

# Strengthening India's Non-tariff Measures Compliance

## A Comparative Analysis of Key Governance Frameworks

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### Executive summary

New-age international trade is increasingly moving towards an inward-looking and protectionist trade policy approach, manifested in the form of laws, regulations, standards, and guidelines, particularly focusing on energy efficiency and sustainability (Prabhakar and Mallya, 2023). These regulations, termed non-tariff measures (NTMs), are designed in the respective domestic economies, but they equally impact

their imports.<sup>1</sup> Over time, trade negotiations and policies, once predominantly centred on tariff considerations, have evolved to prioritise NTMs, with an emphasis on sustainability. Although the NTMs are formulated by the receiving economy to ensure a better quality of imports in the longer run, they also might have serious short-term cost implications if the exporter does not have adequate institutional support for ensuring effective compliance

<sup>1</sup> Non-tariff measures are policy measures other than the custom tariffs, and other additional levies that economically affect the international trade of goods and services. NTMs can be classified into two main types: technical and non-technical measures. Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) are two widely used technical NTMs.

with international regulations or standards. For instance, Indian exports worth USD 37 billion are at risk due to sustainability-driven NTMs of the European Union (EU). To safeguard its exports from the risk of non-compliance with NTMs and to reach its USD 1 trillion target for merchandise exports by 2030, India needs a structured framework for ensuring compliance with the EU NTM regulations, and this policy brief provides an overview of the existing practices in regulatory compliance in international trade and suggests key elements of a potential compliance framework.

While the Technical Barriers to Trade (TBT) and Sanitary and Phyto-Sanitary (SPS) agreements of the World Trade Organization (WTO) provide a global framework to ensure a level-playing field for domestic producers and importers, a uniform country-specific governance structure has not been designed as yet for facilitating NTM compliance by the domestic industry. Countries across the world have distinct frameworks in place to ensure the compliance of their domestic industry firms with foreign regulations. While countries such as the United States and EU have defined a clear division of roles and responsibilities among different departments or divisions, industry players still struggle with compliance procedures in certain cases, which eventually hampers the global competitiveness of exports. To avoid difficulties in compliance, we propose a common country-specific NTM compliance framework centred on three key principles.

- **Information sharing:** Sharing detailed and accurate information with the industry players concerning the proposed and notified regulations, product categories at risk, and compliance mechanisms for these regulations.
- **Feedback and redressal:** Helping the industry with any possible challenges they face in compliance and taking up the issues of the industry to the concerned trading partners for seeking clarifications.
- **Firm-level compliance framework:** Strengthening the compliance mechanisms in the export firms as they bear the most impact in the form of loss of export opportunity cost.

The existing practices in the United States, EU, and India are compared within the framework of these three proposed principles in this issue brief to reflect on the strengths and weaknesses of each countries' practices. An

India-centric stakeholder consultation to assess the gaps in India's existing practices and suggest suitable changes for designing an effective NTM compliance mechanism.

## A. Findings

A comparative assessment of the governance framework clearly highlights the areas that need to be strengthened to improve Indian industry's ability to comply with foreign regulations.

- **Information sharing:** The Government of India (GoI) holds regular meetings to update the industry players about the regulations notified to the WTO, but it needs to be complemented by digital updates or information regarding the regulations, the impacted sectors, and compliance steps. The existing approach is largely fragmented in nature, and a consolidated framework is required for providing information about the recent regulations.
- **Feedback and redressal:** The information-sharing mechanism mentioned above could be complemented with a formal interaction mechanism in which the industry raises their concerns and the governmental organisation adopts a systematic approach to deal with the issues. Although government bodies like the Directorate General of Foreign Trade (DGFT) and Export Promotion Councils (EPCs) are mandated to assist the industry with NTM compliance, their roles are not clearly defined for carrying out this function. Stakeholder discussions conducted as a part of this research suggested that industry players do not know who to approach in these government bodies for compliance-related issues. Therefore, clear instructions and guidelines have to be provided to exporters for approaching the relevant authority in case they have any query related to NTMs imposed by the importing country.
- **Assistance in the importing nations:** Concerning the presence in other countries, information regarding any assistance offered by Indian embassies for NTM compliance-related issues or any other help desks in the importer countries is not available.

**A consolidated framework is required to provide information about the recent foreign regulations to Indian exporters.**

- **SME support:** Overall, support is generally provided by the government to small and medium enterprises (SMEs), but there is no specific support mechanism for SMEs in the case of NTM-related compliance. The Government of India has integrated the Open Network for Digital Commerce (ONDC) with Global Mart specifically for aiding the SMEs to use the Global Mart platform for selling their products or services, but still the SME exporters are required to subscribe to private consultancy services to acquire information about the key export markets, which can be a challenge for them.
- **Firm-level compliance framework:** Exporting firms need to adopt firm-level compliance frameworks at the firm level of operation. This can include a structured plan to strengthen various aspects of NTM compliance like maintaining a guidebook, building a dedicated team to oversee the entire compliance process, tracking foreign NTM regulations, training the in-house team, and managing non-compliance. While the United States and the EU have detailed frameworks that are to be followed for NTM compliance, a similar effort has not been made in India.

## B. Policy recommendations

India has made considerable progress in formulating its export compliance policies, but a concerted effort to facilitate NTM compliance is needed.

### Information-sharing mechanism

The foremost requirement for effective NTM compliance is the streamlined information-sharing platform/mechanism, which needs to be put in place in India. A process needs to be defined for understanding the regulations and providing necessary information to the nodal department, which can then be shared in a structured format with the industry. Once the capacity in the relevant departments is built, a platform needs to be conceptualised to provide real-time updates to the exporters on foreign regulations, with sector-wise details and the necessary compliance steps. In this regard, it is important to also address the sticky challenge of reported harmonised system (HS) codes and their alignment with the possibly impacted products in the compliance regulations.

**The presence of help centres or having a dedicated NTM team in the respective Indian missions need to be strengthened.**

## Feedback and redressal

Although help desks are available in the relevant department, there are no clear guidelines for exporters on how to approach them in case of any problems. Also, multiple contact points can be misleading for the exporters. To overcome this confusion, a dedicated team in the relevant government department can be assigned as the contact point for the exporters who face challenges in NTM compliance. Specific guidelines need to be put in place for the exporters to prepare and submit complaints to this team. The respective EPCs could facilitate this process.

The presence of help centres or having a dedicated NTM team in the respective embassies in other countries can be strengthened to acquire additional information or other guidance in case the exporters need it. Along with building these teams, there needs to be a formal mechanism to connect these teams with the exporters. As micro, small, and medium-sized enterprises (MSMEs) account for a considerable proportion of Indian exports, there needs to be a specific programme to help them with NTM compliance.

## Company-level framework

As the firms bear the direct cost of inadequate compliance mechanisms, it is important that they formulate dedicated in-house policies for ensuring export compliance. The standardised framework can be conceptualised by a group of experts—from the government, legal firms, and think tanks—which should be followed by all the export firms. One of the key requirements of the framework is to have a dedicated team that looks after various aspects of export compliance in the respective firms.

