



**Asia-Pacific
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Study of APEC Economies' TBT and SPS Specific Trade Concerns: An Analysis from the APEC Cross Cutting Principles on Non-Tariff Measures

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I. Background

Non-tariff measures (NTMs) are generally defined as “*policy measures other than ordinary customs tariffs that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both*”. NTMs comprise technical, non-technical and exports-related measures (UNCTAD, 2012: 1).

APEC economies have made significant progress to facilitate trade by reducing tariffs; however, there is a trend of increasing the number of NTMs in the Asia-Pacific region. From the private sector perspective, NTMs are sources of concern, as some of them turn into non-tariff barriers (NTBs). NTBs are in most cases unclear and unpredictable; they are as well obstructionists for the insertion of micro, small and medium enterprises (MSMEs) in regional and global value chains.

In the 2016, in the New Zealand Institute of Economic Research (NZIER) study, *Quantifying the costs of non-tariff measures in the Asia-Pacific region*, it was identified that NTMs in the APEC region are three times more costly than tariffs. NZIER estimated that the ad valorem equivalent of NTMs in APEC is 9.7%, compared to an average APEC tariff of 2.9%. This means an additional cost of US\$790 billion each year for APEC economies.

Moreover, in the APEC study *Non-Tariff Measures Affecting Small and Medium Enterprises in the Asia-Pacific Region* (2016), it is stated that while trade-related regulations address legitimate objectives, NTMs can become trade barriers. This situation occurs because NTMs could be overly complicated or its implementation would be difficult, especially for MSMEs.

In the same line, the APEC Business Advisory Council's (ABAC) study, *Non-Tariff Barriers in Agriculture and Food Trade in APEC: Business Perspectives on Impacts and Solutions* (2016), highlights that the increase of NTMs over the past two decades is greater than ever seen. It was also mentioned that even when not all NTMs are damaging, when used improperly, they become NTBs. Those measures can be particularly burdensome for MSMEs. According to the ABAC study, sanitary and phytosanitary (SPS) measures account for 60% of all APEC-wide reported NTMs; while over 70% of SMEs that participated at the study described technical barriers to trade (TBT) measures as the most burdensome barriers.

It should be noted that NTMs not only impact on agriculture and food trade. In the *APEC CTI Public – Private Dialogue to Advance Understanding on Non-Tariff Measures (NTMs) in Textile and Garment Industry* (2018), it was stated that NTMs could go beyond its primarily objective. In that sense, for example in textile sector, TBT measures increase the cost of the product by 8%, while the rest of NTMs increase it by 14%.

In this context, on November 15th, 2018, during the 30th APEC Ministerial Annual Meeting (AMM), the Cross-Cutting Principles on Non-Tariff Measures (2018/AMM/011app01) were endorsed. These principles were adopted as a reference to guide member economies'

development and implementation of NTMs, and to reduce the extent to which NTMs act as an unjustified barrier to trade,, as well as a response to the concerns raised by ABAC in its 2016 Report to APEC Economic Leaders. They are also expected to contribute to advance towards free and open trade in the Asia-Pacific region, as envisioned in the Bogor Goals.

NTBs concerns still seems to be a predominant topic for trade facilitation purposes. TBT and SPS measures are the ones for which established mechanisms are available to identify specific trade concerns (STCs) at the World Trade Organization (WTO). For these measures in the APEC region, it is stated in the *APEC's Bogor Goals Progress Report (2018)*: “while the trend of new specific trade concerns seem to have fallen in recent years, information reported at the WTO SPS Committee suggests that there is an accumulation of unresolved concerns restricting trade in the APEC region.”

Given the impact of NTMs, as well as the number of STCs and the adoption of the APEC’s Cross-Cutting Principles on Non-Tariff Measures; it is timely to analyze which Principles are most referred by the STCs.

