

# Capacity Building Workshop on Addressing Non-Tariff Measures in FTAs/RTAs under the 3<sup>rd</sup> REI CBNI

17 May 2018, Port Moresby, Papua New Guinea

## SUMMARY REPORT

### Executive Summary

- Speakers discussed that non-tariff measures (NTMs) can be legitimate tools to support public policy objectives, but that officials needed to ensure that any regulation was done well in order to reduce or eliminate trade distorting effects of NTMs.
- Throughout the workshop, speakers highlighted two challenges in particular in relation to NTMs:
  - There is often a lack of transparency around NTMs, which creates unpredictability for businesses. Transparency should be addressed as a priority.
  - Regulatory divergence across economies or 'regulatory distance' between markets increases the cost of trade. Economies should work together on mutual recognition or harmonisation of standards.
- Speakers demonstrated that FTAs and RTAs are one method of addressing these challenges. They currently do so across various chapters, and a very large proportion of the chapters of FTAs could be considered to be dealing with NTMs.
- Speakers outlined a range of approaches to addressing NTMs in FTAs. FTAs can contain both WTO-plus provisions and WTO-extra provisions on NTMs, and contain differing degrees of legal enforceability.
- Speakers compared the content of Trade in Goods chapters and SPS chapters in agreements signed by APEC economies, finding that agreements cover slightly different areas, with varying levels of ambition.
- Speakers gave specific examples of how NTMs are addressed in the ASEAN Trade in Goods Agreement (ATIGA), the Canada-European Union Comprehensive Economic and Trade Agreement (CETA), the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Southern/Eastern Africa and Continental Free Trade Area.
- Private sector representatives described the impact of NTMs on businesses, particularly SMEs. From a business perspective, FTAs can assist by creating a more predictable and streamlined business environment, and regional FTAs can reduce NTMs across multiple markets by providing a single rules framework.
- Several speakers spoke about regional agreements as a potential starting point for how a future Free Trade Area of the Asia-Pacific might address NTMs.
- The workshop found wide support among speakers and participants for further work on NTMs in APEC.

**Background**

The one-day *Capacity Building Workshop on Addressing NTMs in FTAs/RTAs under the 3<sup>rd</sup> Regional Economic Integration Capacity Building Needs Initiative* was held in Port Moresby, Papua New Guinea on 17 May 2018 as part of the SOM2 and Related Meetings. The workshop was held as a Committee on Trade and Investment (CTI) event partially funded through the APEC Support Fund (sub-fund on FTAAP and GVCs), organised by New Zealand with the co-sponsorship of Australia, Korea, Mexico, the Philippines, Peru and Singapore.

APEC has identified an increasing trend in the number of NTMs affecting trade in the region. APEC economies continue to progress work on NTMs through a series of workshops, dialogues and other initiatives under CTI and sub-fora. The purpose of the workshop was to provide capacity-building to APEC economies with respect to addressing NTMs in FTAs and RTAs, with a focus on recent developments and innovations.

The workshop was attended by 8 speakers and around 60 participants. Participants were primarily officials from domestic agencies with an interest in NTMs or FTA/RTA negotiations, and CTI delegates.

Speakers included policy makers, experts from academia and international organisations, and business representatives.

This report provides a summary of the discussions from the workshop. The agenda from the Workshop is attached as Annex I, and the biographies of speakers are attached as Annex II. All presentations from the workshop can be found on the [APEC Meeting Document Database](#).

**Session 1 – Overview: The role of FTAs/RTAs in addressing NTMs**

This session provided the context for the workshop through an overview of the rise of NTMs in the APEC region and their impact on trade. Speakers then reviewed specific provisions that could be included in FTAs to address NTMs, and how trade in goods chapters in FTAs involving APEC member economies had addressed NTMs to date.

