



International  
Trade  
Centre

TRADE IMPACT  
FOR GOOD

# PREVENTING NTMs FROM BECOMING BARRIERS TO TRADE

FROM POLICY TO PRACTICE





# ACHIEVING LEGITIMATE POLICY OBJECTIVES WITH MINIMAL COST TO BUSINESS

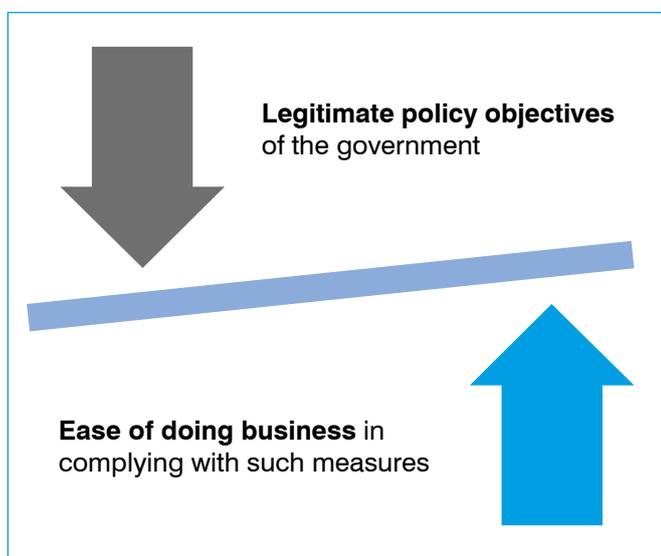
**Non-tariff measures (NTMs)** are policy measures — other than ordinary customs tariffs — that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both. (UNCTAD)

Governments use NTMs for various policy objectives, such as protecting human health and safety, plant and animal health and environmental concerns.

NTMs may however become barriers to trade, when

- they have a deliberate protectionist (or retaliatory) intent or effect;
- they impact trade flows more than is necessary to achieve a given objective;
- they are designed and applied in a discriminatory and non-transparent manner.

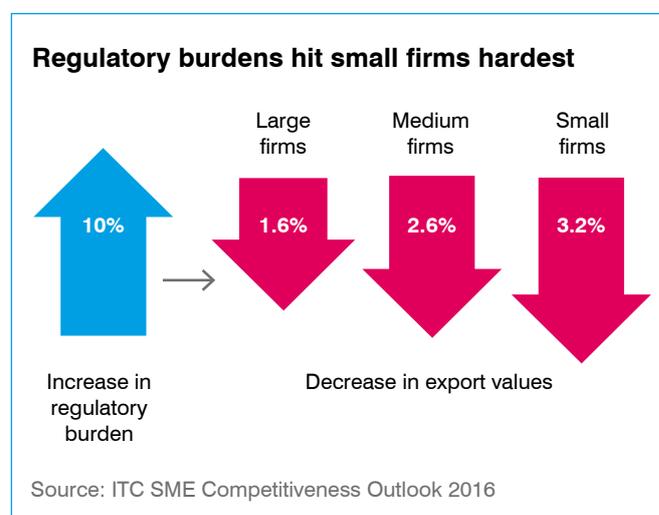
Therefore, to prevent non-tariff measures from becoming trade barriers, governments should maintain a balance between the legitimate policy objectives and the potentially restrictive and burdensome effect of complying with the measures.



## NTM induced trade barriers negatively affect those who are the most vulnerable

Non-tariff measures have a disproportionately large effect on those who can least afford it, such as small and medium size enterprises (SMEs) in developing and the least developed countries.

As an example, the impact of increase in regulatory burden on small firms is double that of large firms.



## The advantages of streamlining non-tariff measures

- better regulation and more efficient procedures result in lower compliance costs for businesses, and thus enhanced competitiveness;
- smart regulations enhance the ability of domestic firms to diversify and compete;
- a smart regulatory environment increases a country's attractiveness to foreign and domestic investors.

# THE TYPES OF BARRIERS TO TRADE PRODUCED BY NTMs

## Regulatory or procedural barriers

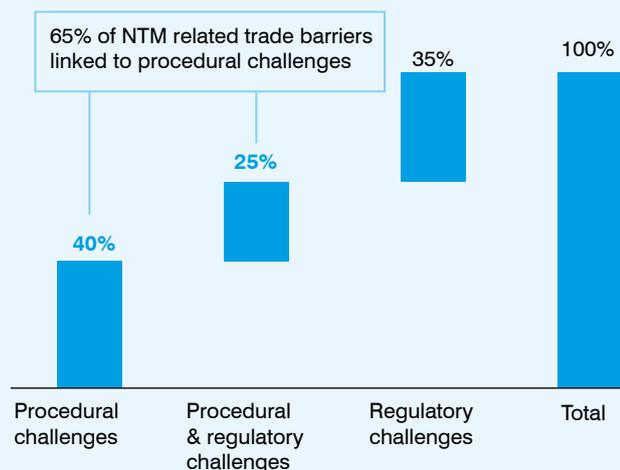
The Non-Tariff Measures (NTMs) survey conducted by ITC in over 25 countries helps to understand the range of issues being faced by businesses when exporting and importing goods.

