

Trade and Public Policies: NTMs in the WTO

Xinyi Li

Trade Policies Review Division, WTO Secretariat

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What is an NTM?

- NTMs are different from tariffs
 - Any measures that are not import tariffs but that can have an impact on trade flows
 - Extremely diverse in terms of:
 - Policy intention (to lower trade, or to achieve other public policy goals)
 - Policy type (price, quantity, or regulatory measures)

- NTMs can be applied at the border, and/or behind the border.



UNCTAD NTMs categories

Imports	Technical measures	A. Sanitary and Phytosanitary Measures (SPS)
		B. Technical Barrier to Trade (TBT)
		C. Pre-shipment Inspection and other Formalities (PSI)
	Non-technical measures	D. Contingent Trade-Protective Measures
		E. Non-automatic Licensing, Quota and other quantitative controls (QC)
		F. Price Controls (PC)
		G. Financial Measures
		H. Measures affecting Competition
		I. Trade-related Investment Measures
		J. Distribution Restrictions
		K. Restrictions on Post-sale Services
		L. Subsidies (Excluding Export Subsidies under P)
		M. Government Procurement Restrictions
		N. Intellectual Property
		O. Rules of Origin
Exports	P. Export-related Measures	



Principles of the MTS

- The multilateral trading system (institutionalised as the World Trade Organization) is a **rule-based** system for its Members.
- **Non-discrimination** principle is at the heart of MTS.
- **Transparency** is the best manner to improve the rules in the MTS.
- Accountabilities make sure all commitments are properly enforced.
- Flexibility to get everyone on board



A History of NTMs in the MTS

- NTMs have never been new in the multilateral trading system.
- Members were concerned about the effect of tariff disciplines will be diluted/undercut by other policy substitutes.
- Discipline on NTMs was discussed when the GATT was conceived.
 - GATT favoured using tariff because of transparency and efficiency
 - QRs were the prevailed NTM back then.
- Kennedy Round (1964-67) was the 1st attempt in negotiations to address a broad range of NTMs (e.g. anti-dumping, health standards).



GATT provisions on NTMs

- Article III provided national treatment, and outlawed internal rules on imported products that were not applied equally to “like” domestic products.
- Article XI clearly prohibited the introduction of new quantitative restrictions and required the elimination of existing ones.
- Article XX explicitly recognized that measures “necessary to protect human, animal or plant life and health” were justified.



GATT provisions on NTMs

- Other non-tariff measures were considered too complex or controversial to be addressed through general rules or “codes of conduct” alone.
 - Article VI established rules regarding anti-dumping and countervailing duties.
 - Article VII specified that customs valuation systems should not be based “on arbitrary or fictitious values” assigned to imports.
 - Article VIII aimed to limit administrative fees assigned to imports and tried to simplify the documentation required by customs officials.
 - Article IX sought to prevent discriminatory restraints on imports through the use of rules of origin.



A History of NTMs in the MTS (cont.)

- Tokyo Round (1973-79) was the 1st successful round of negotiations on disciplines on NTMs.
 - Members' growing concerns of NTMs frustrating market access conditions
 - Disciplines on quantitative restrictions, **technical barriers to trade**, customs (e.g. **valuation, licensing**), subsidies and countervailing measures, and government procurement were discussed.
 - Membership of the negotiated codes were limited, but the 1979 GATT Decision affirmed that these codes (except government procurement) would be applied in an MFN manner.



- Continued to Uruguay Round...
 - Expands coverages to services and intellectual property
 - Agreements reached on agriculture, and sanitary and phytosanitary measures.
 - GATT disciplines on import licensing and rules of origin were also strengthened, while existing rules on subsidies were expanded.
 - Developing countries played a significant roles in the success of the Uruguay Round.

- The focus and scopes of discussions/negotiations on NTMs evolved through rounds of negotiations.



Looking ahead...

- **If** non-tariff measures are emerging as an even more critical focus of the WTO's work, it is largely a reflection of the system's successes, not its failings.
- The system has historically found it harder to address NTMs than tariffs (i.e. traditionally focused on the exchange of tariff reductions).
 - NTMs are more complex and country-specific
 - NTMs can involve domestic policy objectives only indirectly related to trade.