**Dr Doan Thi Thanh Ha** of the Economic Research Institute for ASEAN and East Asia (ERIA) presented data on the rise of NTMs in the APEC region as compared to overall tariff reductions. Challenges relating to NTMs that could be addressed through FTAs included lack of transparency around NTMs, and regulatory divergence between economies. Key considerations and principles for policy-makers addressing NTMs in FTAs/RTAs were transparency and simplicity; non-discrimination; international standards/scientific evidence; least trade restrictive measures; right to respond; and dialogue and cooperation. Specific actions that could be taken in FTAs/RTAs included the establishment of specialized committees in charge of monitoring NTMs; establishment of notification mechanisms; recognition of international standards; mutual recognition agreements; and a regular review process.

**Christian Knebel** of the United Nations Conference on Trade and Development (UNCTAD) gave an overview of UNCTAD's NTMs classification programme and global NTMs transparency initiative. UNCTAD was working to make mandatory regulations public and accessible, in part to address low rates of WTO notifications. In discussing NTMs, it was important to make a distinction between traditional non-tariff *barriers* and different types of *technical measures*, as well as between *regulation* and *procedure*. Knebel showed that regulatory convergence between economies could significantly reduce the costs of trade. Two recent RTAs (the Southern/Eastern Africa and Continental

Free Trade Area and CPTPP) were used as case studies for how NTMs can be addressed in regional agreements. Knebel provided an update of work on NTMs that was occurring at a multilateral level, including the WTO Seventh Triennial Review on TBT and the “Friends of MSMEs” group, which was proposing increased WTO transparency obligations.

**Carlos Kuriyama**, APEC Policy Support Unit (PSU) Senior Analyst, gave an overview of how FTAs involving APEC economies had addressed NTMs. In Trade in Goods chapters, most FTAs addressed import/export restrictions and prohibitions and administrative fees and formalities, whereas few addressed internal taxes or quantitative measures. Within Rules of Origin (ROO) chapters, some FTAs featured a *De Minimis* clause which established the maximum value for waiver of origin certificate. In SPS chapters, some FTAs included WTO-plus elements, such as a required time period to start consultations after receiving a request, or requirement that the party detaining goods notify importers of why the measure was implemented.

## **Session 2 – Recent approaches to addressing NTMs in FTAs/RTAs**

This session saw four speakers delve more deeply into how specific FTAs or FTA chapters had recently addressed NTMs. The discussion drew from a wide geographic range within APEC, including North Asia (bilateral FTAs involving Japan, China and Korea), North America (Canada-European Union Comprehensive Economic and Trade Agreement), ASEAN (the ASEAN Trade in Goods Agreement) and Latin America (Pacific Alliance).

**Dr Bo-Young Choi** from the Korea Institute for International Economic Policy (KIEP) distinguished between WTO-plus (reconfirming existing commitments and/or adding substantive new disciplines) and WTO-x (outside the mandate of the WTO) FTA provisions, and distinguished between differing levels of legal enforceability in NTM-related provisions. Korea and Japan both tended to sign ‘deep’ agreements with a high level of enforceability. Since 2008, China had increased the number of WTO-plus and WTO-x provisions in its FTAs, and was converging practice with Korea and Japan.

**Myrene Sabina Bedaña** from the Philippines Department of Trade and Industry introduced the ATIGA and ASEAN initiatives to address NTMs. Minimising trade protection and compliance costs caused by NTMs is a key objective of the ASEAN Economic Community. ATIGA contains an NTMs chapter, which includes commitments to ensure that NTMs are transparent, do not create unnecessary trade obstacles, are notified to other Member States with the opportunity for consultation. ATIGA also established an NTM database, and provides formal mechanisms to hear and resolve trade complaints. Increasing transparency is a priority, achieved through ATIGA’s notifications system, the ASEAN Trade Repository and the publication and accessibility of information. ASEAN is also mainstreaming good regulatory practice (GRP) through the ASEAN Work Plan on GRP 2016-2025.

