹⁰ UNCTAD and World Bank, *The Unseen Impact of Non-tariff Measures*.

¹¹ More details will be made available in a joint report by ESCAP and ITC (forthcoming, tentatively March 2019).

Figure III
Affectedness rate of surveyed Asia-Pacific economies
 (Percentage)



Source: ESCAP and ITC, *Non-tariff measures in Asia-Pacific: A private sector perspective* (forthcoming).

22. In terms of determining the origin of difficulties encountered with non-tariff measures, there are two main observations from the data. First, a significantly larger portion of burdensome Asia-Pacific non-tariff measures originate from export partners (80 per cent) rather than from the home country (20 per cent). Second, regardless of whether the actual non-tariff measure originated abroad or at home, it is compliance with procedural obstacles at home that makes non-tariff measures difficult for Asia-Pacific exporters. In fact, most (80 per cent) export partner non-tariff measures are burdensome not because of the non-tariff measure regulations themselves, but because their associated procedural obstacles are difficult to comply with.

23. In terms of the mirror data,¹² intraregional non-tariff measures are found to be prevalent in Asia-Pacific trade, with 59 per cent of agriculture non-tariff measure cases and 44 per cent of manufacturing non-tariff measure cases reported as imposed by export partners from within the region (either by regional export partners or domestically within the home country). The share of non-tariff measure cases can also be compared to export market shares for each subregion and major export market. This comparison provides a rough indicator of the difficulty of accessing an export market. By this measure, South-East Asia, and East and North-East Asia (both major intraregional destination markets) and the United States of America appear to be relatively easier to access than the European Union, which imposes the largest share of non-tariff measures in the region while still being a major external export destination. In contrast, although North and Central Asia accounts for a very small share of intraregional exports, the subregion is the subject of many reported non-tariff measure cases.

¹² While ITC surveys were conducted in only nine Asia-Pacific economies, responding businesses reported which economies they encountered issues with. As such, it is possible to infer burdensome non-tariff measures and procedural obstacles in other economies by looking at the stated “partner country” economies from all surveys conducted by ITC (including those outside of the region).

24. The types of burdensome non-tariff measures encountered in intraregional trade also follow global patterns. For non-tariff measures imposed by export partners, technical barriers to trade, followed by sanitary and phytosanitary measures and rules of origin are considered the most problematic, together comprising almost 90 per cent of all burdensome import-related non-tariff measures. In contrast, for non-tariff measures imposed by home governments, export inspections, export permits and licenses, export certifications, and export taxes and charges on domestic companies are found to be the most burdensome, comprising between 50 and 60 per cent of all export-related non-tariff measures.¹³

25. In addition, the most common procedural obstacles reported are delays related to the regulation and informal payments, unusually high fees and charges for the regulation, both comprising almost 70 per cent of all procedural obstacles. These usually occur in customs authorities in charge of export/import control and laboratories for product testing and analysis. In domestic regulations, procedural obstacles also included the lack of accreditation bodies, appropriate testing facilities, and transparency or information availability for non-tariff measures.

26. In summary, the private sector perspective for Asia-Pacific non-tariff measures points to primarily domestic procedural obstacles creating bottlenecks for compliance – whether or not non-tariff measures originate abroad or at home – making this a probable focus for regional cooperation on trade facilitation initiatives.

III. Non-tariff measures and sustainable development

27. The 2030 Agenda for Sustainable Development recognizes international trade as an engine for inclusive economic growth and poverty reduction, and an important enabler to achieve the Sustainable Development Goals. Trade and trade-related policies have a multifaceted link to the Sustainable Development Goals. In addition to the trade-growth-economic development nexus, trade is strongly linked to Goals related to food safety, health, climate, and labour conditions. Non-tariff measures are necessary instruments to achieve social and environmental objectives. However, as explained above, such measures can become barriers to trade, inhibiting sustainable development opportunities.

28. Even though tariffs and certain non-tariff measures feature in the framework for the Goals, concrete quantifiable indicators associated with non-tariff measures are largely missing. To implement the 2030 Agenda, there is a need for a tool to monitor and analyse the impact of non-tariff measures on the Goals.

A. The relationship between non-tariff measures and the Sustainable Development Goals

29. To examine the link between non-tariff measures and the Sustainable Development Goals, ESCAP and UNCTAD analysed certain product groups. Targets within the Sustainable Development Goals were examined to determine which internationally traded products play a role in their achievement and what regulations imposed on such products may have direct

¹³ Non-tariff measures imposed by home Governments account for more than half (51 per cent) of all export-related non-tariff measures in the agriculture sector and three fifths (61 per cent) of such measures in the manufacturing sector.

impact on achievement of the target. This was done based on a review of existing non-tariff measures in the UNCTAD database.