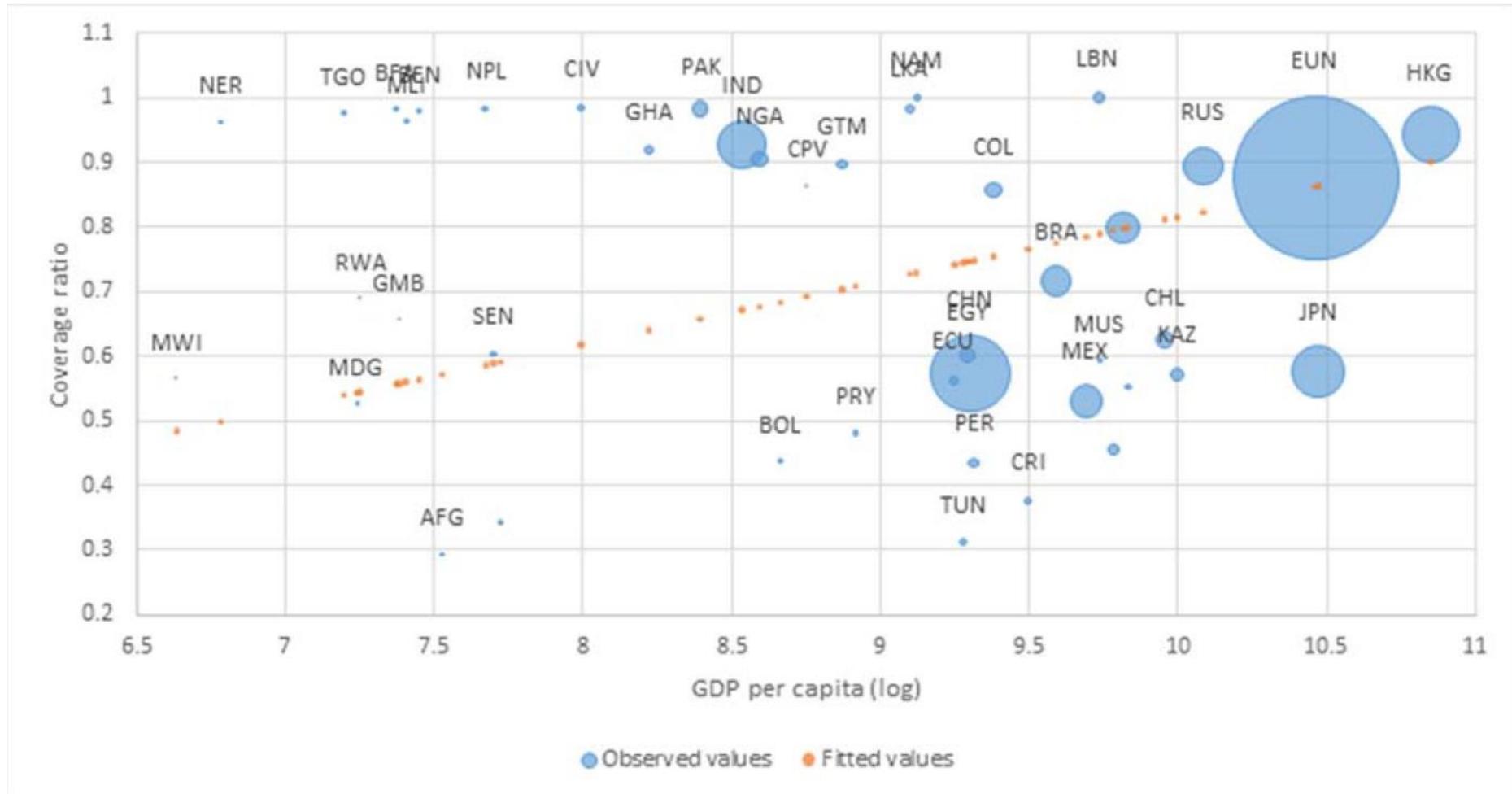


Transparency is a challenge

- Transparency is a major issue with regard to NTMs.
- Information on public policies is not as easily accessible as information on border measures.
- The trade effects of public policy measures are difficult to measure.
- NTMs are diverse and not always easy to compare across countries and sectors.
- Ad Valorem Equivalents are only approximate but still better than some other approaches.
- The effects of NTMs on trade depend on how they are applied