**Edsel Aytona** from Global Affairs Canada presented on how NTMs were addressed in the CETA. CETA’s Technical Barriers to Trade (TBT) chapter contains a commitment to encourage cooperation in technical regulations, standards and conformity assessment and to promote harmonisation of standards in sectors of mutual interest. CETA’s Regulatory Cooperation chapter enhances cooperation and information sharing while regulations are being developed. CETA also contains a Conformity Assessment (CA) Protocol, which allows for the acceptance by Canada and the European Union of product certifications by recognised bodies of the other party. Once this is implemented, European Union companies in selected product categories will be able to have their products tested and certified in the European Union for the Canadian market, and vice versa.

**Rubisel Velázquez Lugo** from Mexico's Ministry of Economy compared the Sanitary and Phytosanitary (SPS) chapters of FTAs signed by Mexico, finding a variety of levels of ambition. Chapters ranged from simply reaffirming rights and obligations of the WTO SPS Agreement, to inclusion of a broad range of provisions such as the establishment of SPS Committees, equivalence provisions, recognition of disease-free or pest-free areas, notification systems and dispute resolution.

### **Session 3 – The view of business: what can FTAs/RTAs do to contain the growth of NTMs?**

This session featured two private sector representatives, who each shared their views on priorities for business in addressing NTMs and how policy-makers should be using FTAs to better address NTMs.

**Jiang YiFan** from Food Industry Asia (FIA) noted that there was a significant gap between business perspectives (87% believe compliance costs are increasing) and public sector perspectives (50% believe compliance costs are decreasing) on NTMs. The food sector in particular was highly regulated, impacting businesses with costs, uncertainty and reputational risk. YiFan described ASEAN's work to drive harmonisation in the F&B sector, including through promoting mutual recognition. APEC, the CPTPP and the Regional Comprehensive Economic Partnership (RCEP) were further opportunities to address NTMs through regional economic integration.

**Stephanie Honey**, Policy Advisor from ABAC New Zealand, highlighted that as well as increasing costs, NTMs created uncertainty for businesses, increased risks in new markets, and had a disproportionate impact on SMEs. FTAs could assist by creating a more predictable and streamlined business environment. Bigger regional FTAs could reduce NTMs across multiple markets by providing a single rules framework. For example, CPTPP contains provisions on regulatory coherence and good regulatory practice; mutual recognition; encouraging transparency and regulatory cooperation on SPS and TBT measures; trade facilitation; customs procedures; services trade liberalisation; digital trade provisions; and liberal region-wide ROO. In Honey's view, CPTPP could be a good starting point for FTAAP in the context of addressing NTMs. APEC could also look at adoption of cross-cutting principles on NTMs; the expansion of the APEC Trade Repository to include all agriculture and food requirements; digital channels and automated processes; and accreditation of third party laboratories for conformity assessment.

**Q&A session** – In response to a question on how CPTPP's SME chapter addresses NTMs, speakers responded that the objectives of the chapter are to provide increased regulatory transparency, provide capacity-building (as some SMEs may not have in-house expertise on NTMs), and increase trade facilitation and provide overall streamlining. In response to a question on using sectoral annexes versus cross-cutting approaches to address NTMs in FTA chapters, speakers emphasised that both approaches are necessary – NTMs are heterogeneous, and business would not want to see particular sectors excluded from coverage.

### **Session 4 – Where to from here? How future trade agreements could practically address NTMs**

This session concluded the workshop with a forward-looking discussion featuring representatives from each of the previous sessions. Panellists and workshop participants were encouraged to share their views on how future FTAs could address NTMs, including looking ahead to a potential FTAAP.

Panel participants:

- Stephanie Honey, ABAC New Zealand Policy Advisor (moderator)
- Jiang YiFan, Food Industry Asia
- Christian Knebel, UNCTAD
- Rubisel Velázquez Lugo, Ministry of Economy Mexico

Panellists emphasised **transparency** mechanisms as one of the most effective ways to address NTMs through FTAs/RTAs. Mandatory commitments at the multilateral level were another method of increasing transparency. However, governments often had good transparency commitments that were implemented poorly due to the difficulties involved in keeping information up to date. One panellist suggested public-private partnerships as one way to address this issue, as some industry organisations already maintain regulatory databases.

