

Facilitating Intra-Regional Agri-Food Trade

CARICOM Thematic Group
BUSINESS DEVELOPMENT
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It is easier to trade in agriculture products from Miami, than it is to trade in the identical products among CARICOM Member States.

Key Messages:

1. Only a relatively small percentage of CARICOM trade occurs among constituent Member States, despite long-standing historical ties and trading relationships.
2. As a Customs Union, the CARICOM Single Market (CSM) is premised on the elimination of obstacles to trade.
3. The WTO disciplines allow for Members to maintain non-discriminatory laws and regulations that document and ensure the health and safety of agriculture products, as well as, regulate trade. Outside of tariffs, trade may be restricted through the use of permissible NTMs, as well as WTO non-compliant NTBs.
4. The central issue is whether Governments, in pursuit of their legitimate policy goals are restricting trade more than is necessary to achieve their objectives/goals.
5. The confluence of circumstances presents an opportunity for concerted action by CARICOM Member States to eliminate the remaining NTBs and 'trade-impeding' NTMs.

This Brief:

- informs of the recent study on Non-Tariff Measures (NTM) and Non-Tariff Barriers (NTB), and their impacts on intra-regional agri-food trade.
- clarifies, in a concise manner, the context of this long-standing issue and the difference between NTMs and NTBs.
- calls for consensus on the need for, and type of concerted actions to be taken to 'systematically dismantle' as opposed to 'eliminate' these NTBs within CARICOM.
- confirms that there is precedent in the Region in eliminating NTBs.
- presents recommendations that should form the basis for Member States to begin the process of internalization, dialogue and action.
- encourages Member States to view Study's findings and recommendations, not as merely fulfilling a COTED mandate, but on the basis of its own importance with respect to facilitating intra-regional agri-food trade as a mechanism to strengthening agriculture for a healthier future in the Region.

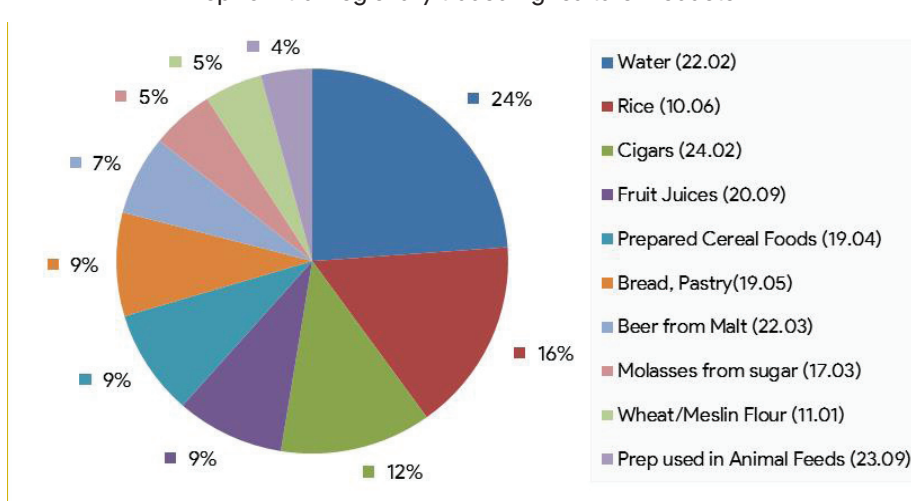
Intra-Regional Agri-Food Trade Profile, 2013-2015, HS 1-24:

- Intra-CARICOM Agri-imports averaged a 16.6% share of total Regional agriculture imports.
- Intra-CARICOM agriculture exports are moderately diversified, with the top 35 intra-regionally exported agri-products distributed across 17 H.S. Chapters.
- There is wide deviation among Member States in relation to share of intra-regional agri-imports:
 - Trinidad & Tobago and Belize were least reliant on agri-imports from other Member States;
 - OECS and Guyana had relatively stronger tendency towards agri-food sourcing from other Member States;
- For each Member State, agriculture imports in terms of value, are densely concentrated in the three top source markets, and in very few product lines.
- In CARICOM agri-imports profile:
 - Trinidad & Tobago, followed by St.Vincent & the Grenadines, are the top exporters of agri-food products within CARICOM.
 - Jamaica followed by Trinidad & Tobago are the top destination markets for intra-regional agri-products.
 - Trinidad & Tobago was most significant source of Jamaica's intra-regional agri-imports - 55% .
 - Guyana was the most significant source of Trinidad & Tobago's intra-regional agri-imports - 36%.