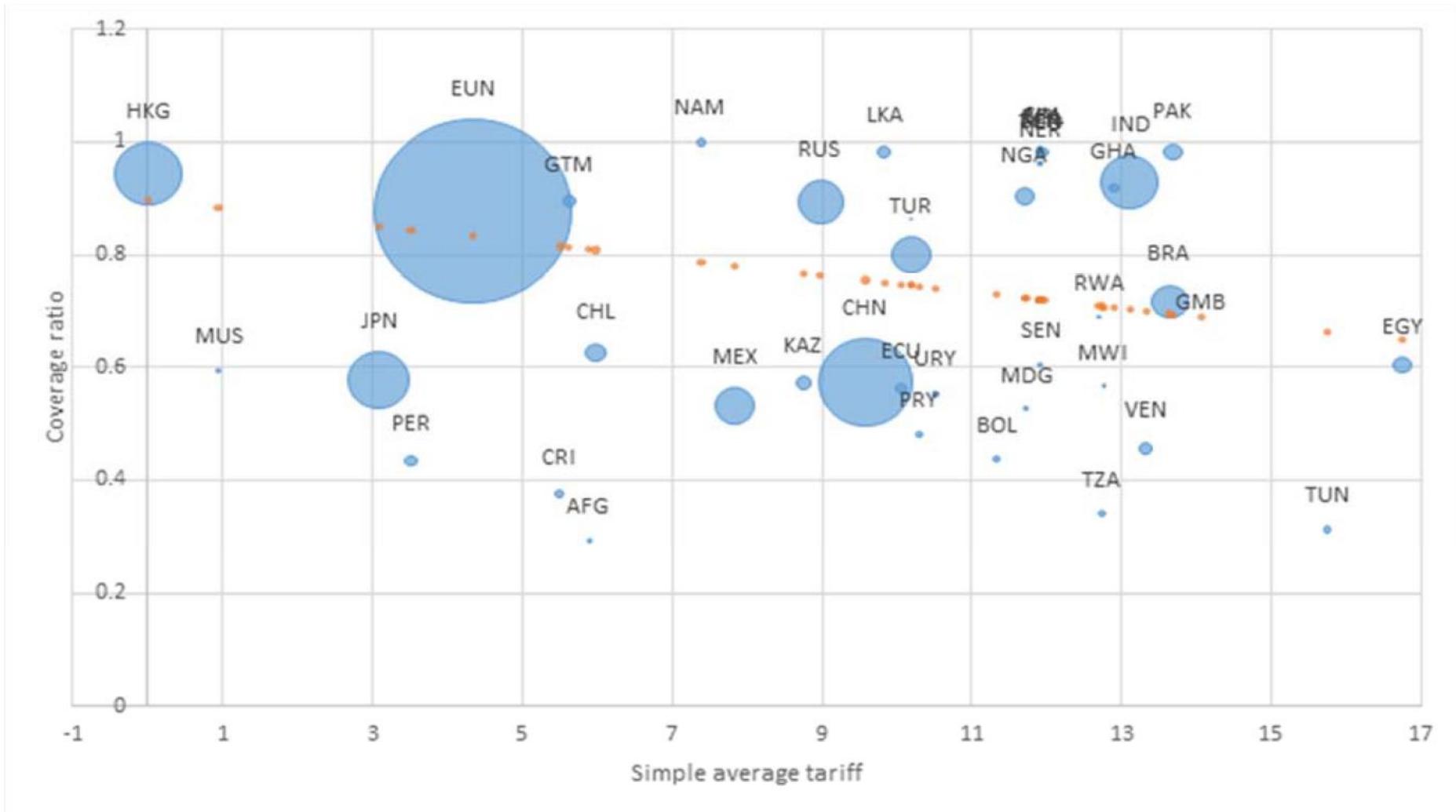
NTMs coverage ratios and per-capital GDP