**Consultation mechanisms** were also emphasised as an important element of FTAs. Informal technical consultations and bilateral dialogue mechanisms could provide a middle ground for economies to resolve NTM-related issues without recourse to legal action. A variety of possible tools and instruments could be incorporated into FTA chapters.

Panellists agreed that **technological innovations** had great potential to be used to address NTMs. Blockchain and e-certification could be used to enhance trust in data and share it amongst stakeholders. Telecommunications could be used by businesses to instantly report trade obstacles from the ground, which could enable them to be addressed quickly by government. Such reporting systems could inform future priorities in FTA negotiations.

Speakers considered the use of specific **NTM chapters** that could provide general principles on good regulatory practice. One approach was to combine standard TBT and SPS chapters with a more experimental chapter on NTMs. Speakers agreed that NTM chapters had the advantage of being able to include issues beyond the scope of SPS and TBT chapters, such as procedural obstacles or obstacles to trade in services.

In relation to a potential **FTAAP**, speakers emphasised that it was important to have high ambition while focusing on practical steps to take forward. Transparency commitments were an example of a possible first step, whereas regulatory convergence would need a longer time horizon. The high level of diversity amongst APEC economies was a challenge, but also an opportunity for different economies to learn from each other's regulatory practices and build each other's capacity.

Panellists agreed that, as the final users of FTAs, it was critical to **incorporate business needs** when developing provisions on NTMs. Private sector involvement needed to be inclusive and include the concerns of SMEs. SME chapters were one way in which this could be done. It was also important to provide capacity-building opportunities to help SMEs take full advantage of the opportunities provided by FTAs. As there were many different opinions within the private sector, it was important to provide a transparent negotiating process in so far as possible, and to communicate the broader picture of interests.

### Next steps

This report is submitted to CTI for its consideration. Economies are urged to consider the ideas that were presented by speakers and how they could be taken forward by CTI or other APEC fora.

Although there was wide support expressed for further work on NTMs and a range of ideas were offered by speakers and participants during the Workshop, the exact detail of any future work should be decided through discussion and consensus of all economies in the appropriate fora.

Erika Webb  
Project Overseer  
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**Annex I: Agenda**

<b>Time</b>	<b>Schedule</b>
8:30 - 9:00	<b>Registration</b>
9:00 - 9:10	<b>Welcome remarks</b> <i>Mr Justin Allen, Chair of the Committee on Trade and Investment</i>
<b>Session 1 Overview: The role of FTAs/RTAs in addressing NTMs</b>	
9:10 - 9:40	<b>Keynote: The rise of NTMs and the role of FTAs/RTAs in addressing this phenomenon</b> <i>Dr Doan Thi Thanh Ha, Economic Research Institute for ASEAN and East Asia</i>
9:40 - 10:10	<b>Recent approaches to addressing NTMs in FTAs/RTAs: an international perspective</b> <i>Mr Christian Knebel, UNCTAD</i>
10:10 - 10:30	<b>How FTAs/RTAs have addressed NTMs in the APEC region</b> <i>Mr Carlos Kuriyama, APEC Policy Support Unit</i>
10:30 - 10:50	<b>Coffee break and group photo</b>
<b>Session 2 Recent approaches to addressing NTMs in FTAs/RTAs</b>	
10:50 - 11:15	<b>Addressing NTMs in Preferential Trade Agreements: Towards Deeper Integration</b> <i>Dr Bo-Young Choi, Korea Institute for International Economic Policy</i>
11:15 - 11:40	<b>The ASEAN Trade in Goods Agreement and ASEAN initiatives to address NTMs</b> <i>Ms Myrene Sabina Bedaño, Department of Trade and Industry, The Philippines</i>
11:40 - 12:05	<b>NTMs in the Canada-European Union Comprehensive Economic and Trade Agreement (CETA)</b> <i>Mr Edsel Aytona, CETA Secretariat, Global Affairs Canada</i>
12:05 - 12:30	<b>Recent approaches to addressing NTMs through SPS chapters</b> <i>Mr Rubisel Velázquez Lugo, Ministry of Economy, Mexico</i>
12:30 – 2:00	<b>Lunch Break</b>
<b>Session 3 The view of business: what can FTAs/RTAs do to contain the growth of NTMs?</b>	
2:00 – 2:20	<b>What can FTAs do to contain the growth of NTMs? The view of business</b> <i>Ms Stephanie Honey, ABAC New Zealand</i>
2:20 - 2:40	<b>Addressing NTMs in ASEAN and other FTAs/RTAs: A perspective from the Food Industry</b> <i>Ms Jiang YiFan, Food Industry Asia</i>
2:40 – 2:50	<b>Q&amp;A session</b>
2:50 – 3:10	<b>Coffee break</b>
<b>Session 4 Where to from here? How future trade agreements could practically address NTMs</b>	
3:10 - 3:40	<b>Panel discussion (moderated by Ms Stephanie Honey, ABAC New Zealand)</b> <i>Mr Christian Knebel, UNCTAD</i> <i>Mr Rubisel Velázquez Lugo, Ministry of Economy, Mexico</i> <i>Ms Jiang YiFan, Food Industry Asia</i>
3:40 - 3:50	<b>Summary and concluding remarks</b> <i>Gemma Cornelissen, New Zealand CTI Representative</i>