CARICOM Member States can reap important growth dividends from further agriculture trade integration. Refocusing political action on agriculture trade integration presents an opportunity to leverage agriculture trade for economic growth



Top 10 Intra-Regionally traded Agriculture Products



The Study adopts the World Trade Organisation (WTO) Agriculture Agreement definition of agriculture (Chapters 1 to 24 of the Harmonised System (HS)). Notably, fish and fish products (Chapter 3) have been included in the definition adopted by this Study. Quite deliberately, no distinction was made between primary agriculture, intermediate inputs, processed or manufactured products, or final products.

The subtle difference between NTMs and NTBs

NTMs comprise an extremely diverse set of policy measures, restrictions, obstacles or restraints, other than customs tariffs, **applied in a non-discriminatory manner**, at or behind the border, to impact trade, changing quantities traded, prices or both.

They can be divided into three categories- those imposed:

1. on imports, i.e., quantitative restrictions (quotas, prohibitions and licensing), and customs procedures and administrative fees.
2. on exports, i.e., taxes, exports restrictions (including subsidies, quotas, prohibitions) and voluntary export restraints.
3. 'behind the-border', i.e., domestic legislation covering health, technical, product, labour and environmental standards, internal taxes or charges and domestic subsidies

The **first two** categories of NTMS are **applied at the border**, either on imports or exports, while the last category is imposed internally in the domestic economy.

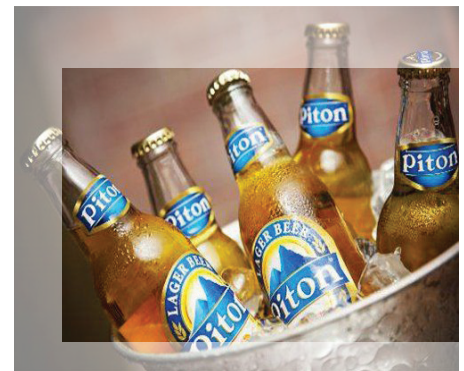
NTMS are utilised as:

- instruments of commercial trade policy (e.g., quotas, subsidies, trade defense measures, export subsidies), or
- non-trade policy objectives (e.g., technical measures).

Some NTMs help protect the health and safety of consumers, safeguard the environment and assist in the regulation of the domestic market.

NTMs have the potential to become NTBs when they act to restrict imports or exports. Accordingly, NTMs that do not act in the least trade-distorting manner are regarded as NTBs.

NTBs are therefore, a **sub-set of NTMs** that could have protectionist or discriminatory intent and negative impacts on trade. These measures are **applied in a discriminatory manner**, affording protection to domestic goods and industries, while restricting market access of foreign goods.



In establishing a legal basis for the assessment of NTBs, the Revised Treaty of Chaguaramas (RTC) Article 79 indicated: *“any trade policy and/or practice, the object or effect of which is to distort competition, frustrate free movement of goods and services, or otherwise nullify or impair benefits to which other Member States are entitled”*.

Through a thorough examination, the Study unearthed few instances of NTBs impacting intra-regional agriculture trade, **concluding that NTBs in CARICOM primarily occur from the unjustified application of NTMs**,

There is no universally accepted definition of a NTM, however in this Study the United Nations Conference on Trade and Development (UNCTAD) definition and classification of NTMs have been utilised.

NTBs in CARICOM Agri-Trade: A summary of Issues

The central issue to be determined is whether Governments, in pursuit of their legitimate policy goals are restricting trade more than is necessary to achieve their objectives/goals. Under WTO rules, the objective is not to remove those measures but to ensure that they are set at an appropriate level to achieve legitimate public policy objectives with minimal impact on trade.

There is precedent in CARICOM, with the elimination of NTBs.

An important benchmark used in the RTC, through the Organ of the Council for Trade and Economic Development (COTED), in classifying whether measures stand to be considered as

NTMs or NTBs is based on distinguishing between “potential” as compared with “actual” impairment or nullification of benefits.

Should disagreements arise, then such are the exclusive purview of the Caribbean Court of Justice (CCJ).