## 1. Introduction

In recent years, economies across the world are showing an inclination to adopt an inward-looking and protectionist trade policy approach, which manifests in the form of laws, regulations, standards, and guidelines. These regulations, termed non-tariff measures (NTMs), are designed in the respective domestic economies, but they equally have an impact on their imports. Over the years, trade negotiations and policies that were earlier focused solely on tariff policies are becoming NTM-focused now.

## 1.1 NTMs and their impact on trading partners

Non-tariff measures (NTMs) are policy measures other than custom tariffs that have an economic effect on the international trade of goods and services. NTMs can be classified into two main types: technical and non-technical. Technical measures include the Sanitary and Phytosanitary (SPS) measures, Technical Barriers to Trade (TBT), pre-shipment inspection, and other formalities. Among them, TBT and SPS measures are the two widely used technical NTMs. SPS measures encompass regulations that aim to protect humans as well as all the flora and fauna of a country from risks that arise from contaminants, additives, toxins, and other disease-causing organisms by restricting their entry into the borders of the country. Technical Barriers to Trade (TBT) consist of technical regulations that lay down the requirements of products that are traded in terms of their characteristics such as packaging, labelling, and symbols to be used. Moreover, TBT measures also specify conformity assessment procedures<sup>2</sup> to ascertain whether the regulations and standards set under these measures are fulfilled. Non-technical NTMs include trade protective measures, non-automatic licensing, quotas, price and quantity control measures, financial measures, competition-related restrictions, subsidies, intellectual property, export-related measures, and others that cover all the regulations that are concerned with aspects of trade other than the characteristics and technical requirements of the product (UNCTAD, 2012).

Countries across the world are increasingly formulating NTMs at a rapid pace, and developed countries are taking a lead (Prabhakar and Mallya, 2023). Although NTMs are notified by the receiving economy to ensure a better quality of imports in the longer run, it can have serious short-term cost implications if the exporter does not have adequate institutional support for ensuring effective compliance with international regulations and standards.

Prabhakar and Mallya (2023) highlight the risks that sustainability-driven NTMs of the EU pose for India's exports, putting potentially USD 37 billion worth of Indian exports at a risk. Though this is an indicative number for broad product categories that can be targeted by the proposed regulations (with the actual impact

being potentially lower), the possible impact of these regulations on exports can also be understood. With other important trading partners of India also showing an inclination to adopt NTMs, India's export community needs a structured governance framework to successfully comply with these regulations.

Maskus et al. (2005) analyse the key findings of the World Bank Technical Barriers to Trade survey in 2002 of 689 export firms in 17 developing countries. The export firms were grouped into four broad sectors—raw food; processed food, tobacco, drug, and liquor; equipment; and textiles and materials. The survey showed that a 1 per cent increase in investment to meet the compliance costs in the importing countries raises the variable production costs by 0.06–0.13 per cent. The authors also find that the fixed cost of compliance is approximately USD 425,000 per firm (in the year prior to the survey year), which is about 4.7 per cent of value-added on average. Fontagné et al. (2018) use firm-level data on French exporters to examine the impacts of foreign technical regulations and reveal that firms tend to exit export markets when extra technical regulations are imposed by the importing nations.

Hu et al. (2019) examine the impact of a technical regulation in the EU that concerns the child safety requirements of lighters. The authors observe that less productive Chinese firms tended to exit the export market upon the introduction of the new measure, but relatively productive firms responded by producing better-quality items. So, overall, the export value declined in the short term, but the negative effect was offset by better-quality products in the long run. Similarly, Chaney (2005) and Manova (2008) find that standards create fixed product adaptation costs, which need to be financed.

While the literature has widely covered the cost of compliance with the NTM regulations, it also stresses on the significance of the long-term effect of standards for better quality exports and enhanced foreign market access. This requires serious thinking towards policymaking in the exporting countries to facilitate NTM compliance through an efficient governance framework.

**Sustainability-driven NTMs of the EU put around USD 37 billion worth of Indian exports at a risk.**

<sup>2</sup> The process of conformity assessment demonstrates whether a product, service, process, claim, system, or person meets the relevant requirements. Such requirements are stated in the standards, regulations, contracts, programmes, or other normative documents (International Organisation for Standardisation, 2023).

## 1.2 WTO Agreements on TBT and SPS

The World Trade Organization (WTO) implemented the TBT and SPS measures in 1995 to ensure that these measures do not result in any kind of discrimination between the domestic producers and importers. For instance, the TBT agreement establishes multilateral rules to ensure that regulations, standards, testing, and certification procedures do not create unnecessary obstacles to trade. The agreement contains detailed provisions covering the entire process of preparing, adopting, and applying standards-related measures that are consistent with international standards and the need for transparency throughout their formulation process (WTO, 2023).

While the TBT agreement was introduced to ensure non-discrimination between the domestic and foreign producers, the harmonisation element of the agreement is intended to facilitate domestic compliance with foreign standards. Harmonisation with international standards not only limits the additional costs of compliance with foreign regulations, which are aligned with international standards, but also ensures the quality of exports, leading to better market access. There is empirical evidence in this context to show that the EU standards harmonised with international norms (International Standard Organisation, in this case) exert a less negative impact on African export volume than standards that are not harmonised, as demonstrated by the study of Czubala et al. (2009).

India's engagement in the international standard-setting process has certainly deepened. The International Standard Organisation (ISO) and the International Electrotechnical Commission (IEC) are the two key international bodies for setting TBT-focused standards. India stands 10th in the country ranking for participation in the Technical Committee (TC) meetings of the ISO. These TC meetings deliberate on the proposed international standards and an active participation in these meetings implies a key role in the international standard-setting process. There is still scope for India to become more engaged in the entire process of international standards setting. Many EU countries such as France, Germany, Italy, and Czech Republic supersede India in their participation in the ISO technical committee meetings. Apart from the EU countries, UK, Korea, and Russia are actively engaged and rank among the top 10 participating members (ISO, 2023). India also shows a deeper

level of engagement in the IEC, being a participating member of its 119 technical committees (TCs) and subcommittees (SCs) and an observer member for its 55 TCs and SCs. However, it is not the secretariat of any of the committees, whereas other key economies have assumed the secretarial position in these committees, with France being the secretariat for 22 TCs and SCs and China for 15 of them (IEC, 2023), which allows them to take the lead in decisions regarding key aspects of these meetings.

Another key component of the WTO TBT agreement that facilitates country-level compliance with foreign regulations is the requirement for all its members to set up a TBT (and SPS) inquiry point. This national inquiry point must be set up by each WTO member to answer all the queries the exporters might have concerning standards, conformity assessment, and technical regulations as well as to consider any concerns they may have related to the systems of other countries and the bilateral agreements on trade with other countries. The domestic measures that do not comply with the basic principles of TBT agreement requirements can be treated as non-tariff barriers as these can imply discrimination against a specific country and can be challenged by the WTO.