## **Annex II: Speaker biographies**

### **Dr Doan Thi Thanh Ha, Economic Research Institute for ASEAN and East Asia (ERIA)**

Dr Doan Thi Thanh Ha is an economist at ERIA. She is responsible for research projects on narrowing the development gap and deepening economic integration in ASEAN and East Asia. She has been intensively involved in trade-related studies such as developing a NTMs database and conducting analysis of NTMs in ASEAN. She was previously a Research Associate at the Asian Development Bank Institute (ADBI) in Tokyo. Prior to ADBI, she was an academic staff at Foreign Trade University in Hanoi, Viet Nam. She obtained her PhD in Economics from Yokohama National University.

### **Christian Knebel, United Nations Conference on Trade and Development (UNCTAD)**

Christian has been an Economic Affairs Officer in the Trade Analysis Branch at UNCTAD since 2012. He specialises in research regarding trade policy, particularly on NTMs. He has drafted reports analysing the impact of NTMs and regulatory convergence in ASEAN, MERCOSUR, ECOWAS and SADC. In technical cooperation projects he has provided advisory services on trade policy and FTAs in many countries in Africa, Latin America and Asia. Previously, he worked at the Market Analysis and Research section of the International Trade Centre (ITC). He authored reports about obstacles to trade faced by companies in several developing countries, and assisted the respective governments in addressing such barriers. He was also research assistant at the Institute for Applied Economic Research (IAW, Germany) and at the University of Tübingen. He holds a Master's degree in International Economics from University of Tübingen, Germany, and also studied in Buenos Aires, Argentina. In his thesis he estimated the effects of non-tariff measures on consumer prices.

### **Carlos Kuriyama, APEC Policy Support Unit (PSU)**

Carlos Kuriyama is currently Senior Analyst at the APEC PSU, working mainly on topics concerning trade and investment liberalization, regulatory and structural reforms. Previously, Carlos was government official at Peru's Ministry of Foreign Trade and Tourism, where he served as Chief Negotiator of the Peru-China FTA negotiations, General Coordinator of the Peru-Singapore FTA negotiations and Advisor to the Deputy Minister of Foreign Trade. He also led the design of Peru's trade negotiations agenda and implemented Peru's trade strategy with Asia and Oceania countries. Carlos holds a Master of International Affairs from the School of International and Public Affairs at Columbia University (New York, U.S.) and a Bachelor's Degree on Economics from Universidad del Pacifico (Lima, Peru).