30. A product and non-tariff measure pair was considered to have direct linkage to a Sustainable Development Goal if: (a) it had a clearly stated goal-related objective (supported relevant keywords in the stated regulation objective); or (b) it was not likely to have any objective other than the one that is relevant to the goal (such as trade in endangered species, cultural heritage items, arms and weapons).

31. A matrix was built linking the targets with related products, corresponding non-tariff measures and relevant keywords. The linkages highlight those product and non-tariff measure pairs where regulation can have a direct impact on the achievement of the Sustainable Development Goals (due to the stated objective or implied intention). The matrix enables an evaluation of the extent to which non-tariff measures address specific Sustainable Development Goals, as illustrated in figure I.

B. Non-tariff measures and international standards

32. While some strides have been made to quantify the costs of non-tariff measures for producers, approximating the benefits is more difficult. In the absence of direct data on the benefits for producers and other constituents, UNCTAD and ESCAP are pursuing an indirect approach, using complementary non-tariff measure data of international standard-setting bodies, such as Codex Alimentarius. The underlying assumption is that regulatory recommendations of these bodies strike a welfare-enhancing balance between costs and benefits of non-tariff measures. In doing so, they internalize market failures at minimum costs for consumers, producers and Governments.

33. To build an indirect indicator of non-tariff measures, UNCTAD and ESCAP examined the extent to which an economy's regulations are in line with standards set by international bodies. First, they identified non-tariff measures and associated products set by international bodies, notably Codex Alimentarius, International Plant Protection Convention and the World Organization for Animal Health. Second, they mapped those non-tariff measures to domestic regulations. Third, to define the regulatory stringency for a product in a given economy, they conducted a structured text comparison between imposed non-tariff measures and international standards. Thus, they defined, mapped, compared and quality-ranked the constituting elements of international and domestic regulations according to established criteria. The process is expected to result in a fine-tuned understanding of regulatory distance and stringency of a product in a given economy relative to international standards.

IV. Non-tariff measures and foreign direct investment

34. One study found a positive relationship between non-tariff measures and FDI,¹⁴ yet in the 15 years since the study was published, there has been no follow-up to confirm this relationship. For researchers and policymakers to fully assess and understand the implications of non-tariff measures, they must also understand how the measures affect FDI. This section outlines how non-tariff measures may influence the investment decisions of firms and then

¹⁴ Giuseppe Nicoletti and others, "The influence of policies on trade and foreign direct investment", *OECD Economic Studies*, vol. 2003/1, No. 36 (2003).

compares these considerations against the preliminary results of case studies on links between non-tariff measures and FDI.

35. Conventional FDI theory presupposes that a firm will pursue FDI instead of exporting when faced with market imperfections. Non-tariff measures are one important example of a market imperfection. The type and size of the non-tariff measure, as well as the constraints on a firm's strategic choices, will determine its response to the measure. A firm may choose to circumvent a non-tariff measure through FDI when the cost of doing so is lower than the cost for exporting imposed by the non-tariff measure. Furthermore, to the extent that tariffs may trigger tariff jumping, non-tariff measures may also induce inward FDI into the economy imposing the measure because they increase market access barriers.¹⁵

36. Different non-tariff measures will have different cost implications for firms. Consequently, certain non-tariff measures may be more likely to motivate a firm to pursue FDI instead of trading. Government procurement restrictions and local content requirements are most likely to sway a firm towards FDI, especially because such non-tariff measures could exclude foreign firms from trading. In such instances, firms are faced with the choice between market entry through FDI or market exclusion, and therefore the cost of these types of non-tariff measures for the firm is the profit lost by not operating in the market.

37. Both technical standards and intellectual property rights may increase the costs for firms regardless of whether firms choose to export or pursue FDI. Differences in technical standards may force firms to produce different models of their products to meet multiple market requirements, consequently increasing expenditures and reducing economies of scale for batch production. In certain sectors, firms may pursue FDI to circumvent the non-tariff measure if it is easier and cheaper to comply with the technical standards when producing locally. Different intellectual property rights regimes may increase the cost of research and development and lead to higher administrative and legal costs. While strongly enforced intellectual property rights regimes may also serve to encourage FDI and exporting, the opposite would be true when intellectual property rights are weakly enforced because the risk of patent or copyright infringements is higher.