The surveys reveal that a major portion of the NTMs are reported as burdensome not because the regulations are too strict but because of the associated procedural obstacles (POs), or a combination of both.

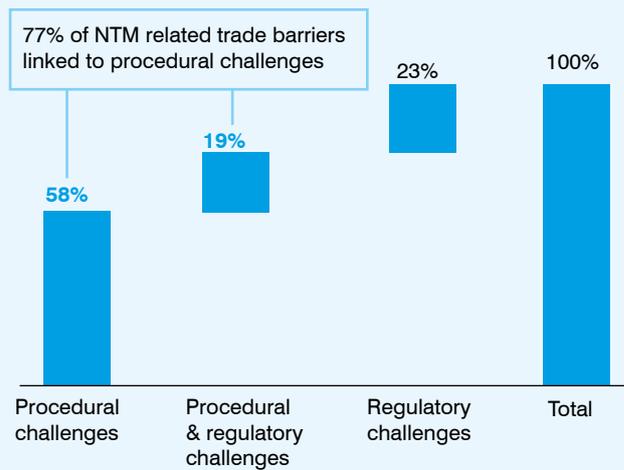
Exporting companies face POs domestically because of regulations implemented by partner, transit and home countries – most frequently linked to partner country measures (such as issuance of licences, rules of origin certification, [conformity assessment and technical requirements](#)) as well as home country measures (such as export inspections, export licenses, prohibitions and quotas). On the other hand, most PO cases encountered by importers are due to domestic regulations (such as import inspection and other entry formalities, conformity testing as well as quantity and price control measures).

### Procedural and regulatory challenges in agricultural and manufacturing trade

#### Enforcement related challenges in agricultural trade (%)



#### Enforcement related challenges in manufacturing trade (%)

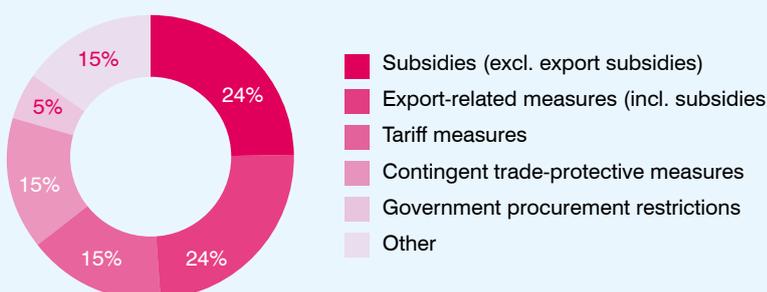


Source: ITC, The Invisible Barriers to Trade – How Businesses Experience Non-Tariff Measures, 2015

## State interventions used to promote country's industrial or agriculture development

Such policies include restricting the export of local raw materials to encourage development of domestic finished product industries; subsidies, or other incentives, may be granted to encourage internal production.

### Top 5 policy instruments used to promote trade and investment\*



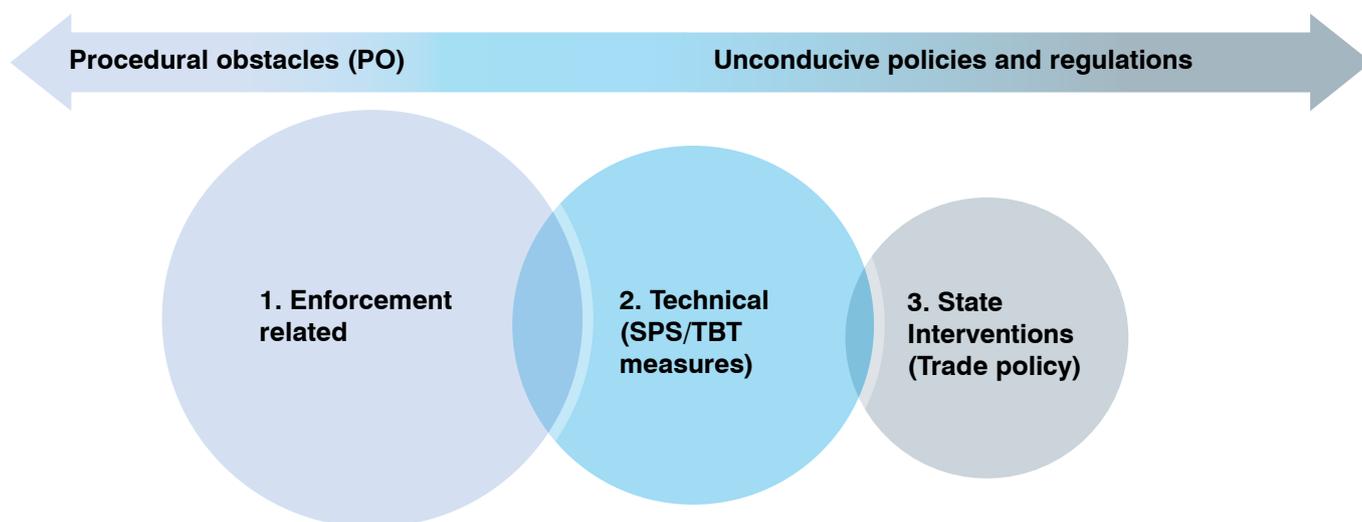
Source: Global Trade Alert  
\*Since November 2008

