Report

on the

"Definition of Key Concepts and of a Standard Classification System for the ATR"

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1. Introduction

Activity 1.1.2.2 (on "*Assisting in the development of regional capacity to classify and notify NTMs*") of the programme of technical assistance of ASEAN Regional Integration Supported by the European Union (hereinafter, ARISE) falls within ARISE's Sub-Project 1.1.2 on the "*Support to ATIGA Implementation*" and aims at supporting the implementation of the ASEAN Trade in Goods Agreements (hereinafter, ATIGA), with particular focus on enhanced transparency and non-tariff measures (hereinafter, NTMs).

The strengthening of the institutional arrangements and management of the regional economic integration process will occur through the creation and operationalisation of the ASEAN Trade Repository (hereinafter, ATR) and the National Trade Repositories (hereinafter, NTRs). ARISE's engagement, as endorsed by ASEAN in its Overall Work-Plan, aims at strengthening the institutional framework within ASEAN Member States (hereinafter, AMSs) and the ASEAN Secretariat (hereinafter, ASEC) in relation to regulatory transparency, classification and notification of NTMs, and the related reporting processes. The ultimate goal of this technical assistance and capacity building is to enable AMSs to operate NTRs and to use them as a stepping stone to feed information, in a standardised and systematic manner, to the ATR, which is a mandated body under the ATIGA and an agreed objective by 2015.

Regulatory transparency is a fundamental catalyst for economic development, cross-border investment and trade, and ASEAN regional integration. The ATIGA requires that an ATR be established by 2015 and be made accessible to the public through the internet. The ATR must contain the trade and customs laws and procedures of all AMSs and trade-related information such as: (i) tariff nomenclature; (ii) MFN tariffs, preferential tariffs offered under this Agreement and other Agreements of ASEAN with its Dialogue Partners; (iii) rules of origin; (iv) non-tariff measures; (v) national trade and customs laws and rules; (vi) procedures and documentary requirements; (vii) administrative rulings; (viii) best practices in trade facilitation applied by each Member State; and (ix) list of authorised traders of AMSs. It is the ASEC that must maintain and update the ATR based on the notifications submitted by AMSs.

The initial '*Mapping Exercise*', conducted by ARISE within Activity 1.1.2.1 and the related Activity Reports with the Conclusions and Recommendations, as circulated to the ASEC and AMSs and presented at the 13th Meeting of the ASEAN Coordinating Committee on the ATIGA of 11-14 November 2013 in Yangon, Myanmar, indicated a number of actions that need to be considered by AMSs for purposes of moving forward the process of establishment and operationalisation of the NTRs/ATR.

In line with those conclusions and recommendations, and according to the Terms of Reference (ToRs) of Activity 1.1.2.2, the immediate area of intervention of ARISE now focuses on building the skills on NTRs/ATR content development, the reporting processes, and the templates and common classification language, especially in relation to NTMs (in cooperation/coordination with other international donors active in this area of technical assistance, such as UNCTAD and/or the World Bank), in order to ensure that a standardised and harmonious notification process occurs regionally and in each AMS.

The key results, which this technical assistance aims at delivering, are the following:

- Strengthening the institutional framework within AMSs and ASEC in relation to regulatory transparency, classification and notification of NTMs, and the related reporting processes;

- Assisting and promoting the institutionalisation and operationalisation at AMSs' level of the NTRs, in light of ASEAN transparency requirements under the ATIGA (ATR) and parallel notification obligations under the WTO; and

- Assisting and promoting the cooperation among AMSs, the ASEC and the ASEAN sectoral committees responsible for trade, customs, standards and technical regulations in light of the NTR/ATR transparency obligations and ensure that the system be open to all stakeholders (*i.e.*, governments, private sector, foreign entities, etc.), including for purposes of a functioning ACTS system based on EU SOLVIT's best practices.

The first task of this activity concerned the development of the ATR's '*shell*' architecture (*i.e.*, its substantive structure and outlay), which will dictate the structure of the IT interface and the requirements for both the hardware and software development, as well as informing the adjustments to be brought to the currently-operating individual NTRs so that all 10 AMSs' repositories will have the same outer structure, scope, look and searchability functions.

The second task concerns the formulation of the ATR/NTRs operational guidelines, for AMSs' endorsement. In particular, the second task concerns:

- The definition and endorsement of the key concepts of '*non-tariff measure*' and '*trade related information*', which will shape the notification procedures and the scope of the repositories;

- Clarification on the distinction between the notification requirements and procedures under Article 11 of the ATIGA and the ones under Article 13 of the ATIGA; and

- The formulation of a standard classification system that would provide the framework for the notification and the storage on the NTRs/ATR of the trade-related measures in all areas of notification under Article 13 of the ATIGA.

2. Stocktaking from the '*Mapping Exercise*'

The '*Mapping Exercise*' conducted within Activity 1.1.2.1 led to a number of conclusions and recommendations that should inform the structure and development of the ATR/NTRs. The final consideration developed from the outcome of the '*Mapping Exercise*' is that the ATR be a '*well-structured*', '*comprehensive*', '*accessible*' and '*easy-to-search*' source of '*reliable*' (if not legally binding) information on the trade and customs laws and procedures of all AMSs, containing AMSs' trade-related information in line with Article 13 of the ATIGA and with the notification architecture, the procedural requirements and the substantive contents agreed among AMSs. In particular:

- In order to be '*well-structured*', the ATR must be based on a framework that AMSs should agree to and consider legally-binding. This overall architecture

should be simple, logical, easy to maintain and update, and based on the macro-areas of notification indicated in the (non-exhaustive) list of Article 13 of the ATIGA. The regional architecture agreed for the ATR should then inform the structures of the individual AMSs' NTRs;

- In order to be '*comprehensive*', the ATR must contain all trade-related information on the trade and customs laws and procedures of all AMSs, as mandated by the ATIGA;

- In order to be '*accessible*', the ATR must be in English, based on standardised notification forms that can be simple and timely made by AMSs, but also equipped with enough information to provide users with sufficient elements to understand the trade-relevance of any measure being notified;

- In order to be '*easy-to-search*', the ATR must be well organised, running on a simple and logical software, based on a shared classification, as much as possible searchable by HS code, well cross-referenced with hyperlinks to other AMSs' internet facilities and databases where the substantive information can be traced and downloaded (or purchased if available only on paper form), and user-friendly. The same interfaces, structures, style and searchability functions should apply to the ATR and the NTRs of all AMSs; and

- In order to be '*reliable*', the ATR must be complete, timely updated by AMSs through their notifications to the ATR and by the upload of the contents on their NTRs, and based on a shared set of ASEAN templates, classification and categories.

The following aspects, in relevant part, need to be taken into consideration to achieve the objectives outlined above:

- The need to define certain key concepts, such as those of (i) '*non-tariff measure*'; and (ii) '*trade-relation*', found in the ATIGA so to improve AMSs' process of identification, collection and classification of measures to be notified to the ATR under Article 13 of the ATIGA;

- The need to confirm and/or reduce/increase the indicative list of the macro-areas of ATR notification contained in Article 13 of the ATIGA, so that the ATR/NTRs structure can be organised accordingly and to ensure that all AMSs' domestic institutional and organizational structures are established to meet their transparency obligations;

- For the ATR and the NTRs to smoothly interface, they must be based on a single software and on common architectures and search functions. Hence the importance of a single classification and of legally-binding standard operating procedures. HS codes will be clear assets to run searches (especially when measures and information that immediately relates to specific goods is being searched), but they cannot provide the sole framework for the classification of all measures. Many NTMs and/or other categories of NTM notification cannot or will not be systematically organised by HS codes and would risk going unreported; and

- The need for a common classification (particularly for NTMs, but more in general for all the areas of ATR notification to be agreed in line with Article 13 of the ATIGA) is particularly relevant and urgent. With particular regard to NTMs, most AMSs appear inclined to using the 2012 UNCTAD's NTM classification (either as it is or in a '*tailor-made*' version developed expressly for the ATR). The recommendation was made that the 2012 UNCTAD's NTM classification (fine-tuned to the ATR's purposes) should be adopted and systematically used by all AMSs.

3. The definition and clarification of the key concepts of "*non-tariff measures*" and "*trade related information*"

3.1 Introduction

For the ATR/NTRs to constitute a '*well-structured*', '*comprehensive*', '*accessible*' and '*easy-to-search*' source of '*reliable*' information, it is necessary that AMSs agree on a common definition of the key concepts of "*non-tariff measures*" and "*trade related information*". These concepts are functional to ensure that all measures that are relevant under the ATR/NTRs, and particularly NTMs, are identified and systematically classified in an uniform and standardised manner by all AMSs.

The consultative meetings conducted within the framework of the '*Mapping Exercise*' revealed that, in general terms, AMSs are not very familiar with the evaluation of NTMs, which is the critical step to be undertaken at national level by all competent and relevant authorities. The identification of the trade relation (and relevance) of any measure is always the first and, perhaps, most important assessment that will precede all other more '*mechanical*' functions geared to ASEAN transparency (*i.e.*, the classification and notification).

3.2 The definition of "*non-tariff measures*"

NTMs are generally defined as measures other than tariffs, which have an effect on trade. The range of measures explicitly or inadvertently acting as obstacles to trade is broad, which makes the identification of NTMs not an easy task.[1]

Neither the ASEAN nor the WTO framework provide a definition of NTMs. With regard to the WTO, Paragraph 6 of the Marrakesh Protocol to the GATT created a mechanism for the scheduling of "*non-tariff measures*". These were to be included in Part III of WTO Members' Schedules. However, a definition of "*non-tariff measures*" was never developed and this mechanism was used only rarely. Nevertheless, WTO Agreements contain a number of obligations relating to NTMs. The GATT itself includes several obligations concerning NTMs and a number of these obligations have been further elaborated and supplemented by other multilateral WTO agreements and instruments.

Although no definition is given, the term "*non-tariff measure*" is, in itself, enough to conclude that tariffs are not included within its scope. The concept of tariff refers to "*ordinary customs*

[1] OECD, *Looking Beyond Tariffs - The Role of Non-Tariff Barriers in World Trade*, 2005, p. 3.

duties". The term "*ordinary customs duty*" is used both in Article II of the GATT and Article 4.2 of the WTO Agreement on Agriculture, which, however, fail to provide a definition. Article II of the GATT provides the basic rule that products subject to tariff bindings under Part I of each WTO Member's Schedule of Concession shall be exempt from "*ordinary custom duties*" in excess of those set forth and provided therein. This article also provides that products listed in Part I of each WTO Member's Schedule shall be exempt from all "*other duties or charges*" imposed in excess of what was specified and bound when the concession was made.[2] Under Article II of the GATT, therefore, WTO Members are allowed to impose "*ordinary customs duties*" and "*other duties or charges*" on imports up to the bound level, indicated in Part I of their Schedules of Concessions.

ASEAN instruments similarly fail to provide a definition of "*non-tariff measures*", even though NTMs are explicitly mentioned in the ATIGA and the ATIGA clearly distinguishes between NTMs and "*non-tariff barriers*" (hereinafter, NTBs).[3] On the other hand, the definition of customs duties under the ATIGA, included in Article 2(c) thereof is identical, in scope, to Article II:2 of the GATT.[4]

Therefore, it may be concluded that, inasmuch as "*non-tariff measures*" are defined as "*measures other than tariffs*", GATT and ASEAN instruments suggest that the concept of "*non-tariff measures*" will refer to measures other than "*ordinary customs duties*" and, arguably, "*other duties and charges*" that are bound under the WTO Schedule of Concession (under the ATIGA, the GATT Article II concept of "*other duties and charges*" appears to be covered by the definition of customs duties).[5] However, there is a need to further clarify the characteristics of "*non-tariff measures*" with respect to their relevance to international trade.

One source of significant information regarding NTMs is the work produced by the UNCTAD. In 2006, the Secretary-General of UNCTAD established the Group of Eminent Persons on Non-Tariff Measures (hereinafter, GNTM). The main purpose of the GNTM was to discuss the definition, classification, collection and quantification of NTMs to aid in the examination of NTMs around the world. To carry out the technical work of the GNTM, it set up a Multi-Agency Support Team (hereinafter, MAST). The MAST is composed of numerous relevant organisations, including UNCTAD, the Food and Agriculture Organisation of the United Nations (FAO), the International Monetary Fund (IMF), the International Trade Centre UNCTAD/WTO

[2] See GATT Article II:1(b).
[3] See, *inter alia*, Article 42 of the ATIGA.
[4] Article 2(c) of the ATIGA.
[5] It is noted that both Article II of the GATT and Article 2(c) of the ATIGA refer to three categories of additional (exceptional or extra-"*ordinary*") duties and charges which are allowed as an exception to the rule that only tariffs that are bound can be applied. These include: (i) charges equivalent to internal taxes imposed consistently with the obligation of non discrimination in respect of the like domestic product (*i.e.*, value added tax); (ii) anti-dumping and countervailing duties (imposed consistently with the relevant rules); and (iii) fees or other charges commensurate with the cost of services rendered. This reference may be interpreted to suggest or imply that under Article II:2 of the GATT and Article 2(c) of the ATIGA the exceptional or extra-"*ordinary*" tariffs or charges allowed should also be treated as "*other duties and charges*" for the purposes on the definition of NTMs and be excluded from the scope of NTMs. This interpretation is, however, not to be endorsed as the concept of "*non-tariff measures*" includes also the measures which are commonly classified within such categories. With respect to anti-dumping and countervailing duties, it is recalled that the classification of anti-dumping and countervailing duties as NTMs is still the object of an on ongoing debate among AMSs, the result of which may lead to trade defence measures being dropped as an area of NTMs notification and compilation in the database for purposes of the ATR/NTRs. The UNCTAD's 2012 NTM Classification includes such measures within the category of "*Contingent Trade Protective Measures*". On the contrary, these measures are not listed as NTMs under the ASEAN Working Definition of NTMs, adopted by the Interim Technical Working Group (ITWG) on CEPT for AFTA. Certain AMSs have expressed reservations with respect to the necessity of notifying measures taken by AMSs through trade defence instruments, particularly as NTMs.

(ITC), the Organisation for Economic Co-operation and Development (OECD), the United Nations Industrial Development Organization (UNIDO), the World Bank and the World Trade Organization (WTO).

The MAST established the following common definition of "*non-tariff measures*":

> *"[P]olicy 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*".

The definition proposed by the MAST captures the essence of "*non-tariff measures*" qualifying their impact on international trade. While it is clear that the vast majority of NTMs are applied for legitimate reasons and in the pursuit of legitimate objectives, whereas other may be imposed on the basis of a protectionist drive, the MAST emphasised that the term "*non-tariff measure*" is to be understood as a neutral concept and does not imply a direction of impact.[6]

The MAST developed a classification of NTMs in 16 large macro-categories (referred to by UNCTAD as Chapters), organised by alphabetic characters.[7] As recommended in the context of the assistance delivered under ARISE Activity 1.1.2.1, the UNCTAD's 2012 NTM classification is being used as a basis for the classification of NTMs under the ATR/NTR (see below, Section 5). The use of this instrument is instrumental for purposes of establishing the ATR as a '*well-structured*', '*comprehensive*', '*accessible*' and '*easy-to-search*' source of '*reliable*' information. Therefore, a further argument supporting the use of the MAST definition of "*non-tariff measures*" is that it does appear largely coherent and practical that such definition be used for purposes of the transparency requirements set forth under the ATIGA.

Lastly, it is noted that the WTO Secretariat also refers to the MAST definition of NTMs in a 15 October 2013 background note for the WTO Committee on Trade and Development.[8] The background note also provides a list illustrating "*a myriad of different policies other than ordinary tariffs*" that constitute NTMs, including SPS and TBT measures, certification and testing requirements, quotas, import and export licenses, additional taxes and surcharges, financial measures and rules of origin.

In sum, the definition created by the MAST is broad enough to capture the essence on NTMs, while distinguishing such measures from the narrower concept of "*non-tariff barriers*". In

[6] See UNCTAD/DITC/TAB/2012/1, p. 2. See also WT/COMTD/SE/W/28, p. 4. According to the MAST, NTMs should be distinguished from the concept of "*non-tariff barriers*", which has a negative impact on trade and should be regarded as a subset of NTMs that could have a protectionist or discriminatory intent. This is in line with the framework established under the ASEAN and, in particular, under the ATIGA. Put otherwise, NTBs can be defined as those NTMs for which there is a presumption (*i.e.*, an allegation) or evidence that they constitute barriers to trade. These NTBs can be allowed only under certain conditions. For the ASEAN transparency system to work and to become a systematic and reliable instrument for businesses, traders and Governments to deal with the increasing numbers of regulatory and legislative measures being adopted at national AMSs' level and having an impact on the process of ASEAN regional integration, the focus must be placed on NTMs and on the other measures having an effect on trade, not on NTBs. The transparency framework set up within the ATIGA and through the ATR relates to NTMs not NTBs.

[7] UNCTAD, Classification of Non-Tariff Measures (February 2012). The NTMs classification was first adopted in 2010 and has further been revised by UNCTAD after consultation with the WTO in 2012. With respect to its structure, the UNCTAD refers to this as "*a hierarchical "tree" structure where NTMs are differentiated according to 16 "branches" or chapters (denoted by alphabetical letters), each comprising of "sub-branches" (1-digit), "twigs" (2-digits) and "leafs" (3 digits)*".