### **Bo-Young Choi, Korea Institute for International Economic Policy (KIEP)**

Bo-Young Choi is Associate Research Fellow and Head of the Cooperation Policy Team in the Department of Northeast Asian Economies at the Korea Institute for International Economic Policy. She has a background in international trade and international organisations, and holds a PhD from the University of California-Davis.

### **Myrene Sabina C. Bedaña, Department of Trade and Industry, the Philippines**

Myrene Bedaña is Chief Trade and Industry Development Specialist in the Regional Relations and Arrangements Division of the Philippines' Department of Trade and Industry. She is also the Chairperson of the Coordinating Committee on the ASEAN Trade in Goods Agreement (CCA). She has previously worked for Deloitte Consulting Overseas Projects and the Asian Development Bank (ADB), and has extensive experience working on regional economic integration in APEC and ASEAN.

### **Edsel J. Aytona, Global Affairs Canada**



Edsel is a member of the Canada-EU Comprehensive Economic and Trade Agreement (CETA) Secretariat, under Global Affairs Canada. He has previously been Trade Commissioner responsible for South, Southeast Asia and Oceania Commercial Relations, Trade Commissioner to Korea, and has been posted to Colombia as Second Secretary (Commercial).

### **Rubisel Velázquez Lugo, Mexico Ministry of Economy**

Rubisel has a degree in International Business from the National Polytechnic Institute (IPN) in Mexico. He completed a Master's Degree in Public and Private Management at the University of Applied Sciences in Bremen, Germany. He has academic experience at the University of Groningen in the Netherlands, at the National Polytechnic Institute, as well as at Westhill University both in Mexico City. For several years, he has given lectures such as Legal Regime of Foreign Trade and Free Trade Agreements signed by Mexico. He has worked in the private sector and as a public server in the Mexican Government for the last ten years. In the international trade field, he has been in charge of the negotiations of the SPS Measures and Competition Policy' chapters in trade negotiations such as the Pacific Alliance, the CPTPP, the modernization of the Free Trade Agreement between Mexico and the European Union, the Agreement between Mexico and the European Free Trade Association (EFTA), and recently in the renegotiation of the North American Free Trade Agreement (NAFTA). In the same way, he has been involved in trade negotiations with countries such as Jordan, Turkey, Cuba, Panama, Brazil and Argentina. Currently, he serves as Deputy Director General of International Trade Rules in the General Directorate of International Trade Rules of the Undersecretariat of Foreign Trade of the Ministry of Economy.

### **Stephanie Honey, ABAC New Zealand Policy Advisor**

Stephanie is a trade policy consultant, Associate Director of the New Zealand International Business Forum and is a policy advisor to the New Zealand members of the APEC Business Advisory Council. She is also co-founder of a business offering executive education in trade policy. Stephanie's interests include regional economic integration especially in the Asia-Pacific, the WTO, agriculture and food trade, services trade, the digital economy, SMEs and women in trade. Prior to becoming a consultant, Stephanie worked for many years as a New Zealand trade negotiator for the Ministry of Foreign Affairs and Trade, including serving as the New Zealand Agriculture Negotiator in the WTO Doha Round, at the New Zealand Mission to the EU in Brussels and a variety of other roles.

### **Jiang YiFan, Food Industry Asia (FIA)**

YiFan is Head of Science and Regulatory Affairs of Food Industry Asia (FIA), where she leads FIA in providing science based advocacy to promote regional / global regulatory harmonisation in platforms such as the Codex Alimentarius Commission and ASEAN. With her industry expertise, YiFan has worked in partnership with the government bodies on several technical trainings with the region's food regulators to enhance national standards-setting activities and regional regulatory collaboration based on Codex. YiFan also represents FIA in a number of regional food safety capacity building programmes through public-private partnership initiatives. YiFan holds a degree in Applied Science majoring in Food Science and Technology from the National University of Singapore.