

“Addressing non-tariff barriers to maximize Indonesia trade potential”



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Non Tariff Measures Vs Non Tariff Barriers



NTMs : 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. NTMs encompass all measures altering the conditions of international trade, including policies and regulations that restrict trade and those that facilitate it.



- NTBs:

is defined as selected NTMs that discriminated against foreign product directly or indirectly which resulting negative impact on trade, whether those NTMs is regulated as de jure or technically imply as de facto

NTM Rules in WTO that affect mostly Indonesia



- Sanitary and Phitosanitary Measures
- Technical Barrier to Trade
- Import Licensing
- Rules of Origin

Why is NTMs in SPS and TBT hard to comply?



- Some countries, most of them are developing countries are using Article XX GATT (exceptional clause) in order to imply NTBs especially in SPS and TBT
- Public Morals
- Protection human, animal or plant life
- Production related measures
- etc



- Dealing with variety of NTBs based on SPS is basically provided by Article XX (b) GATT, where the chapeau of Article XX GATT :

“Those measures are not apply in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same condition prevail, or a disguised restriction on international trade”

NTBs in SPS Measures



- This measures that are applied to protect human or animal life from risk arising from additives, contaminants, toxins or disease-causing organism in their food; to protect human life from plant or animal – carried disease; 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.

example



- Prohibition or restriction import for SPS reason for example Temporary geographic prohibitions for SPS reason.
- Geographical restriction on eligibility
- Product registration requirement
- Testing requirement e.g. Pesticide testing
- Certificate requirement e.g. Certificate of conformity for materials in contact with food
- Inspection Requirement e.g. Animals or plant parts must be inspected before entry is allowed

How to tackle?



Once the NTB based on SPS become more restrictive, arbitrary and discriminatory, the importing country has right to request :

1. Scientific prove that identified risk of imported product
2. proven a causal link between certain product properties and potential damages to health, where the SPS Agreement lays down rather detailed standards for the evaluation and management of health risk.

TBT



- A "technical regulation" is a document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

Example



- Prohibition on imports based on TBT Agreement
e.g. Imports are prohibited for hazardous substances
- Authorization Requirement for TBT Reasons
E.g. Imports must be authorized for drugs, waste
- Registration Requirement for importer
E.g. Importers of "sensitive product" such as medicines, drugs, explosives, firearms, alcohol, cigarettes, game machines, etc. may be required to be registered in the importing country

Requirement of NTB based on TBT



- 1. The measures must serve the compliance with laws or regulations which are inconformity with GATT
- 2. The measure must be proportionate and necessary

Import Licensing (non automatic)



- 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
- A trader who wishes to import a product that is subject to a quota or tariff quota must apply for an import licence, i.e. a permit to import

Example



- Licensing for specified use
- Licensing linked with local production
- Licensing procedure with no specific ex-ante criteria
- Licensing for moral, religious and cultural reasons

Requirement



- the non-discrimination among applicants for import licences
- the obligation to give reasons for refusing an application
- the right of appeal or review of the decisions on applications
- time-limits for processing applications

Rules of Origin



- Rules of origin cover laws, regulations and administrative determinations of general application applied by governments of importing countries to determine the country of origin of goods.

Requirements ROO



Article 2 of the Agreement on rules of origin :

- Harmonization of ROO
- Non discriminatory
- Based on positive standard
- To be administered in a consistent, uniform, impartial and reasonable manner
- Promptly published
- Review through judicial procedures

Conclusion



To deal with NTMs, a government should:

1. Harmonize these measures across different sectors and countries
2. Advocate the harmonization of NTMs in intra regional (ASEAN) or multilateral (WTO)
3. Transparent and non-discriminative



- To tackle the arbitrary and discriminative NTBs, a government urges to use:
 1. Negotiation scheme
 2. WTO dispute settlement mechanism



Thank you