II. Objectives of the study

The main objective of the study is to assess STCs on WTO TBT and SPS issues to determine the number of times complaints related to APEC’s Cross Cutting Principles on NTMs were addressed to member economies. In addition, this study seeks to:

- Identify the main APEC’s Cross Cutting Principles on NTMs in the TBT STCs addressed to APEC economies.
- Identify the main APEC’s Cross Cutting Principles on NTMs in the SPS STCs addressed to APEC economies.

III. Methodology

a. Scope

The study considered all STCs raised in the WTO TBT and SPS Committees to APEC economies between 1995 and 2019. A total of 526 were analyzed considering both TBT and SPS issues.

All STCs are published in the WTO TBT and SPS Information Management System.

b. Analysis

The STCs were reviewed in order to discern whether they were related or not to APEC’s Cross Cutting Principles on NTMs. The information collected is the number of times STCs were raised per principle. The results are aggregated.

Each STC was assessed using the questionnaire developed in the Annex 1 which was previously endorsed by APEC Committee on Trade and Investment (2020/CTI2/IS07).

The questionnaire is divided into two (2) sections. The first one focus on relevant information for the identification of the STCs. It should be noted that the study considered only STCs raised to APEC economies.

The second section focus on the concerns raised in the STCs and how they align with APEC's Cross Cutting Principles on NTMs. The questionnaire consists of five dichotomous scoring items ("yes" or "no") in terms of the specific objectives of the study. These questions were answered in accordance with what is stated on the STCs documents.

The study only focusses on five of the seven principles and it is possible to identify more than one principle in each STC.

The principle *"Non-tariff measures should be consistent with member economies' commitments and obligations as members of the WTO"* was not be considered in this study, since a STC, by definition, is raised regarding any law, regulation or procedure that a WTO member considers restrict trade. Therefore, it is implicit that a STC is raised regarding any regulation that might differ from the commitments and obligations in the framework of the TBT and SPS Agreements.

Similarly, the principle *"A regulatory impact analysis could be considered as a possible tool to assess consistency with the principles stated above"* was not included in the study since it is not possible to quantify it. It also should be noted that the information provided in a STC may not allow to identify if a regulatory impact analysis was involved in the development of a SPS or TBT measure.

c. Limitations

This study focusses only on STCs raised at the WTO TBT and SPS Committee meetings. A significant number of discussions on specific trade concerns takes place outside of these committees. The limitations should be taken into account when interpreting the results of the study.

IV. Results

a. STCs of SPS and TBT measures, related to APEC's Cross Cutting Principles on NTMs

It should be noted that when a STC is presented due to an APEC technical measure, in 68.63% of cases, the WTO member that raise or support the STC is another APEC economy. In the remaining 31.37% of cases, non-APEC members have presented a STC to APEC economies.

When analyzing the STCs raised by an APEC economy due to technical measures, the most relevant APEC principle was the one related to transparency. In 31.08% of cases, the complaining WTO member, considering both APEC and non-APEC economies, mentioned that the measures were not transparent, consultative, or timely developed.