## 1.3 Need for country-specific NTM compliance framework

Besides WTO's framework, country-specific governance structure is also critical for facilitating NTM compliance by the domestic industry. An efficient governance framework for NTM compliance should rest on three broad principles—first, sharing detailed and accurate information with the industry players with respect to the proposed and notified regulations, product categories at risk, interpretation of the regulations and of the expected impact along with the compliance mechanisms for these regulations; second, helping the industry with any possible challenges that they face in compliance and taking up the issues of the industry to the concerned trading partners for seeking clarifications; third, strengthening the compliance mechanisms domestically and in the export firms as they bear the most impact of the poorly structured governance in the form of increased export cost.

**Besides WTO's framework, country-specific governance structure is also critical for facilitating NTM compliance by the domestic industry.**

A well-structured governance framework would ensure better market access for Indian exporters and could turn out to be an important determinant of global competitiveness. In this regard, it is important to undertake a comparative analysis of some of the existing governance frameworks to understand the best practices across the world. This A detailed comparative assessment of the NTM compliance governance framework in the United States, the European Union, and India is done in this issue brief.

Section 2 discusses the governance frameworks in the three geographies considered in this study, followed by key insights from stakeholder discussions on India's NTMs governance framework, which are provided in section 3. Section 4 provides a comparative assessment of the country-level frameworks and finally, section 5 offers policy recommendations to improve India's governance structure to address the NTM challenge.

## 2. Governance frameworks for NTM compliance

A strong governance structure should be based on three key principles: (i) information sharing; (ii) feedback and complaint redressal; and (iii) empowering export firms. Sharing information and receiving feedback about the recently notified or proposed foreign regulations with the industry players forms the core of the governance framework for NTM compliance. The absence of an information-sharing mechanism results in a lack of preparedness to comply with foreign regulations and increases the likelihood of exporters withdrawing from the foreign market. This situation arose when the EU's REACH regulation, which imposed regulations for chemical exports from India, was introduced in 2007. Due to lack of preparedness for compliance with the regulation, around 40 per cent of exporters withdrew from the export market (Prabhakar and Mallya, 2023).

A sound feedback mechanism needs to be put in place to ensure that the industry concerns are heard and addressed in an effective way. A streamlined mechanism or platform can be created through which the industry players report the kind of challenges that they face in complying with the regulations. It is also important to design systems to offer solutions to the industry's problems by clarifying the issues, or by taking up the issue with the concerned trading partner. Finally, adopting firm-level compliance frameworks is required to

ensure enough attention to NTM compliance at the firm level of operation. This can include a structured plan for the exporting firms to strengthen various aspects of NTM compliance like maintaining a guidebook, building a dedicated team to oversee the entire compliance process, tracking foreign NTM regulations, training the in-house team, and managing non-compliance. A governance framework can be deemed successful only if it ensures that the exporters can retain their place in the market, and all three principles of the proposed framework play an important role in ensuring its success.

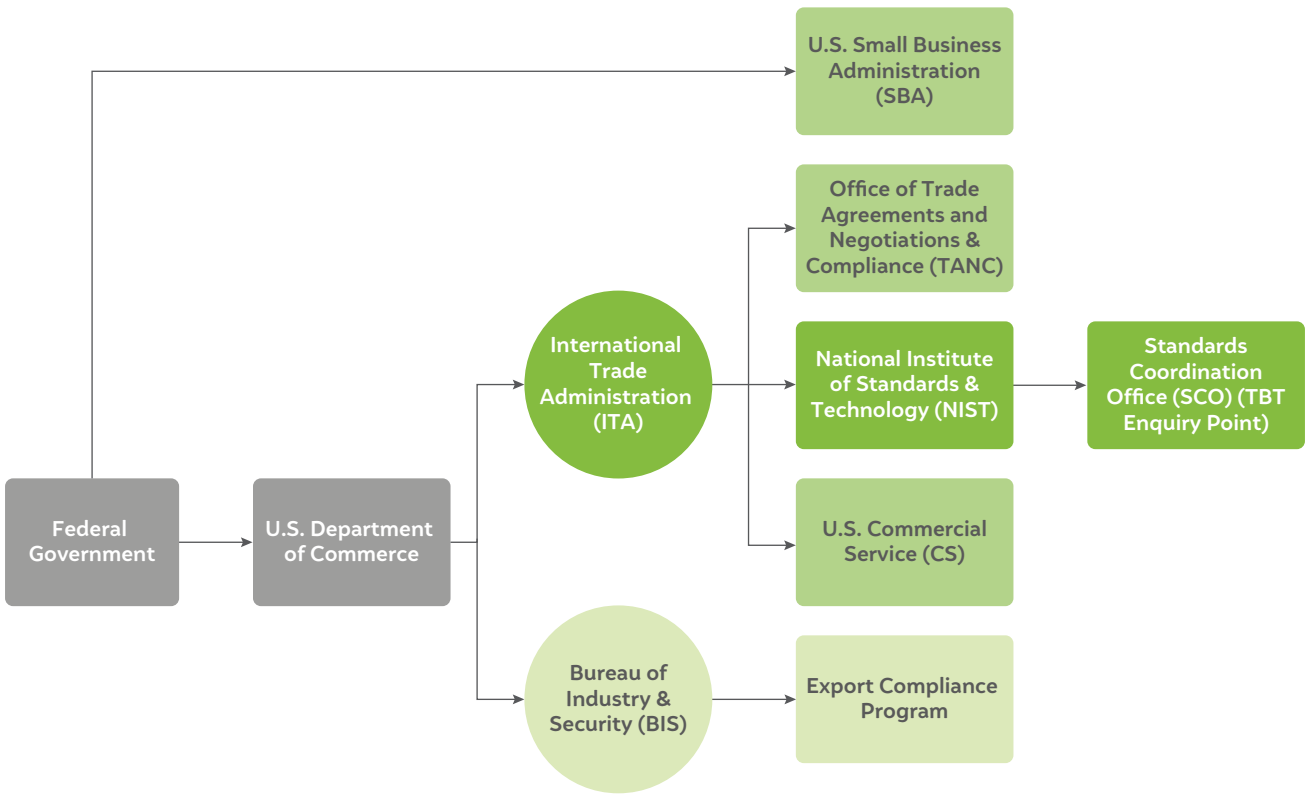
Unlike the WTO TBT/SPS agreement that sets uniform rules for all the countries, there is no standard governance framework to ensure compliance with TBT and SPS measures at the country level. Countries across the world have distinct frameworks in place to ensure that their domestic industry firms comply with foreign regulations. Some countries have defined a clear division of roles and responsibilities among different departments and divisions, but industry players struggle with compliance procedures in certain instances, which eventually hampers the global competitiveness of exports. To understand these varied governance components, this section delves deeper into the governance structure in the United States, EU, and India to understand the strengths and weaknesses of each of the frameworks. The frameworks, based on the three key principles of information sharing, feedback and complaint redressal, and empowering export firms, are discussed in this section.