# ADDRESSING BARRIERS TO TRADE:

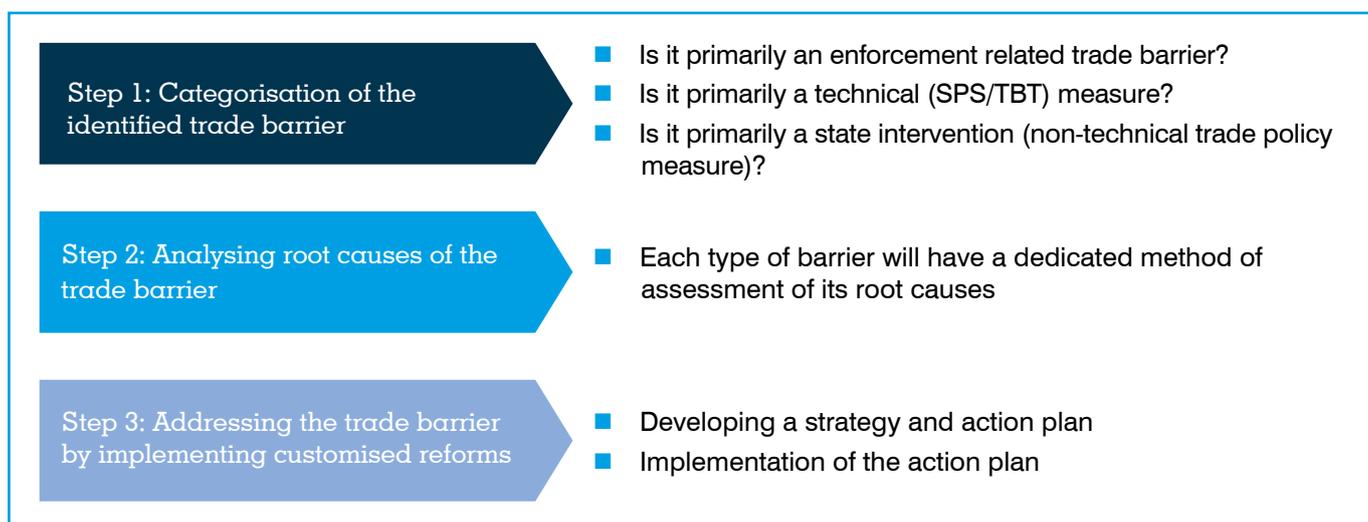
## AN INCLUSIVE AND TARGETED APPROACH

ITC has taken a problem-solving perspective for devising a common methodology for analysing the root cause of the perceived trade obstacle. The most common NTMs are grouped into three broad categories of trade barriers, namely enforcement or implementation related barriers, sanitary and phytosanitary (SPS) as well as technical barriers to trade (TBT) and other state interventions under the realm of trade policy.

The three groups may however overlap, representing a combination of both regulatory and procedural obstacles. For instance a technical measure may be perceived as an obstacle both in terms of the severity of the regulation as well as in the way it is implemented.



ITC's methodology to resolve trade barriers follows the following steps:



# KEY GUIDING PRINCIPLES TO ADDRESSING TRADE BARRIERS

I. Inclusive

II. Comprehensive

III. Coordinated

## 1. Inclusive public-private dialogue

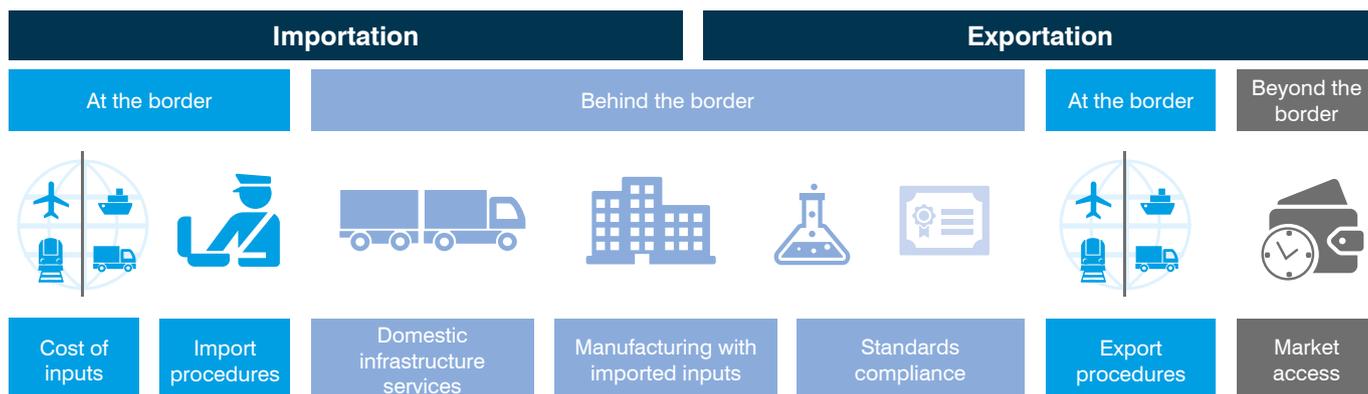
This implies an inclusive exchange of views between the governments who establish, implement and enforce laws and regulations and the business sector that is required to comply with those regulations. A sector-specific approach gives opportunity for businesses to engage more deeply with the problems.

### Recommended participants in PPD

Private Sector		Public Sector	
Exporters	Customs brokers	Ministry of Commerce	Standards Bureau
Importers	Logistics service providers	Ministry of Industries	Trade Development / Promotion Authority
Producers	Business associations	Customs	Ministry of Health
Distributors	Chambers of commerce	Port Authorities	Border Police
Freight forwarders	Trade support institutions	Ministry of Agriculture	Other relevant agencies

## II. Comprehensive supply chain approach

This low-cost, high-impact sector-specific approach allows examining the policy and regulatory challenges along the entire supply chain of a product from the importation of inputs into domestic manufacturing to the outputs entering the export destination market.



## III. Coordinated approach from diagnosis of problems to implementation of reforms

Key stakeholders, namely the regulatory agencies and the private sector, need to engage in all phases of the reform process. When identifying and assessing the root cause of trade barriers, one has to distinguish where along the process the problem lies, for example whether it is in the way a measure is designed and encoded or in the way the measure is implemented.

Diagnosis

Design

Implementation

# 1. ADDRESSING ENFORCEMENT RELATED TRADE BARRIERS

Non-tariff measures often become barriers not because of the design of the measures themselves but because of their implementation and enforcement by responsible government agencies. The barriers are practices commonly related to the ways customs and other cross-border agencies control and inspect goods moving across borders, and the related administrative formalities required to comply with the rules that serve the mandate of the said agencies.

Commonly these barriers are perceived by the traders as purely procedural problems, or as a combination of both a regulatory obstacle and the way it is being implemented. For example, the control of imported fruits and vegetables is a necessary means to prevent the entry of pests or diseases. However, the design of the control procedures and their implementation should not lead to unnecessarily lengthy waiting periods, unpredictability, and excessive costs of compliance.

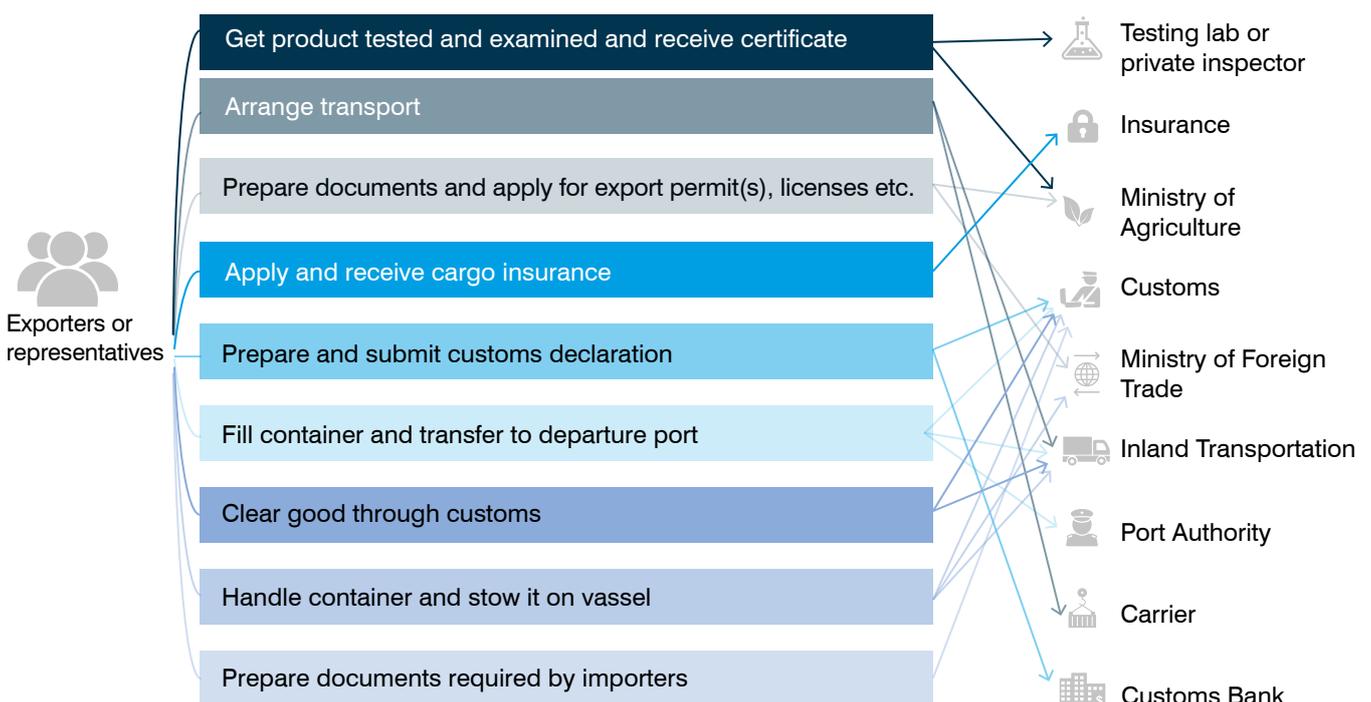
## Analysing root causes of the trade barrier