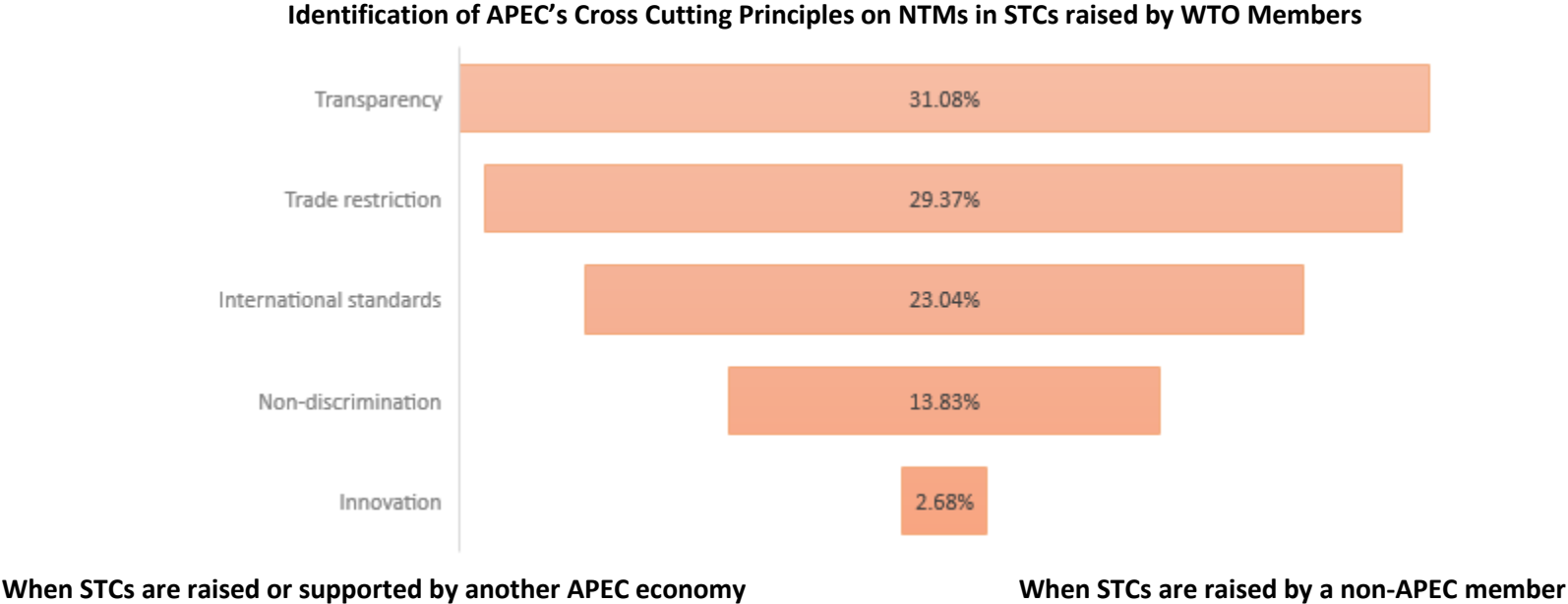
In many cases, these situations refer to technical measures that a WTO member argued were not notified to the WTO in accordance with TBT or SPS Agreements and when there was a notification, a WTO member argued the time for application, scope of the affected products, among others, did not consider the WTO guidelines.

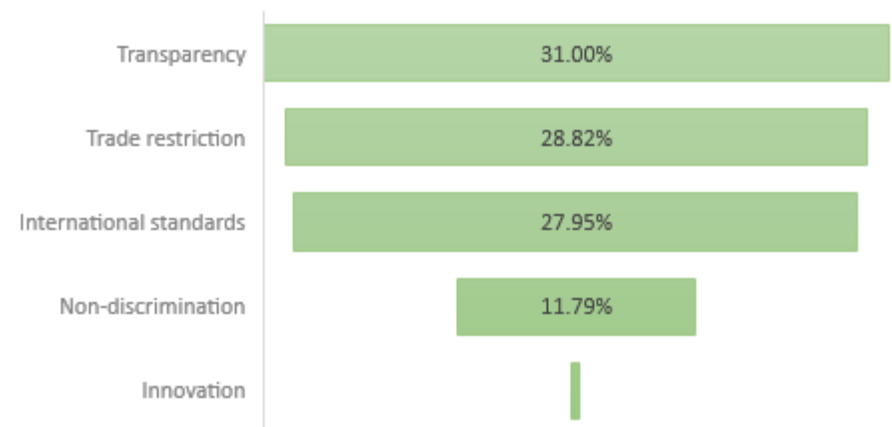
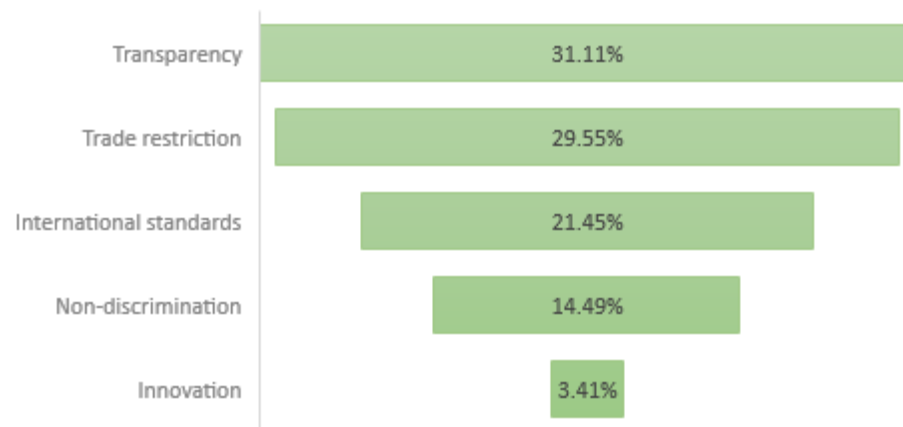
Secondly, in 29.37% of STCs, WTO members specified that they thought the questioned measures enacted by APEC economies were considered to be more trade-restrictive than necessary for meeting a legitimate objective. The situation is similar when an APEC economy raises or supports the STC or if a non-APEC member is involved.