### 2.1 Governance framework for NTM compliance in the United States

In the United States, the agencies and bodies that are responsible for facilitating international trade and developing a bigger market for the United States are clearly identified (Figure 1). All trade-related activities are overseen by the US Department of Commerce, which is further divided into various sub-bodies that govern different dimensions of trade.

All standards in the country are administered by the National Institute of Standards and Technology (NIST), which provides exporters with reference material and data on standards and conformity assessment procedures that have to be followed. The Standards Coordination Office (SCO), under NIST, is set up as the TBT inquiry point, as per the legal requirement of the TBT agreement.

**Figure 1** Key government bodies in US NTM compliance



Source: Authors' analysis based on US Department of Commerce. 2023. "Issues". Accessed June 30, 2023. <https://www.commerce.gov/issues>

Note: Boxes in dark green indicate information-providing entities, while light green and lighter green indicate the entities responsible for feedback and redressal and export compliance frameworks, respectively.

### Information sharing

The International Trade Administration (ITA) is assigned for dealing with international trade issues. It informs US export firms about the fundamental principles of the WTO TBT agreement, so that they clearly know of any discriminatory measures adopted by their trading partners.

ITA also keeps all the stakeholders informed about all possible policies and regulations in other countries through country-specific commercial guides. These guides contain all the necessary information relating to international trade such as the national standards, accreditation, and conformity assessment bodies as well as information on technical standards such as the labelling and marking requirements.

For example, the commercial guide for India mentions how Indian systems are currently posing various challenges to the US exporters since India fails to notify

many of its measures to the WTO, thereby slowing down or creating administrative barriers in the trade process (ITA, 2022). This shows that the commercial guide informs exporters not only about the regulatory requirements of their trading partners but also about the potential challenges that they might face in this regard.

### Feedback and redressal mechanism

Under ITA, various other agencies work on more specific issues. The Office of Trade Agreements Negotiations and Compliance (TANC) is responsible for monitoring and resolving any non-tariff trade barriers that exporters face in other countries. TANC ensures compliance with foreign trade regulations and protects the US industry from unfair trade practices abroad.

TANC has played a key role in defending domestic American companies when they faced issues in exporting their goods or services and has been efficient in the timely redressal of such issues.

### Box 1 A case study of TANC's assistance to export firms

In August 2011, Klinge Corporation, a manufacturing company based in York, Pennsylvania, was in a tough situation after bagging a multi-million-dollar contract from the Australian military for providing refrigerated containers and power-generation equipment. Klinge decided to ship these packages to China, which were to be mounted on containers before they were shipped to Australia. However, the shipment was held in Chinese customs for several weeks without providing any concrete reason. The matter was taken up by ITA after Klinge approached them. Klinge was sent a newsletter describing the export assistance services of ITA and how a trade barrier can be reported on the website and TANC would provide support in the elimination of such barriers and work towards protecting the rights of the United States as per trade agreements (TANC, 2011). As the issue was taken up, it was found that China has misapplied technical regulations by imposing more trade restrictions than necessary, thereby violating its TBT agreement. TANC resolved the issue by hosting a roundtable with US industry experts and the China Certification and Accreditation Administration (CNCA). Representatives from Klinge were also invited to take part in this deliberation. Within months of TANC taking up the issue, Klinge's issue was resolved and they obtained the necessary certifications for the items (TANC, 2011).

*Source: Authors' analysis based on The Office of Trade Agreements Negotiations and Compliance, 2011*

Since goods are being traded beyond domestic borders, exporters need support both domestically as well as in the importing country to overcome any hurdles they face. The US Commercial Service (CS), under ITA, helps domestic companies expand their business. The CS has created a global network of trade professionals spread across 100 US cities and in embassies and consulates of the United States in more

than 75 countries. The CS lookup tool helps explore resources for each country and gives all the necessary information such as compliance with regulations and opportunities in the country. There is also a market intelligence tool that helps companies with research and news on various sectors in the export destination to get a background of the conditions of the market before they decide to trade with the country.

### Box 2 A case study of US Commercial Service assistance to US exporters

Spectronics Corporation, an American manufacturing firm based out of New York, was exporting products to Japan through a local distributor, who had changed the freight forwarder, which led to their shipment being held up in the customs of Osaka in Japan for a long time and the authorities were demanding proprietary information. The firm sought assistance from the US CS immediately. They received a reply within 24 hours and confirmed that the Japanese authorities were right in demanding detailed information due to a change in the freight forwarder and made the firm feel more comfortable in releasing this sensitive information to the customs authority. The legal team of the firm was also involved to ensure safeguarding measures for protecting intellectual property following the advice given by the Commercial Service. Hence, Spectronics successfully waded through the crisis due to the quick resolution of queries by the CS (ITA, 2023).

*Source: Authors' analysis based on International Trade Administration, 2023*



The US Small Business Administration (SBA), an independent body set up under the federal government, provides support to small and medium-level enterprises (SMEs) with regard to export compliance. It provides information on all the rules and regulations applicable for trading within and outside the United States as well as information on processes for acquiring licences and certificates, export controls as well as other resources developed by the Department of Commerce. The US SBA has set up centres called US Export Assistance Centres (USEAC) across the metropolitan areas of the country. These centres aim to help American small businesses to compete in the global marketplace (SBA, 2023).

### Empowering export firms

The Bureau of Industry and Security (BIS), under the US Department of Commerce, introduced an Export Compliance Program (ECP) to create a series of procedures that help US firms to operate their export activities in accordance with the Export Administration Regulations (EAR) that are maintained by the Department of Commerce. The ECP aims to help firms align export regulations with their business operations, which will eventually streamline the export operations of the firms. The key elements of ECP include management commitment, risk assessment, export authorisation, recordkeeping, training, audits, handling export violations and taking corrective actions, and building and maintaining ECP (US Department of Commerce, BIS, 2017).

## 2.2 Governance framework for NTM compliance in the European Union

The European Commission's (EC) trade department is the apex body overseeing the exchange of goods and services for all member countries of the European Union. The EU's efforts to help the industry with export compliance dates back to 1996 when the European Commission launched a Market Access Strategy (MAS). The aim of MAS was to facilitate EU exports by enforcing multilateral (WTO) and bilateral trade agreements; taking action to provide EU exporters with information on market access conditions/requirements that apply in