Several NTB cases have been resolved in CARICOM to date. The resolution of these cases was achieved through mechanisms outlined in the RTC. Article 188.1 allows for the use of good offices, mediation, consultation, conciliation, arbitration and adjudication for the settlement of disputes.

Summary of Non-Tariff Barriers Restricting Intra-Regional Agriculture Trade

| UNCTAD Category | Total # of NTBs | Countries Applying the Measure and Affected Countries | |
|--|-----------------|---|---|
| SPS | 8 | Guyana : 6 | Raw coffee, rice seeds, oranges, citrus |
| | | Belize :1 | Jamaican beef patties |
| | | Trinidad & Tobago: 3 | Duck meat and honey, ginger, yams, sweet potatoes |
| Quantity Control Measure (quantitative restrictions) | 1 | Saint Lucia | Poultry and pork |
| Price Control | 1 | St.Kitts and Nevis | Chicken: wings, leg quarters, drumsticks, backs, thighs and neck, turkey wings; salt fish; mackerel; king fish; marlin; mutton; pig snout; pig tail; elbow, processed pasta; spaghetti; margarine; butter; processed cheese; sardines; corned beef; vienna sausage; tuna; honey; cereal; rice |

The findings of the Study reveal that:

1. improper application of SPS measures are the most prevalent NTBs restricting market access - **total prohibition** - with deleteriously negative effects for the magnitude of intra-Regional agriculture trade, e.g., improper application of the Pest Risk Analysis, length of time taken to issue SPS and other health certificates, and continued delays in repealing non-conforming legislation after a COTED ruling has been rendered.
2. use of domestic purchasing requirement, as in Saint Lucia (which imposes a domestic purchasing requirement of 25% for poultry and 40% for pork of the imported quantity), which acts as an illegitimate quantitative restriction against the importation of poultry and pork from CARICOM Member States.
3. price control mechanisms on the domestic sale of certain products used as the basis for setting the domestic price of all goods, whether domestically produced or imported.

The Study concludes that the instances of NTBs in CARICOM have reduced over the years as more countries are aligning their trade procedures WTO and RTC disciplines. Some NTBs impact specific agriculture products and many NTBs are based on outdated legislation that do not comply with commitments undertaken at the multilateral and regional levels, particularly Community Law. Based on the analysis above, some Member States knowingly continue to flout Community law (as well as WTO commitments, particularly the SPS Agreement and commitments under GATTs articles VIII and X) even after decisions have been taken at the COTED.

The Impact of Legitimate NTMS in Restricting CARICOM Agri-Trade



NTMs affect all sectors. However, the literature suggests that the agriculture sector is often the most affected by NTMs. Most NTMs in agriculture are ostensibly aimed at protecting human health, animal and plant safety, as well as maintaining environmental standards.

CARICOM countries predominantly use internationally accepted standards to regulate, monitor and enforce NTMs. This is because national and regional standards generally do not exist for most tradable agriculture products, particularly fresh produce. In most instances, these international standards are domestic standards from developed WTO Member States. This accounts for some of the difficulties experienced by CARICOM Members in complying with international standards and implementing NTMs.

Although The Common External Tariff (CET) allows for NTMs to be used by CARICOM Member States, it does not provide for harmonised use and application of NTMs. Thus, Members use different NTMs both among themselves and with third parties at their own discretion.

The proliferation of NTMs has impacted agriculture trade in CARICOM. There are a number of NTMs applied to agriculture products in CARICOM Member States.

While currently, there are very few NTBs impacting specific products in CARICOM, several legitimate NTMs, particularly TBT and SPS, prompted by legitimate public policy objectives, are having adverse trade effects. While there are varying views on the impact of NTMs, consensus is that NTMs restrict international trade and their contribution to overall trade restrictiveness is higher than tariffs.

The Study finds that:

- a relatively large number of SPS measures, regulating both the import and export of agriculture products exist in every CARICOM State, integrated into the licensing regimes, as they form the basis on which import permits and/or licenses are issued. (See UNCTAD NTM Classification Chapter A).
- there are increased instances of technical regulations and compulsory standards, with some degree of regional harmonisation. However, the adoption of regional standards by Member States is not mandatory. (See UNCTAD NTM Classification Chapter B).
- quantity control measures, i.e., mechanisms to control imports - both automatic and non-automatic licenses - are applied on goods of CARICOM origin - are still in place, though instances of non-automatic licensing have been reduced. (See UNCTAD NTM Classification Chapter E).
- price control mechanisms which allow for different whole sale and retail prices to be applied to several basic commodities, are still found in some CARICOM Member States. (See UNCTAD NTM Classification Chapter H).
- several CARICOM Member States apply monopolistic measures, i.e., legal monopolies that take the form of marketing boards, ministries and associations. (See UNCTAD NTM Classification Chapter P).