[8] See WT/COMTD/SE/W/28, p. 3.

addition, it has been developed in cooperation with, and is accepted by, the most relevant organisations in the field of international trade. In this respect, adopting a widely-accepted definition is also useful for purposes of gathering information on NTMs and collecting and classifying NTMs in a consistent and uniform fashion *vis-à-vis* all relevant *fora*.

3.3 The concept of '*trade relation*' and '*trade related*' measures

3.3.1 Introduction

Paragraph 2 of Article 13 of the ATIGA includes a reference to "*trade related information*". In particular, Article 13 provides that:

> *"2. The ASEAN Trade Repository shall contain trade related information such as (i) tariff nomenclature; (ii) [Most Favoured Nation] tariffs, preferential tariffs offered under [ATIGA] and other Agreements of ASEAN with its Dialogue Partners; (iii) Rules of Origin; (iv) non-tariff measures; (v) national trade and customs laws and rules; (vi) procedures and documentary requirements; (vii) administrative rulings; (viii) best practices in trade facilitation applied by each Member State; and (ix) list of authorised traders of Member States*". (emphasis added)

This paragraph provides a substantial amount of information regarding what constitutes "*trade related information*" under the ATIGA, although deriving a definition of the term "*trade related information*" using the listed categories may still be difficult. However, such definition is particularly relevant for purposes of abiding by the transparency requirements mandated under the ATIGA. AMSs are required to make an assessment of the "*relation to trade*" of measures that have to be notified to, and included in, the ATR/NTR. This exercise may be particularly problematic for those categories that are formulated in broad terms in Article 13 of the ATIGA (*e.g.*, "*non-tariff measures*", "*national trade and customs laws and rules*", "*procedures and documentary requirements*" and "*administrative rulings*") in the absence of any guidance *vis-à-vis* the '*trade relation*' criterion.

3.3.2 '*Trade relation*' under the WTO

The term "*trade related*" is commonly used in the WTO context. The Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter, the TRIPs Agreement) and the Agreement on Trade-Related Investment Measures (hereinafter, the TRIMs Agreement) are both concerned with measures that are related to trade. The objectives of the TRIPs Agreement are (*inter alia*) to reduce distortions and impediments to international trade and ensure that measures and procedures enacted to enforce intellectual property rights do not become themselves barriers to legitimate trade. Therefore, under the TRIPs Agreement a relevant trade-related measure is a measure that (concerns protection and/or enforcement of intellectual property rights and) creates distortions and impediments to international trade and/or barriers to legitimate trade.

The TRIMs Agreement applies "*to investment measures related to trade in goods*". No further definition or explanation of the '*relation to trade*' requirement is provided, but the agreement contains an *Illustrative List of TRIMs* that are inconsistent with certain provisions of the GATT, and, therefore, whose relation to trade is intrinsic. Two WTO disputes address the language

contained in the TRIMs Agreement, but they are of little use. In *Indonesia – Autos*, the panel stated simply that, if a measure includes a local content requirement, it is necessarily "*trade related*" because the definition of local content requirements includes favouring domestic products over import products, which clearly affects trade.[9] As the panel recognised in *Canada – Renewable Energy*, the "*Minimum Required Domestic Content Level*" that was at issue there was "*not unlike the domestic content requirements challenged in* Indonesia – Autos*, where the panel opined that 'by definition, [domestic content requirements] always favour the use of domestic products over imported products, and therefore affect trade*'".[10]

Together, the TRIPs Agreement and the TRIMs Agreement provide a useful starting point for an examination of the term "*trade related*". The implementation of the objectives under the TRIPs Agreement includes first the process of identifying measures that create distortions and impediments to international trade, or barriers to legitimate trade. Though the TRIMs Agreement does not include such concrete terms addressing "*trade relation*", it does provide an *Illustrative List* of measures, which are by definition trade-related, that may also indirectly offer some guidance on measures related to trade (*e.g.*, domestic content requirements, limitations on imports and exports). The list is non-exhaustive, but it is reasonable to presume that WTO dispute settlement organs will assess any alleged TRIMs against the instances offered by the *Illustrative List*. Once the indicative list of nine categories of "*trade related information*" included in Article 13 of the ATIGA is endorsed and confirmed by AMSs, measures of the same kind, class or nature as the measures contained in such list should all be considered "*trade related*".

Even so, other WTO Agreements may provide more direct guidance on the term "*trade related*". Certain WTO Agreements refer to measures having a "*significant effect on trade*". Notably, this occurs in the context of WTO notification and transparency requirements. For example, Annex B of the *Agreement on Sanitary and Phytosanitary Measures* (hereinafter, SPS Agreement) requires WTO Members to abide by a number of transparency obligations whenever:

> "*[A]n international standard, guideline or recommendation does not exist or the content of a proposed sanitary or phytosanitary regulation is not substantially the same as the content of an international standard, guideline or recommendation, and if the regulation may have a significant effect on trade of other Members*". (emphasis added)

The *Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement*[11] clarify when a proposed SPS regulation "*may have a significant effect on trade of other Members*":

> *"9. For the purposes of Annex B, paragraphs 5 and 6 of the SPS Agreement, the concept of 'significant effect on trade of other Members' may refer to the effect on trade:*
> - *of one sanitary or phytosanitary regulation only or of various sanitary or phytosanitary regulations in combination;*
> - *in a specific product, group of products or products in general; and*

[9] Panel report, *Indonesia – Certain Measures Affecting the Automobile Industry*, WT/DS54/R, para. 14.82.
[10] Panel report, *Canada – Certain Measures Affecting the Renewable Energy Generation Sector*, WT/DS412/R, para. 7.111.
[11] WTO, document G/SPS/7/Rev.3.

- *between two or more Members.*

10. To assess whether the sanitary or phytosanitary regulation may have a significant effect on trade, the Member concerned should consider relevant available information such as: the value or other importance of imports to the importing and/or exporting Members concerned, whether from other Members individually or collectively; the potential development of such imports; and difficulties for producers in other Members, particularly in developing country Members, to comply with the proposed sanitary or phytosanitary regulations. The concept of a significant effect on trade of other Members should include both import-enhancing and import-reducing effects on the trade of other Members, as long as such effects are significant".

The *Agreement on Technical Barrier to Trade* (hereinafter, TBT Agreement) contains a requirement similar to that of the SPS Agreement. *Inter alia*, Article 2.9 of the TBT Agreement mandates WTO Members to comply with a number of transparency requirements

"*Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of the relevant international standards, and if the technical regulation may have a significant effect on trade*". (emphasis added)

A similar provision is foreseen with respect to conformity assessment procedures.

As it is the case for the SPS-related transparency obligations, the TBT Committee clarified the concept of "*significant effect on trade*" in the following manner:

"For the purposes of Articles 2.9 and 5.6, the concept of "significant effect on trade of other Members" may refer to the effect on trade:

(a) Of one technical regulation or procedure for assessment of conformity only, or of various technical regulations or procedures for assessment of conformity in combination;
(b) In a specific product, group of products or products in general; and
(c) Between two or more Members.

When assessing the significance of the effect on trade of technical regulations, the Member concerned should take into consideration such elements as the value or other importance of imports in respect of the importing and/or exporting Members concerned, whether from other Members individually or collectively, the potential growth of such imports, and difficulties for producers in other Members to comply with the proposed technical regulations. The concept of a significant effect on trade of other Members should include both import-enhancing and import-reducing effects on the trade of other Members, as long as such effects are significant". [12]

[12] WTO, document G/TBT/1/Rev.8.

The SPS Agreement and TBT Agreement mandate consideration of the same elements to be applied by WTO Members when assessing the significance of the effect on trade of a measure. Those elements include:

- The value or other importance (*i.e.*, quantity) of imports to the importing and/or exporting Members concerned, whether from other Members individually or collectively;
- The potential growth of such imports; and
- Difficulties for producers in other Members to comply with the proposed technical regulations.

Additionally, both agreements provide generally that "*[t]he concept of a significant effect on trade of other Members should include both import-enhancing and import-reducing effects on the trade of other Members, as long as such effects are significant*". Though limited to the effects that certain measures (*i.e.*, SPS and TBT measures) stand to have on imports, these considerations provide concrete elements that can be examined by concerned countries. In particular, value, quantity and estimated growth are metrics that are regularly recorded and can be easily accessed.

3.3.3 "*Trade related information*" and UNCTAD's definition of "*non-tariff measures*"

The last entity that provides some useful information regarding the definition of "*trade related information*" is the UNCTAD. It is to be recalled that, in the list found in Article 13(2) of the ATIGA, the first 2 categories (or ATR '*topics*') are related to tariffs. The third category (*i.e.*, Rules of Origin) is relatively straightforward and sufficiently narrow to enable an easy identification of the related information to be notified. The remaining 6 categories are all arguably related to NTMs.[13]

On this basis, one recommended option would be to '*synchronise*' the definition of "*trade related information*" and the concept of '*trade relation*' with the definition used for "*non-tariff measures*". As seen above, the UNCTAD definition developed by the MAST, which is being proposed also for purposes of the ATR/NTR, defines "*non-tariff measures*" as:

> "*[P]olicy 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*".

[13] National trade and customs laws and rules (*i.e.*, item (v) of Article 13(2) of the ATIGA) include measures that likely overlap with NTMs, while procedures, documentary requirements and administrative rulings are all derived from NTMs. Similarly, though trade facilitation may encompass more than NTMs, such as infrastructure, many relevant practices in trade facilitation are likely derived through the implementation of an NTM. Lastly, a list of authorised traders is related to NTMs, insomuch as having an authorised trade policy is considered a positive NTM because it should decrease the length of time it takes to trade goods between countries.

By removing the clause referencing "*ordinary customs tariffs*", UNCTAD's definition of NTMs is expanded to apply to the first four categories listed in Article 13(2) of the ATIGA.[14] The remaining 5 categories of "*trade relation information*" from Article 13(2) should then be accounted for separately in the definition, so as to provide clarity. As a result, the definition of "*trade related information*" using an amended version of UNCTAD's definition could be:

> *"Trade related information is information, in the form of tariff measures, policy measures, laws, rules, regulations, documents, requirements, rulings, procedures or practices, that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both*".

3.3.4 Conclusion regarding "*trade related information*"

When considered together, the guidance relating to defining "*trade related information*" provided by the ATIGA, the WTO agreements and the UNCTAD demonstrate some common features, which allow to gather a clearer understanding of the concept.

First, there is no definitive list of "*trade related*" information or measures. Instead, Article 13 of the ATIGA provides an indicative list of relevant information or measures that AMSs should be aware of. Once confirmed and endorsed by AMSs, this list will be exhaustive and certainly provide a more definitive guidance of measures that are to be notified and which are considered '*trade related*'. However, the development of a criterion to assess the "*relation to trade*" of any measure is still needed in order to enable AMSs to fully discharge their obligations *vis-à-vis* the ATR/NTRs.

Second, the elements relating to the level of significance that a measure may have on trade, as outlined in the WTO documents clarifying the provisions of SPS and TBT Agreements, demonstrate a notable bridge to the elements seen in the definition of an NTM created by the UNCTAD through the MAST. Simply put, the SPS and TBT Agreements require the consideration of the value or importance of the goods, now and in the future, and the difficulty to comply with the relevant measure. The operative clause in the UNCTAD's definition of "*non-tariff measures*" considers the potential "*economic effect on international trade in goods, changing quantities traded, or prices or both*". The change in quantities traded or the price of goods are effects that are directly related to the value or importance of a good and the difficulty to comply with measures relevant to trade in goods.

These similarities support the use of the definition of "*trade related information*" derived from the UNCTAD's NTMs definition and outlined above. The structure of Article 13(2) of the ATIGA implies that "*trade related information*" is a broader concept than NTMs because NTMs are included within the non-exhaustive list of "*trade related information*". The above definition of "*trade related information*" takes into account the scopes of the measures included in Article 13(2) of the ATIGA, while providing useable elements for which metrics should be available.

4. Notification requirements under the ATIGA

[14] This statement includes the category (iii) of Article 13(2) of the ATIGA on Rules of Origin because UNCTAD considers rules of origin to be NTMs, though the ATIGA separated these measures from the broader category of NTMs.

The notification obligations found in Articles 11, 13, and 40 of the ATIGA and relevant for purposes of the ATR are better understood when considered together. Article 13(3) of the ATIGA states that:

> *"3. The ASEAN Secretariat shall maintain and update the ASEAN Trade Repository based on the notifications submitted by Member States as set out in Article 11*".

Article 11 of the ATIGA is concerned with notification procedures. It first outlines the scope of the notification requirements and then sets forth the notification procedures. Effectively, the ATIGA "*centralises*" the notification requirements within the sole Article 11. Paragraph 1 of Article 11 requires AMSs to notify any measure that could potentially affect the operation of the ATIGA, which must consist in a measure causing either:

- Nullification or impairment; or
- Impediment to the attainment of objectives under the ATIGA.

This obligation has the intrinsic limitation and relative weakness of being triggered only when the measure to be imposed is capable of causing one of the two situations above. In addition, the assessment of whether a measure is capable of either nullification or impairment, or of impeding the attainment of the objectives under the ATIGA, is left to the AMS imposing such measure. Taken in isolation, Article 13(3) of the ATIGA could, therefore, be read as to suggest that the measures to be notified, for purposes of ATR maintenance and functioning, are those indicated in Article 11 of the ATIGA, thus allowing flexibility and discretion to AMSs on what notifications they are to submit.

However, this interpretation would not be correct. Rather, the sense of the provision included in Article 13(3) of the ATIGA is that the procedures of Article 11 of the ATIGA also apply to the "*trade related information*" list contained in Article 13 and reflected in the ATR, including NTMs. In fact, notification requirements are instrumental to the ambitious transparency framework embodied in the ATR. The text of the ATIGA clearly suggests this.

The first and second paragraphs of Article 13 of the ATIGA make clear that "*trade related information*" must be included in the ATR. "*Trade related information*", as clarified in the Section above, comprises (but it is not limited to) NTMs, and it is certainly not limited to the much narrower concept of notifiable measures referred to the first paragraph of Article 11 of the ATIGA. According to Paragraph 3 of Article 13 of the ATIGA, it is the responsibility of the AMSs to make notifications of the information required under Paragraph 2 of Article 13 of the ATIGA.

With specific respect to NTMs, it is noted that these are also governed by Article 40 of the ATIGA. Article 40(4) itself references Article 13 and the ATR, requiring that NTMs be "*further developed and included in the [ATR] as referred in Article 13*". More importantly, Article 40(3) states that, *"[a]ny new measure or modification to the existing measure shall be duly notified in accordance with Article 11*". Thus, both Article 13 and Article 40 of the ATIGA recall the notifications procedures in Article 11 as applicable, respectively, to "*trade related information*" and NTMs (which themselves are included within the "*trade related information*" to be included in the ATR).

In addition, the first clause of Paragraph 1 of Article 11 qualifies its very scope by stating "*[u]nless otherwise provided in this Agreement*". As a result, though the procedures of Article 11 of the ATIGA typically apply to a limited range of measures (and subject to the discretion of AMSs), they also concern other measures as provided by the ATIGA. The second paragraph in Article 11 also supports the expanded application of Article 11's notification procedures, as it references a list of relevant measures in Annex I of the ATIGA, but qualifies the reference by stating that "...*the notification procedures shall apply, but need not be limited, to...*" such listed measures.

All these arguments strongly support the need that any "*trade related information*" within the scope of Article 13, and NTMs under Article 40 of the ATIGA, be duly notified and in accordance with the procedures of Article 11, without the need for an assessment of the potential for nullification or impairment or of the impediment to the attainment of the objectives of the ATIGA. In simple terms, the reference to Article 11 must be read in relation to the procedures for notification, as set forth in Paragraphs 3 to 8 of Article 11 and not as relevant *vis-à-vis* the obligation to notify.

With respect to the actual notification procedures, according to Article 11(3) of the ATIGA, AMSs should make a notification to the Senior Economic Officials meeting and to the ASEAN Secretariat at least 60 days before the date when the relevant measure that they are considering is to take effect. Article 11(4) provides that the notification itself must include:

- A description of the action or measures to be taken;
- The reasons for undertaking the action or measure; and
- The intended date of implementation and the duration of the action or measure.

The notification process is intended to provide concerned AMSs with the opportunity to comment on the measure. Those comments should be sent to the AMS potentially enacting the measure within 15 days of the notification. That AMS must provide the ASEAN Secretariat with a copy of each comment received pursuant to Articles 11(6)–(8) of the ATIGA. Although Article 11 does not explicitly state so, final measures should also be notified, where different from the draft measures notified according to the procedures described above.

5. Standard classification system proposed for the ATR/NTRs

5.1 Introduction

Article 13 of the ATIGA identifies nine areas for inclusion in, and notification to, the ATR: (i) tariff nomenclature; (ii) MFN tariffs, preferential tariffs offered under the ATIGA and other agreements of ASEAN with its Dialogue Partners; (iii) rules of origin; (iv) non-tariff measures; (v) national trade and customs laws and rules; (vi) procedures and documentary requirements; (vii) administrative rulings; (viii) best practices in trade facilitation applied by each AMS; and (ix) list of authorised traders of AMSs.