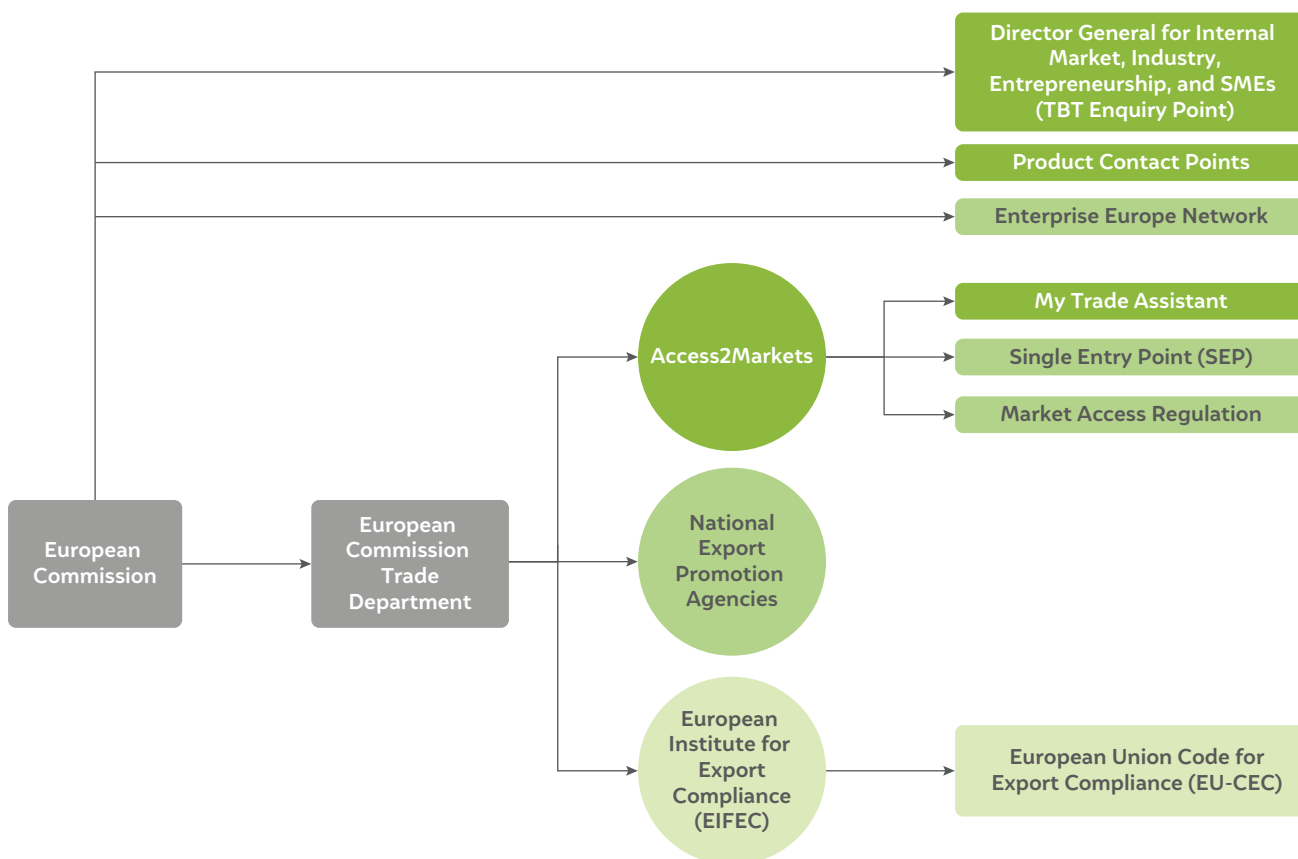
the importer countries; and addressing market-access-restricting policies that impede EU exports (EC, 1996). In 2007, as part of the implementation of the 2006 Global Europe strategy (EC, 2006), a stronger market access partnership (MAP) between the Commission, Member States, and businesses was established (EC, 2007). This partnership focused on a goal-oriented approach for concrete problems that EU businesses face in their importer countries (Figure 2).

As per the WTO TBT agreement, the Director General for Internal Market, Industry, Entrepreneurship, and SMEs is the TBT enquiry point. Other than the EU-wide inquiry point, there are inquiry points in the respective member states as well. Based on the feedback from exporters, the inquiry point sends comments to their counterparts in the importer countries.

Under the ambit of the European Commission Single Market Economy division, Product Contact Points (PCPs) have also been established across all the EU countries in order to assist firms by providing information on mutual recognition of goods and regulation of product harmonisation in the region in the internal EU market (EC, 2019a). The EU countries are required to publish their national rules for products as well, which is available on the Technical Regulation Information Systems (TRIS) database, which informs all the stakeholders about the new draft technical regulations and prevents technical barriers in the internal market (EC, 2018a). The EU product requirements are nearly completely harmonised, which means they are the same across all the EU countries and the national product rules found on the TRIS database are non-harmonised because they are country-specific. The national rules might differ based on product size, weight, composition, labelling, or packaging. Guidance has also been provided on the mandatory and voluntary labelling that needs to be done before they can be sold within or outside the EU.

**The EU's efforts to help the industry with export compliance dates back to 1996 Market Access Strategy (MAS) was launched.**

**Figure 2** Key government bodies in EU's NTM compliance



Source: European Commission. 2023. “The European Commission’s Trade Department”. Accessed June 26, 2023. <https://trade.ec.europa.eu/>

Note: Boxes in dark green indicate information-providing entities, while light green and lighter green indicate the entities responsible for feedback and redressal and export compliance frameworks, respectively.

### Information sharing

EC’s Access2Markets, a platform accessible by all businesses within the EU, particularly the SMEs, provides comprehensive guidance on all the rules and regulations (both domestic and foreign) and trade barriers, which can take many forms such as tariffs, import licensing, standards, and conformity assessment, labelling and packaging requirements, and other related information. A tool called ‘My Trade Assistant’ within Access2Markets provides country-specific information on trade agreements, geographical indications, and tariff-related information.

### Feedback and redressal

Single-Entry Point (SEP) is a toolbox on the Access2Markets portal to address any non-compliance or trade barrier-related issues faced by EU exporters in the importer countries. The complaints can be raised to the SEP team by filling out forms that can either relate to market access/trade barrier issues or sustainability problems. The team also provides guidelines for

completing these forms and is also available for assistance when the businesses/firms are preparing their complaints. As part of the pre-notification process, the team can help you assess whether a complaint must be raised and will guide you through the complaint process (EC DG Trade, 2022). The team follows a systematic process to assess the complaint and the assigned point of contact keeps the complainant informed about the progress of the complaint and the plan of action to address the issue.

In addition, to facilitate the entire process, SEP already has a list of registered trade barriers that are reported to the Directorate General for Trade of the European Commission, which can impact EU exports to non-EU countries. These registered barriers are classified according to type of measures and the affected sectors. If any foreign regulation that is obstructing an exporter’s trade is already a registered barrier, then the exporter need not raise a complaint. If the issue is not already registered in the database, only then a fresh complaint must be filed. Once the complaint is successfully raised

by the exporters, two key instruments—diplomatic actions and settlement of disputes—are employed to manage trade barriers.

While EC supports the EU region for NTM-related compliance, each EU country also has a support mechanism in the form of National Export Promotion Agencies, which guide country-specific companies in accessing international markets by providing information and also embassy contacts. These EPAs provide information as well as extend assistance to the domestic industry in complying with foreign regulations. For instance, Denmark's Trade Council is a part of the Ministry of Foreign Affairs and is mandated to help Danish companies in the fields of export, innovation, and growth. They help the companies by providing export market-specific information on rules and regulations and coordinate with the Danish embassies in the importer countries to help their exporters with tailored advice on laws, regulations, customs, and local practices (The Trade Council, 2023).