In the third place, in 23.04% of cases, WTO members referred to what they believed was a deviation of international standards and thus a possible barrier to trade. When these measures are mentioned in a STC, the usual reason is the lack of explanation for making that regulatory decision. It should be noted that economies have the right to develop standards with a higher level of protection.

These 3 principles are related to 83.49% of STCs cases, while just in 13.83% and 2.68% of them are related to discrimination and barriers to innovation. In Figure 1, the results by principle are presented.

Figure 1. Identification of APEC’s Cross Cutting Principles on NTMs in STCs (SPS and TBT measures only)





b. TBT STCs related to APEC's Cross Cutting Principles on NTMs

When a STC is presented due to an APEC technical measure, in 77% of cases, the WTO member that raised or supported the STC was another APEC economy. In the remaining 23% of cases, non-APEC members have presented a STC to APEC economies.

When analyzing the STCs raised due to TBT issues by an APEC economy, it was identified that the most relevant APEC principle continues to be transparency. In 29.61% of cases, the WTO member was concerned about what it believed was the lack of transparency or of consultations with different stakeholders. In most cases, even if the TBT measure was notified, WTO members that raised or supported the STC required more detailed information regarding the scope of the measure, the technical requirements, and the timelines.

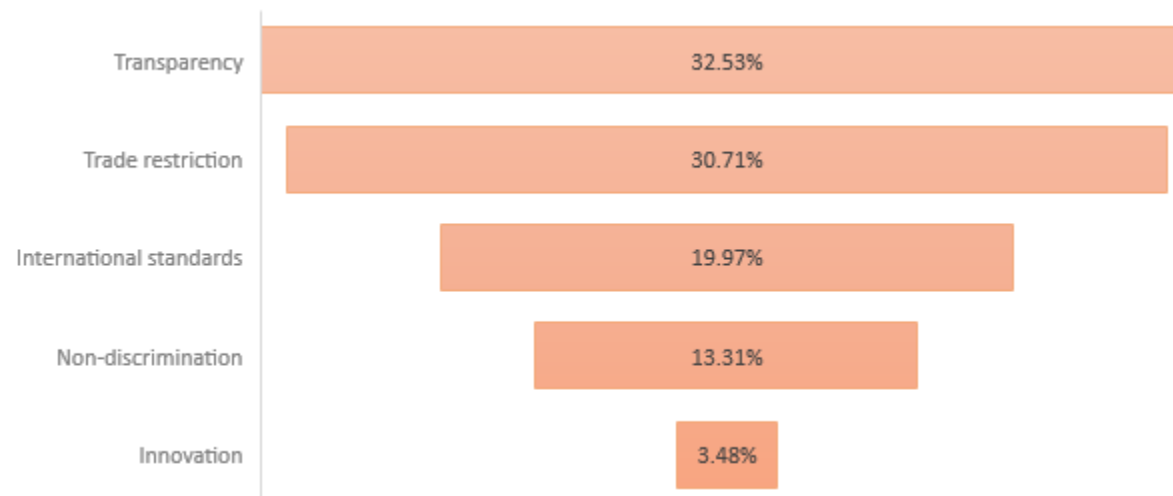
It seems that the lack of better consultations has led to the development of technical measures that some WTO members considered to be restrictive. In that sense, in 30.71% of STCs, WTO members stated that measures by APEC economies were considered more trade-restrictive than necessary to meet a legitimate objective.