38. The foregoing examples illustrate ways in which non-tariff measures may be linked to the FDI decisions of firms. To better understand the relationship between non-tariff measures and FDI, ESCAP conducted several case studies focused on local content requirements and intellectual property rights.

39. Regarding intellectual property rights, case studies on the pharmaceutical industry in India and the electronics industry in the Philippines confirmed that FDI increased in the run-up to and in the first year of stronger patent protection regimes. However, despite higher overall levels of FDI flows, significant volatilities were still apparent following intellectual property rights implementation. For instance, in India, the most dramatic declines in FDI were in years in which there were intellectual property rights court rulings against foreign pharmaceutical firms. However, inward FDI quickly recovered after each decline, largely due to the market potential. Overall, both case studies

¹⁵ Of course, the extent to which a non-tariff measure may incentivize FDI is also linked to the host country investment climate.

confirmed that there is a significant positive correlation between increased protection of intellectual property rights and inward FDI.

40. Case studies on local content requirements in the 4G (fourth generation) smartphone segment in Indonesia and on solar panels in India confirmed that local content requirements led to an immediate increase in FDI. However, FDI spiked only in the year the local content requirements were implemented and tapered off significantly in the years that followed. In Indonesia, for example, inward FDI massively expanded in 2015, the year the local content requirements were announced, and then dramatically declined. The local content requirements have yet to stimulate commensurate levels of FDI because the firms with the largest market share became capable of meeting the local content requirements and catering to the local market.

41. The case studies illustrate that local content requirements and intellectual property rights may, in some instances, positively affect FDI. The extent of the positive effect is significantly correlated with the type and scope of the non-tariff measure, the political economic and legal framework in which it is implemented, and the implementation procedures. While the case studies may have shown the extent to which intellectual property rights and local content requirements can increase the quantity of FDI, a bigger and still unanswered question is whether these measures have helped attract quality FDI that contributes “to the creation of decent and value-adding jobs, enhancing the skill base of host economies, facilitating transfer of technology, knowledge and know-how, boosting competitiveness of domestic firms and enabling their access to markets, as well as operating in a socially and environmentally responsible manner”.¹⁶ Increasing the stock of quality FDI is at the core of the 2030 Agenda, and understanding how non-tariff measures contribute to or detract from it is critical to meeting this ambitious Agenda.

V. Streamlining non-tariff measures: regional initiatives

42. Efforts to reduce technical barriers and enhance market access through improving conformity to standards are long-standing in the region. For example, the Asia-Pacific Economic Cooperation (APEC) Subcommittee on Standards and Conformance, which involves 17 ESCAP member States, has been in operation since 1994. The Sub-Committee has focused in particular on alignment to international standards and trade facilitation, taking into account ongoing work at the global level under the WTO Agreement on Technical Barriers to Trade and Agreement on the Application of Sanitary and Phytosanitary Measures.¹⁷

43. ASEAN has also made concrete attempts to reduce the cost of non-tariff measures, in particular by means of three main initiatives: the ASEAN Single Window; the ASEAN Trade Repository; and the ASEAN Framework Agreement on Mutual Recognition Arrangements. The ASEAN Single Window is a cross-border paperless trade system initiated through the Agreement to Establish and Implement the ASEAN Single Window, which was signed in Kuala Lumpur on 9 December 2005. It aims at enabling the electronic exchange and legal recognition of electronic data and documents between the national single windows of all 10 ASEAN member countries. While implementation has been much slower than expected, live operation of the ASEAN Single Window officially began in January 2018, with 5 of the

¹⁶ Holger Görg and others, “How to attract quality FDI?”, G20 Insights, 28 April 2017.

¹⁷ See www.apec.org/Groups/Committee-on-Trade-and-Investment/Sub-Committee-on-Standards-and-Conformance.

10 ASEAN member countries exchanging preferential certificates of origin. Efforts are now under way to expand the electronic exchange capabilities of the ASEAN Single Window to include electronic sanitary and phytosanitary certificates.¹⁸

44. The ASEAN Trade Repository is a one-stop platform for trade and customs regulations and other related information based on the operation of 10 national trade repositories.¹⁹ The trade repositories provide access to non-tariff measures based on the Multi-Agency Support Team classification introduced in the table.²⁰ A review of the ASEAN Trade Repository reveals that the platform essentially redirects users to national trade repositories, and the design, accessibility and quality of the national trade repositories vary significantly across economies. Nonetheless, the further development of the trade repositories as well as their regular updates could go a long way towards making non-tariff measures more transparent.