Under the Market Access Strategy, EC's Trade Department has been successful in addressing any trade barriers or concerns that the exporting companies have faced unexpectedly. The box below

shows the success stories of this mechanism and its efficiency in timely redressal of complaints.

There are EU-funded business support centres set up in various parts of the world to provide support services like market information, assistance on market access, and regulatory advice to make exporters feel safe while trading with other economies. A few of these centres include the EU–Japan Centre for Industrial Cooperation, EU SME Centre in China, and Support to European Businesses in South-East Asian Markets (SEBSEAM).

The European Commission also has a few agencies set up outside the trade department's purview. One among them is the Enterprise Europe Network, which was created to help SMEs widen their reach in the international market by closely working with industry stakeholders, research institutes, and development agencies. The network has local contact points set up across the world in both EU and non-EU countries, which assist SMEs by giving them tailored advice on international partnerships that they can engage in and all the related queries. There are also EU SME help desks in importer countries like China, Latin America, South-East Asia, India, and Africa for information provision as well as support services.

### Box 3

### Case studies for EU's Market Access Strategy

#### Case study 1

VanDrie, a Dutch company and a leading producer of veal in the EU, faced a barrier in 2000 when China imposed a ban on import of veal and beef from the EU, citing a risk of bovine spongiform encephalopathy (BSE), thereby creating an unfair barrier to EU's trade with China. The company then joined hands with the European Commission and the Dutch government to work out a solution to the trade barrier from its roots. Under the EU's Market Access Partnership, other member states and companies were also involved in the efforts (EC, 2018b). EU used all possible for a to convey the company's concerns to the Chinese authorities. Although the resolution of the issue took time, the joint efforts paid off in 2018 when China decided to grant access to imports originating from the Netherlands and Ireland. This story highlights the perseverance of the EU in supporting their exporters and helping them in case any complexity arises during the trade processes and otherwise.

#### Case study 2

Framesi, a medium-sized hair care company based in Italy, faced a barrier while exporting to China. Since China mandates the requirement of printing details of the product in Chinese on the outside packaging of products, the company claimed that this rule required small companies to incur huge costs, which was stretching their capacity and restricting them from exporting their products. Hence Framesi decided to approach the EU Commission to address this issue under their market access partnership, which allowed them to report the barrier easily and save Framesi from being barred from the Chinese market. The Commission and member states took measures to convey these grievances to the Chinese authorities, who then discontinued the implementation of the measure, thereby protecting SMEs and allowing Framesi to grow further as an exporter to the country (EC, 2019b).

## Empowering export firms

Detailed export compliance frameworks in the EU have been designed and disseminated to companies to ensure that the exports match the national standards that are set across each sector or product type. The compliance frameworks lay down key elements that form the foundation of the export compliance code developed in the EU.

EU's compliance framework is called the EU-CEC (European Union Code of Export Compliance). The main body responsible for international standard-setting and policymaking is the European Institute for Export Compliance (EIFEC). The EU's export compliance framework comprises certain principal standards that organisations need to follow to ensure better management and effective compliance. The founding principle of the EU's compliance framework is the "commitment to the implementation of appropriate measures, transparency, compliance to the applicable export regulations, acknowledgement and responsibility towards the policies and associated decisions, consistent commitment to compliance obligations with timely disclosure of changes made, and usage of all available

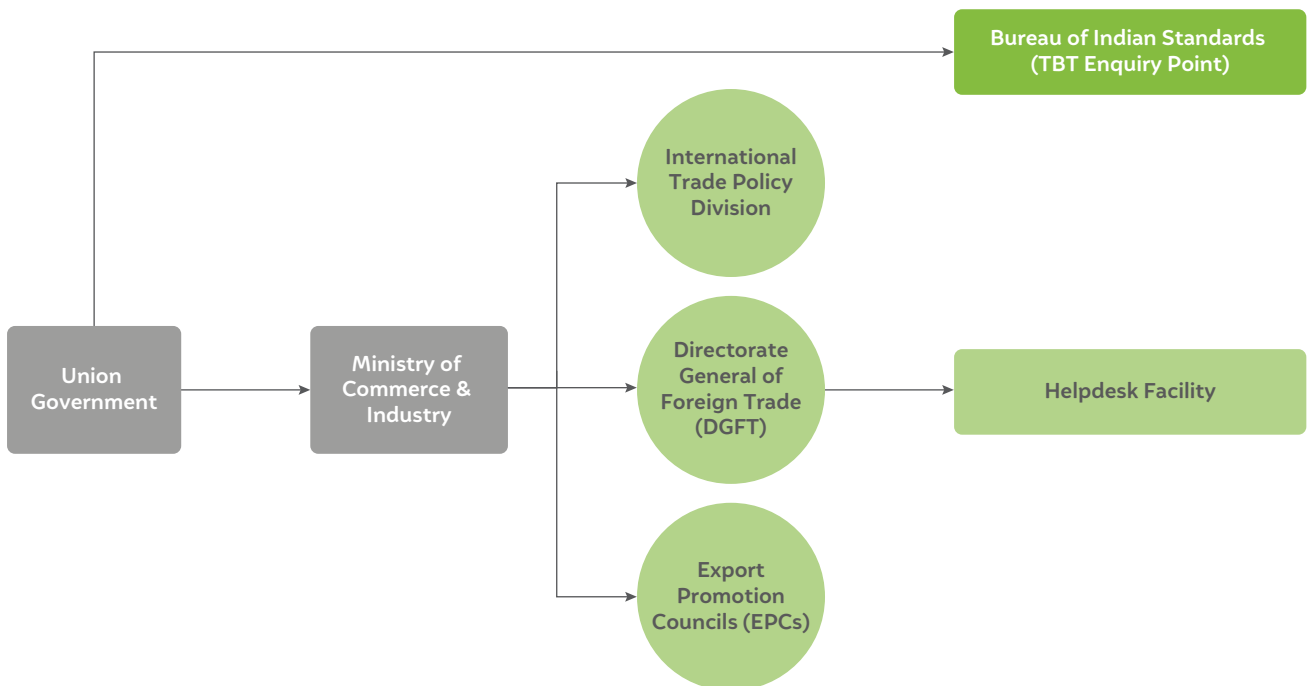
means in a way that it follows the export compliance policy to the highest possible degree" (EIFEC, 2018).

## 2.3 Governance framework for NTM compliance in India

Export-related matters in India are broadly controlled by the Ministry of Commerce and Industry (MoCI), Government of India. Under the MoCI, various divisions, attached offices, subordinate offices, autonomous bodies, public sector undertakings, and Export Promotion Councils (EPCs) work on different aspects of trade and industry. The most relevant bodies responsible for administering international trade in the country include the International Trade Policy Division, Directorate General of Foreign Trade (DGFT), and EPCs (Figure 3).

The Bureau of Indian Standards (BIS) has been appointed as the India WTO TBT inquiry point for all sectors except the telecom sector for which the Telecommunication Engineering Centre (TEC) is the TBT inquiry point. BIS issues standards regularly and the number of standards notified has been increasing over the years, which reflects the government's intent to ensure the quality of the goods being exported from and imported to India.