Addressing enforcement related trade barriers requires a balance between the Government's objective of effective implementation and enforcement of legitimate measures for regulatory compliance including environmental and/or health reasons and business objective of minimizing the cost of compliance.

All business processes across the value chain may be assessed according to a step-by-step procedural mapping or business process analysis. This is a mapping of existing business processes to identify bottlenecks and inefficiencies in end-to-end trading processes along with the responsible agencies.

## Mapping the processes of an export transaction through a step-by-step analysis

### Transport and regulatory procedures in export of agro-food



## Identifying the root causes of procedural obstacles

Commonly observed procedural obstacles	Root cause
<p>Excessive documentation and delays in administrative procedures, unusually high fees</p> 	<p><b>Efficiency deficit</b> Lack of efficiency mindset and regular review of formalities</p>
<p>Inadequate information or unannounced changes to procedures or regulation</p> 	<p><b>Transparency deficit</b> Latest information on requirements unavailable</p>
<p>Multiple controls and submissions of similar data to various regulatory agencies, which may also interpret rules differently at different entry points</p> 	<p><b>Cooperation and compliance deficit</b> Multiple agencies regulating and controlling trade at the border, coupled with lack of private sector capacity</p>
<p>Obsolete and inefficient practices (e.g. non-acceptance of copies, e-signatures etc.) continue in absence of updated legal instruments and technological solutions</p> 	<p><b>Technological and legal deficit</b> Weak and obsolete legal framework, lack of resources and capacity to adopt new technologies</p>

## Implementing trade facilitation reforms

The World Trade Organization's (WTO) Trade Facilitation Agreement, as well as other international agreements, may be leveraged to help design and implement reforms of non-transparent, inefficient and costly cross-border trading procedures and practices.

ITC offers technical assistance in the implementation of a comprehensive range of trade facilitation reforms:



### Enhance transparency

We enhance access to information and documentation requirements for crossing borders

Internet Publication	to describe the practical steps required to import or export a consignment at national or regional level
Enquiry points	to answer queries on trade-related information and documents through the creation and strengthening of trade facilitation enquiry points
Awareness raising and business guides	to make businesses aware of new rules and their benefits, creating greater certainty for traders and fewer opportunities for corruption



### Promote cooperation

We promote public-private dialogue and generate ways to improve inter-agency coordination

Institutional support (NTFC/RTFC)	to establish national and/or regional trade facilitation committees to ensure better integration of business interests in trade facilitation reforms
Public-private dialogue	to facilitate public-private sector cooperation and provide businesses with the opportunity to advocate for efficient reforms
Border agency coordination	to assist countries in ensuring coordination amongst agencies in charge of border controls for import, export and transit of goods



## Foster efficiency

We support the improvement of efficiency and modernization of cross-border procedures

### Review of Formalities

to support countries in periodically reviewing trade related documentation requirements and formalities

### Process Re-engineering

1. Pre-arrival processing to allow traders to submit all documents before arrival of goods at the border
2. Risk management to focus customs controls on high risk consignments
3. Single Window allowing traders to submit all documents to a single entry point

### Specialised Operations

1. Advance rulings to enhance predictability
2. Authorised operators scheme to reduce formalities based on good past behaviour
3. Expedited shipments for faster delivery of certain goods



## Improve traders' compliance

We build private sector capacity to efficiently comply with new rules

### TFA understanding

to deliver private sector training, including e-learning courses to raise business awareness on how they can benefit from the Trade Facilitation Agreement