The exact definition and content of these nine macro-areas of inclusion in, and notification to, the ATR bear fundamental importance for purposes of the functioning of the transparency

mechanism designed by the ATIGA and it is crucial that they be agreed upon by AMSs, uniformly applied in all AMSs and duly reflected in the ATR/NTRs' structures.

The first task of this Activity, resulted in the Report on the "*Definition of the ATR's 'Shell' Architecture*", concerned the development of the ATR's '*shell*' architecture. In such context, a classification of measures to be notified under each of the nine areas of notification in Article 13(2) of the ATIGA was drawn and outlined for AMSs' consideration and endorsement. In particular, the classification proposed linked each of the nine macro-areas of notification included in Article 13(2) of the ATIGA to nine '*topics*' under the ATR. These topics were further divided and classified (at the 2-digit level) in order to reflect (and distinguish between) all notifiable measures that are comprised therein.

Whereas some of these nine '*topics*' are currently not susceptible of being further sub-divided, others require further classification and elaboration, particularly the all-encompassing category of non-tariff measures. The following section contains a further elaboration of the actual content of the notification obligations for each of the nine macro-areas of notification reported in Article 13 of the ATIGA.[15] The full classification of measures for notification to, and inclusion in, the ATR (including the sub-division of certain categories at the 2, 3 or 4 –digit level), is contained in Annex 1. The suggestion is made that this classification be finally endorsed by AMSs for purposes of the transparency requirements under Article 13 of the ATIGA and the establishment and functioning of the ATR/NTRs.

5.2 Description of the nine macro-areas for notification under the ATR

1. Tariff nomenclature

Under this macro-area of notification, AMSs are required to notify their laws and regulations establishing the tariff nomenclature as well as the explanatory notes, where applicable.

Each AMS has a tariff nomenclature which, according to Article 4 of the ASEAN Agreement on Customs, must be based (at the eight-digit level) on the ASEAN Harmonised Tariff Nomenclature (hereinafter, AHTN).[16] Tariff nomenclatures are commonly adopted by law and managed by customs authorities. Implementing acts, as well as certain amendments, may be adopted by administrative authorities, according to each country's legislation.

The term tariff nomenclature is not defined in the ATIGA or in the ASEAN Agreement on Customs. However, to give effect to the requirement under Article 13 of the ATIGA, this must be intended to refer to:

1.1 The tariff nomenclature of each AMSs (up to the ten-digit level);

[15] It is noted that, with respect to the vast majority of ATR '*topics*' of notification, there is no effective need or margin for a further classification beyond the 1 or 2 -digit level. For such '*topics*', the descriptions already provided in the Report on the "*Definition of the ATR's 'Shell' Architecture*" have been reproduced and summarised.

[16] See ASEAN Agreement on Customs, Phuket, Thailand, 1 March 1997. This agreement requires that the ASEAN Harmonised Tariff Nomenclature be based on the 6-digit Harmonised Commodity Description and Coding System (HS) of the World Customs Organisation and the amendments thereto. It also requires AMSs to use a common tariff nomenclature at the 8-digit level. AMSs may further sub-divide the AHTN, beyond the 8-digit level, for the collection of statistical data or other non-tariff purposes. See also the Protocol Governing the Implementation of the ASEAN Harmonised Tariff Nomenclature, Makati, Philippines, 7 August 2003. The Protocol contains the Interpretative Notes Governing the Implementation of the AHTN.

1.2 The explanatory notes, where applicable.

These two sub-categories identify and exhaust the measures that are notifiable within this macro-area of notification.

2. *MFN tariffs, preferential tariffs offered under the ATIGA and other Agreements of ASEAN with its Dialogue Partners*

This macro-area of notification is intended to capture all information related to the applicable tariff concessions on any given product. In particular, under this macro-area of notification, AMSs have to notify for inclusion in the ATR:

- MFN tariffs, which are the tariff concessions negotiated and agreed upon within the WTO framework;[17]
- Tariff concessions applicable pursuant to the ATIGA; and
- Tariff concessions applicable pursuant to the free trade agreements in place with Dialogue Partners.

The latter sub-category currently includes:

- The ASEAN – Australia New Zealand Free Trade Area;[18]
- The ASEAN – China Free Trade Area;[19]
- The ASEAN – India Free Trade Area;[20]
- The ASEAN – Japan Free Trade Area;[21] and
- The ASEAN – Republic of Korea Free Trade Area.[22]

This macro-area of notification should also cater for new preferential arrangements that could be negotiated at the ASEAN level. Therefore, the suggestion is made that this macro-area be further classified in the following manner (see Annex 1 for full classification):

2.1 MFN tariffs (WTO);

2.2 ATIGA tariffs;

2.3 Preferential tariffs offered under Agreements of ASEAN with its Dialogue Partners and other agreements:

2.3.1 Tariff concessions applicable pursuant to the ASEAN – Australia New Zealand Free Trade Area;

[17] See Article 2(j) of the ATIGA.
[18] Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area: Hua Hin, Thailand, 27 February 2009.
[19] Framework Agreement on Comprehensive Economic Co-Operation Between ASEAN and the People's Republic of China: Phnom Penh, Cambodia, 4 November 2002.
[20] Framework Agreement on Comprehensive Economic Cooperation Between the Republic of India and the Association of Southeast Asian Nations, Bali, Indonesia, 8 October 2003.
[21] Agreement on Comprehensive Economic Partnership among Japan and Member States of the Association of Southeast Asian Nations, 14 April 2008 (by authorised ministers in capitals of respective countries).
[22] Framework Agreement on Comprehensive Economic Cooperation Among the Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea: Kuala Lumpur, Malaysia, 13 December 2005.

2.3.2 Tariff concessions applicable pursuant to the ASEAN – China Free Trade Area;
2.3.3 Tariff concessions applicable pursuant to the ASEAN – India Free Trade Area;
2.3.4 Tariff concessions applicable pursuant to the ASEAN – Japan Free Trade Area;
2.3.5 Tariff concessions applicable pursuant to the ASEAN – Korea Free Trade Area; and
2.3.6 Tariff concessions applicable pursuant to future preferential arrangements.

3. Rules of origin

Rules of origin are laws, regulations and administrative determinations of general application applied to determine the country of origin of goods.[23] Rules of origin are commonly classified into non-preferential and preferential rules of origin. The obligation to notify and to include the rules of origin in the ATR must be interpreted as requiring AMSs to notify:

3.1 Non-preferential rules of origin;

3.2 Preferential rules of origin.

Non-preferential rules of origin are used for the application of (non-preferential) trade policy instruments, such as the MFN treatment, anti-dumping and countervailing duties, safeguard measures, origin marking requirements or tariff quotas, as well as for purposes of gathering trade statistics.[24] Preferential rules of origin are those that are applied to determine whether or not goods qualify for preferential treatment under contractual trade agreements (*i.e.*, FTAs, customs unions) or autonomous trade regimes[25] (*e.g.*, generalised system of preferences).

These definitions, provided by the WTO Agreement on Rules of Origin (Agreement on RoO), can apply to the ASEAN framework.[26,27]

4. Non-tariff measures

As introduced in the Report on the "*Definition of the ATR's 'Shell' Architecture*" and recalled above (*i.e.*, in Section 3 of this report), the UNCTAD provides a uniform classification system

[23] Definition from the WTO Agreement on Rules of Origin (hereinafter, Agreement on RoO).
[24] Definition from Article 1, paragraph 2 of the Agreement on RoO.
[25] Definition provided in Annex II, paragraph 2 of the Agreement on RoO.
[26] The ATIGA contains disciplines and criteria for the purposes of establishing the ASEAN origin of goods in Chapter 3, but fails to provide a definition of rules of origin for the purposes of the transparency requirements under Article 13.
[27] It is noted that under the WTO framework both categories of rules of origin are subject to transparency requirements. In particular, under Article 5 of the Agreement on RoO, WTO Members were required to provide to the WTO Secretariat their applicable non-preferential rules of origin, as well as judicial decisions and administrative rulings of general application relating to rules of origin. The same article also foresees an advanced notice requirement for modifications (other than *de minimis*) of rules of origin and for new rules of origin, in order to enable interested parties to become acquainted with the amendments. With respect to preferential rules of origin, paragraph 4 of Annex II of the Agreement on RoO required WTO Members to provide the Secretariat with their preferential rules of origin, including a listing of the preferential arrangements to which they apply, as well as judicial decisions and administrative rulings of general application relating to their preferential rules of origin as soon as possible, as well as any modification thereto or new preferential rule of origin.

for NTMs. There are 16 large macro-categories (referred to by UNCTAD as Chapters), organised by alphabetic characters. In the Report on the "*Definition of the ATR's 'Shell' Architecture*", the recommendation was made that this classification be used for purposes of the ATR (and the NTRs), and particularly for purposes of defining the scope and content of the macro-area of notification listed in item (iv) of Article 13(2) of the ATIGA, with the following carve-outs and/or clarifications:

- Certain measures identified as NTMs under the 2012 UNCTAD NTM classification are to be expressly included in other macro-areas of notification to the ATR. This is the case of rules of origin, mentioned in item (iii) of Article 13(2) of the ATIGA, which constitute a separate area of notification although they are commonly identified (including by UNCTAD) as non-tariff measures. Rules of origin should, therefore, not be notified or included within the macro-area defined by item (iv) of Article 13(2) of the ATIGA; and

- There is a risk of duplication inasmuch as certain non-tariff measures contained in, or effected through, laws, rules and procedures are susceptible of notification and inclusion (also) within other macro-areas of notification, such as those defined by items (v) on "*national trade and customs laws and rules*" and (vi) on "*procedures and documentary requirements*". The approach suggested in this report is that, in such instances, the nature of the measure concerned as "*non-tariff measure*" should prevail to the extent that such measure is classifiable within (any of the sub-categories of) the macro-area of notification of "*non-tariff measures*". Where such measure is not susceptible of classification under any of the sub-categories of the macro-area of notification of "*non-tariff measures*", it should be classified under any other applicable macro-area of notification identified within Article 13(2) of the ATIGA and the ATR/NTRs.

On this basis, the Report on the "*Definition of the ATR's 'Shell' Architecture*" classified NTMs to be notified in 15 sub-categories. Taking stock of such classification, and with the above clarifications in mind, the recommendation is made that the classification relating to this macro-area of notification (or ATR '*topic*') be further conducted according the structure indicated in Annex 1. This structure is based on the 2012 UNCTAD NTM classification. (For reasons of space, the full classification of the entire sub-category 4, as recommended in this report, is not reproduced in this sub-Section). The UNCTAD's manual with the 2012 UNCTAD NTM classification contains a description of all the NTMs that have been identified and classified.[28] This description is reported below, as applicable for the purposes of the classification of "*non-tariff measures*" in the ATR/NTR context, where relevant.

Annex 2 provides a proposed template to identify, collect and classify NTMs, which is aimed at assisting AMSs in the development and maintenance of standardised trade repositories and/or to assist in the collection of data. This proposed template was developed, proposed and progressively refined in the context of the first two dedicated training seminars sponsored by the World Bank on "*NTM Classification and Streamlining*", which were held, respectively, in Siem Riep, Cambodia on 7-11 October 2013 and in Nay Pyi Taw, Myanmar on 25-28 February 2014. This instrument was conceived and tailored for specific use by AMSs in light of their obligations under the applicable transparency requirements under the ATIGA (*i.e.*, Articles 11, 13 and 40 thereof). It remains just a suggestion, but the recommendation is made that AMSs

[28] UNCTAD, Classification of Non-Tariff Measures (February 2012).

discuss its structure and contents at the earliest opportunity and agree to the exact format so that it provides a harmonized approach both at national (NTRs) and regional (ATR) level. The World Bank has committed resources to continue assisting AMSs in the process of NTM classification and streamlining. This standardized template is seen as instrumental to achieve operational harmonization among AMSs and interoperability of information on NTMs, which are key ingredients to increased ASEAN transparency as mandated under the ATIGA.

4.1 Sanitary and phytosanitary measures

SPS measures are those applied to protect human or animal life from risks arising from additives, contaminants, toxins or disease-causing organisms in their food; to protect human life from plant- or animal-carried diseases; to protect animal or plant life from pests, diseases, or disease-causing organisms; to prevent or limit other damage to a country from the entry, establishment or spread of pests; and to protect bio-diversity. These include measures taken to protect the health of fish and wild fauna, as well as of forests and wild flora. Note that measures taken for environmental protection purposes (other than as defined above), to protect consumer interests, or for the welfare of animals, are not considered SPS measures, but rather as TBT measures.

As suggested by the UNCTAD's 2012 NTM classification and reflected in the classification reproduced in Annex 1, SPS measures are further classified as follows:

- Prohibitions/restrictions of imports for SPS reasons;
- Tolerance limits for residues and restricted use of substances;
- Labelling, marking and packaging requirements;
- Hygienic requirements;
- Treatment for elimination of plant and animal pests and disease-causing organisms in the final product (*e.g.*, post-harvest treatment);
- Other requirements on production or post-production processes;
- Conformity assessment related to SPS; and
- SPS measures not elsewhere specified.

As described in more details below, these sub-categories comprehend a number of further sub-categories identifying specific SPS requirements.

4.1.1 Prohibitions and restrictions of imports for SPS reasons

This sub-category covers prohibitions and restrictions of the final products to be imported (restrictions on the tolerance limits on residues or use of certain substances contained in the final products are classified under the sub-category below). It includes the following measures:

4.1.1.1 Temporary geographic prohibitions for SPS reasons: These are prohibitions on the importation of specified products from countries or regions due to infectious or contagious diseases. Measures included in this category are typically more of an *ad hoc* and time-bound nature (*e.g.*, a prohibition of poultry imports from areas affected by avian flu or cattle from foot-and-mouth disease-affected countries).

4.1.1.2 *Geographical restrictions on eligibility*: These measures relate to prohibitions of imports of specified products from specific countries or regions due to the lack of evidence of safety conditions sufficient to avoid sanitary and phytosanitary hazards. These restrictions are imposed automatically until the affected country proves implementation of acceptable sanitary and phytosanitary protections (*e.g.*, the prohibition of imports of dairy products from countries with unproven sanitary conditions).

4.1.1.3 *Systems approach*: This sub-category refers to approaches that combine two or more independent SPS measures on the same product. The combined measures can be composed of any number of interrelated measures, as well as their conformity assessment requirements, and can be applied at all stages of production (*e.g.*, an import programme that establishes a package of measures requiring specific pest-free production location, the pesticides to be used, harvesting techniques as well as post-harvest fumigation, combined with an inspection requirement at the entry point: hazard analysis and critical control point requirements).

4.1.1.4 *Special authorisation requirement for SPS reasons*: This sub-category identifies requirements concerning authorisation, permits or approval that importers should receive from the relevant government agencies of the destination country for SPS reasons. In order to obtain the authorisation, importers may need to comply with other related regulations and conformity assessments (*e.g.*, an import authorisation from the Ministry of Health is required for importation of a specific product).

4.1.1.5 *Registration requirements for importers*: This sub-category concerns measures requiring that importers be registered before they can import certain products. To register, importers may need to comply with certain requirements, provide documentation and pay registration fees.

4.1.1.6 *Prohibition or restrictions of imports for SPS reasons not elsewhere specified*: this is a residual sub-category which covers prohibitions and restrictions on imports for SPS purposes that are not classifiable above.

4.1.2 Tolerance limits for residues and restricted use of substances

This sub-category covers tolerance limits for residues and restricted use of substances. It can be further split in two sub-categories covering the following measures:

4.1.2.1 *Tolerance limits for residues of or contamination by certain (non-microbiological) substances*: This sub-category concerns measures that establish a maximum residue limit (MRL) or tolerance limit of substances such as fertilisers, pesticides, and certain chemicals and metals in food and feed, which are used during their production process but are not their intended ingredients. This sub-category includes a permissible maximum level (ML) for non-microbiological contaminants (whereas measures related to microbiological contaminants are classified under 4.1.2.4 below) (*e.g.*, (a) an MRL established for insecticides, pesticides, heavy metals and veterinary

drug residues; (b) POPs and chemicals generated during processing; and (c) residues of dithianon in apples and hop).

4.1.2.2 Restricted use of certain substances in foods and feeds and their contact materials: This sub-category covers restrictions or prohibitions on the use of certain substances contained in food and feed. It includes the restrictions on substances contained in the food containers that might migrate to food (*e.g.*, (a) Certain restrictions exist for food and feed additives used for colouring, preservation or sweeteners; and (b) for food containers made of polyvinyl chloride plastic, vinyl chloride monomer must not exceed 1 mg per kg).

4.1.3 Labelling, marking and packaging requirements

This sub-category covers labelling, marking and packaging requirements when adopted for SPS proposes (see above, in the introduction to Section 4.1). In particular, it covers:

4.1.3.1 Labelling requirements: Measures defining the information directly related to food safety, which should be provided to the consumer. Labelling is any written, electronic or graphic communication on the consumer packaging or on a separate but associated label.

4.1.3.2 Marking requirements: Measures define the information directly related to food safety, which should be carried by the packaging of goods for transportation and/or distribution.

4.1.3.3 Packaging requirements: Measures regulating the mode in which goods must be or cannot be packed, or defining the packaging materials to be used, which are directly related to food safety.