In the third place, in 19.97% of cases, WTO members included the deviation of international standards as a possible barrier to trade. It should be considered that economies have the right to develop standards with a higher level of protection. However, when those measures are exposed in a STC, it is usually due to the lack of explanation in making that regulatory decision. In addition, WTO members that raised and supported the STC claimed that relevant international standards should be taken into account as a basis for developing technical regulations, unless international standards do not allow members to achieve a legitimate objective, due to divergent domestic preferences or circumstances, according to the TBT Agreement.

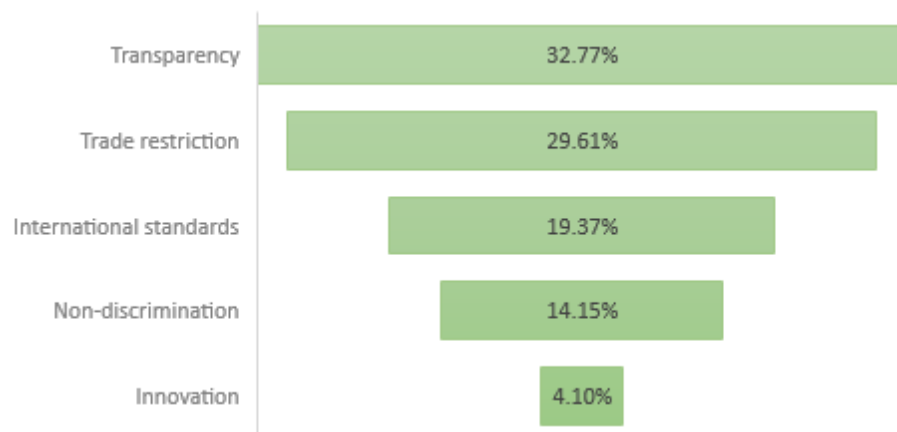
These 3 principles represent the information included in 83.21% of cases, while just in 13.31% and 3.48% of them are related to discrimination and barriers to innovation. In Figure 2, the results by principle are presented.

Figure 2. Identification of APEC's Cross Cutting Principles on NTMs in TBT STCs

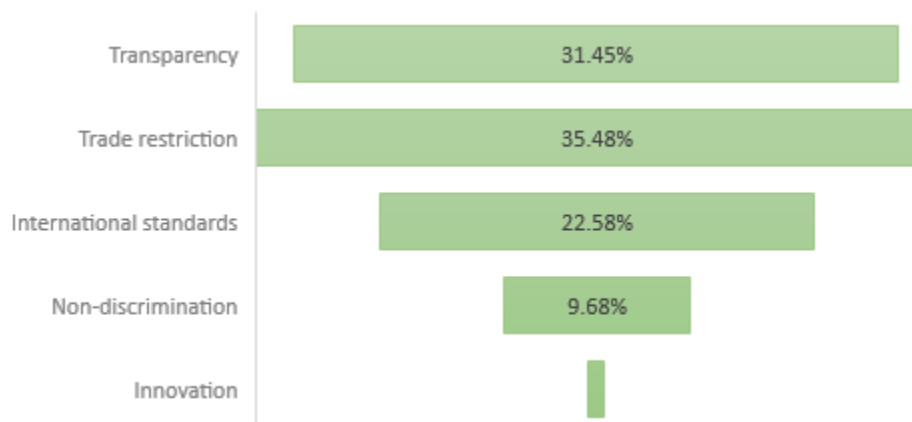
Identification of APEC's Cross Cutting Principles on NTMs in TBT STCs raised by WTO Members