At the core, NTMs in CARICOM agriculture trade have exhibited both trade enhancing and trade restrictive effects.

Eliminating Prevalent NTBs and Burdensome NTMs in CARICOM Agri-Trade: Recommendations

The reduction and eventual elimination of NTBs will depend on the level of commitment of Member States to engaging in the process and to greater economic integration.

For the purposes of this Policy Brief, the recommendations put forward by the Study are grouped, for convenience, according to the nature of the intervention envisaged. The synergies created from these recommendations can aid in partnerships between small-scale traders to meet extra-regional demands. They seek to improve the uniformity in the adoption of standards/procedures across the Region and the equivalence between domestic and international standards, to reduce the instances of divergent trade mechanisms in CARICOM and make trading across the Region less burdensome.

| RECOMMENDATION | DESCRIPTION |
|---|---|
| PROCESSES & PROCEDURES | |
| #1: Develop a Flexible and Effective Rules-based Framework to Address SPS Related Concerns and to expedite the Resolution of SPS Disputes among MS. | The prevalence of SPS related disputes among Member States and the protracted time-frames for their resolution as significant factors inhibiting intra-regional trade, provide justification for serious consideration of the CAHFSA Draft Procedures proposal. A sine qua non for acceptance of these Draft Procedures for Resolving SPS Disputes must be the consistency with the rights and obligations of Member States contained in the RTC. |
| #4: Implement a Regional Regulatory Impact Assessment Regime | Member States, in presenting proposals to CROSQ, to implement a new regulation within the Community, should undertake and attach the results of a mandatory Regional Regulatory Impact Assessment. This assessment will ascertain the impact of the objectives of new regulations on the domestic market, particularly with respect to identifying and reducing trade inhibiting measures, and establish alignment with the core objectives of the WTO and the Community. |
| #2: Adopt a Multi-dimensional Approach to Harmonisation of Standards. | Lessons learned indicate that Standards Harmonisation and Coordination were among the main actions taken to address the elimination of NTBs arising from technical measures such as SPS standards and TBT Measures. Key elements to address the lack of harmonisation in the application of standards and other technical measures include: <ul style="list-style-type: none"> • strengthening institutions and increasing programmatic financing to CROSQ and CAHFSA; • stocktaking of Regional Standards and Technical Requirements (which will feed into database at recommendation #5); • adopting “One region, One requirement, One method of adoption-accepted everywhere”; • establishing equivalence: National Standards=Regional Standards=International Standards”; • establishing a Regional Mechanism to provide for the implementation of Regional Technical Regulations (already initiated by CROSQ); • creating a Quick Pass System - a regional level of certification to facilitate the expeditious movement of certified goods around CARICOM (already being considered in the OECS). |
| THE LEGAL FRAMEWORK | |
| #8: Legislation and Regulations | The presence of inadequate and antiquated legislation and regulations to address, enforce and control application of NTMs and prevent NTBs is a major concern. There is need to, <i>inter alia</i> : <ul style="list-style-type: none"> • review and reform legislation in CARICOM Member States as it relates to SPS Measures and Technical Requirements, • address the lengthy and onerous process involved in legislative changes, • establish a mechanism to assist in redrafting of legislation and regulations, • provide timeframes for the resolution of these issues. |