Source: Ederington and Ruta (2016)



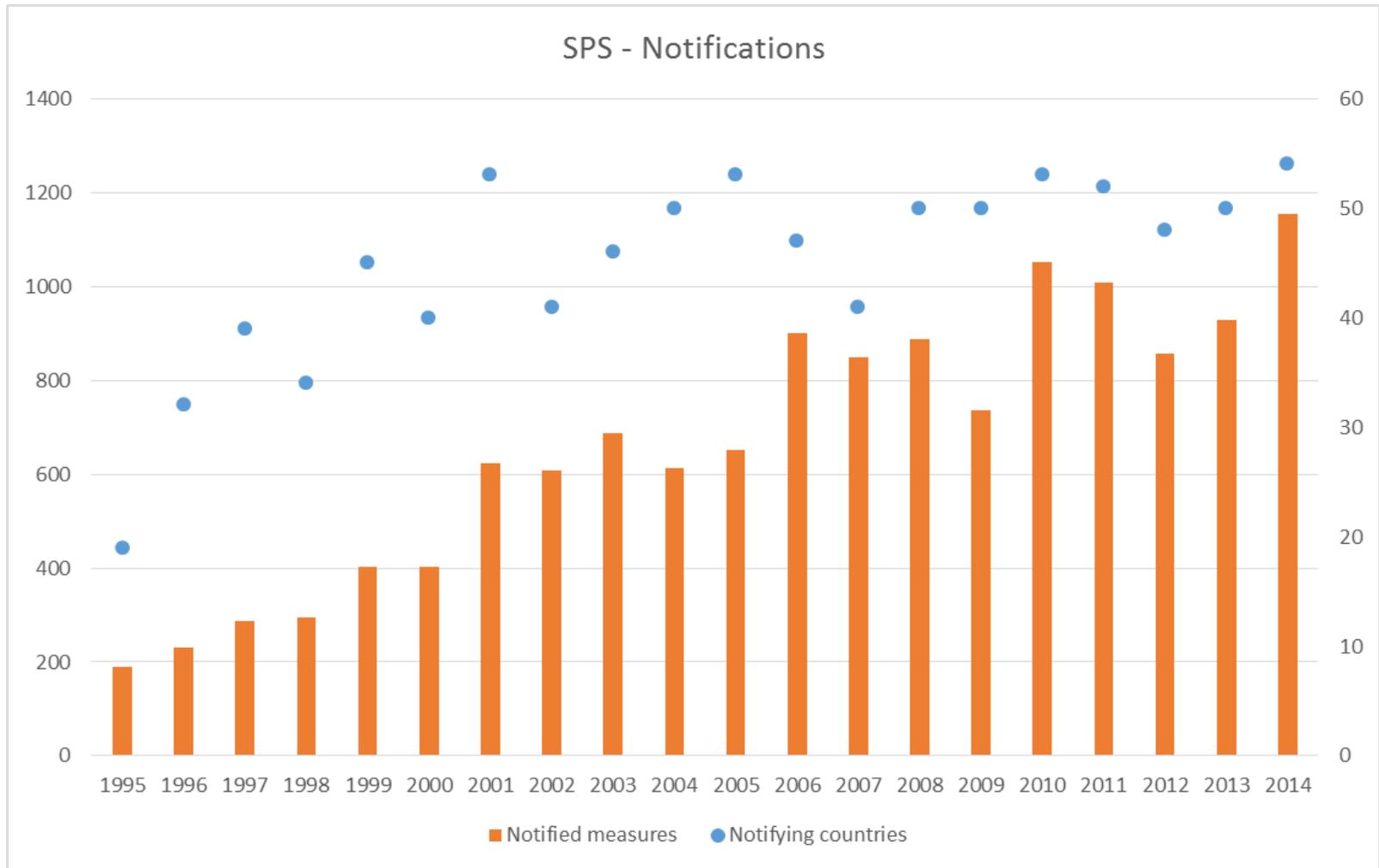
NTMs coverage ratios and average tariffs