When TBT STCs are raised or supported by another APEC economy



When TBT STCs are raised by a non-APEC member



c. SPS STCs related to APEC's Cross Cutting Principles on NTMs

When a STC is presented due to an APEC SPS measure, in only 57.52% of cases, the WTO member that raised or supported the STC was another APEC economy. In the remaining cases, non-APEC members have presented a STC to APEC economies.

When analyzing the STCs raised due to SPS measures by an APEC economy, it was identified that in most of the cases, the perceived deviation of international standards is considered the main concern. In 28.14% of cases, the WTO member that raised or supported the STC, asked for explanations about the reasons that generated that possible deviation and also requested the APEC economy to consider the international reference as the appropriate tool to avoid trade disruptions.

When international standards are mentioned, it does not seem to be a predominant type of standard between food safety, animal or plant health in STCs.

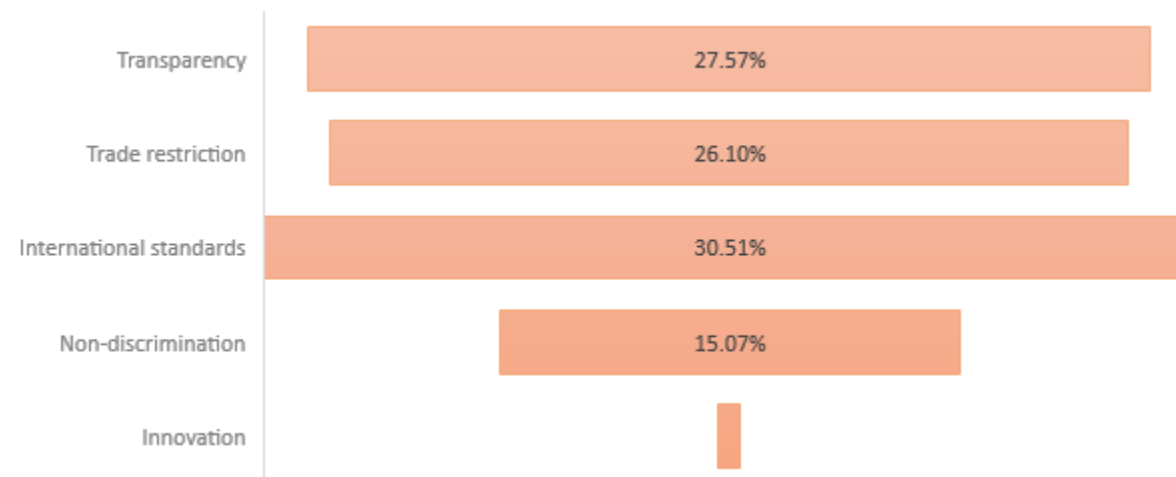
The second most cited issue in STCs related to SPS issues is the perceived lack of transparency, in 27.57% of cases. In this context, there are STCs that were raised due to a notification with ambiguous information or the unjustified reduction of period for comments and publications. There are also other cases, when the involved APEC economy has not notified the modification of a measure. In addition, there is a wide range of STCs referred to the delays in publication of the final rules that could allow the beginning of trade relations.

In the third place, in 26.10% of cases, WTO members expressed in the STCs that a restrictive approach was considered when APEC economies developed certain SPS measures. As it was mentioned before, the use of international standards is perceived as the first choice to consider when adopting a SPS measure to avoid trade disruptions.