45. In contrast to the ASEAN Trade Repository initiative, which began after 2012, the development of mutual recognition arrangements of conformity assessments has been ongoing since 1998, as part of the implementation of the ASEAN Framework Agreement on Mutual Recognition Arrangements.²¹ Although the agreement was signed two decades ago, ASEAN member countries have signed mutual recognition agreements of conformity assessments in only four sectors, namely: cosmetics, electrical and electronics, pharmaceuticals and prepared foodstuffs. A review of the text of these arrangements reveals that actual participation in each of the sectoral arrangements – and the recognition of each other’s conformity assessments – remain voluntary even after a country has signed the arrangement. While there is some evidence that mutual recognition agreements have positive impact on export probability and trade volumes for participating member countries,²² the ASEAN experience suggests that putting these arrangements in place is difficult and time consuming. Sharing lessons learned and good practices among members on how to negotiate and implement such arrangements may be considered in that context.

46. Reducing the negative impacts of non-tariff measures is also increasingly being pursued as part of regional trade agreements. The secretariat has conducted an analysis of provisions on technical barriers to trade, sanitary and phytosanitary measures, and government procurement in 58 regional trade agreements signed between 2009 and 2018 by at least one economy in Asia and the Pacific. Preliminary results show that agreements signed in the past four years included substantially more provisions on non-tariff measures than those signed before 2014, indicating that economies are increasingly addressing non-tariff measures through trade agreements (see figure IV).

¹⁸ See <http://asw.asean.org/>.

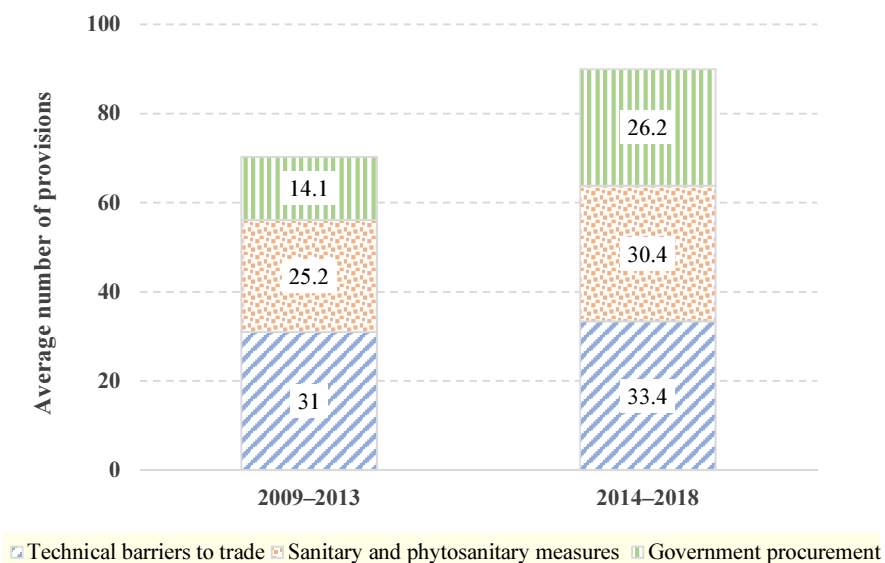
¹⁹ ASEAN, *A Resilient and Innovative ASEAN Community - Annual Report 2017–2018* (Jakarta, 2018). Available at <http://atr.asean.org>.

²⁰ The database is also accessible at <http://asean.i-tip.org/>.

²¹ ASEAN, *Guidelines for the Development of Mutual Recognition Arrangements: ASEAN Consultative Committee on Standards and Quality* (Jakarta, 2014).

²² Silja Baller, “Trade effects of regional standards liberalization: a heterogeneous firms approach”, Policy Research Working Paper No. WPS4124 (Washington, D.C., World Bank, 2007).

Figure IV
Average number of provisions in non-tariff measures in regional trade agreements in Asia and the Pacific, 2009–2018



47. All the regional trade agreements make specific references to the need to comply with the WTO Agreement on Technical Barriers to Trade and Agreement on the Application of Sanitary and Phytosanitary Measures. Provisions on information exchange and cooperation are almost always included. More than 50 per cent of agreements also contain a provision on establishing a specific committee to address technical barriers to trade and sanitary and phytosanitary measures. In contrast, specific provisions on harmonization of standards are rare. When classifying the agreements based on the income level of partners, it can be deduced that average provisions on technical barriers to trade and government procurement are highest in agreements between high-income economies. On the contrary, the number of provisions on sanitary and phytosanitary measures are highest in agreements between high-income economies and lower-income economies.

