Non-Tariff Measures: Definition, Classification and Transparency

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Introduction

There are various reasons why policymakers and trade analysts should worry about non-tariff measures (NTMs). The first reasons relates to trade costs. Although most NTMs add to the cost of trading, these costs can be quite diverse depending on the type of NTMs and its implementation. Moreover, some NTMs may actually be reducing trade costs by streamlining information between seller and buyers. A second reason why NTMs are relevant for policymakers relates to their proliferation. While NTMs have been around for years[1], the use of NTMs to regulate trade has been rising both in terms of countries adopting these measures as well as in their variety. A third reason is that NTMs can be discriminatory, and thus can have important trade diverting effect. Even when NTMs are indiscriminately applied to all imported goods, many NTMs discriminate among a country's trading partners because costs of compliance are often different across exporters.[2] Another reason is protectionist intents could be hidden behind NTMs. Governments may be using increasingly sophisticated methods about how they protect domestic industries. The fact that trade rules are now taking forms that are increasingly complex makes it harder to identify and quantify their effect. A concern is that some of these measures can therefore serve protectionist purposes. Final reason is that, as NTMs are integral part of the trade negotiation agendas both at the multilateral and at the bilateral level, policymakers should be aware on the use of NTMs and their effect on international trade, especially in terms of market access.

[1] For example, English laws in the 17th and 18th centuries required that all colonial trade be conducted on British ships manned by British sailors. Also, certain goods had to be shipped to Great Britain first before they could be sent to their final destination.

[2] Compliance costs are generally higher in low income countries, as NTM related production processes and export services are often more expensive, or need to be outsourced abroad

Definition and Classification

Broadly defined, NTMs include all policy related trade costs incurred from production to final consumer, with the exclusion of tariffs. For practical purposes NTMs are categorized depending on their scope and/or design and are broadly distinguished in technical measures (Sanitary and Phytosanitary Standards, SPS; Technical Barriers to trade, TBT and pre-shipment inspection, PSI) and non-technical measures. These are further distinguished in hard measures (e.g. price and quantity control measures), threat measures (e.g. antidumping and safeguards), and other measures such as trade-related finance and investment measures). In practice, NTMs are measures that have the potential to substantially distort international trade, whether their trade effects are protectionist or not. For example, measures such as quality standards, although generally imposed without protectionist intent, may be of particular concern to poor countries whose producers are often ill-equipped to comply with them.

The paucity of data on trade policy measures has been the main problem behind the study of the effect of NTMs. The fact that NTMs are increasingly used to regulate international trade makes the need to update data even more compelling. The reason behind the scarcity of databases on NTMs is largely related to the difficulty in collecting the data and in assembling consistent databases. Unlike tariffs, NTM data are not merely numbers; the relevant information is often hidden in legal and regulatory documents. Moreover, these documents are generally not centralized but often reside in different regulatory agencies. All these issues make the collection of NTM data a very resource intensive task. The first attempt to collect and categorize NTMs was conducted by UNCTAD in the late 1990s, and the data is available in the UNCTAD Trade Analysis and Information System database (TRAINS – accessible via WITS)[3]. However, the TRAINS NTMs database has not been consistently updated in the last 10 years. To fill this gap and in response to the increased interest of both researchers and policymakers, UNCTAD and the World Bank in collaboration with the International Trade Centre and the African Development Bank, have initiated a new effort on NTMs data – Transparency in Trade Initiative – which is a multi-year joint programme, particularly focusing on the objectives of improving the coverage and classification of NTMs and to update, consolidate and freely disseminate NTM data. As of

[3] http://wits.worldbank.org/wits.

2011, this joint effort has produced an updated NTMs classification as well as detailed new data for about 30 countries.

The definition of NTMs encompasses all measures altering the conditions of international trade including policies and regulations that restrict trade as well as those that facilitate it. NTMs are often incorrectly referred to as Non-tariff Barriers (NTBs). The difference is that NTMs comprise a wider set of measures than NTBs, which are now generally intended only as discriminatory non-tariff measures imposed by governments to favor domestic over foreign suppliers. The cause of this confusion is because in the past most NTMs were largely in the form of quota or voluntary export restraints. These measures are restrictive by design which explains why the word "barrier" was used. In present times, policy interventions take many more forms, and therefore it is preferable to refer to them as "measures" instead of "barriers" to underline that the measure may not be necessarily welfare or trade reducing.[4] For practical purpose, the commonly used definition of NTMs is:

"Non-tariff measures (NTMs) are policy measures, other than ordinary customs tariffs, that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both". (UNCTAD, 2010)