4.1.4 Hygienic requirements

This sub-category covers hygienic requirements, which are requirements related to food quality, composition and safety. These requirements are usually based on hygienic and good manufacturing practices (GMPs), recognised methods of analysis and sampling. These requirements may be applied on the final product (*e.g.*, see sub-category 4.1.4.1 below) or on the production processes (*e.g.*, see sub-category 4.1.4.2 below).

4.1.4.1 Microbiological criteria of the final product: This sub-category covers measures on the statement of the microorganisms of concern and their toxins or metabolites and the reason for that concern, the analytical methods for their detection and quantification in the final product. Microbiological limits should take into consideration the risk associated with the microorganisms and the conditions under which the food is expected to be handled and consumed. Microbiological limits should normally also take account of the likelihood of uneven distribution of microorganisms in the food and the inherent variability of the analytical procedure (*e.g.*, liquid eggs should be pasteurised or otherwise treated to destroy all viable Salmonella microorganisms).

4.1.4.2 Hygienic practices during production: This sub-category includes requirements principally intended to give guidance on the establishment and application of microbiological criteria for foods at any point in the food chain from primary production to final consumption. The safety of foods is principally assured by control at the source, product design and process control, and the application of good hygienic practices during production, processing (including labelling), handling, distribution, storage, sale, preparation and use (*e.g.*, milking equipment on the farm should be cleaned daily with a specified detergent).

4.1.4.3 Hygienic requirements not elsewhere specified: This residual sub-category covers hygienic requirements that are not otherwise included above.

4.1.5 Treatment for elimination of plant and animal pests and disease-causing organisms in the final product (*e.g.*, post-harvest treatment)

This sub-category covers the different treatments that can be applied during production or as a post-production process in order to eliminate plant and animal pests or disease-causing organisms in the final product. It includes:

4.1.5.1 Cold or heat treatment: This classification refers to requirements to cooling or heating of products below or above certain temperature, respectively, for a certain period of time to kill targeted pests, either prior to, or upon arrival to the destination country. Specific facilities on land or ships may be required. In this case, containers should be equipped properly to conduct cold or heat treatment and should be equipped with temperature sensors (*e.g.*, citrus fruits must undergo cold (disinfection) treatment to eliminate fruit flies).

4.1.5.2 Irradiation: Measures under this sub-category concern requirements to kill or devitalise microorganisms, bacteria, viruses or insects that might be present in food and feed products by using irradiated energy (ionizing radiation) (*e.g.*, this technology may be applied on meat products, fresh fruits, spices and dried vegetable seasonings).

4.1.5.3 Fumigation: This classification concerns a process of exposing insects, fungal spores or other organisms to the fumes of a chemical at a lethal strength in an enclosed space for a given period of time. A fumigant is a chemical, which at a required temperature and pressure can exist in the gaseous state in sufficient concentration to be lethal to a given pest organism (*e.g.*, use of acetic acid is mandatory as a post-harvest fumigant to destroy fungal spores on peaches, nectarines, apricots and cherries; methyl bromide for fumigating cut flowers and many other commodities).

4.1.5.4 Treatment for elimination of plant and animal pests and disease-causing organisms in the final product, not elsewhere specified: Again, this residual sub-category is intended to capture measures concerning the treatment for the elimination of plant and animal pests and disease-causing organisms in the final product, which are not classifiable in any of the above sub-categories.

4.1.6 Other requirements on production or post-production processes

This sub-category covers requirements on other (post-) production processes not classified above. It also excludes those specific measures under sub-category 4.1.2. In particular, it includes:

4.1.6.1 Plant-growth processes: Measures classified herewith concern requirements on how a plant should be grown in terms of conditions related to temperature, light, spacing between plants, water, oxygen and mineral nutrients (*e.g.*, seeding rate and row spacing of soybean plants are specified to reduce the risk of frogeye leaf spots).

4.1.6.2 Animal-raising or -catching processes: This sub-category covers requirements on how an animal should be raised or caught due to SPS concerns.

4.1.6.3 Food and feed processing: This sub-category covers requirements on how food or feed production should take place in order to satisfy sanitary conditions for the final products (*e.g.*, new equipment or machinery for handling or processing feed in or around an establishment producing animal feed shall not contain polychlorinated biphenils (PCBs)).

4.1.6.4 Storage and transport conditions: This sub-category includes requirements on certain conditions under which food and feed, plants and animals should be stored and transported.

4.1.6.5 Other requirements on production or post-production processes, not elsewhere specified: This residual sub-category is intended to capture measures concerning requirements on production or post-production processes not classifiable in any of the above sub-categories.

4.1.7 Conformity assessment related to SPS

This sub-category concerns conformity assessment related to SPS, which are requirements for verification that a given SPS condition has been met. Conformity assessments can be achieved by one or more combined forms of inspection and approval procedures, including procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; accreditation and approval.

4.1.7.1 Product registration requirement: This sub-category covers product registration requirements in an importing country (*e.g.*, requirements and guidelines for the registration of a pesticide and its compounds such as for minor crops or minor use. This type of measure may include provisions describing types of pest control products that are exempt from registration and procedures detailing the registration process, including provisions relating to distribution, import, sampling and detention).

4.1.7.2 Testing requirements: This sub-category is concerned with conformity assessment requirements for products to be tested against a given

regulation, such as MRLs. This measure includes cases where there is sampling requirement (*e.g.*, a test on a sample of orange imports is required to check against the MRL of certain pesticides).

4.1.7.3 *Certification requirement*: This sub-category covers requirements of certification of conformity with a given regulation by the importing country (where certification may be issued in the exporting or the importing country) (*e.g.*, certificate of conformity for food contact materials (containers, papers, plastics, etc.) is required).

4.1.7.4 *Inspection requirement*: This sub-category covers requirements for product inspection in the importing country, which may be performed by public or private entities. Such requirements are similar to testing, but do not include laboratory testing (*e.g.*, animals or plant parts must be inspected before entry is allowed).

4.1.7.5 *Traceability requirements*: This sub-category covers disclosure requirements of information that allows following a product through the stages of production, processing and distribution. It is further sub-divided into:

4.1.7.5.1 *Origin of materials and parts*: This further sub-category covers disclosure of information on the origin of materials and parts used in the final product (*e.g.*, for vegetables, disclosure of information on the location of the farm, name of the farmer or fertilisers used may be required).

4.1.7.5.2 *Processing history*: This further sub-category relates to disclosure of information on all stages of production: may include their locations, processing methods and/or equipment and materials used (*e.g.*, for meat products, disclosure of information on their slaughter house, as well as food-processing factory, may be required).

4.1.7.5.3 *Distribution and location of products after delivery*: This sub-category concerns disclosure of information on when and how the goods have been distributed from the time of their delivery to distributors until they reach the final consumer (*e.g.*, for rice, disclosure of information on the location of its temporary storage facility may be required).

4.1.7.5.4 *Traceability requirements not elsewhere specified*: This residual sub-category covers traceability requirements that are not otherwise included above.

4.1.7.6 *Quarantine requirements*: These concern requirements to detain or isolate animals, plants or their products on arrival at a port or place for a given period in order to prevent the spread of infectious or contagious disease, or contamination (*e.g.*, live dogs must be quarantined for two weeks before entry into the territory is authorised).

4.1.7.7 Conformity assessment related to SPS not elsewhere specified: This residual sub-category covers conformity assessment procedures that are not otherwise included above.

4.1.8 SPS measures not elsewhere specified

This is a broad residual sub-category that covers all SPS measures that are not otherwise included above.

4.2 Technical barriers to trade

TBTs are measures that include technical regulations and procedures for assessment of conformity with technical regulations and standards, excluding measures covered by the SPS Agreement. Further discussion of the distinction between SPS and TBT measures is useful. Accordingly, below is an excerpt from the SPS Agreement Training Module from the WTO (Chapter 1.4):

> "*It should be noted that health-related trade restrictions are addressed by both the SPS Agreement and the Agreement on Technical Barriers to Trade (TBT Agreement) [see Chapter 9]. There are, however, differences in the scopes of the two agreements.*
>
> *The SPS Agreement covers health protection measures as defined above.*
>
> *The TBT Agreement covers all technical requirements, voluntary standards and the procedures to ensure that these are met (called conformity assessment procedures), except when these are SPS measures as defined by the SPS Agreement.*
>
> *TBT measures could cover any subject, from car safety to energy-saving devices, to the shape of food packages. To give some examples pertaining to human health, TBT measures could include pharmaceutical restrictions, or the labelling of cigarettes. Most measures related to human disease control are under the TBT Agreement, unless they concern food safety or diseases which are carried by plants or animals (such as rabies). In terms of food, labelling requirements dealing with nutrition claims, quality and packaging regulations are not considered to be SPS measures and hence are normally subject to the TBT Agreement. However, labelling requirements dealing with food safety are considered to be SPS measures*".

TBT measures can be further classified as follows:

- Prohibitions/restrictions of imports for objectives set out in the TBT Agreement;
- Tolerance limits for residues and restricted use of substances
- Labelling, marking, and packaging requirements;
- Production or post-production requirements;
- Product identity requirement;
- Product-quality or -performance requirement;
- Conformity assessment related to TBT; and

- TBT measures not elsewhere specified.

As it is the case for SPS measures, each of these sub-categories is further detailed below.

4.2.1 Prohibitions or restrictions of imports for TBT reasons

Prohibitions or restrictions for TBT reasons may be established for reasons related, *inter alia*, to national security requirements, the prevention of deceptive practices, the protection of human health or safety, animal or plant life or health, or the environment. This broad sub-category is further classified as follows:

4.2.1.1 Prohibition for TBT reasons: This sub-category refers to import prohibitions for reasons set out in Sections 4.2 and 4.2.1 (*e.g.*, imports are prohibited for hazardous substances, including explosives; certain toxic substances covered by the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal).

4.2.1.2 Authorization requirement for TBT reasons: This sub-category covers requirements that the importer must receive authorisations, permits or approval from a relevant government agency of the destination country, for reasons such as national security or environmental protection (*e.g.*, imports must be authorised for drugs, waste and scrap, fire arms, etc.).

4.2.1.3 Registration requirement for importers for TBT reasons: This sub-category refers to requirements that importers must be registered in order to import certain products. To register, importers need to comply with certain requirements, documentation and registration fees. It also includes the cases when the registration of establishments producing certain products is required (*e.g.*, importers of sensitive products such as medicines, drugs, explosives, firearms, alcohol, cigarettes and game machines may be required to be registered in the importing country).

4.2.1.4 *Prohibitions or restrictions of imports for TBT reasons not elsewhere specified*: This residual sub-category covers prohibitions or restrictions of imports for TBT reasons that are not otherwise included above.

4.2.2 Tolerance limits for residues and restricted use of substances

4.2.2.1 Tolerance limits for residues of or contamination by certain substances: This sub-category includes measures that establish a maximum level or tolerance limit of substances, which are used during their production process but are not their intended ingredients (*e.g.*, salt level in cement or sulphur level in gasoline, must be below a specified amount).

4.2.2.2 Restricted use of certain substances: This sub-category encompasses restrictions of the use of certain substances as components or material as a way to prevent the risks arising from their use (*e.g.*, restricted use of solvents in paints).

4.2.3 Labelling, marking, and packaging requirements

4.2.3.1 Labelling requirements: Labelling requirements regulate the kind, colour, and size of printing on packages and labels and define the information that should be provided to the consumer. Labelling is any written, electronic, or graphic communication on the packaging, or on a separate but associated label, or on the product itself. It may include requirements on the official language to be used as well as technical information on the product, such as voltage, components, instruction on use, safety and security advice.

4.2.3.2 Marking requirements: This sub-category concerns measures defining the information for transport and customs that the transport or distribution packaging of goods should carry.

4.2.3.3 Packaging requirements: This sub-category refers to measures that regulate the mode in which goods must be or cannot be packed, or define the packaging materials to be used.

4.2.4 Production or post-production requirements

This sub-category encompasses a number of measures and is susceptible of the following classification:

4.2.4.1 TBT regulations on production processes: This sub-category deals with requirements on production processes not classified under SPS above. It also excludes those specific measures under Section 4.2.2 or its sub-categories (*e.g.*, measures requiring use of environmentally friendly equipment is mandatory).

4.2.4.2 TBT regulations on transport and storage: These are requirements on certain conditions under which products should be stored or transported (*e.g.*, requirements that medicines should be stored below a certain temperature).

4.2.4.3 Production or post-production requirements not elsewhere specified: This residual sub-category covers production or post-production requirements that are not otherwise included above.

4.2.5 Product identity requirement

Product identity requirements are conditions to be satisfied in order to identify a product with a certain denomination (including biological or organic labels) (*e.g.*, in order for a product to be identified as "*chocolate*", it must contain a minimum of 30% cocoa).

4.2.6 Product quality or performance requirement

This sub-category refers to conditions which must be satisfied in terms of performance (*e.g.*, durability, hardness) or quality (*e.g.*, content of defined ingredients).

4.2.7 Conformity assessment related to TBT

This sub-category encompasses different verification processes that a given TBT requirement has met. This could be achieved by one or combined forms of inspection and approval procedure(s), including procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; accreditation and approval.

4.2.7.1 *Product registration requirement*: This sub-category concerns product registration requirements in the importing country (*e.g.*, only registered drugs and medicine may be imported).

4.2.7.2 *Testing requirement*: This sub-category includes requirements for products to be tested against a given regulation, such as performance level. It includes sampling requirements (*e.g.*, a testing on a sample of motor vehicle imports is required against the required safety compliance and its equipment).

4.2.7.3 *Certification requirement*: Certification requirements include conformity with a given regulation required by the importing country, but they may be issued in the exporting or the importing country (*e.g.*, certificate of conformity for electric products is required).

4.2.7.4 *Inspection requirement*: This sub-category refers to requirements for product inspection in the importing country, which may be performed by public or private entities. These are similar to testing, but do not include laboratory testing (*e.g.*, textile and clothing imports must be inspected for size and materials used before entry is allowed).

4.2.7.5 *Traceability information requirements*: This sub-category concerns requirements to disclose information that allows for a product to be traced through the stages of production, processing, and distribution. It can be further divided as follows:

4.2.7.5.1 *Origin of materials and parts*: This sub-category covers requirements concerning the disclosure of information on the origin of materials and parts used in the final product (*e.g.*, manufacturers of automobiles must keep the record of the origin of the original set of tires for each individual vehicle).

4.2.7.5.2 *Processing history*: This sub-category refers to requirements to disclose information on all stages of production, which may include their locations, processing methods or the equipment and materials used (*e.g.*, for wool apparel product, disclosure of information on the origin of the sheep, location of the textile factory, as well as the identity of the final apparel producer may be required).

4.2.7.5.3 *Distribution and location of products after delivery*: This sub-category is concerned with disclosure of information on when and how the goods have been distributed during any time after the production and before final consumption may also be required (*e.g.*, before placing imported cosmetic products on the EU market, the person responsible must indicate to the competent authority of the Member State where the

products were initially imported, the address of the manufacturer, or the address of the importer).

4.2.7.5.4 *Traceability requirements not elsewhere specified*: This residual sub-category covers traceability requirements for TBT reasons that are not otherwise included above.

4.2.7.6 *Conformity assessment related to TBT not elsewhere specified*: This residual sub-category covers conformity assessments related to TBT reasons that are not otherwise included above.

4.2.8 TBT measures not elsewhere specified

This final category serves as the most general residual category, reserved for any TBT measures that do not fit into another specified section.

4.3 Pre-shipment inspection and other formalities

Sub-category 4.3 covers pre-shipment inspections and other formalities. It encompasses:

- Pre-shipment inspections;
- Direct consignment requirements;
- Requirements to pass through a specified port of customs;
- Import monitoring surveillance requirements and automatic licensing measures; and
- Other formalities not elsewhere specified.

4.3.1 Pre-shipment inspection

A pre-shipment inspection measure requires an independent agency to inspect the goods in the exporting country for quality, quantity, and price (*e.g.*, a pre-shipment inspection of textile imports by a third party for verification of colours and types of materials that are required).

4.3.2 Direct consignment requirement

A direct consignment requirement forbids goods to be shipped through a third country after leaving the country of origin (*e.g.*, goods imported under a preferential scheme such as GSP must be shipped directly from the country of origin in order to satisfy the scheme's rules of origin condition (*i.e.*, to guarantee that the products have not been manipulated, substituted, or further processed in any third country of transit)).

4.3.3 Requirement to pass through specified port of customs

This sub-category covers measures providing for an obligation for imports to pass through a designated entry point or customs office for inspection and test (*e.g.*, DVD players need to be cleared at a designated customs office for inspection).

4.3.4 Import monitoring and surveillance requirements and other automatic licensing measures

This sub-category refers to administrative measures which seek to monitor the import value or volume of specified products (*e.g.*, automatic import license is required as an administrative procedure for textile and apparel prior to importation).

4.3.5 Other formalities not elsewhere specified.

This sub-category serves as the most general residual category, reserved for any other formalities that do not fit into another specified section.

4.4 Contingent trade protective measures

These are measures implemented to counteract particular adverse effects of imports in the market of the importing country, including measures aimed at '*unfair*' foreign trade practices, contingent upon the fulfilment of certain procedural and substantive requirements. This sub-category includes the following measures:

- Anti-dumping measures;
- Countervailing measures;
- Safeguards (multilateral);
- Agricultural special safeguards; and
- Safeguards not elsewhere specified.