Source: Ederington and Ruta (2016)



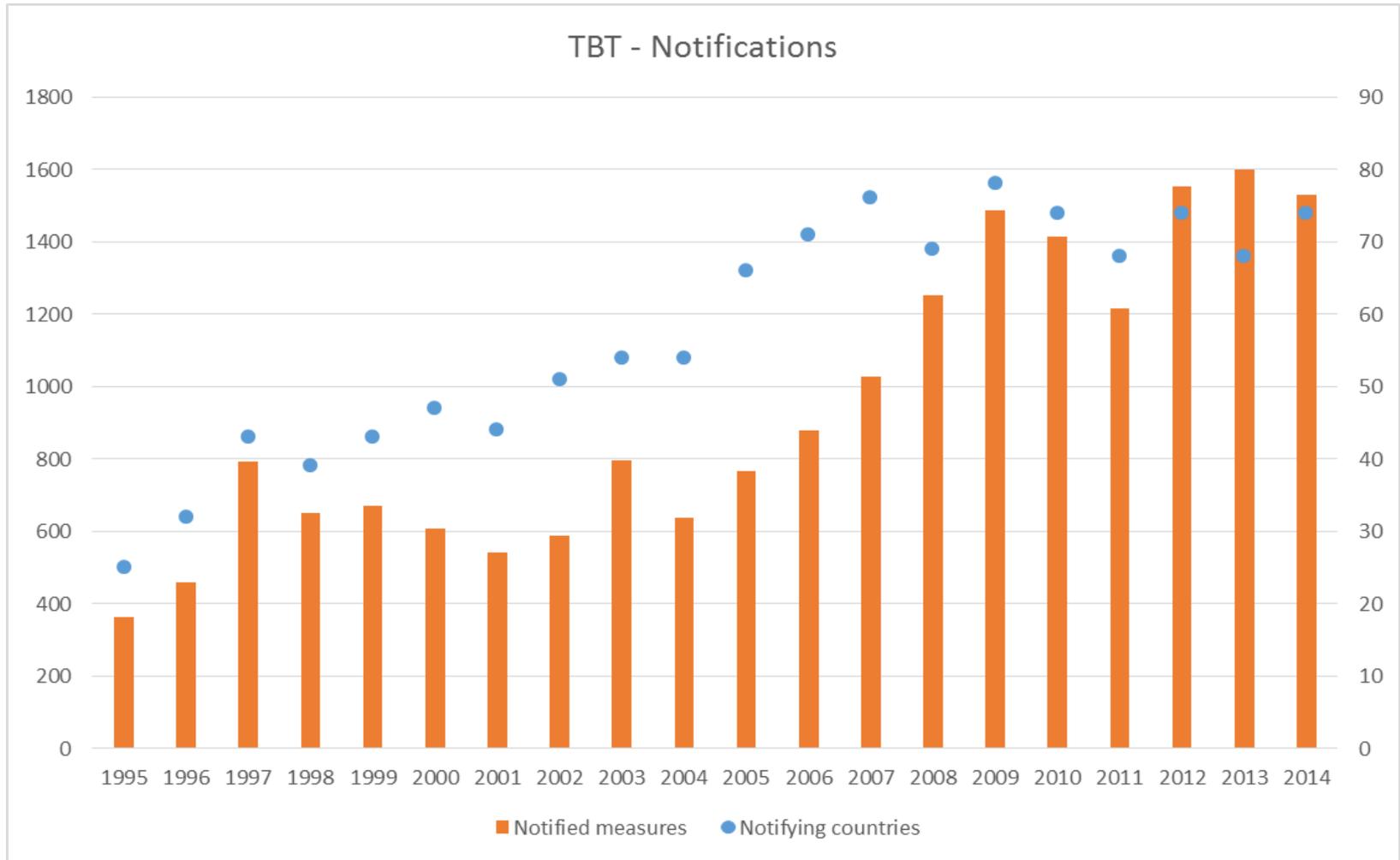
SPS notifications, 1995-2014



Source: Ederington and Ruta (2016)