### Export management

to coach businesses on how to improve their import/export management practices

### Enhanced capacity of Trade Support institutions

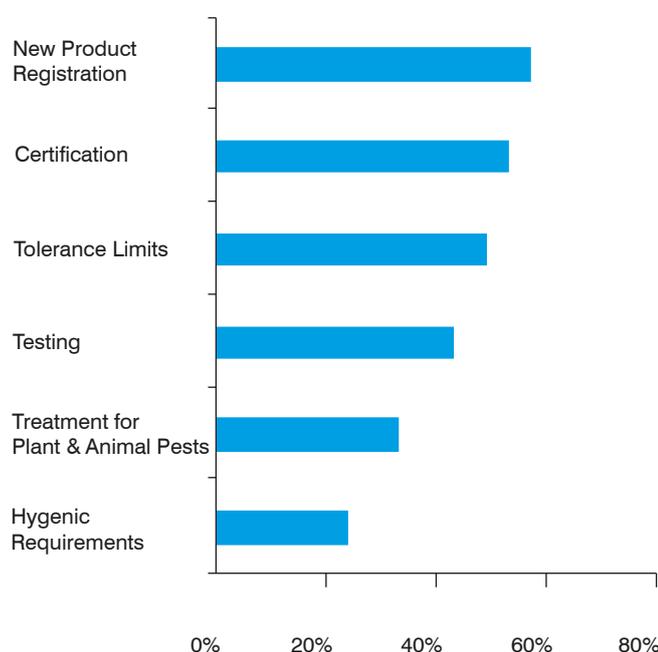
to improve the effectiveness of institutions in supporting the private sector's management of cross-border operations

## 2. ADDRESSING TRADE BARRIERS RESULTING FROM TECHNICAL (SPS/TBT) MEASURES

### Sanitary and phytosanitary (SPS) measures

Measures designed to protect human, animal and plant life, and health.

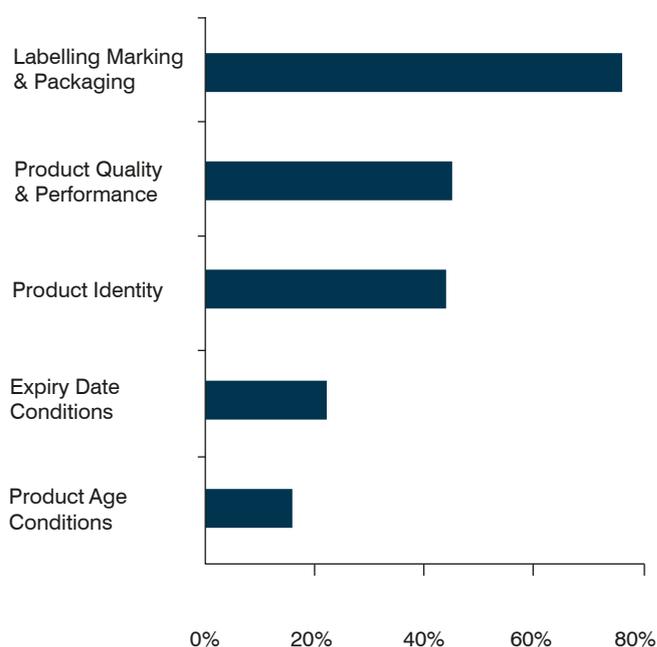
#### Common SPS Barriers



### Technical regulations, standards, and conformity assessments

Measures designed to protect, inter alia, human health and safety, the environment, or to prevent deceptive practices, including packaging, marking and labelling, requirements and procedures for assessment of conformity with technical regulations and standards.

#### Common Technical Barriers



Source: University of Southern California, NTBs in Agriculture and Food Trade in APEC, 2016

#### Illustrations of SPS measures

- A requirement limiting the use of hormones and antibiotics in the production of meat; or
- A sample test on imported oranges to check for the residue level of pesticides.

#### Illustrations of TBT measures

- Prohibition/ limitation of the level of restrictions on toxins in children's toys; or
- Refrigerators requiring a label indicating their electricity consumption level.

#### SPS and TBT measures may become barriers to trade through:

- The stringency of the measure itself e.g. extremely low pesticide residue content or non-justifiable labelling requirements;
- Difficulty in credibly demonstrating compliance with the technical regulations and standards due to information deficit or lack of access to affordable conformity assessment (testing, inspection and certification) services.

## Analysing the root causes of the trade barrier

Addressing trade barriers resulting from technical measures requires a balance between WTO members' rights and obligations to adopt SPS or TBT regulations and conformity assessment procedures on the one hand and business' desire to avoid unnecessary barriers to international trade on the other.