48. Overall, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership – which entered into force on 30 December 2018 – is the most comprehensive agreement in terms of provisions on technical barriers to trade and government procurement. The Singapore-European Union and Singapore-Sri Lanka Free Trade Agreements, the Pacific Agreement on Closer Economic Relations and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership are equally extensive in their provisions related to sanitary and phytosanitary measures. While many of the provisions on non-tariff measures in most agreements remain rather generic, a more detailed review of those found in the most comprehensive agreements identified above may provide useful guidance on how to further streamline non-tariff measures in the Asia-Pacific region.

VI. Next generation non-tariff measures: regulatory barriers to digital trade

49. As noted above, sharing data electronically and the digitalization of trade is one way through which to reduce the cost of non-tariff measures and of trade in general. Data are the new currency in twenty-first-century trade,

underpinning trade in both goods and services. Flows of data grew sevenfold in only five years from 2008 to 2013. They contributed approximately \$2.8 trillion to the global economy in 2014 and their contribution is estimated to grow to \$11 trillion by 2025.

50. But in the new era of trade, a new set of barriers also rose. These are policy measures that inhibit the cross-border transfer of data and increase the cost of trade. Examples of these emerging non-tariff measures include privacy protection regulations, localization, digital taxation policies, geo-blocking and filtering. Currently, two hotly debated policies are taxation of digital trade transactions and regulations of cross-border data flows.

51. Innovations spurred by the digital economy have changed the global economy forever. Globalization has richly rewarded innovators and most first movers, but it has also created a backlash from economies that see tax revenues dissipating or are threatened by technology-dominant foreign firms. Data flow restrictions, taxation of digital trade transactions, geo-blocking and competition on information and communications technology standards are some of the policy responses to ensure security, protect consumers, maintain revenues or protect the domestic market from competition.

52. It will likely be impossible to set back the clock to the time when there were no data restrictions on the Internet. If anything, the implementation of data protection policies should only be expected to increase. Furthermore, economies that adopt taxation of digital trade transactions would likely increase in number. The challenge is how to minimize its adverse impact on businesses. Opportunities exist in making data regulations interoperable, and solving any gaps in regulations through bilateral, plurilateral or multilateral agreements. Furthermore, a balance must be struck between the legitimate objectives of data protection rules with the economic opportunities that a free Internet enables. Finally, a consistent and global consensus on taxation of digital trade transactions and balanced data regulations must be achieved.

A. Data policies

53. In 2000, different restrictions on cross-border data flows began to increase. Most are conditional restrictions, but localization measures also began to emerge especially after 2010. Localization measures can be any of the following (in the order of increasing restrictiveness): (a) local data storage; (b) both local data storage and processing; and (c) a ban on data transfer.

54. Conditional flow restrictions on economies usually require “adequate level of data protection” or equivalent regulation on data recipient economies. For example, the European Union considers New Zealand as the only Asia-Pacific economy with an adequate level of data protection.²³ Japan’s adequacy is under consideration after it added further safeguards to its privacy law to protect the data of European Union citizens and prevent data transfers to third countries.²⁴ Where the economy has no “equivalent” protection, multinational

²³ European Commission, “Adequacy of the protection of personal data in non-EU countries” (2018). Available at https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/adequacy-protection-personal-data-non-eu-countries_en.

²⁴ European Commission, “European Parliament resolution of 13 December 2018 on the adequacy of the protection of personal data afforded by Japan”, 17 December 2018. Available at www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2018-0529.

firms can still transfer data under certain conditions, among which may be the data subject's explicit consent on data transfer abroad.

55. Localization measures, such as local data storage, require a copy to be stored locally but do not prevent data transfer and processing abroad. If local processing is also required, data controllers may have to build data centres, leading perhaps to global excess capacity. Data controllers can outsource data processing to local service providers or decide not to invest and leave the economy. The most stringent of restrictions is a ban on personal cross-border data transfer. Unlike other data localization measures, a ban precludes the transfer of even a copy of the data. A ban, however, is rare except for specific types of data such as security-related information or health data (as in the case of Australia). In general, restrictiveness in data policies depends on the type of data and on sectors. Personal data are more restricted than accounting data, for example, although the definition of personal data is not straightforward. Similarly, financial and health sectors are more restrictive than others.