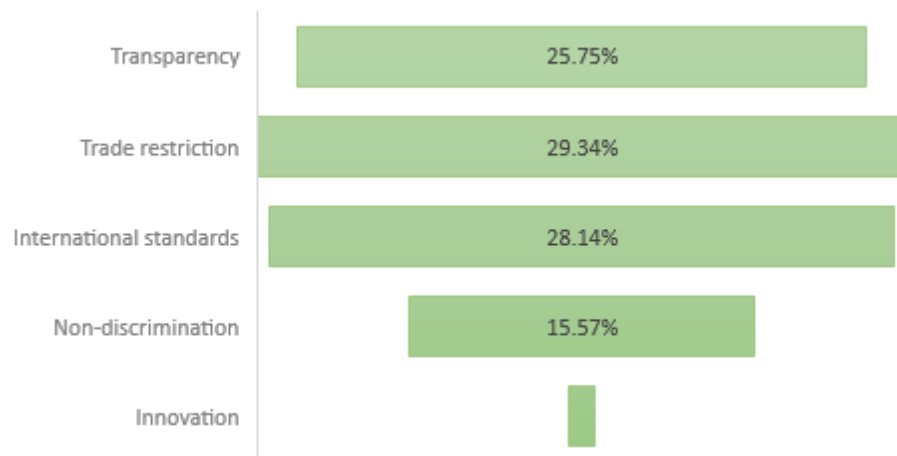
These 3 principles represent the information included in 84.19% of cases, while just in 15.07% and 0.74% of them, are related to the other principles: discrimination and barriers to innovation. In Figure 3, the results by principle are presented.

Figure 3. Identification of APEC's Cross Cutting Principles on NTMs in SPS STCs

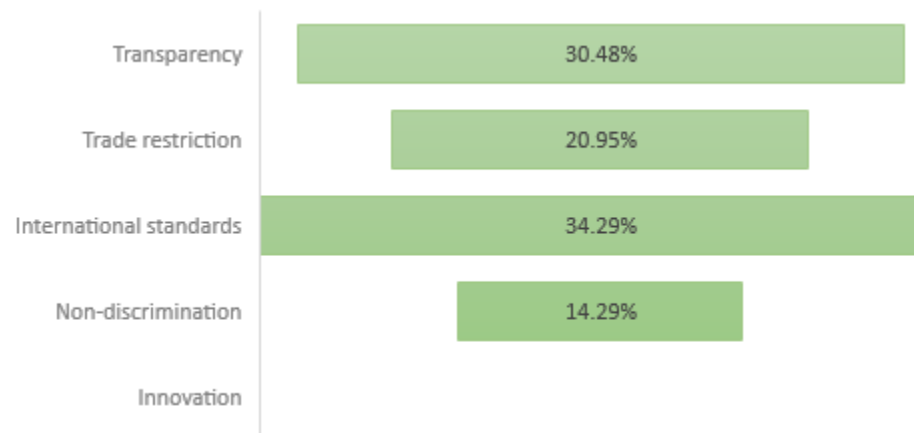
Identification of APEC's Cross Cutting Principles on NTMs in SPS STCs raised by WTO Members



When SPS STCs are raised or supported by another APEC economy



When SPS STCs are raised by a non-APEC member



V. Conclusions and recommendations

Regarding the first objective of this study that was to assess STCs on WTO TBT and SPS issues, as examples in the wider range of various NTMs, by looking at the number of times complaints related to APEC's Cross Cutting Principles on NTMs were addressed to member economies, it should be noted that transparency, unnecessary trade restrictions and the use of international standards are the ones to be taken into account on a priority basis when APEC economies develop a new technical regulation.