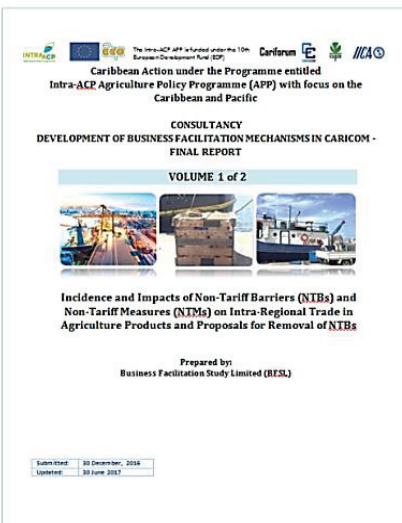
| RECOMMENDATION | DESCRIPTION |
|---|---|
| INSTITUTIONAL RATIONALISATION & STRENGTHENING | |
| #3: Developing Infrastructure for Quality Assurance | <p>Inability to execute required risk analysis testing, pest treatment and certification has severely hampered the level and quality of trade in the Region. The state of laboratory readiness in CARICOM is inadequate to meet the growing demands of international trade. Laboratory facilities in the Region are fragmented and lack high levels of international certification. The prevalence of SPS-related measures impacting agriculture trade both regionally and internationally makes internationally accredited institutions an imperative to the growth of the agriculture sector. The recommendation to 'Develop and improve laboratories and testing facilities' is aimed at improving the laboratory infrastructure and networks to support international trade through the establishment of centres of excellence. The several considerations/questions that must be contemplated in developing this project are indicated in the Study.</p> |
| #6: Increased and Improved Inter-Agency Cooperation | <p>Improved cooperation, linkages and inter-dependency among relevant stakeholders in the Agriculture Trade Chain - Customs and Health Departments, Ministries, and Agriculture and Plant and Animal Quarantine Agencies - will aid in addressing issues, such as, time delays, document processing, certification and in certain cases inspection of products. This will be enabled by establishment of:</p> <ul style="list-style-type: none"> • communication protocols for clear transfer of information and cooperation, • working groups for regular dialogue with the private sector. |
| INFORMATION AND KNOWLEDGE MANAGEMENT | |
| #5: Establishing a Modality for Notification of Non-Tariff Barriers and Non-Tariff Measures to Trade in CARICOM | <p>A notification procedure and requirements for monitoring of new NTM to ensure that they are Treaty compatible is an imperative for CARICOM. This is to ensure that these NTMs do not become NTBs. CARICOM needs to have a NTM framework that mirrors the regime that emerged from the treatment of subsidies by developed countries. The Proposal for a CARICOM Online NTB System that would allow for traders and relevant country authorities to notify instances of NTMs and NTBs experienced via an effective web-based instrument is offered for consideration. (see Best Practice Cases of NTB Eliminating Mechanism of the Tripartite-FTA of COMESA, SADC and EAC in Chapter 3 of the Study)</p> |
| #7: Transparency and Harmonisation of Procedures | <p>Knowledge and access to information in relation of regulations, requirements and procedures applied by each Member State is critical for the movement of agriculture goods, effective business operational capabilities and for enhanced confidence in the business environment. This includes:</p> <ol style="list-style-type: none"> 1. Early communication with regards to changes in import regulations and other procedures 2. Continued information dissemination on regulations and procedures 3. Specific and clear tax categories and product classifications <p>At the regional level, a harmonised approach to required documentation for the import and export of goods is also required. The creation of an online regional portal where information can be accessed should be explored as an avenue through which initial steps can be taken address issues of procedures, followed by complete harmonisation across Member States.</p> |

Other Measures that Negatively Impact the Business and Trade Environment in CARICOM

There are several measures that are neither classifiable as NTBs or NTMs but nevertheless negatively impact the business environment. These measures represent an amalgam of institutional, administrative and logistic regulations and procedures and may be deemed as obstacles to intra-regional agriculture trade, as they impact the transparency, cost, consistency and the speed and efficiency of trade across the Region.

They include lack of sector-specific facilities for testing and storage; issues related to the availability of information; the high number (and sometimes cost) of administrative requirements; lack of sector specific facilities for transportation and storage, and foreign exchange control restrictions.

These measures are particularly burdensome to small-scale traders, who operate in an informal manner, but who nonetheless have traditionally accounted for a significant cohort of the Region's traders of agriculture products.



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DEVELOPMENT OF BUSINESS FACILITATION MECHANISMS IN CARICOM, VOLUME 1 of 2 - INCIDENCE AND IMPACTS OF NON-TARIFF BARRIERS (NTBs) AND NON-TARIFF MEASURES (NTMs) ON INTRA-REGIONAL TRADE IN AGRICULTURE PRODUCTS AND PROPOSALS FOR REMOVAL OF NTBs (Updated Version - 30 June 2017)

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<http://agriviewcaribe.net/wp-content/uploads/2017/10/Dev-of-BusinessFacilitationMechanisms-CARICOM-1-NTBs-Jun2017.pdf>