This definition is broad and to a large extent uninformative as it was in the case of NTBs, which were defined as policies that are not tariffs. To better identify NTMs, and distinguish among the various forms of NTMs, a detailed classification is therefore of critical importance. To facilitate data collection and analysis, the multitude of NTMs are often aggregated in various groups: hard measures (e.g. price and quantity control measures), threat measures (e.g. antidumping and safeguards), sanitary and phytosanitary standard (SPS), technical barriers to trade (TBT), and other categories such as export measures, trade-related investment measures, distribution restrictions, restrictions on post-sales services, subsidies, measures related to intellectual

[4] For example, NTMs such as standards and regulations may expand trade by facilitating production and exchange of information, reducing transactions costs, guaranteeing quality, and achieving the provision of public goods (Maskus, Wilson and Otsuki 2003). Where trade in some products would have been difficult without clear standards, with it, trade could be created between two countries.

property rights and rules of origin. Each of these groups comprises various and often very different forms of NTMs. In this regard, UNCTAD with support and collaboration from other organizations including ITC, World Bank and WTO produced a new classification which updates and refines the one developed in the 1990s.. This classification takes this into account and develops a tree/branch structure where measures are categorized into *chapters* depending on their scope and/or design. Then each *chapter* is further differentiated into several sub-groups to allow a finer classification of the regulations affecting trade. The NTMs classification encompasses 16 chapters (A to P) and each individual chapter is divided into groupings with depth up to three levels (1, 2, and 3 digits). Although a few chapters reach the 3-digits level of disaggregation, most of them stops at 2-digits. The chapters of the NTMs classification are illustrated in Figure 1.

Figure 1 – Non tariff measure classification (chapters)

Technical Measures	A	SANITARY AND PHYTOSANITARY MEASURES
	B	TECHNICAL BARRIERS TO TRADE
	C	PRE-SHIPMENT INSPECTION AND OTHER FORMALITIES
Non Technical Measures	D	CONTINGENT TRADE PROTECTIVE MEASURES
	E	NON-AUTOMATIC LICENSING AND QUANTITY CONTROL MEASURES
	F	PRICE CONTROL MEASURES, ADDITIONAL TAXES AND CHARGES
	G	FINANCE MEASURES
	H	MEASURES AFFECTING COMPETITION
	I	TRADE-RELATED INVESTMENT MEASURES
	J	DISTRIBUTION RESTRICTIONS
	K	RESTRICTION ON POST-SALES SERVICES
	L	SUBSIDIES
	M	GOVERNMENT PROCUREMENT RESTRICTIONS
	N	INTELLECTUAL PROPERTY
	O	RULES OF ORIGIN
Export Measures	P	EXPORT RELATED MEASURES

The classification organizes NTMs into various chapters, each comprising measures with similar purposes. All chapters reflect the requirements of the importing country on its imports, with the

exception of measures imposed on exports (chapter P). A brief description of the various chapters is presented in Box 1.

Box 1 – Brief description of chapters in the NTMs classification

Chapter A, on sanitary and phytosanitary measures, refers to measures affecting areas such as restriction for substances, and measures for preventing dissemination of disease. Chapter A also includes all conformity assessment measures related to food safety, such as certification, testing and inspection, and quarantine.

Chapter B, on technical measures, refers to measures as labelling, and other measures protecting the environment, standards on technical specifications, and quality requirements.

Chapter C, classifies the measures related to pre-shipment inspections and other customs formalities.

Chapter D, Contingent measures Measures implemented to counteract particular adverse effects of imports in the market of the importing country, including measures aimed at "unfair" foreign trade practices, contingent upon the fulfilment of certain procedural and substantive requirements.

Chapter E, licensing, quotas and other quantity control measures, groups the measures that have the intention to limit the quantity traded, such as quotas. Chapter E also covers licenses and import prohibitions that are not SPS or TBT related.

Chapter F, Price control measures. Measures implemented to control or affect the prices of imported goods in order to, inter alia,: support the domestic price of certain products when the import prices of these goods are lower; establish the domestic price of certain products because of price fluctuation in domestic markets, or price instability in a foreign market; or to increase or preserve tax revenue. This category also includes measures, other than tariffs measures, that increase the cost of imports in a similar manner (para-tariff measures).

Chapter G, on finance measures, refers to measures restricting the payments of imports, for example when the access and cost of foreign exchange is regulated. It also includes measures imposing restrictions on the terms of payment.

Chapter H, Measures affecting competition. These measures grant exclusive or special preferences or privileges to one or more limited group of economic operators. They refers mainly to monopolistic measures, such as state trading, sole importing agencies, or compulsory national insurance or transport.