4.4.1 Anti-dumping measures

This sub-category addresses border measures applied to imports of a product from an exporter, whose imports are causing injurious dumping to the domestic industry producing the like product, or to third countries' exporters of that product. Dumping takes place when a product is introduced into the commerce of an importing country at less than its normal value, generally where the export price of the product is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country. This sub-category can be further split as it follows:

4.4.1.1 *Anti-dumping investigations*: This sub-category refers to investigations (which are procedures) initiated and conducted either following a complaint by the domestic industry producing the like product or, in some situations, investigations that are self-initiated by authorities in the importing country (*ex officio* investigations) to determine whether a product is being dumped and is injuring national producers (or a third country's exporters) of the like product. Provisional duties may be applied during the investigation.

4.4.1.2 *Anti-dumping duty*: This sub-category concerns duties levied on imports of a particular good originating from a specific trading partner to offset injurious dumping found to exist as the result of an investigation. Duty rates are generally enterprise-specific.

4.4.1.3 *Price undertaking*: This sub-category addresses undertakings by exporters to increase their export price (by not more than the amount of the dumping

margin) to avoid the imposition of antidumping duties. Prices can be negotiated for this purpose, but only after a preliminary determination that dumped imports are causing injury.

4.4.2 Countervailing measures

This sub-category refers to border measures that are applied to imports of a product to offset any direct or indirect subsidy granted by authorities in an exporting country where subsidised imports of that product from that country are causing injury to the domestic industry producing the like product in the importing country. Countervailing measures may take the form of countervailing duties or undertakings negotiated and concluded with the exporting firms or by authorities of the subsidising country.

4.4.2.1 Countervailing investigation: This sub-category addresses investigations initiated and conducted either following a complaint by the domestic industry producing the like product or investigations self-initiated by the importing country authorities (*ex officio*) to determine whether the imported goods are subsidised and are causing injury to national producers of the like product.

4.4.2.2 Countervailing duty: This sub-category concerns duties levied on imports of a particular product to offset the subsidies granted by the exporting country on the production or trade of that product, where an investigation has found that the subsidised imports are causing injury to the domestic industry producing the like product.

4.4.2.3 Undertaking: This sub-category refers to either an undertaking by an exporter to increase its export price (which cannot be higher than the amount of the subsidy), or an undertaking by the authorities of the subsidising country to eliminate or limit the subsidy or take other measures concerning its effects, to avoid the imposition of countervailing duties. Undertakings can be negotiated only after a preliminary determination that subsidised imports are causing injury.

4.4.3 Safeguard measures

4.4.3.1 General (multilateral) safeguard: Safeguard measures are temporary border measures imposed on imports of a product to prevent or remedy serious injury caused by increased imports of that product and to facilitate adjustment. A country may take a safeguard action (*i.e.*, temporarily suspend multilateral concessions) in respect of imports of a product from all sources where an investigation has established that increased imports of the product are causing or threatening to cause serious injury to the domestic industry that produces like or directly competitive products. Safeguard measures can take various forms, including increased duties, quantitative restrictions, and others (*e.g.*, tariff-rate quotas (TRQs), price-based measures or special levies). They can be further sub-divided as follows:

4.4.3.1.1 *Safeguard investigation*: This is a procedure consisting in an investigation conducted by the importing country authorities to determine whether the goods in question are being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to national producers of like or directly competitive products.

4.4.3.1.2 *Safeguard duty*: This sub-category addresses safeguard measures applied in the form of a temporary duty on imports of a particular product to prevent or remedy serious injury from increased imports (as established pursuant to an investigation) and to facilitate adjustment.

4.4.3.1.3 *Safeguard quantitative restriction*: This sub-category refers to safeguard measures applied in the form of quantitative restrictions on imports of a particular product to prevent or remedy serious injury from increased imports (as established pursuant to an investigation) and to facilitate adjustment. Rules apply regarding the overall level and the allocation of the quota.

4.4.3.1.4 *Safeguard measure, other form*: This sub-category refers to safeguard measures applied in a form other than a duty or quantitative restriction (which could include measures combining duties and quantitative elements) to prevent or remedy serious injury from increased imports (as established pursuant to an investigation) and to facilitate adjustment.

4.4.3.2 *Agricultural special safeguard*: This sub-category concerns agricultural special safeguards, which consist of an additional tariff applied in response to a surge in certain imports or a fall in import prices. The specific trigger levels for volume or price of imports are defined at the country level. In the case of the volume trigger, the additional duties only apply until the end of the year in question. In the case of price triggers, the additional duty is imposed on a shipment by shipment basis.

4.4.3.2.1 *Volume-based agricultural special safeguard*: This type of agricultural safeguard consists of an additional duty applied if the volume of imports of designated agricultural product exceeds a defined trigger quantity (*e.g.*, an additional duty equal to one-third the current applied duty is applied to imports of milk when the volume of imports exceeds the trigger volume of 861 tonnes).

4.4.3.2.2 *Price-based agricultural special safeguard*: This type of agricultural safeguard consists of an additional duty which may be applied if the import price of a designated agricultural product falls below defined trigger price (*e.g.*, an additional duty of is applied to a shipment of frozen meat and offal of fowls of the species *Gallus domesticus* when the c.i.f. import price of that shipment is below the established the trigger price).

4.4.3.3 *Safeguard not elsewhere specified*: This category could include, *e.g.*, special safeguard mechanisms applicable to imports of a product under regional trade arrangements, protocols of accession, or other agreements.

4.5 Non-automatic licensing, quotas, prohibitions, and quantity control measures other than for SPS or TBT reasons

This sub-category concerns control measures generally aimed at restraining the quantity of goods that can be imported, regardless of whether they come from different sources or one specific supplier. These measures can take the form of non-automatic licensing, fixing of a predetermined quota, or prohibitions. It must be noted that all measures introduced for SPS and TBT reasons are classified within sub-categories 4.1 and 4.2 above, rather than within this sub-category.

In particular, this sub-category comprises the following measures:

- Non-automatic import licensing procedures other than authorisations for SPS or TBT reasons;
- Quotas;
- Prohibitions other than for SPS and TBT reasons;
- Export restraint arrangement; and
- Tariff rate quotas.

4.5.1 Non-automatic import licensing procedures other than authorisations for SPS or TBT reasons

An import licensing procedure introduced for reasons other than SPS or TBT requirements includes those where approval is not granted in all cases. The approval may either be granted on a discretionary basis or may require specific criteria to be met before it is granted. The further sub-categories into which this sub-category can be classified are listed below:

4.5.1.1 *Licensing for economic reasons*: This sub-category refers generally to the following instances of licensing for economic reasons:

4.5.1.1.1 *Licensing procedure with no specific ex-ante criteria*: This type of licensing procedure includes those where approval is granted at the discretion of the issuing authority. They may also be referred to as discretionary licenses.

4.5.1.1.2 *Licensing for specified use*: This licensing procedure refers to those where approval is granted only for imports of products to be used for pre-specified purpose. Normally these types of licensing procedures are granted for use in operations generating anticipated benefit in important domains of the economy (*e.g.*, licenses to import high-energy explosives is granted only if such imports are used for the mining industry).

4.5.1.1.3 *Licensing linked with local production*: These types of licenses are only for imports of products with linkages to local production, including the

local production level of the same product, except where such licensing is classified as a TRIM (*e.g.*, licensing requirements to import gasoline is granted only if domestic supply is insufficient).

4.5.1.1.4 Licensing for economic reasons not elsewhere specified: This residual sub-category covers licensing requirements for economic reasons that are not otherwise included above.

4.5.1.2 Licensing for non-economic reasons: This sub-category refers generally to licensing requirements established for non-economic reasons as listed below:

4.5.1.2.1 Licensing for religious, moral, or cultural reasons: These types of licenses are meant to control imports for religious, moral, or cultural reasons (*e.g.*, imports of alcoholic beverages are permitted only by hotels and restaurants).

4.5.1.2.2 Licensing for political reasons: This sub-category refers to measures that control imports by requiring licenses for political reasons (*e.g.*, imports of all products from a given country is subject to import license).

4.5.1.2.3 Licensing for non-economic reasons not elsewhere specified: This residual sub-category covers licensing requirements for non-economic reasons that are not otherwise included in the categories above.

4.5.2 Quotas

This sub-category refers to restrictions on importation of specified products through the setting of a maximum quantity or value that is authorised for import. It includes three further subcategories susceptible of further classification, as indicated below:

4.5.2.1 Permanent quotas: These are quotas of a permanent nature (*i.e.*, they are applied throughout the year, without a known date of termination of the measure) where the importation can take place any time of the year. They include:

4.5.2.1.1 Global allocation: This sub-category refers to permanent quotas where no condition is attached to the country of origin of the product (*e.g.*, a quota of 100 tons of fish where the importation can take any time of the year, and there is no restriction on the country of origin of the product).

4.5.2.1.2 Country allocation: This classification refers to permanent quotas where a fixed volume or value of the product must originate in one or more countries (*e.g.*, a quota of 100 tons of fish that can be imported any time of the year, but where 75 tons must originate in country A and 25 tons in country B).

4.5.2.2 *Seasonal quotas*: Seasonal quotas are of a permanent nature (*i.e.*, they are applied every year, without a known date of termination of the measure), where the importation must take place during a given period of the year. They include:

4.5.2.2.1 *Global allocation*: This sub-category refers to seasonal quotas where no condition is attached to the country of origin of the product (*e.g.*, an annual quota of 300 tons of seaweed where the importation must take place between March and June, and there is no restriction on the country of origin of the product).

4.5.2.2.2 *Country allocation*: This sub-category concerns seasonal quotas where a fixed volume or value of the product must originate in one or more countries (*e.g.*, an annual quota of 300 tons of seaweed where the importation must take place during winter, and 60 tons must originate in country A and 40 tons in country B).

4.5.2.3 *Temporary quotas*: This sub-category addresses quotas that are applied for on a temporary basis (*e.g.*, they are only applied for one or two years), whether or not they are also seasonal in nature. This sub-category includes:

4.5.2.3.1 *Global allocation*: These are temporary quotas where no condition is attached to the country of origin of the product (*e.g.*, an annual quota of 1000 tons of fish and fish meat that will only be applied for three years, where there is no restriction on the country of origin of the product).

4.5.2.3.2 *Country allocation*: These are temporary quotas where a fixed volume or value of the product must originate in one or more countries (*e.g.*, an annual quota of 1000 tons of fish and fish meat that will only be applied for three years, where the imports must take place during summer and 700 tons must originate in country A, 200 tons must originate in country B, and the remainder can originate in any country).

4.5.3 Prohibitions other than for SPS and TBT reasons

This sub-category refers to prohibitions on the importation of specific products for reasons other than SPS or TBT reasons, as addressed in Sections 4.1 and 4.2, respectively.

4.5.3.1 *Prohibition for economic reasons*: This sub-category refers generally to the further sub-categories detailed below relating to prohibitions for economic reasons.

4.5.3.1.1 *Full prohibition (import ban)*: This sub-category refers to prohibitions made without any additional condition or qualification (*e.g.*, the import of motor vehicles with cylinders under 1500cc is not allowed, to encourage domestic production).

4.5.3.1.2 *Seasonal prohibition*: These are prohibitions on imports during a given period of the year. This is usually applied to certain agricultural

products while the domestic harvest is in abundance (*e.g.*, import of strawberries is not allowed from March to June each year).

4.5.3.1.3 Temporary prohibition, including suspension of issuance of licenses: This sub-category includes prohibitions set for a given fixed period of time unrelated to a specific season. They usually regard urgent matters not covered by safeguard measures (*e.g.*, import of certain fish is prohibited with immediate effect until the end of the current season).

4.5.3.1.4 Prohibition of importation in bulk: These are prohibitions on importation in large-volume containers. In this situation, importation is only authorised if the product is packed in a small retail container, which increases per unit cost of imports (*e.g.*, import of wine is allowed only in a bottle of 750ml or less).

4.5.3.1.5 Prohibition of products infringing patents or other intellectual property rights: This sub-category refers to measures which prohibit copies or imitations of patented or trademarked products.

4.5.3.1.6 Prohibition of used, repaired or remanufactured goods: These include prohibitions on the importation of goods that are not new.

4.5.3.1.7 Prohibition for economic reasons not elsewhere specified: This residual sub-category covers prohibitions for economic reasons that are not otherwise included above.

4.5.3.2 Prohibition for non-economic reasons: This sub-category covers the following sub-categories detailed below relating to prohibitions for non-economic reasons.

4.5.3.2.1 Prohibition for religious, moral, or cultural reasons: These sub-category refers to the prohibition of imports for religious, moral, or cultural reasons not established in technical regulations (*e.g.*, imports of books and magazines displaying pornographic pictures are prohibited).

4.5.3.2.2 Prohibition for political reasons (embargo): These are prohibitions of imports from a country or group of countries applied for political reasons (*e.g.*, imports of all goods from country A are prohibited in retaliation for that country's testing of nuclear bombs).

4.5.3.2.3 Prohibition for non-economic reasons not elsewhere specified: This residual sub-category covers prohibitions for non-economic reasons that are not otherwise included above.

4.5.4 Export restraint arrangement

This sub-category addresses measures which create an arrangement by which an exporter agrees to limit exports in order to avoid imposition of restrictions by the importing country, such as quotas, raised tariffs, or any other import controls. The arrangement may be concluded at either government or industry level.

4.5.4.1 *Voluntary export restraint arrangements (VERs)*: This sub-category concerns arrangements made by the government or an industry of an exporting country to voluntarily limit exports in order to avoid the imposition of mandatory restrictions by the importing country. Typically, VERs are a result of requests made by the importing country to provide a measure of protection for its domestic businesses that produce substitute goods.

4.5.4.1.1 *Quota agreement*: This sub-category refers to a VER agreement that establishes export quotas (*e.g.*, a bilateral quota on export of motor vehicles from country A to country B was established to avoid sanction by the latter).

4.5.4.1.2 *Consultation agreement*: This would include a VER agreement that provides for consultation with a view to introducing restrictions (quotas) under certain circumstances (*e.g.*, an agreement was reached to restrict export of cotton from country C to country D in case the volume of export exceeds USD 2 million tons in the previous month).

4.5.4.1.3 *Administrative co-operation agreement*: This sub-category concerns VER agreements that provide for administrative cooperation with a view to avoiding disruptions in bilateral trade (*e.g.*, an agreement was reached between country E and country F to cooperate to prevent sudden surge of exports).

4.5.4.2 *Export restraint arrangements not elsewhere specified*: This residual sub-category covers export restraint arrangements that are not otherwise included above.

4.5.5 Tariff Rate Quotas (TRQs)

This sub-category refers to measures which create a system of multiple tariff rates applicable to a same product: the lower rates apply up to a certain value or volume of imports, and the higher rates are charged on imports which exceed this amount. Tariff rate quotas (TRQs) can be further classified as follows:

4.5.5.1 *WTO bound TRQs*: This sub-category covers TRQs included in WTO schedules. It comprises:

4.5.5.1.1 *Global allocation*: This refers to WTO bound TRQs where no condition is attached to the country of origin of the product (*e.g.*, a WTO TRQ provides for duty-free import of milk and cream up to 2,000 tonnes with no condition attached to the country of origin).

4.5.5.1.2 *Country allocation*: This sub-category concerns WTO bound TRQs where a fixed volume or value of the product must originate in one or more countries (*e.g.*, a WTO TRQ of 200,000 tons of poultry with an in-quota duty of 12% is available, and half of the quantity must originate from country A).

4.5.5.2 Other TRQs: This sub-category covers TRQs included in other trade agreements. Again, it comprises:

4.5.5.2.1 Global allocation: These are non-WTO TRQs where no condition is attached to the country of origin of the product (*e.g.*, a non-WTO TRQ is available for 40,000 tonnes of beef with no condition attached to the country of origin).

4.5.5.2.2 Country allocation: This sub-category refers to non-WTO bound TRQs where a fixed volume or value of the product must originate in one or more countries (*e.g.*, fresh bananas from country A can be imported duty-free up to 4,000 tonnes).

4.5.6 Quantity control measures not elsewhere specified

This residual sub-category covers quantity control measures generally that are not otherwise included in Section 4.5.

4.6 Price control measures including additional taxes and charges

Measures that should be classified under sub-category 4.6 of the ATR/NTR include those implemented to control or affect the prices of imported goods in order to, *inter alia*, support the domestic price of certain products when the import prices of these goods are lower; establish the domestic price of certain products because of price fluctuation in domestic markets or price instability in a foreign market; or to increase or preserve tax revenue. This sub-category also includes measures, other than tariffs measures, that increase the cost of imports in a similar manner (*i.e.*, by fixed percentage or by a fixed amount, known as '*para-tariff measures*'). These measures are further divided in the following sub-categories:

- Administrative measures affecting customs value;
- Voluntary export price restraints;
- Variable charges;
- Customs surcharges;
- Seasonal duties;
- Additional taxes and charges levied in connection to services provided by the government;
- Internal taxes and charges levies on imports;
- Decreed customs valuations; and
- Price control measures not elsewhere specified.

4.6.1 Administrative measures affecting customs value

This sub-category refers to situations where authorities of the importing country set import prices by taking into account the domestic prices of the producer or consumer. This could take the form of establishing floor and ceiling price limits or reverting to determined international market values. There may be different price setting, such as minimum import prices or prices set according to a reference.