Assessing the root causes involves a three-fold evaluation of:

- SPS and TBT related laws and regulations for compliance with WTO commitments and obligations from other relevant trade agreements;
- Institutional capacity of the Conformity Assessment Bodies (Testing Labs, Accreditation Bodies, Inspection Agencies) to credibly demonstrate compliance with technical regulations and standards;
- Ability of enterprises including their logistics and production processes to comply with market requirements (including possible private standards).

### Evaluation methodology

**Legal compliance** with WTO and other international agreements

**Conformity Assessment Bodies** against the criteria established in the following standards

- Requirements for accreditation bodies accrediting conformity assessment bodies (ISO 17011)
- Requirement for the operation of various types of bodies performing inspection by inspection bodies (ISO 17020)
- Requirement for the bodies providing audit and certification of management systems (ISO 17021)
- Requirements for bodies certifying products, processes and services (ISO 17065)
- General Requirements for the Competence of Testing and Calibration of Laboratories (ISO:17025)
- Validating micro-organism testing in food (ISO 16140-1)

**Enterprises** against the criteria established in the following standards

- Criteria for Quality Management System (ISO 9001)

## Identifying the root causes

ITC surveys reveal that over 50% of enterprises face difficulties relating to standards, technical regulatory measures, SPS measures and conformity assessment procedures, owing to:



### Information deficit

Insufficient or unclear understanding of technical requirements in specific markets



### Capacity deficit

Inadequate knowledge (skills and internal systems) to comply with requirements



### Infrastructure deficit

Lack of access to affordable and timely conformity assessment (testing, inspection and certification) services



### Policy deficit

Weak policy and regulatory framework to support compliance framework to support compliance.

## Implementing quality and standards related reforms

ITC offers technical assistance in the implementation of quality and standards compliance

# 1

### Advise policymakers and regulators on how to create a conducive regulatory environment

- Improve technical regulatory frameworks
- Enhance transparency of technical requirements
- Craft national quality policies/ strategies
- Develop and promote national standards

# 2

### Guide conformity assessment bodies that demonstrate compliance with technical regulations & SPS measures

- Attain international accreditation of conformity assessment bodies
- Enable international recognition of testing / inspection reports and certifications

# 3

### Prompt enterprises to improve quality and comply with standards and technical regulations

- Reinforce quality & implement management systems
- Build capacity to comply with market access requirements and standards

### 3. RESOLVING TRADE BARRIERS RESULTING FROM STATE INTERVENTIONS (TRADE POLICY MEASURES)

**State interventions** are frequently used to promote trade and investment in pursuance of the country's industrial or agricultural development. These may include measures such as subsidies or export restrictions to promote the development of particular domestic sectors.

#### Conflict between Trade and Industrial and Agriculture Development Policies

There is a fine line between a trade policy instrument designed to promote 'fair' international trade and those designed to protect an industry and to achieve a country's industrial or agricultural development objectives. The crossing of this line may result in a conflict between industrial and trade policy, often straining legally binding commitments undertaken in international trade treaties.

#### Reconciling Trade Policies with Industrial and Agricultural Development Policies

- Trade liberalisation balanced with time-bound and targeted tariff protection
- Export promotion including through the use of permissible subsidies
- Facilitation of Foreign Direct Investment
- Regulatory reforms of the services sector
- Addressing export market issues including through negotiations

#### Overarching objectives of Balanced Trade Policy

- Create competitive infrastructure services
- Promote exports and foreign investment
- Move goods across borders effectively
- Address export market issues
- Improve inputs and capital goods

#### Typical State Interventions (Non-technical trade policy measures)

Charges, taxes and other para-tariff measures

Quality control measure (e.g. licenses, quotas, prohibitions)

Finance Measures

Price control measures

Anti-competitive measures

Trade-related investment measures

Distribution restrictions

Restrictions on post-sale services

Subsidies

Government procurement restrictions

Intellectual property

Rules of origin and related certificates of origin

Export related measures  
(Export Restrictions and / or support measures)

Source: UNCTAD (MAST)

## Analysing the root causes of the trade barrier

Addressing trade barriers resulting from state interventions (other than the previous two groups of measures) requires a balance between Government's trade policy shaped by its obligations in international treaties on the one hand and its industrial and agricultural policy or foreign direct investment incentive policy on the other, especially for enhancing international trade in the global value chain (GVC) paradigm.

Assessing trade barriers resulting from non-technical state interventions requires an evaluation of:

- The history of what a given policy has achieved and sharing of other international policies rooted in similar experiences. Continued necessity of the measures should be established to achieve the desired development objective;
- Impact assessment of the policy on the upstream and downstream industry;
- Effectiveness of achieving the policy objective;
- The legal "consistency" and compliance of the relevant measures concerned with WTO rules and/or other applicable international treaties (e.g. regional trade agreements).

### Assessment methodology of trade barriers

#### **To what extent and how does the measure address a "market failure" (Objective behind the measure)**

- Is the measure an appropriate tool or sufficiently targeted to address the given situation?
- Is it in conflict with any other policy / regulatory objective?