**Figure 3** Key government bodies in India's NTM compliance



Source: Authors' analysis based on Ministry of Commerce and Industry, Government of India. 2023. "About us". Accessed June 13, 2023. <https://commerce.gov.in/>

Note: Boxes in dark green indicate information-providing entities, while light green indicate the entities responsible for feedback and redressal and export compliance frameworks, respectively.

## Information sharing

As regards NTMs compliance, the MoCI organises meetings with the industry, where a designated legal firm updates the industry about the recently notified TBT and SPS measures from which the firms can foresee the possible impact of the measures on their exports and can work with the legal firm to raise concerns at the WTO regarding any regulation. This designated firm also sends weekly reports to industry contacts to track the latest SPS and TBT measures. In addition to this, there is also a TBT/SPS portal that is maintained by the Centre for WTO Studies, a think tank of MoCI, which requires registration for access to the information on the latest regulations that are implemented by key trading partners.

## Feedback and redressal

DGFT acts as a trade facilitator for exports and imports in the country. DGFT holds consultations with the Export Promotion Councils and the Trade Promotion Bodies of India to institute an efficient and transparent system of international trade in the country. To increase the ease of doing business, there is also a 24x7 helpdesk facility on the DGFT website to assist exporters in case of any problems. A common digital platform has also been created for quality control or trade disputes raised by Indians, foreign importers, or exporters in the online space. DGFT recently released India's Foreign Trade Policy 2023 (MoCI, 2023), which is a comprehensive framework containing various provisions for facilitating India's international trade. While the policy mentions provisions like ease of doing business, it does not cover NTM compliance for the industry.

The International Trade Policy Division plays a key role in developing and implementing India's foreign trade strategies. As India's representative in international trade negotiations, it oversees the negotiation of bilateral and multilateral trade agreements, adherence to trade accords, and marketing Indian exports. The International Multilateral Trade Negotiation Wing under the Trade Policy Division is divided into different functional areas and each of these areas works on reviewing compliance with various trade agreements with other countries, identifying and monitoring any NTMs in the key markets, and meeting the notification requirements of the WTO by timely release of information (DoC, 2023). To make sure that trade policies are in line with the requirements

of various sectors of the Indian economy, the division also conducts research and analysis on trade trends and engages with a variety of stakeholders.

EPCs in India are autonomous bodies established by the Government of India to promote and develop the country's exports in various sectors. These councils play a crucial role in enhancing India's exports and increasing the competitiveness of Indian products in the global market. There are a total of 24 EPCs in India as of now and they are governed by the Ministry of Commerce. While their mandate is to ensure export compliance, which also includes NTM-related compliance, the EPC websites do not necessarily contain information on the measures being taken for NTM compliance.

Like in the case of the United States and EU, India does not have designated help centres in their importer countries to help its exporters with issues pertaining to rules and regulations impacting their export.

India has launched a few initiatives to provide support to the MSMEs as well. This includes MSME Global Mart set up under the National Small Industries Corporation unit of the Ministry of MSMEs. The Global Mart facilitates information availability, provides support services, and is an all-in-one platform containing information for both buyers as well as sellers in a sector-wise format.

## Empowering export firms

Indian export firms do not have a formal export compliance mechanism. Large firms usually rely on external consultants for complying with complex compliance procedures and small and medium firms that are unable to access such services typically miss out on the export market.

While India has made progress over the last few years to ensure effective export compliance with foreign regulations, it is imperative to understand how far these facilities are utilised by exporters. In this regard, we held discussions with various stakeholders to gauge their perspectives on the NTM compliance governance in India.

**MoCI organises meetings with the industry, where a designated legal firm updates the industry about the recently notified TBT and SPS measures.**



Image: iStock

### 3. Insights from stakeholder discussions

The insights gathered from the discussions with industry associations and trade law firms, aiming to assess and suggest solutions for gaps in India's international trade governance mechanisms, are provided in this section.

As regards information sharing, stakeholders recognised the effectiveness of the structured way in which the EU communicates NTM-related information to their industry players by clearly offering information about the regulation, compliance steps, and the impacted sectors. It was highlighted that, for offering this kind of structured information flow, it is imperative to create capacity in the line ministries to be able to process the information that is received from other countries. It is only when this capacity is created that the information can be efficiently passed on to the nodal ministry for trade matters (MoCI).

The existing approach is largely fragmented in nature, for instance, some of the textile exporters stated that the respective EPCs, Apparel Export Promotion Council (AEPC) in this case, update them about the recent textile-related regulations from other countries. Instead of all the EPCs updating the information, a common portal would be more useful for information sharing, and EPCs can act as advising agencies to assist the industry in utilising these portals.

As regards feedback and redressal processes, the stakeholders highlighted that exporting firms are not sure who to approach in the MoCI or DGFT for addressing their issues and they need clear instructions and guidelines on who the relevant authority is in case of any query related to any foreign regulation. It has been noted that the exporters claim that even if they raise their concerns to the EPCs, their concerns seldom reach the concerned country and they do not get the solution they need to resolve their problems. The trade law firms taking part in the discussion stated that some form of assistance in foreign countries can facilitate a better understanding of the respective foreign regulations, ranging from technical clarifications to translation services in some instances.

Regarding the firm-level efforts, the discussions highlighted the inability of the firms to stay updated with the latest developments in the NTM space, as they have not appointed relevant personnel to track them. In this regard, the importance of firm-level policies to facilitate export compliance with foreign regulations was stressed.

Overall, while the stakeholders recognised the recent improvements in India's governance mechanisms pertaining to NTM compliance, several gaps were highlighted that need to be bridged to achieve better outcomes.

## 4. Comparative analysis of the governance frameworks

The stakeholder discussions served two purposes: first, understanding the effectiveness of the existing provisions in India related to three key NTM compliance and governance principles, and second, enabling a comparison between the Indian governance mechanism with that of the United States and EU. This section discusses the comparative assessment of the governance frameworks (Table 1),<sup>3</sup> which clearly highlights the areas that need to be strengthened to improve Indian industry's capacity to comply with foreign regulations.

The United States and EU clearly have a well-established system of providing information to the industry. While the US provides comprehensive information about various domestic regulations of its trade partners through the commercial guides, the EU maintains an Access2Markets portal to create a customised query based on the trade partner and industry sectors. While GoI's MoCI hosts regular meetings to update the industry players about the regulations notified to the WTO, it needs to be complemented by digital updates or information regarding the regulations, the impacted sectors, and compliance steps. This would ensure that information is easily accessible on mobile phones and can even be used by the SME segment that usually struggles to access to information through other media like emails.