4.6.1.1 *Minimum import prices*: This sub-category refers to measures which create a pre-established import price below which imports cannot take place.

4.6.1.2 *Reference prices*: This refers to the situation where a pre-established import price which authorities of the importing country use as reference to verify the price of imports is present (*e.g.*, reference prices for agricultural products are based on farm-gate price, which is the net value of the product when it leaves the farm, after marketing costs have been subtracted).

4.6.1.3 *Other administrative measures affecting the customs value not elsewhere specified*: This residual sub-category covers other administrative measures affecting the customs value that are not otherwise included above.

4.6.2 Voluntary export price restraints (VEPRs)

This sub-category refers to arrangements in which the exporter agrees to keep the price of his goods above a certain level. A VEPR process is initiated by the importing country and is thus considered as an import measure.

4.6.3 Variable charges

This sub-category refers to taxes or levies aimed at bringing the market prices of imported products in line with the prices of corresponding domestic products. Primary commodities may be charged per total weight, while charges on processed foodstuffs can be levied in proportion to the primary product contents in the final product. These charges include the following:

4.6.3.1 *Variable levies*: This occurs when a tax or levy whose rate varies inversely with the price of imports is created to keep a stable price in the home country. They are applied mainly to primary products and may be called flexible import fee.

4.6.3.2 *Variable components*: This sub-category refers to a tax or levy whose rate includes an *ad valorem* component and a variable component: These charges are applied mainly to processed products where the variable part is applied on the primary products or ingredients included the final product.

4.6.3.3 *Variable charges not elsewhere specified*: This residual sub-category covers variable charges that are not otherwise included within the above sub-categories.

4.6.4 Customs surcharges

This sub-category refers to *ad hoc* taxes levied solely on imported products in addition to customs tariff to raise fiscal revenues or to protect domestic industries.

4.6.5 Seasonal duties

This sub-category addresses duties applicable at certain times of the year, usually in connection with agricultural products.

4.6.6 Additional taxes and charges levied in connection to services provided by the Government

This sub-category concerns additional charges, which are levied on imported goods in addition to customs duties and surcharges and which have no internal equivalents. They include the following measures, which may constitute a sub-category each:

4.6.6.1 Custom inspection, processing and servicing fees;

4.6.6.2 Merchandise handling or storing fees;

4.6.6.3 Tax on foreign exchange transactions;

4.6.6.4 Stamp taxes;

4.6.6.5 Import license fees;

4.6.6.6 Consular invoice fees;

4.6.6.7 Statistical taxes;

4.6.6.8 Tax on transport facilities; and

4.6.6.9 Additional charges not expressly covered in sub-category 4.6.6.

4.6.7 Internal taxes and charges levied on imports

This sub-category refers to taxes levied on imports that have domestic equivalents. They include:

4.6.7.1 Consumption taxes: This is a tax on sales of products which is generally applied to all or most products (*e.g.*, sales tax, turnover tax (or multiple sales tax), value added tax).

4.6.7.2 Excise taxes: This is a type of tax imposed on selected types of commodities, usually of a luxurious or non-essential nature: This tax is levied separately from, and in addition to, the general sales taxes (*e.g.*, excise tax, tax on alcoholic consumption, cigarette tax).

4.6.7.3 Taxes and charges for sensitive product categories: This sub-category refers to charges that include emission charges, (sensitive) product taxes, and administrative charges: These latter charges are meant to recover the costs of administrative control systems (*e.g.*, CO_2 emission charge on motor vehicles).

4.6.7.4 Internal taxes and charges levied on imports not elsewhere specified: This residual sub-category covers internal taxes and charges levied on imports that are not otherwise included above.

4.6.8 Decreed Customs valuations

This sub-category refers to measures where the value of goods is determined by a decree for the purpose of imposition of customs duties and other charges. This practice is presented as a means to avoid fraud or to protect domestic industry. The decreed value *de facto* transforms an *ad-valorem* duty into a specific duty (*e.g.*, the so-called "*valeur mercuriale*" in Francophone countries).

4.6.9 Price control measures not elsewhere specified

This residual sub-category covers price control measures that are not otherwise included in any of the categories above.

4.7 Finance measures

Finance measures are intended to regulate the access to, and cost of, foreign exchange for imports and to define the terms of payment. They may increase import costs in the same manner as tariff measures. They include:

- Advance payment requirements;
- Multiple exchange rates;
- Regulation on officials foreign exchange allocation;
- Regulations concerning terms of payment for imports; and
- Other finance measures not elsewhere specified.

4.7.1 Advance payment requirement

Advance payment requirements concern the value of the import transaction or related import taxes. These payments are made at the time an application is lodged or when an import license is issued. They can consist of the following:

4.7.1.1 Advance import deposit: This sub-category refers to requirements which force the importer to deposit a percentage of the value of the import transaction before receiving the goods. In this situation, no interest is paid on the deposits (*e.g.*, payment of 50% of the transaction value is required three months before the expected arrival of the goods to the port of entry).

4.7.1.2 Cash margin requirement: This sub-category covers requirements to deposit the total amount of the transaction value in a foreign currency, or a specified part of it, in a commercial bank, before the opening of a letter of credit (*e.g.*, deposit of 100% of the transaction value is required at the designated commercial bank).

4.7.1.3 Advance payment of customs duties: This sub-category concerns requirements to pay all or part of the customs duties in advance. Here, no interest is paid on the advance payments (*e.g.*, payment of 100% of the estimated customs duty is required three months before the expected arrival of the goods to the port of entry).

4.7.1.4 Refundable deposits for sensitive product categories: This sub-category refers to requirements to pay a certain deposit which is refunded when the used product or its container is returned to a collection system (*e.g.*, USD 100 deposit is required for each refrigerator, which will be refunded when brought in for recycling after use).

4.7.1.5 Advance payment requirements not elsewhere specified: This residual sub-category covers advance payment requirements that are not otherwise included in the sub-categories above.

4.7.2 Multiple exchange rates

This sub-category refers to measures that create varying exchange rates for imports, depending on the product category. Usually, the official rate is reserved for essential commodities, while the other goods must be paid at commercial rates or occasionally by buying foreign exchange through auctions (*e.g.*, only the payment for infant food and staple food imports may be made at the official exchange rate).

4.7.3 Regulation on official foreign exchange allocation

This sub-category covers a number of measures detailed below and constituting separate sub-categories relating to regulations on official foreign exchange allocation.

4.7.3.1 Prohibition of foreign exchange allocation: This sub-category concerns measures that disallow the availability of official foreign exchange allocations to pay for imports (*e.g.*, foreign exchange is not allocated for imports of luxury products such as motor vehicles, TV sets and jewellery).

4.7.3.2 Bank authorisation: This sub-category refers to requirements to obtain a special import authorisation from the central bank.

4.7.3.3 Authorisation linked with non-official foreign exchange: This situation refers to countries that require a license that is granted only if non-official foreign exchange is used for the import payment. It may be further classified to include the following:

4.7.3.3.1 External foreign exchange: This sub-category addresses instances where licenses are granted only for imports related to technical assistance projects and other sources of external foreign exchange (*e.g.*, imports of construction materials are allowed only if payments may be made through the foreign direct investment fund).

4.7.3.3.2 Importers' own foreign exchange: This sub-category covers licenses that are granted if the importer has his own foreign exchange held in an overseas bank (*e.g.*, imports of textile materials are authorised only if the importer could pay directly to the exporter with his own foreign exchange obtained through his export activity abroad).

4.7.3.3.3 License linked with non-official foreign exchange not elsewhere specified: This residual sub-category covers licenses linked with non-official foreign exchange that are not otherwise included above.

4.7.3.4 Regulation on official foreign exchange allocation not elsewhere specified: This residual sub-category covers regulations on officials foreign exchange allocations that are not otherwise included in Section 4.7.3.

4.7.4 Regulations concerning terms of payment for imports

This sub-category refers to regulations related to conditions of payment of imports and the obtaining and use of credit (foreign or domestic) to finance imports (*e.g.*, no more than 50% of the transaction value can be paid in advance of the arrival of goods to the port of entry).

4.7.5 Finance measures not elsewhere specified

This residual sub-category covers finance measures generally that are not otherwise included in Section 4.7.

4.8 Measures affecting competition

This sub-category refers to measures that grant exclusive or special preferences or privileges to one or more limited group of economic operators. Examples include State-owned or -controlled enterprises with special rights, and measures imposing compulsory use of national services (*e.g.*, insurance or transport services). In particular, it includes the following sub-categories:

- State trading enterprises, for importing; other selective import channels
- Compulsory use of national services; and
- Measures affecting competition not elsewhere specified

4.8.1 State trading enterprises, for importing; other selective import channels

This sub-category refers generally to the further sub-categories detailed below relating to state trading enterprises for importing or other selective import channels.

4.8.1.1 State trading enterprises, for importing: This sub-category concerns enterprises (whether or not state-owned or state-controlled) with special rights and privileges not available to other entities, which influence through their purchases and sales the level or direction of imports of particular products (*e.g.*, a statutory marketing board with exclusive rights to control imports of certain grains, a canalizing agency with exclusive right to distribute petroleum, a sole importing agency, or importation reserved for specific importers regarding certain categories of goods).

4.8.1.2 Other selective import channels not elsewhere specified: This residual sub-category covers other selective import channels that are not otherwise included above.

4.8.2 Compulsory use of national services

This sub-category refers generally to the further sub-categories detailed below relating to the compulsory use of national services.

4.8.2.1 *Compulsory national insurance*: This is a requirement that imports must be insured by a national insurance company.

4.8.2.2 *Compulsory national transport*: This is a requirement that imports must be carried by a national shipping company.

4.8.2.3 *Compulsory national service not elsewhere specified*: This residual sub-category covers compulsory national service regulations that are not otherwise included above.

4.8.3 Measures affecting competition not elsewhere specified

This residual sub-category covers measures affecting competition generally that are not otherwise included in Section 4.8.

4.9 Trade-related investment measures (TRIMs)

There are typically two types of TRIMs: (1) local content measures; and (2) trade balancing measures.

Local content measures are requirements to purchase or use certain minimum levels or types of domestically produced or sourced products or restrictions on the purchase or use of imported products based on the volume or value of exports of local products.

Trade balancing measures are: restrictions on the importation of products used in, or related to, local production, including in relation to the amount of local products exported; or limitations on access to foreign exchange used for such importation based on the foreign exchange inflows attributable to the enterprise in question. TRIMs are further classified in the following sub-categories:

4.9.1 Local content measures

This sub-category refers to requirements to purchase or use certain minimum levels or types of domestically produced or sourced products or restrictions on the purchase or use of imported products based on the volume or value of exports of local products (*e.g.*, in the production of automobiles, locally-produced components must account for at least 50% of the value of the components used).

4.9.2 Trade balancing measures

This sub-category refers to restrictions on the importation of products used in or related to local production, including in relation to the amount of local products exported; or limitations on access to foreign exchange used for such importation based on the foreign exchange

inflows attributable to the enterprise in question (*e.g.*, a company may import materials and other products only up to 80% of its export earnings of the previous year).

4.9.3 Trade-related investment measures not elsewhere specified

This residual sub-category covers TRIMs generally that are not otherwise included in Section 4.9.

4.10 Distribution restrictions

This sub-category refers to restrictions on distribution of goods inside the importing country. Two common distribution restrictions include geographical restrictions or restrictions on who may resell a product. These restrictions sometimes come in the form of additional license or certification requirements.

Accordingly, this sub-category is further classified as follows:

4.10.1 Geographical restriction

This sub-category refers to restrictions to limit the sales of goods to certain areas within the importing country (*e.g.*, imported beverages may only be sold in cities having facility to recycle the containers).

4.10.2 Restriction on resellers

This classification concerns restrictions that limit the sales of imported products by designated retailers (*e.g.*, exporters of motor vehicles need to set up their own retail points as existing car dealers in the destination country belong exclusively to car producers in that country).

4.11 Restriction on post-sales services

This sub-category applies to restrictions on post-sale services that limit the ability of businesses importing goods of also providing after-sale services (*e.g.*, maintenance and repair) on said goods.

4.12 Subsidies (excluding export subsidies)

The accepted definition of a '*subsidy*' is found in Articles 1 and 2 of the WTO's *Agreement on Subsidies and Countervailing Measures*, and is comprised of three elements: (1) a financial contribution, or income or price support, by a government; (2) which thereby confers a benefit; (3) that is specific. The term financial contribution includes direct or potential direct transfers of funds, government revenue foregone, provisions of goods or services, and payments to a funding mechanism. Additionally, this financial contribution by a government may also include public bodies or the government entrustment or direction to a private body. A benefit is present when the financial contribution makes the recipient *'better off'*. And, lastly, a financial contribution is specific if it is available only to a particular enterprise or industry, or a limited geographic area.

4.13 Government procurement restrictions

This sub-category refers to measures controlling the purchase of goods by government agencies, generally by preferring national providers.

4.14 Intellectual property

Measures related to intellectual property rights in trade include: intellectual property legislation covering patents, trademarks, industrial designs, lay-out designs of integrated circuits, copyright, geographical indications, and trade secrets.

4.15 Export-related measures

Export-related measures are measures applied by the government of the exporting country on exported goods. Some examples include: export licenses, quotas, prohibitions or other quantitative restrictions; state trading enterprises for exporting; export price controls; limits on re-export of goods; export taxes and charges; regulations on the technical specifications of exports; export subsidies; and export credits. Export-related measures can be further classified as follows:

4.15.1 Export license, quota, prohibition, and other quantitative restrictions

This sub-category refers to restrictions to the quantity of goods exported to a specific country or countries by the government of the exporting country for reasons such as: shortage of goods in the domestic market, regulating domestic prices, avoiding antidumping measures, or for political reasons.

4.15.1.1 *Export Prohibition*: These are measures which prohibit exports of certain products (*e.g.*, export of corn is prohibited because of shortage in domestic consumption).

4.15.1.2 *Export quotas*: These are measures which create quotas that limit value or volume of exports (*e.g.*, export quota of beef is established to guarantee adequate supply in the domestic market).

4.15.1.3 *Licensing or permit requirements to export*: This sub-category refers to measures that create the requirement to obtain license or permit by the government of the exporting country to export products (*e.g.*, Export of diamond ores are subject to licensing by the Ministry).

4.15.1.4 *Export registration requirements*: This classification concerns requirements to register products before being exported (for monitoring purposes) (*e.g.*, pharmaceutical products need to be registered before being exported).

4.15.1.5 *Export quantitative restrictions not elsewhere specified*: This residual sub-category covers export quantitative restrictions that are not otherwise include above.

4.15.2 State trading enterprises, for exporting; other selective export channels

4.15.2.1 *State trading enterprises, for exporting*: Enterprises (whether or not state-owned or state-controlled) with special rights and privileges not available to other entities, which influence through their purchases and sales the level or direction of exports of particular products (*e.g.*, an export monopoly board, to take advantage of terms of sale abroad; a marketing board, to promote for export on behalf of a large number of small farmers).

4.15.2.2 *Other selective export channels not elsewhere specified*

This residual sub-category covers other selective export channels that are not otherwise included in the sub-category above.

4.15.3 Export price control measures

This sub-category refers to measures that are implemented to control the prices of exported products (*e.g.*, different prices for exports are applied from the same product sold in domestic market (*i.e.*, dual pricing schemes)).

4.15.4 Measures on re-export

This classification concerns measures applied by the government of the exporting country on exported goods, which have originally been imported from abroad (*e.g.*, re-export of wines and spirits back to producing county is prohibited: the practice is common in cross-border trade to avoid imposition of domestic excise tax in the producing country).

4.15.5 Export taxes and charges

Taxes collected on exported goods by the government of the exporting country fall within this sub-category. They can be set either on a specific or an *ad valorem* basis.

4.15.6 Export technical measures

These are export regulations that refer to technical specification of products and conformity assessment systems thereof.

4.15.6.1 *Inspection requirement*: This sub-category refers to situations where a government has control over the quality or other characteristics of products for export (*e.g.*, exports of processed food products must be inspected for sanitary conditions).

4.15.6.2 *Certification required by the exporting country*: This sub-category refers to requirements by the exporting country to obtain sanitary,

phytosanitary, or other certification before the goods are exported (*e.g.*, export of live animals must carry individual health certificate).

4.15.6.3 *Export technical measures not elsewhere specified*: This residual sub-category covers technical export measures that are not otherwise included above.

4.15.7 Export subsidies

This sub-category refers to financial contributions by a government or public body, or via government entrustment or direction of a private body (direct or potential direct transfer of funds: *e.g.*, grant, loan, equity infusion, guarantee; government revenue foregone; provision of goods or services or purchase of goods; payments to a funding mechanism); or income or price support, which confers a benefit and is contingent in law or in fact upon export performance (whether solely or as one of several conditions), including measures illustrated in Annex I of the *WTO Agreement on Subsidies and Countervailing Measures* and measures described in the *Agreement on Agriculture*.

4.15.8 Export credits

This sub-category refers to situations where an importer opens a credit with a bank in an exporter's country to finance an export operation.

4.15.9 Export measures not elsewhere specified

This residual sub-category covers export measures in general that are not otherwise included in Section 4.15.