Chapter I, on trade related investment measures, groups the measures that restrict investment by requiring local content, or requesting that investment should be related to export in order to balance imports.

Chapter J, on distribution restrictions, refers to restrictive measures related to the internal distribution of imported products.

Chapter K, on the restriction on post sales services, refers to difficulties in allowing technical staff to enter the importing country to provide accessory services (repair technological goods imported).

Chapter L, contains measures that relate to the subsidies that affect trade.

Chapter M, on government procurement restriction measures, refers to the restrictions bidders may find when trying to sell their products to a foreign government.

Chapter N, on intellectual property measures, refers to the problems arising from intellectual property rights.

Chapter O, on rules of origin, groups the measures that restrict the origin of products, or its inputs.

Chapter P, on export measures, groups the measures a country applies to its exports. It includes export taxes, export quotas or export prohibitions, etc.

Transparency

Lack of regulatory transparency is a major and recurrent obstacle both for policymakers negotiating trade agreements and for businesses seeking to trade internationally. The transparency of the regulatory framework not only facilitates cross border transactions, but also helps identifying and addressing obstacles to trade. In addition, transparency is essential to check against subtle forms of protectionism. Transparency is also important for a non-discriminating business environment. When transparency is lacking, there is an additional cost involved in obtaining information. Fixed costs associated with obtaining the relevant information are often larger for foreign firms than domestic firms, thus making NTMs de facto discriminatory. In addition, small and medium enterprises have fewer capacities to absorb these information costs, and thus will be in a disadvantageous position vis-à-vis more established international companies.

In addition to transparency related to the NTM per se, there can be compliance costs attributable to lack of transparency in how regulations are interpreted and implemented. Given uncertainties in how regulations will be enforced, assessment of conformity can be more difficult and expensive. In this regard customs, technical and procedural capabilities are often an issue, as well as outright corruption in the implementation of measures. Transparency in the implementation of regulations is a key problem, particularly in developing countries.

Transparency can be improved with the established multilateral notification process. However, these notification mechanisms are not costless and governments may be reluctant to bear the costs involved. In addition, although there are transparency provisions in many agreements (e.g., notification of SPS and TBT measures to the WTO), many are not enforced properly, some for the very reason that impose additional burden to members. Moreover, domestic regulators are often unaware of such international requirements. A more strict enforcement of transparency disciplines paired with efforts to streamline NTMs and trade facilitation initiatives can play a role in increasing transparency. The proliferation of RTAs may also contribute to improve

transparency. Capacity building in developing countries in the context of regional trade agreements can help to increase transparency and to reduce problems associated with NTMs (e.g. through assistance with inspection legislation, setting up inspection systems, equivalence, and technical assistance for risk assessment). In addition, regional institutions can provide a vehicle for increased involvement of participating national economic and trade agencies in the formation of rules, and also a forum for meetings between national regulators (which improves communication on measures and confidence in their application).

Transparency in rules and regulations is not only related to information costs. There are several additional important reasons why transparency is an important prerequisite to tackling NTMs. One reason is related to the possible protectionist intent of NTMs. As Bhagwati (1988) remarked, exposing illiberal policies to daylight and scrutiny would lead to better, and more liberal, policies worldwide. Another reason is that, whereas some NTMs have a protectionist purpose, others address societal concerns which are largely the same everywhere, albeit to different degrees. Publicly disclosing NTMs information encourages latecomers to the regulation-making process to adopt measures patterned after existing ones, thus reducing the bureaucratic and political burden of designing regulations, improving design, and promoting natural harmonization as opposed to fragmentation. Finally, transparency in NTMs involves more than simply having information on measures or notifications readily available. It requires knowledge and analysis of how international trade in general and companies in particular are affected by these measures. Policymakers often ask aggregate assessment on the importance of a particular type of measure and its impact. The economic analysis can play a useful role in informing policymakers to a better understanding of the impact of NTMs.

To increase the availability of information of NTMs, UNCTAD, ITC, African Development Bank and the World Bank, have been working together to collect and to improve the organization of data on NTMs. In addition, several Regional Economic Communities (RECs) in Africa have started to put in place monitoring schemes for NTMs affecting intra-bloc trade. Moreover, some countries have implemented autonomous projects to provide NTMs information so as to facilitate both imports and exports. These initiatives, if properly coordinated, have the

potential to improve the picture drastically in terms of transparency in NTMs in the next few years.