The second objective was to identify the main APEC's Cross Cutting Principles on NTMs in the TBT STCs addressed to APEC economies, the situation seems similar to the general evaluation. While it is not possible to assess the merit of the concerns raised in STCs, this review of STCs underscores that developing new regulations in a transparent, trade facilitating way and with an international standard as its base, would contribute to reducing unnecessary barriers to trade in the APEC region.

In the case of SPS measures, the most common concern raised in STCs is on the use of international standards. When a concern about a deviation from an international standard is presented, APEC economies should consider making available a risk assessment that demonstrates why a higher level of protection is justified., Regarding transparency, it is recommended that APEC economies should consider comments from other APEC economies, WTO members and other stakeholders.

With these results, it is recommended that APEC economies could focus their efforts on initiatives, workshops, exchange of experiences that build on transparency, trade facilitation, as well as harmonization of measures with international standards, where appropriate.

Annex 1. Assessment Tool for TBT and SPS STCs

Number	Question	Alternative
Section 1		
1.1	Committee where the STC was raised on	- SPS - TBT
1.2	Number of STC	(IMS ID)
1.3	Number of times raised	
1.4	First time raised	(dd/mm/yyyy)
1.5	Last time raised	(dd/mm/yyyy)
1.6	APEC economies subject to STC	21 APEC economies
1.6.1	Economies raising STC	WTO Members
1.6.2	Economies supporting the STC	WTO Members
Section 2		
2.1	Transparency: Were concerns raised that the processes to develop the measure were not transparent, consultative or timely?	0: No 1: Yes
2.2	Trade restriction: Were concerns raised that the measure restricts trade more than necessary to meet a legitimate objective?	0: No 1: Yes
2.3	International standards: Were concerns raised that the measure was not based on relevant international standards, where appropriate?	0: No 1: Yes
2.4	Non-discrimination: Were concerns raised that the measure arbitrarily or unjustifiably discriminates against imported products?	0: No 1: Yes
2.5	Innovation: Were concerns raised that the measure poses unwarranted barriers to development of new technologies that drive innovation?	0: No 1: Yes
2.6	Status	- Resolved - Partially resolved - Not reported

Annex 2. APEC's Cross Cutting Principles on Non-Tariff Measures (NTMs) (2018/AMM/STMT/AnxA)

Noting that non-tariff measures (NTMs) have increased in the APEC region,

Noting previous evidence presented in APEC on the cost NTMs impose on trade in the region,

Noting that unwarranted NTMs constitute non-tariff barriers (NTBs), which can be particularly burdensome for micro, small and medium-sized enterprises,

Recognising in this regard the concerns raised by the APEC Business Advisory Council in its 2016 Report to APEC Economic Leaders, as well as international studies on the topic,

While recognising that economies have the ability to implement warranted policy measures based on each economy's individual circumstances,

APEC adopts the following principles as a reference to guide member economies' development and implementation of NTMs,

To reduce the extent to which NTMs act as an unjustified barrier to trade, and

To facilitate free and open trade in the Asia-Pacific region, as envisioned in the Bogor Goals.

Principles:

- The processes to develop non-tariff measures should be transparent, consultative (including with business and other affected stakeholders) and timely, resulting in predictable, coherent, and non-discriminatory application; and information about non-tariff measures should be publicly available;
- Non-tariff measures should be consistent with member economies' commitments and obligations as members of the WTO;
- Non-tariff measures should not be more trade-restrictive than necessary to meet a legitimate objective, and where appropriate, should focus on outcomes, rather than mandating prescriptive approaches;
- Non-tariff measures should be based on relevant international standards, where appropriate, and should be developed in accordance with the WTO TBT Agreement, the WTO SPS Agreement or recommendations and/or decisions of the WTO TBT Committee or the WTO SPS Committee;
- Non-tariff measures should not arbitrarily or unjustifiably discriminate against imported products;
- Non-tariff measures should not pose unwarranted barriers to the development of new technologies that drive innovation; and
- A regulatory impact analysis could be considered as a possible tool to assess consistency with the principles stated above.

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