5. National trade and customs laws and rules

This area of notification and transparency is very broad. It further reflects the general obligation under paragraph (1) of Article 13 of the ATIGA that the ATR contain "*trade and customs laws and procedures*".

The category covering "*national trade and customs laws and rules*" includes the following items:

- National trade laws and rules; and
- National customs laws and rules.

Under the ATIGA, "*customs laws and rules*" are "*laws and regulations administered and enforced by the customs authorities of each AMS concerning the importation, exportation, transit, transhipment, and storage of goods as they relate to customs duties, charges and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each AMS*".[29]

[29] See Article 2(1)(d) of the ATIGA.

On the other hand, in the absence of a definition of "*national trade laws and rules*" in the ATIGA, trade laws and rules should be intended to cover all "*trade regulations*" in force in each AMS, within the meaning of Article X of the GATT, which, by virtue of Article 12 of the ATIGA, is incorporated into the ATIGA *mutatis mutandis*. On the basis of the wording of Article X of the GATT, [30] "*national trade laws and rules*" should be intended to cover laws and regulations[31] of AMSs pertaining to the classification or valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports of exports or on the transfer of payments therefore, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, that are not otherwise included within the concept of "*customs laws and rules*".

On this basis, the macro-area of notification identified under item (v) of the ATIGA may be further classified into the following five sub-categories:

5.1 Laws and regulations concerning the importation, exportation, transit, transhipment, and storage of goods as they relate to customs duties, charges and other taxes;

5.2 Laws and regulations relating to the rates of duty, taxes or other charges (e.g., customs surcharges, additional taxes and charges, customs fees and charges on imports);

5.3 Laws and regulations relating to requirements, restrictions or prohibitions on imports or exports, transit goods or transhipment (e.g., licensing, quotas, prohibitions and quantity control measures);

5.4 Laws and regulations relating to requirements, restrictions or prohibitions on the transfer of payments for imports or exports, transit goods or transhipment; and

5.5 Laws and regulations affecting the sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use of imports or exports, goods in transit and transhipment.

It is noted that there may be instances of duplication inasmuch the category of "*National trade and customs laws and rules*" requires notification of all measures affecting trade and customs, including measures that are susceptible of notification and inclusion in other macro-areas of notification, particularly those of tariffs (ATR '*topic*' 2), Rules of Origin (ATR '*topic*' 3) and NTMs (ATR '*topic*' 4). In this respect, this macro-area of notification must be intended to act as a residual category for all measures that are classifiable within one of the 5 sub-categories listed

[30] Article X of the GATT, which also contains an obligation of transparency, concerns the category of trade regulations. This category must be intended to comprise, in relevant part, laws, regulations, judicial decisions and administrative rulings of general application, which pertain to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefore, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use. Article X of the GATT clarifies that WTO Members are not required to disclose confidential information, which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

[31] This sub-category would not include administrative rulings, which are covered under item (vii) of Article 13(2) of the ATIGA) and judicial decisions, which appear to fall outside of the notion of "*laws and rules*".

above and that are not susceptible of being classified within any of the dedicated categories or '*topics*' of the ATR. Where measures that are susceptible of inclusion within this macro-area of notification are classified elsewhere in the ATR, for completeness and consistency purposes, cross-references and links should be inserted in the ATR's dedicated space for this macro-area (*i.e.*, ATR '*topic*' 5).

6. Procedures and documentary requirements

This category encompasses all those trade-related procedural and documentary requirements that are imposed in connection with the importation and exportation of goods. Broadly speaking, it covers measures concerning customs formalities (*i.e.*, all the operations that must be carried-out by the persons concerned and by the customs authorities in order to comply with customs laws).

In particular, these formalities and requirements may consist of, *inter alia*, those relating to the preparation and submission of certain documents required for trading, such as permits, letters of credit, bills of lading, etc.; procedures for the submission of applications, including the eligibility of persons, firms and institutions where to submit applications, the administrative bodies to liaise with, and the list of goods subject to application; and administrative procedures and documentary requirements related to customs clearance, technical controls, analysis and inspections, quarantine, sanitation and fumigation, pre-shipment inspections; and special customs formalities. This macro-area of notification, or ATR category or '*topic*', may be further classified as follows:

6.1 Consular formalities;

6.2 Documentary requirements relating to the importation, exportation, transit and transhipment of goods;

6.3 Licensing;

6.4 Pre-shipment inspections and other formalities;

6.5 Analysis and inspection procedures;

6.6 Quarantine, sanitation, and fumigation;

6.7 Special customs regimes; and

6.8 Special customs formalities (e.g., formalities that are not clearly related to the administration of any measure applied by the given importing country such as the obligation to submit more detailed product information than normally required on the basis of a customs declaration, the requirement to use specific points of entry, etc.).

Similarly to what has been stated in relation to the macro-area of notification on "*National trade and customs laws and rules*" and the potential for overlap, there may be instances of duplication inasmuch as a number of sub-categories identified within this macro-area of notification (*e.g.*, "*Licensing*", "*Pre-shipment inspections and other formalities*", "*Analysis and*

inspection procedures", and "*Quarantine, sanitation, and fumigation*") are susceptible of notification and inclusion in other macro-areas of notification, particularly that of NTMs. Again, this macro-area of notification must be intended to act as a residual category for all measures that are classifiable within one of the 8 sub-categories listed above and that are not susceptible of being classified within any of the dedicated categories or '*topics*' of the ATR. Where measures that are susceptible of inclusion within this macro-area of notification are classified elsewhere in the ATR, for completeness and consistency purposes, cross-references and links should be inserted in the ATR's dedicated space for this macro-area (*i.e.*, ATR '*topic*' 6).

7. Administrative rulings

"*Administrative rulings*" are actions of governing or exercising authorities, government, authority, control, influence or authoritative pronouncements stemming from administrative bodies[32] (*i.e.*, bodies in charge of managing and implementing regulations, laws and governmental policies). Therefore, this category captures acts from this type of bodies, which in practice may be attributed variable degrees of authority, depending on the national administrative provisions in place in each AMS.

The term '*administrative ruling*' is found in Article X of the GATT, on "*Publication and Administration of Trade Regulations*". The type of administrative rulings relevant to Article X of the GATT are those of '*general application*'. The transparency requirements under Article X are not concerned with administrative rulings that are not of general application. Administrative rulings in individual cases will be of '*general application*' where such rulings establish or revise principles or criteria applicable in future cases and of a systemic discretion to deviate from a general methodology.

Some interpretative guidance on the notion of '*general application'* is offered by WTO case-law:

In *US – Underwear*, the WTO Appellate Body upheld the panel's interpretation

> "*… that Article X:1 of GATT 1994, which … uses the language 'of general application', includes 'administrative rulings' in its scope. The mere fact that the restraint at issue was an administrative order does not prevent us from concluding that the restraint was a measure of general application. Nor does the fact that it was a country-specific measure exclude the possibility of it being a measure of general application. If, for instance, the restraint was addressed to a specific company or applied to a specific shipment, it would not have qualified as a measure of general application. However, to the extent that the restraint affects an unidentified number of economic operators, including domestic and foreign producers, we find it to be a measure of general application*".[33]

[32] WTO Panel report *EC – IT Products*, para. 7.1025. The definition put forward by the Panel is taken from the *Shorter Oxford Dictionary* (2003), p. 2630.
[33] Panel Report, *United States – Restrictions on Imports of Cotton and Man-Made Fibre Underwear, ("US – Underwear"),* WT/DS24/R, adopted 25 February 1997, as modified by the Appellate Body Report, WT/DS24/AB/R, para. 21.

In *EC – Poultry*, the WTO Appellate Body upheld the panel's finding that the withholding of information regarding a specific shipment was not inconsistent with Article X as being outside its scope. It noted that:

> "*… Article X does not deal with specific transactions, but rather with 'rules of general application'. (…) Although it is true … that any measure of general application will always have to be applied in specific cases, nevertheless the specific treatment accorded to each individual shipment cannot be considered a 'measure of general application' within the meaning of Article X*".[34]

The WTO Appellate Body further agreed with the panel that:

> "*conversely, licenses issued to a specific company or applied to a specific shipment cannot be considered to be a measure of 'general application' within the meaning of Article X*".[35]

In the *Japan – Film* case, the panel referred to the panel Report on *US – Underwear* when interpreting the term '*of general application*' as follows:

> "*…inasmuch as the Article X:1 requirement applies to all administrative rulings of general application, it should also extend to administrative rulings in individual cases where such rulings establish or revise principles or criteria applicable in future cases*".[36]

The ATIGA does not require that administrative rulings to be notified/included in the ATR be of '*general application*'. However, in order to ensure synchrony with parallel WTO and ATIGA obligations[37] and to avoid placing unnecessary burdens on AMSs, the recommendation is made that the requirement to (notify and) include in the ATR and NTRs administrative rulings, be interpreted so to cover only administrative rulings of '*general application*'.

Notably, this interpretation would exclude from the scope of administrative rulings anti-dumping and countervailing measures adopted by administrative authorities, but, arguably, not safeguard measures. This clarification is important only to the extent that the AMSs ultimately decide that anti-dumping and/or countervailing measures are to be subjected to the transparency obligations of Article 13 of the ATIGA and are not to be classified as NTMs (this report recommends that anti-dumping and/or countervailing measures, as well as safeguards, be all classified as NTMs, as described above).

The types of administrative rulings that are relevant for purposes of Article 13(2)(vii) of the ATIGA are those concerning the application and interpretation of trade and customs laws, such as, *inter alia*, those concerning: goods' tariff classification (*e.g.*, binding tariff information, nomenclature explanatory notes), origin determination (*e.g.*, binding origin information,) and

[34] Appellate Body Report, *EC – Poultry,* WT/DS69/AB/R, paras. 111 and 113. See also Panel Report, *US – Underwear,* WT/DS24/R, as modified by the Appellate Body Report, WT/DS24/AB/R, para. 7.65. Confirmed in *United States, Sunset Review of Anti-dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*, Report of the Panel, WT/DS244/R para. 7.309.
[35] Appellate Body Report, *EC – Poultry,* WT/DS69/AB/R, para. 113.
[36] Panel Report, *Japan – Measures Affecting Consumer Photographic Film and Paper, ("Japan – Film"),* WT/DS44/R, adopted 22 April 1998, para. 10.388.
[37] Note that Article 12 of the ATIGA on "*Publication and Administration of Trade Regulations*" refers to, and incorporates, Article X of the GATT.

the appropriate method for customs valuation; relief or exemption from customs duties (where decided by an administrative authority); safeguard measures (where imposed by an administrative authority and if not otherwise classified under the ATR '*topic*' on "*non-tariff measures*"), quota management. On this basis, this macro-area of notification can be further classified as follows:

7.1 Administrative rulings concerning tariff classification;

7.2 Administrative rulings concerning origin determination;

7.3 Administrative rulings concerning the customs valuation applicable criteria and its implementation;

7.4 Administrative rulings concerning the applicability of the requirements for relief or exemption from customs duties;

7.5 Administrative rulings concerning the application of the Member's requirements for quotas, including tariff quotas;

7.6 Schemes for the establishment of the programme of Authorised Economic Operators (where not otherwise included in the ATR 'topics' 5 or 6); and

7.7 Administrative rulings not elsewhere specified.

8. Best practices in trade facilitation applied by each Member States

The Report on the "*Definition of the ATR's 'Shell' Architecture*" has elaborated at length on the definition of the term '*trade facilitation*' and the scope of the concept of this macro-area of notification and transparency. In particular, taking stock on the WTO framework, and in particular the WTO Agreement on Trade Facilitation,[38] it concluded that the requirement to notify best practices in trade facilitation must be intended as a requirement to notify the following measures:

- Publication and availability of information (*e.g.*, enquiry points);
- Advance rulings;
- Appeal or review procedures;
- Disciplines on fees and charges imposed on or in connection with importation and exportation;
- Release and clearance of goods (including, *inter alia*, pre-arrival processing, risk management, post-clearance audit, authorised operators, expedited shipments);
- Border agency cooperation;
- Formalities connected with importation and exportation and transit (*e.g.*, single window, temporary admission of goods);
- Freedom of transit; and

[38] The conclusion of the negotiations for a WTO Agreement on Trade Facilitation was formalised with a Ministerial Decision of 7 December 2013 within the framework of the WTO Ministerial Conference held on 3-6 December 2013. See WTO, document WT/MIN(13)/36, WT/L/911.

- Customs cooperation.

9. List of authorised traders

Article 13(2)(ix) of the ATIGA requires AMSs to notify and include within the ATR the list of authorised traders. The concept of '*authorised traders*' appears to coincide with that of '*authorised economic operator*', which is defined, under Article 52 of the ATIGA, as a:

> "*party involved in the international movement of goods in any function that has been approved by the customs authorities as complying with statutory and/or regulatory requirements of Member States, taking into account supply chain security standards*".

Therefore, under this category, AMSs are required to notify their lists of '*authorised economic operators*', drawn and compiled following the establishment of the programme of Authorised Economic Operators, as required by Article 59 of the ATIGA. The notification should initially occur upon the ATR establishment, or upon the completion of the list (if this occurs after the ATR is established) and, following such first notification, upon amendment.

It is noted that trade facilitation schemes such as the ASEAN Self-Certification Pilot Project, which relate to trade and actually provide participating countries with certain trade facilitation advantages, should not need notification under this category inasmuch as and for as long as they are '*pilot projects*'. It is recalled that this self-certification scheme aims at allowing exporters to declare and self-certify the ASEAN product content in their exported products through an invoice declaration. To operationalise this trade facilitation measure, AMSs selected eligible exporters as '*certified exporters*' and empowered them to self-declare their products as originating in order to enjoy the preferential treatment. These certified exporters are selected by the AMS concerned based on the agreed criteria set by the Participating Member States (PMS).[39] Eventually, such schemes should be notified under the ATR '*topic*' above (*i.e.*, as '*best practices in trade facilitation*').

6. Conclusions

This Report has provided a set of definitions and clarifications that are instrumental for the proper functioning of the ATR/NTRs and the transparency framework set forth by the ATIGA. In particular, definitions of the concepts of "*non-tariff measures*" and "*trade related information*" have been developed and proposed for AMSs' consideration. The relationship

[39] The First Self-Certification Pilot Project (1st SC PP) in ASEAN commenced with three PMS in November 2010. The PMS of the 1st SC PP were Brunei Darussalam, Malaysia, and Singapore. Thailand subsequently joined in October 2011. As of to date, Malaysia has registered a total of 118 certified exporters. The First Self-Certification Pilot Project was extended until 31 December 2015. Myanmar has also agreed to participate in the 1st SC PP. In addition to the First Self-Certification Pilot Project, a Second Self Certification Pilot Project (2nd SC PP) Signing was also developed and the MoU was signed during the 44th AEM, Siem Reap, Cambodia, August 2012. Parties who had joined the 2nd SC PP are Indonesia, the Philippines and Lao PDR. The project is expected to take off by the third quarter of 2013. Meanwhile Thailand and Viet Nam expressed their interests to participate in the 2nd SC PP. There will be an ASEAN-wide implementation of the Self-Certification System by 2015. Discussion on the convergence, divergence and possible reconciliation of the two pilot projects will commence six months after the take-off of the 2nd SC PP.

between Article 11 and 13 of the ATIGA has been discussed and reviewed, with a clear indication that all "*trade related information*", which is relevant for purposes of the ATR/NTRs, must be notified according to the procedures of Article 11 of the ATIGA.

Once agreed, and uniformly applied, these concepts and procedures will facilitate AMSs in discharging their obligations under the ATIGA and support the establishment and maintenance of the ATR as a source of '*reliable*' (if not legally binding) information on the trade and customs laws and procedures of all AMSs.

In addition, this Report has further developed and proposed a classification for purposes of the transparency obligations under Article 13 of the ATIGA. This classification is based on the nine macro-areas of notification identified in Article 13 of the ATIGA, the outlined classification developed in the Report on the "*Definition of the ATR's 'Shell' Architecture*" and, with respect to the ATR '*topic*' n. 4 (*i.e.*, NTMs), on the 2012 UNCATD's NTM Classification. This instrument is the most comprehensive classification of non-tariff measures developed so far, and it is currently used by a number of AMSs to improve compliance with their transparency obligations.

For this reasons, its use for purposes of the ATR/NTRs is recommended in order to ensure compliance with the transparency requirements mandated by the ATIGA with respect to NTMs and consistency with existing AMSs' practices. The UNCTAD's 2012 NTM Classification is also the classification template that has provided the basis for the first two dedicated training seminars sponsored by the World Bank on "*NTM Classification and Streamlining*", which were held, respectively, in Siem Riep, Cambodia on 7-11 October 2013 (attended by Cambodia, Laos and Thailand) and in Nay Pyi Taw, Myanmar on 25-28 February 2014 (attended by Myanmar). Needless to say that AMSs remain sovereign in deciding the level of detail that they wish to use in structuring the ATR/NTRs by further specifying the categories of the UNCTAD's 2012 NTM Classification or, conversely, by deciding to limit these categories to, *e.g.*, only the three-digit level.