56. All data restrictions increase the operational cost of firms. Even apparently benign conditional flow restrictions imply transactions costs to apply for "adequacy" or certification, or legal fees for drafting specific contract clauses for data transfers. Localization measures can result in excess capacity. For example, the requirement of Indonesia and Viet Nam to locate data centres domestically adds excess capacity and additional data security risk. At the macro level, data policies impact trade and productivity. Some new empirical studies are finding negative impacts of data restrictiveness on services traded over the Internet, on the performance of servicified firms as well as on downstream firms in sectors reliant on electronic data.²⁵

B. Taxation of digital trade transactions

57. Another hotly discussed regulation is taxation of digital trade transactions. Particularly for services supplied online, the difficulty faced by many economies is how to protect their tax revenues. Deciding who should pay taxes, where, how much as well as how to collect those taxes has become more challenging with digitalization, and many services have slipped from the tax net. Various proposals, including a tax on global turnover of digital businesses, are being debated. Australia, Japan, New Zealand, Singapore and the Republic of Korea are among the Asia-Pacific economies that now require registration for value added tax purposes of online suppliers that sell to domestic consumers. India introduced the "Google tax" on advertising revenues of companies that are not established domestically. Other economies are following suit in considering tax measures for Internet services. Overall, the new taxes represent a shift from taxing "based on location where functions are performed, assets are used, risks are undertaken" to taxing based on where the consumers are located.²⁶

58. The problem that digital taxation measures create for businesses comes from the lack of consistency and consensus in dealing with digital services. Compliance costs are high because businesses must wrestle not only with

²⁵ Martina Francesca Ferracane and Erik van der Marel, "Do data policy restrictions inhibit trade in services?", Digital Trade Estimates (DTE) Working Paper No. 2 (Brussels, European Centre for International Political Economy, 2018) and Martina Francesca Ferracane, Janez Kren and Erik van der Marel, "Do data policy restrictions impact the productivity performance of firms and industries?", Digital Trade Estimates (DTE) Working Paper No. 1 (Brussels, European Centre for International Political Economy, 2018).

²⁶ Ernst and Young, "Rising to digital taxation", *You and the Taxman*, Issue 1 (2018).

different tax rules in different jurisdictions but also how to interpret and apply these rules while seeking to minimize double or multiple taxation risk.

VII. Way forward and issues for consideration

59. The secretariat will continue to work with UNCTAD and other organizations to deepen the understanding of the link between non-tariff measures and sustainable development in the Asia-Pacific region. In particular, Bangladesh, the Lao People's Democratic Republic and Viet Nam have been selected as pilot countries to examine how their non-tariff measures match international standards for selected products. Furthermore, the matrix on matching between the Sustainable Development Goals and non-tariff measures will be updated to include as many of the Goals and targets as possible. Ultimately, it is expected that economies' shares of non-tariff measures addressing each of the Goals will help to explain the progress (or lack of progress) towards achieving those Goals.

60. As part of its capacity-building support to evidence-based policymaking in Asia and the Pacific, the secretariat commissioned seven case studies through the Asia-Pacific Research and Training Network on Trade (ARTNeT) to examine the link between sustainable development and non-tariff measures. The secretariat is also engaged in collecting information on non-tariff measures following the UNCTAD classification in Azerbaijan, as well as updating data on non-tariff measures in Tajikistan. This new data will help in understanding the impact of non-tariff measures in the North and Central Asia subregion as well as the region as a whole.

61. The secretariat is working on evaluating alternative estimates of the ad-valorem tariff equivalents of non-tariff measures across sectors, economies and subregions to better gauge the impact of non-tariff measures on trade and FDI, and identify good practices. In this regard, the secretariat will continue to identify national and regional initiatives, both in Asia and the Pacific and globally, that may help to reduce the cost of implementing non-tariff measures. A summary of the learning and findings from the above-mentioned work will be included in the *Asia-Pacific Trade and Investment Report 2019*.

62. The Committee may wish to deliberate on the issues presented and provide guidance to the secretariat in these areas for its future work. In particular, the Committee may wish to do the following:

(a) Provide guidance on issues they may wish to see emphasized or additionally included in the forthcoming flagship report, *Asia-Pacific Trade and Investment Report 2019: Navigating Non-tariff Measures Towards Sustainable Development*;

(b) Share country experiences, good practices and lessons learned in this area;

(c) Discuss the role of ESCAP in building capacity and promoting regional cooperation to ensure that non-tariff measures support sustainable development.