**Table 1** Summary of country-level governance frameworks

Governance components	EU	US	India	Remarks on India's framework
<b>Information sharing</b>	Access2Markets/Trade Assistant provides importer and product-specific information on trade-related rules and regulations, to the EU exporters	ITA commercial guides provide information on all the policies sector-wise and regulations in other countries	MoCI organises TBT/SPS meetings for the industry; a think tank of MoCI manages the TBT/SPS portal	Ad-hoc mechanisms do not yield wider gains
<b>Feedback and redressal</b>	EC's Single-Entry Point addresses any non-compliance or trade barrier-related issues faced by EU exporters in the importer countries	TANC monitors and resolves any non-tariff trade barriers that exporters face in other countries	There is a 24x7 help desk facility on the DGFT website to assist exporters in case of any problems	Lack of clear instructions limits the utilisation of the services offered by DGFT
<b>Help centres in other countries</b>	EU-funded business support centres set up to provide support services like market information, assistance on market access, and regulatory advice	The US Commercial Service (CS) provides a lookup tool to explore resources for each country and gives all necessary information such as compliance with regulations and opportunities in the country	There are no help centres in other countries	The absence of this service poses a huge information barrier and adds to the cost of compliance
<b>MSME support</b>	Enterprise Europe Network is created to help SMEs widen their reach in the international market	US Small Business Administration (SBA) provides support to SMEs for export compliance	Government provides support to SMEs in many ways	There is no NTM-specific support
<b>Official firm-level compliance framework</b>	European Union Code of Export Compliance has certain principal standards that firms need to follow to ensure better management and effective compliance	Export Compliance Program (ECP) helps US firms to operate their export activities	There is no uniform compliance programme to be adopted by firms	Mandating firm level compliance is likely to lead to better national level outcomes.

Source: Authors' analysis

<sup>3</sup> India-specific remarks derived from stakeholder discussions are provided as a separate column.

Providing the information is not sufficient and it must be followed up with a formal interaction mechanism through which the industry can raise their concerns on compliance-related issues and concerned government department follows a systematic approach to deal with them. Although the MoCI and its sub-bodies like DGFT and EPCs are mandated to assist the industry with NTM compliance, there is no clarity regarding their role in this space, so the industry players are usually not able to access their services. The case studies of TANC in the United States and SEP facility in the EU for assisting industries highlight the importance of clearly providing instructions and guidelines to the industry players to access the assistance services, which is currently not provisioned in India's case.

With respect to the presence in other countries, we could not find any information regarding any assistance offered by Indian embassies or any other help desks in the importer countries. It was in fact mentioned in the stakeholder discussions that the diplomatic staff in the embassies are not equipped to carry out the designated tasks for NTM compliance and hence cannot manage additional responsibilities of helping the exporters in resolving on compliance issues and providing technical assistance such as language translations of domestic regulations for better understanding. The United States and EU demonstrate the importance of having an international presence and help centres. The US Commercial Service (CS) has a presence in around 75 countries and assists their exporters in accessing country-specific information on respective rules and regulations. EU also has centres in its key trade partner countries like Japan and China.

As regards support to SMEs by the government, the United States, EU, and India provide support for SME exports. However, in the case of India, there is no specific guidance for SMEs in the case of NTM-related compliance. While the Global Mart initiative

has been launched by the Government of India with the integration of Open Network for Digital Commerce (ONDC) with Global Mart to provide services to SMEs, SME exporters are required to subscribe to private consultancy services to acquire information about the key export markets, which can be a challenge for them.

Lastly, in terms of company-level directives for export compliance, while detailed frameworks are available and followed by exporters in the EU and United States, India does not enforce a firm-level compliance framework for exporters. In fact, some large Indian companies struggle to follow a structured compliance framework for their exports as they have not assigned a designated team to specifically deal with regulatory compliance required in the importing countries.

## 5. Policy recommendations

Compared to the governance frameworks in major global economies, it is evident where India's NTM compliance mechanisms fall short. Although India has made significant strides in drafting export compliance policies, a focused and collective effort is required to assist exporters with NTM compliance. The existing governance frameworks in key economies across the world clearly indicate the gaps in India's NTM compliance mechanisms. Various dimensions of NTM compliance require a dedicated policy focus, broadly based on three principles that have been outlined in this issue brief—information sharing, feedback and redressal, and empowering export firms.

**The fundamental reason for the absence of a robust information-sharing mechanism is the lack of capacity in the relevant sector-specific departments to understand the regulations.**



## 5.1 Information-sharing mechanism

The foremost requirement for effective NTM compliance is a streamlined information-sharing platform or mechanism, which is currently absent in India. While there are mechanisms to communicate the information and updates to the export firms, these are largely ad-hoc in nature and do not serve the needs of the exporters. The fundamental reason for the absence of a robust information-sharing mechanism is the lack of capacity in the relevant sector-specific departments to understand the regulations and provide the necessary information to the nodal department, which can then be shared in a structured format with the industry. The industry usually struggles with an inability to understand the regulations and therefore in its compliance. It thus becomes important to address this core problem before we think of applying technology to manage this information. Once the capacity in the relevant departments is built, a platform needs to be conceptualised to provide real-time updates to the exporters on foreign regulations, with a sector-wise coverage and compliance steps. It is important to also address the sticky challenge of reported harmonised system (HS) codes and their alignment with the possibly impacted products by the proposed compliance regulations.

## 5.2 Feedback and redressal

Though help desks are available in the relevant departments, no clear guidelines are available on how to approach them in case the exporters face problems with regard to compliance. Also, multiple contact points can also be misleading for the exporters. To overcome this confusion, a dedicated team in the relevant government department can be assigned as the contact point for the exporters who face challenges in NTM compliance. Furthermore, specific guidelines on how to prepare and submit complaints to this team should be framed. EPCs could then facilitate this process and subsequently track the success based on the extent of hassle-free exports by the industry.

The presence of help centres or having a dedicated NTM team in the respective embassies in other countries is necessary to acquire additional information or other guidance in case the exporters need it. A formal mechanism needs to be defined to connect these teams with the exporters. As MSMEs account for a considerable proportion of Indian exports, there needs to be a specific programme to assist them with NTM compliance.

## 5.3 Company-level frameworks

As firms bear the direct cost of inadequate compliance mechanisms, it is important that there are dedicated in-house policies for ensuring export compliance. The standardised framework can be conceptualised by a group of experts—from the government, legal firms, and think tanks—which should be followed by all the export firms. One of the key requirements for the framework is to have a dedicated team to deal with various aspects of export compliance in the respective firms.

To reach the target of USD 1 trillion in merchandise exports by 2030, which the Government of India has recently proposed, it must focus on limiting the existing constraints to exports from the country. One of the key steps in this direction is to facilitate compliance with the non-tariff measures in the form of regulations and labelling/certification requirements from the importing countries. Concerted efforts in this regard can lead to the increased realisation of India's export potential, which has not been limited due to the complexities arising from compliance with foreign regulations. The fundamental need to deal with non-compliance is putting a governance framework for NTM compliance in place, with adequate capacity building within the government to understand the various NTM regulations. This should be followed by a comprehensive mechanism to support the industry with various aspects of NTM compliance. This will not only enable the Indian exporters to meet the compliance requirements of the importing countries but will also ensure greater market access for superior-quality Indian exports. This is particularly important as an increasing number of sustainability-driven NTM regulations are being adopted by nations across the world.

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