A swift, uniform and consistent implementation of the ASEAN transparency framework, as mandated by the ATIGA, relies greatly on AMSs' capacity to properly identify, classify, collect and notify all "*trade related information*", including NTMs, and to discharge their obligations with respect to the ATR/NTRs. To this end, dedicated technical assistance and capacity building should be provided to all AMSs' competent authorities. Training should be delivered particularly with respect to the obligations relating to the identification, collection and classification of NTMs and the use of the UNCTAD 2012 NTM Classification and of standardised procedures and notification forms. These disciplines and agreed operating guidelines will prove fundamental in achieving a meaningful ATR/NTRs system, particularly as the existing transparency structures and repositories of AMSs need to be '*synchronised*' into a common ATR interface in a manner that is simple, cost-effective and able to preserve as much as possible national identities and existing infrastructure (physical, institutional and IT).

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Annex 1

Proposed classification for purposes of the notification obligations under Article 13 of the ATIGA

The following classification is proposed for the purposes of the notification obligation under Article 13(2) of the ATIGA:

1. Tariff nomenclature
- 1.1 The tariff nomenclature of each AMSs (up to the ten-digit level)
- 1.2 The explanatory notes, where applicable

2. MFN tariffs, preferential tariffs offered under the ATIGA and other Agreements of ASEAN with its Dialogue Partners
- 2.1 MFN tariffs (WTO)
- 2.2 ATIGA tariffs
- 2.3 Preferential tariffs offered under Agreements of ASEAN with its Dialogue Partners and other agreements:
  - 2.3.1 Tariff concessions applicable pursuant to the ASEAN – Australia New Zealand Free Trade Area
  - 2.3.2 Tariff concessions applicable pursuant to the ASEAN – China Free Trade Area
  - 2.3.3 Tariff concessions applicable pursuant to the ASEAN – India Free Trade Area
  - 2.3.4 Tariff concessions applicable pursuant to the ASEAN – Japan Free Trade Area
  - 2.3.5 Tariff concessions applicable pursuant to the ASEAN – Korea Free Trade Area
  - 2.3.6 Tariff concessions applicable pursuant to future preferential arrangements

3. Rules of origin
- 3.1 Non-preferential rules of origin
- 3.2 Preferential rules of origin

4. Non-tariff measures
- 4.1 Sanitary and phytosanitary measures
  - 4.1.1 Prohibitions and restrictions of imports for SPS reasons
    - *4.1.1.1 Temporary geographic prohibitions for SPS reasons*
    - *4.1.1.2 Geographical restrictions on eligibility*
    - *4.1.1.3 Systems approach*
    - *4.1.1.4 Special authorisation requirement for SPS reasons*:
    - *4.1.1.5 Registration requirements for importers*
    - *4.1.1.6 Prohibition or restrictions of imports for SPS reasons not elsewhere specified*
  - 4.1.2 Tolerance limits for residues and restricted use of substances
    - *4.1.2.1 Tolerance limits for residues of or contamination by certain (non-microbiological) substances*
    - *4.1.2.2 Restricted use of certain substances in foods and feeds and their contact materials*
  - 4.1.3 Labelling, marking and packaging requirements
    - *4.1.3.1 Labelling requirements*

4.1.3.2 Marking requirements
4.1.3.3 Packaging requirements
4.1.4 Hygienic requirements
4.1.4.1 Microbiological criteria of the final product
4.1.4.2 Hygienic practices during production
4.1.4.3 Hygienic requirements not elsewhere specified
4.1.5 Treatment for elimination of plant and animal pests and disease-causing organisms in the final product (*e.g.*, post-harvest treatment)
4.1.5.1 Cold or heat treatment
4.1.5.2 Irradiation
4.1.5.3 Fumigation
4.1.5.4 Treatment for elimination of plant and animal pests and disease-causing organisms in the final product, not elsewhere specified
4.1.6 Other requirements on production or post-production processes
4.1.6.1 Plant-growth processes
4.1.6.2 Animal-raising or -catching processes
4.1.6.3 Food and feed processing
4.1.6.4 Storage and transport conditions
4.1.6.5 Other requirements on production or post-production processes, not elsewhere specified
4.1.7 Conformity assessment related to SPS
4.1.7.1 Product registration requirement
4.1.7.2 Testing requirements
4.1.7.3 Certification requirement
4.1.7.4 Inspection requirement
4.1.7.5 Traceability requirements
4.1.7.5.1 Origin of materials and parts
4.1.7.5.2 Processing history
4.1.7.5.3 Distribution and location of products after delivery
4.1.7.5.4 Traceability requirements not elsewhere specified
4.1.7.6 Quarantine requirements
4.1.7.7 Conformity assessment related to SPS not elsewhere specified
4.1.8 SPS measures not elsewhere specified
4.2 Technical barriers to trade
4.2.1 Prohibitions or restrictions of imports for TBT reasons
4.2.1.1 Prohibition for TBT reasons
4.2.1.2 Authorization requirement for TBT reasons
4.2.1.3 Registration requirement for importers for TBT reasons
4.2.1.4 *Prohibitions or restrictions of imports for TBT reasons not elsewhere specified*
4.2.2 Tolerance limits for residues and restricted use of substances
4.2.2.1 Tolerance limits for residues of or contamination by certain substances
4.2.2.2 Restricted use of certain substances
4.2.3 Labelling, marking, and packaging requirements

4.2.3.1 Labelling requirements
4.2.3.2 Marking requirements
4.2.3.3 Packaging requirements
4.2.4 Production or post-Production requirements
4.2.4.1 TBT regulations on production processes
4.2.4.2 TBT regulations on transport and storage
4.2.4.3 Production or post-production requirements not elsewhere specified
4.2.5 Product identity requirement
4.2.6 Product quality or performance requirement
4.2.7 Conformity assessment related to TBT
4.2.7.1 Product registration requirement
4.2.7.2 Testing requirement
4.2.7.3 Certification requirement
4.2.7.4 Inspection requirement
4.2.7.5 Traceability information requirements
4.2.7.5.1 Origin of materials and parts
4.2.7.5.2 Processing history
4.2.7.5.3 Distribution and location of products after delivery
4.2.7.5.4 Traceability requirements not elsewhere specified
4.2.7.6 Conformity assessment related to TBT not elsewhere specified
4.2.8 TBT measures not elsewhere specified
4.3 Pre-shipment inspection and other formalities
4.3.1 Pre-shipment inspection
4.3.2 Direct consignment requirement
4.3.3 Requirement to pass through specified port of customs
4.3.4 Import monitoring and surveillance requirements and other automatic licensing measures
4.3.5 Other formalities not elsewhere specified
4.4 Contingent trade protective measures
4.4.1 Antidumping measures
4.4.1.1 Antidumping investigations
4.4.1.2 Antidumping duty
4.4.1.3 Price undertaking
4.4.2 Countervailing measure
4.4.2.1 Countervailing investigation
4.4.2.2 Countervailing duty
4.4.2.3 Undertaking
4.4.3 Safeguard measures
4.4.3.1 General (multilateral) safeguard
4.4.3.1.1 Safeguard investigation
4.4.3.1.2 Safeguard duty
4.4.3.1.3 Safeguard quantitative restriction
4.4.3.1.4 Safeguard measure, other form
4.4.3.2 Agricultural special safeguard
4.4.3.2.1 Volume-based agricultural special safeguard

4.4.3.2.2 Price-based agricultural special safeguard

4.4.3.3 Safeguard not elsewhere specified

4.5 Non-automatic licensing, quotas, prohibitions, and quantity control measures other than for SPS or TBT reasons

4.5.1 Non-automatic import licensing procedures other than authorisations for SPS or TBT reasons

4.5.1.1 Licensing for economic reasons

4.5.1.1.1 Licensing procedure with no specific ex-ante criteria

4.5.1.1.2 Licensing for specified use

4.5.1.1.3 Licensing linked with local production

4.5.1.1.4 Licensing for economic reasons not elsewhere specified

4.5.1.2 Licensing for non-economic reasons

4.5.1.2.1 Licensing for religious, moral, or cultural reasons

4.5.1.2.2 Licensing for political reasons

4.5.1.2.3 Licensing for non-economic reasons not elsewhere specified

4.5.2 Quotas

4.5.2.1 Permanent quotas

4.5.2.1.1 Global allocation

4.5.2.1.2 Country allocation

4.5.2.2 Seasonal quotas

4.5.2.2.1 Global allocation

4.5.2.2.2 Country allocation

4.5.2.3 Temporary quotas

4.5.2.3.1 Global allocation

4.5.2.3.2 Country allocation

4.5.3 Prohibitions other than for SPS and TBT reasons

4.5.3.1 Prohibition for economic reasons

4.5.3.1.1 Full prohibition (import ban)

4.5.3.1.2 Seasonal prohibition

4.5.3.1.3 Temporary prohibition, including suspension of issuance of licenses

4.5.3.1.4 Prohibition of importation in bulk

4.5.3.1.5 Prohibition of products infringing patents or other intellectual property rights

4.5.3.1.6 Prohibition of used, repaired or remanufactured goods

4.5.3.1.7 Prohibition for economic reasons not elsewhere specified

4.5.3.2 Prohibition for non-economic reasons

4.5.3.2.1 Prohibition for religious, moral, or cultural reasons

4.5.3.2.2 Prohibition for political reasons (embargo)

4.5.3.2.3 Prohibition for non-economic reasons not elsewhere specified

4.5.4 Export restraint arrangement
4.5.4.1 Voluntary export restraint arrangements (VERs)
4.5.4.1.1 Quota agreement
4.5.4.1.2 Consultation agreement
4.5.4.1.3 Administrative co-operation agreement
4.5.4.2 Export restraint arrangements not elsewhere specified
4.5.5 Tariff Rate Quotas (TRQs)
4.5.5.1 WTO bound TRQs
4.5.5.1.1 Global allocation
4.5.5.1.2 Country allocation
4.5.5.2 Other TRQs
4.5.5.2.1 Global allocation
4.5.5.2.2 Country allocation
4.5.6 Quantity control measures not elsewhere specified
4.6 Price control measures including additional taxes and charges
4.6.1 Administrative measures affecting customs value
4.6.1.1 Minimum import prices
4.6.1.2 Reference prices
4.6.1.3 Other administrative measures affecting the customs value not elsewhere specified
4.6.2 Voluntary export price restraints (VEPRs)
4.6.3 Variable charges
4.6.3.1 Variable levies
4.6.3.2 Variable components
4.6.3.3 Variable charges not elsewhere specified
4.6.4 Customs surcharges
4.6.5 Seasonal duties
4.6.6 Additional taxes and charges levied in connection to services provided by the Government
4.6.6.1 Custom inspection, processing and servicing fees
4.6.6.2 Merchandise handling or storing fees
4.6.6.3 Tax on foreign exchange transactions
4.6.6.4 Stamp taxes
4.6.6.5 Import license fees
4.6.6.6 Consular invoice fees
4.6.6.7 Statistical taxes
4.6.6.8 Tax on transport facilities
4.6.6.9 Additional charges not expressly covered in sub-category 4.6.6
4.6.7 Internal taxes and charges levied on imports
4.6.7.1 Consumption taxes
4.6.7.2 Excise taxes
4.6.7.3 Taxes and charges for sensitive product categories
4.6.7.4 Internal taxes and charges levied on imports not elsewhere specified
4.6.8 Decreed Customs valuations
4.6.9 Price control measures not elsewhere specified
4.7 Finance measures
4.7.1 Advance payment requirement
4.7.1.1 Advance import deposit

4.7.1.2 Cash margin requirement
4.7.1.3 Advance payment of customs duties
4.7.1.4 Refundable deposits for sensitive product categories
4.7.1.5 Advance payment requirements not elsewhere specified
4.7.2 Multiple exchange rates
4.7.3 Regulation on official foreign exchange allocation
4.7.3.1 Prohibition of foreign exchange allocation
4.7.3.2 Bank authorisation
4.7.3.3 Authorisation linked with non-official foreign exchange
4.7.3.3.1 External foreign exchange
4.7.3.3.2 Importers' own foreign exchange
4.7.3.3.3 License linked with non-official foreign exchange not elsewhere specified
4.7.3.4 Regulation on official foreign exchange allocation not elsewhere specified
4.7.4 Regulations concerning terms of payment for imports
4.7.5 Finance measures not elsewhere specified
4.8 Measures affecting competition
4.8.1 State trading enterprises, for importing; other selective import channels
4.8.1.1 State trading enterprises, for importing
4.8.1.2 Other selective import channels not elsewhere specified
4.8.2 Compulsory use of national services
4.8.2.1 Compulsory national insurance
4.8.2.2 Compulsory national transport
4.8.2.3 Compulsory national service not elsewhere specified
4.8.3 Measures affecting competition not elsewhere specified
4.9 Trade-related investment measures (TRIMs)
4.9.1 Local content measures
4.9.2 Trade balancing measures
4.9.3 Trade-related investment measures not elsewhere specified
4.10 Distribution restrictions
4.10.1 Geographical restriction
4.10.2 Restriction on resellers
4.11 Restriction on post-sales services
4.12 Subsidies (excluding export subsidies)
4.13 Government procurement restrictions
4.14 Intellectual property
4.15 Export-related measures
4.15.1 Export license, quota, prohibition, and other quantitative restrictions
4.15.1.1 Export Prohibition
4.15.1.2 Export quotas
4.15.1.3 Licensing or permit requirements to export
4.15.1.4 Export registration requirements
4.15.1.5 Export quantitative restrictions not elsewhere specified
4.15.2 State trading enterprises, for exporting; other selective export channels
4.15.2.1 State trading enterprises, for exporting

4.15.2.2 Other selective export channels not elsewhere specified
4.15.3 Export price control measures
4.15.4 Measures on re-export
4.15.5 Export taxes and charges
4.15.6 Export technical measures
4.15.6.1 Inspection requirement
4.15.6.2 Certification required by the exporting country
4.15.6.3 Export technical measures not elsewhere specified
4.15.7 Export subsidies
4.15.8 Export credits
4.15.9 Export measures not elsewhere specified

5. National trade and customs laws and rules

5.1 Laws and regulations concerning the importation, exportation, transit, transhipment, and storage of goods as they relate to customs duties, charges and other taxes
5.2 Laws and regulations relating to the rates of duty not otherwise included under category 2 (item *ii* of Article 13(2) of the ATIGA), taxes or other charges (*e.g.*, customs surcharges, additional taxes and charges, customs fees and charges on imports)
5.3 Laws and regulations relating to requirements, restrictions or prohibitions on imports or exports, transit goods or transhipment (*e.g.*, licensing, quotas, prohibitions and quantity control measures)
5.4 Laws and regulations relating to requirements, restrictions or prohibitions on the transfer of payments for imports or exports, transit goods or transhipment
5.5 Laws and regulations affecting the sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use of imports or exports, goods in transit and transhipment

6. Procedures and documentary requirements

6.1 Consular formalities
6.2 Documentary requirements relating to the importation, exportation, transit and transhipment of goods
6.3 Licensing
6.4 Pre-shipment inspections and other formalities
6.5 Analysis and inspection procedures
6.6 Quarantine, sanitation, and fumigation
6.7 Special customs regimes
6.8 Special customs formalities (*e.g.*, formalities that are not clearly related to the administration of any measure applied by the given importing country such as the obligation to submit more detailed product information than normally required on the basis of a customs declaration, the requirement to use specific points of entry, etc.)

7. Administrative rulings

7.1 Administrative rulings concerning tariff classification
7.2 Administrative rulings concerning origin determination
7.3 Administrative rulings concerning the customs valuation applicable criteria and its implementation
7.4 Administrative rulings concerning the applicability of the requirements for relief or exemption from customs duties

7.5 Administrative rulings concerning the application of the Member's requirements for quotas, including tariff quotas
7.6 Schemes for the establishment of the programme of Authorised Economic Operators (where not otherwise included in the ATR '*topics*' 5 or 6)
7.7 Administrative rulings not elsewhere specified

8. Best practices in trade facilitation

9. List of authorised economic operators

Annex 2

Proposed NTM Classification Template

Field label	Issuing Ministry	Regulation Reference	Description	Source URL	ASEAN Trade Repository URL	Reason	NTM Code	NTM Name	Start Date	End Date	HS Code	Product Description	Notification Year	Internal Reference/s	Notifying Country	Affected Country/ies
Field description		*Specify: type of measure (law, decree, directive, etc.); title; number and signing date*	*Indicate the relation to trade of the measure*	*Encode specific URL with link to the actual measure (in English if available)*	*Not yet available (it will provide link to the actual notification form submitted to the ASEAN Secretariat)*	*Describe with sufficient detail (2-3 sentences) the measure's objectives, specifying relevant articles*	*Use UNCTAD 's NTM classifcation (Feb 2012), as available in Annex D of the WB's Toolkit on NTMs: https://openknowledge.worldbank.org/bitstream/handle/10986/6019/683590PUB0EPI007902B09780821395103.pdf?sequence=1*	*Use name corresponding to the NTM code*	*Indicate date of entry into force of the measure*	*If the measure is temporary, indicate the end date, otherwise indicate "permanent"*	*Indicate the HS code/s corresponding to the products covered by the measure*	*List the product categories corresponding to the HS codes*	*Indicate year of notification to ASEAN Secretariat*	*Indicate reference to studies or other materials used to justify the measure (not for notification to ASEAN Secretariat)*	*Name of the country making the notification*	*Indicate - if applicable - the name of the country/ies covered by the measure*
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