#### **How successful has the measure been in achieving its objective? Is the measure still relevant in changed technological and market conditions? Who are the winners and losers?**

- Big versus small industry
- Upstream versus downstream industry
- Domestic producers versus importers
- Producers versus consumers

#### **Strict 'rules of origin' under preferential trade regimes: please consider the following options:**

- Diagonal accumulation across Regional Trade Agreements (RTAs) to spur cross-border production sharing;
- Higher de minimis levels;
- Allowing duty drawback.

#### **Subsidies and investment incentives**

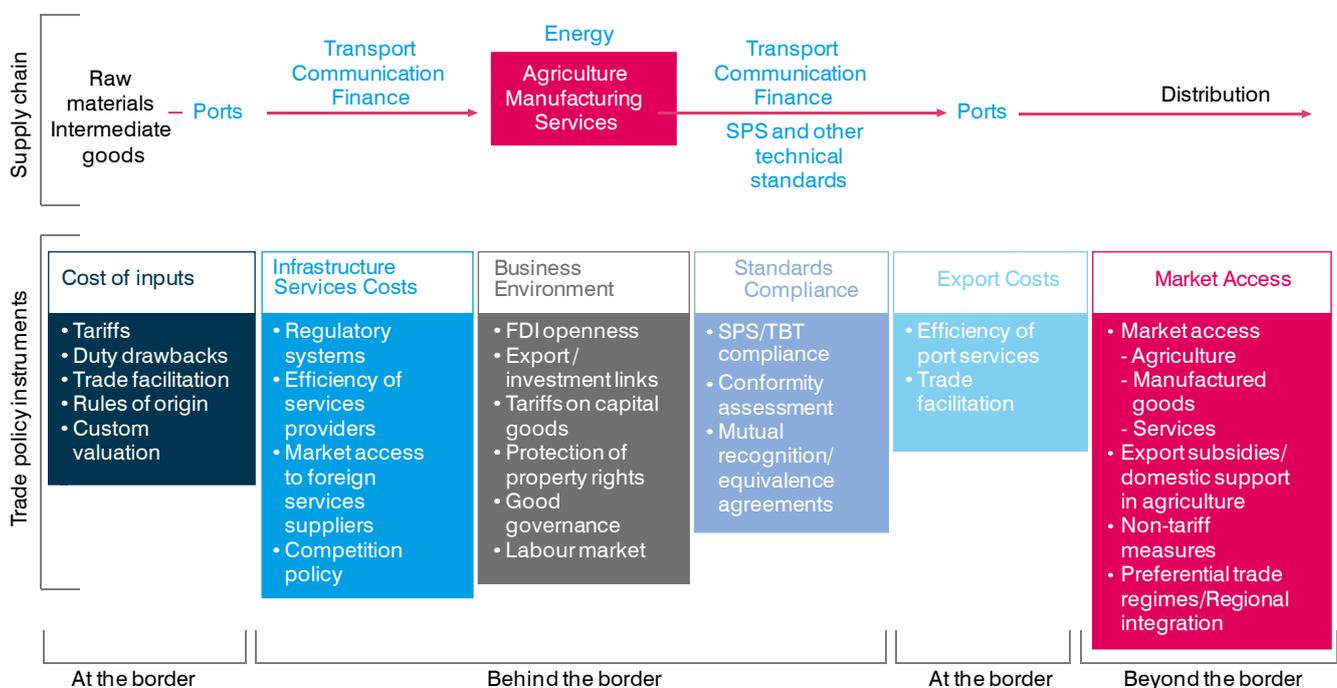
- Do they comply with legal commitments under international treaties?
- How do they compare against intended economic rationale such as:
  - Positive externalities, jobs, social safeguards, exports.
- Do they outbid competing jurisdictions?

## Adopting and implementing comprehensive export-oriented policies

Recommendations for reforms related to the range of state interventions and trade policy instruments include:

- Develop coherent trade, industrial, investment and other policies/ regulations to achieve export competitiveness using the export competitiveness framework given below.** The whole range of issues need to be addressed through a comprehensive, export-oriented assessment of the different instruments and policies at government's disposal. This will help overcome the isolated policy measures that may hinder the overall objective of export development, and instead should support local private sector competitiveness and better integration of domestic business to regional and global value chains.

### Export development-oriented framework for assessing trade policy instruments



Source: ITC

- Promote and strengthen domestic institutional structures for effective and efficient review of barriers to prevent potential disputes.** These may include the following bodies and committees that will support enhancing capacity to effectively raise concerns about NTMs encountered in trading partners.
- WTO Committees (Subsidies, SPS/TBT/TF/Agriculture/Customs Valuation etc.)
- Regional inter-governmental bodies: Committees established to address NTMs (e.g. NTM Committee under African CFTA in AUC)





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