Data Collection

Up to recently, the authoritative source of statistical information on NTMs was the TRAINS database maintained by UNCTAD. A major achievement at the time, TRAINS put together information on NTMs coded according to a precise NTMs nomenclature over the Harmonized System (HS) 6-digit classification system. The pairing of the NTMs nomenclature with the HS classification allowed to easily match NTMs data with tariff and trade data and thus was a big step forward compared to the WTO's notification system which, as already discussed, has suffered from imprecise description of the products affected by the measures notified.

However, TRAINS coverage was incomplete in terms of countries, as fewer than 100 countries were covered. It was also incomplete in terms of measures, with heavy emphasis on old-style "command-and-control" NTMs like quotas and prohibitions, and far less comprehensive coverage of new-style regulations like SPS and TBT. In addition, data collection was not sustained across time and resulted in a one-time effort with most of the data collected between 1999 and 2001.

Besides its limitations, the TRAINS database has been used extensively by researchers and has generated important statistical information on the incidence of NTMs and their severity. However, with no follow-up in the data collection and given the limitations of the initial exercise, empirical analysis on NTMs has been hitting diminishing returns.

Over the last few years, under the impulse of UNCTAD, a new data collection effort has been undertaken, with a pilot phase successfully concluded in 2010. As discussed, this effort started with a new and more detailed classification incorporating new forms of NTMs. Besides generating new data and interest for a new effort to replenish the TRAINS database, the pilot phase generated useful lessons on the process itself. Even though some countries had shown the capability to organize the data collection themselves, it was clear that relying on countries was bound to encounter the same basic incentive problem that WTO notifications have been encountering: countries that do the data collection properly look like they are intensive users of NTMs, and therefore potentially "bad players" in the world trading system, whereas countries

that under-reported look like they are “good players”. Whereas data collection done for statistical purposes under the auspices of UNCTAD has less of a “surveillance” overtone than in the case of notifications to the WTO, the incentive problem is basically the same. Essentially, countries do not have many incentives in disclosing information on the regulatory regimes they apply on imports but are more interested in better understanding the regulatory regimes of their trading partners. Therefore, the collection of data in global or regional manner often results in much less resistance. In addition to the incentive problem, many countries simply did not have the capacity to do the data collection themselves, at least without the support of external technical assistance.

Regional collection of NTMs data coordinated by RECs is potentially a powerful way of overcoming incentives and technical problems, but also in this case the technical and organizational capabilities of RECs vary substantially, and their capacity to organize the data collection also varies for particular reasons that do not necessarily correlate with overall capabilities. For instance, ALADI has successfully coordinated NTM data collection for Latin American countries in collaboration with UNCTAD. ASEAN, with informal assistance from the World Bank and UNCTAD, is currently setting up an agenda for coordinating the various independent national data collection efforts occurring in the region. Some of the regional initiatives are reviewed in more detail in the following section; suffice it to say that relying on the RECs for the data collection, while providing a natural route toward sustainable data collection, is likely to also require substantial technical assistance.

In parallel and in coordination with the activities listed above, the World Bank initiated NTMs data collection projects in several countries. Data collection was subcontracted to local consultants including academics, think tanks and consulting firms. All considered, as 2012 the data covers about 30 countries plus the European Union.

Table 1 - NTM data collection: country coverage as of 2011

	LAC	NA	ECA	MENA	SSA	SA	EAP
Covered	Argentina Bolivia Brazil Chile Colombia Ecuador Mexico Paraguay Peru Uruguay Venezuela		E.U.	Egypt Lebanon Morocco Tunisia	Kenya Mauritius Tanzania Uganda Senegal Namibia Madagascar South Africa	Bangladesh	Japan Philippines Indonesia Cambodia Laos HK, China
In collection							China PRC

Some updating and new data collection is currently planned; for instance, SADC and COMESA countries are expected to collect data in 2012, still data collection is a resource intensive and costly. Thus, if the one-off impulse in the data collection effort is undoubtedly useful, it does not provide an answer to the problem of sustainable NTM data collection.

In this regard, the Transparency in Trade (TNT) initiative is an attempt to put trade data collection, publication and dissemination on a sound footing by providing a clear framework for collaboration between UNCTAD, the World Bank, the ITC and the African Development Bank.

The TNT initiative seeks, inter alia, for financing over a four-year period of data collection on NTMs, service trade and regulations, anti-dumping, and tariffs & trade data. It is strongly innovative in that it emphasizes as one of its core principles universal free access to data, as opposed to the many restrictions and fees that have long plagued trade data publication, with adverse consequences particularly for researchers, in particular younger ones and those in developing countries which do not have access to the research funds that can finance subscriptions to expensive databases.