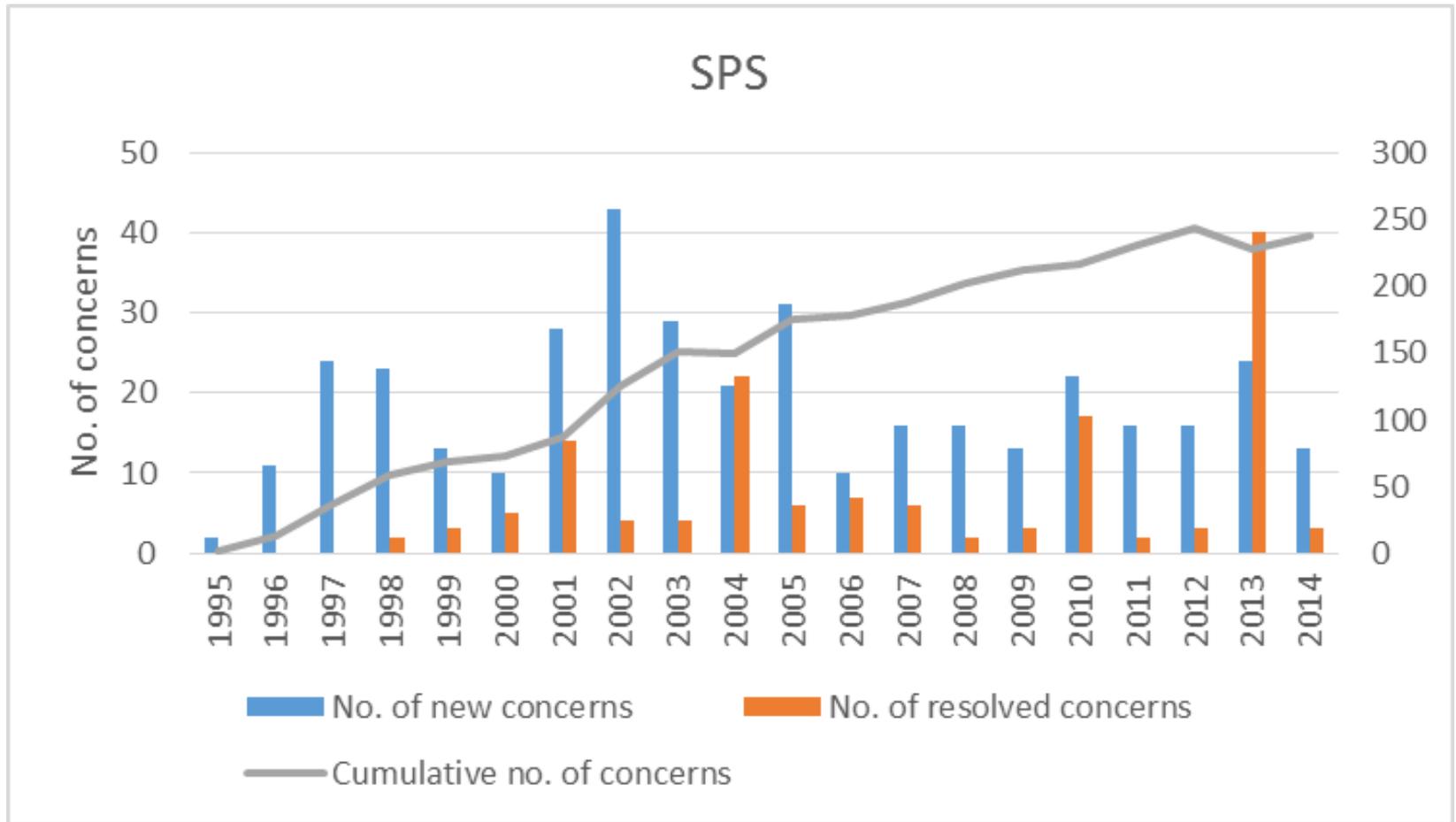
TBT notifications, 1995-2014



Source: Ederington and Ruta (2016)



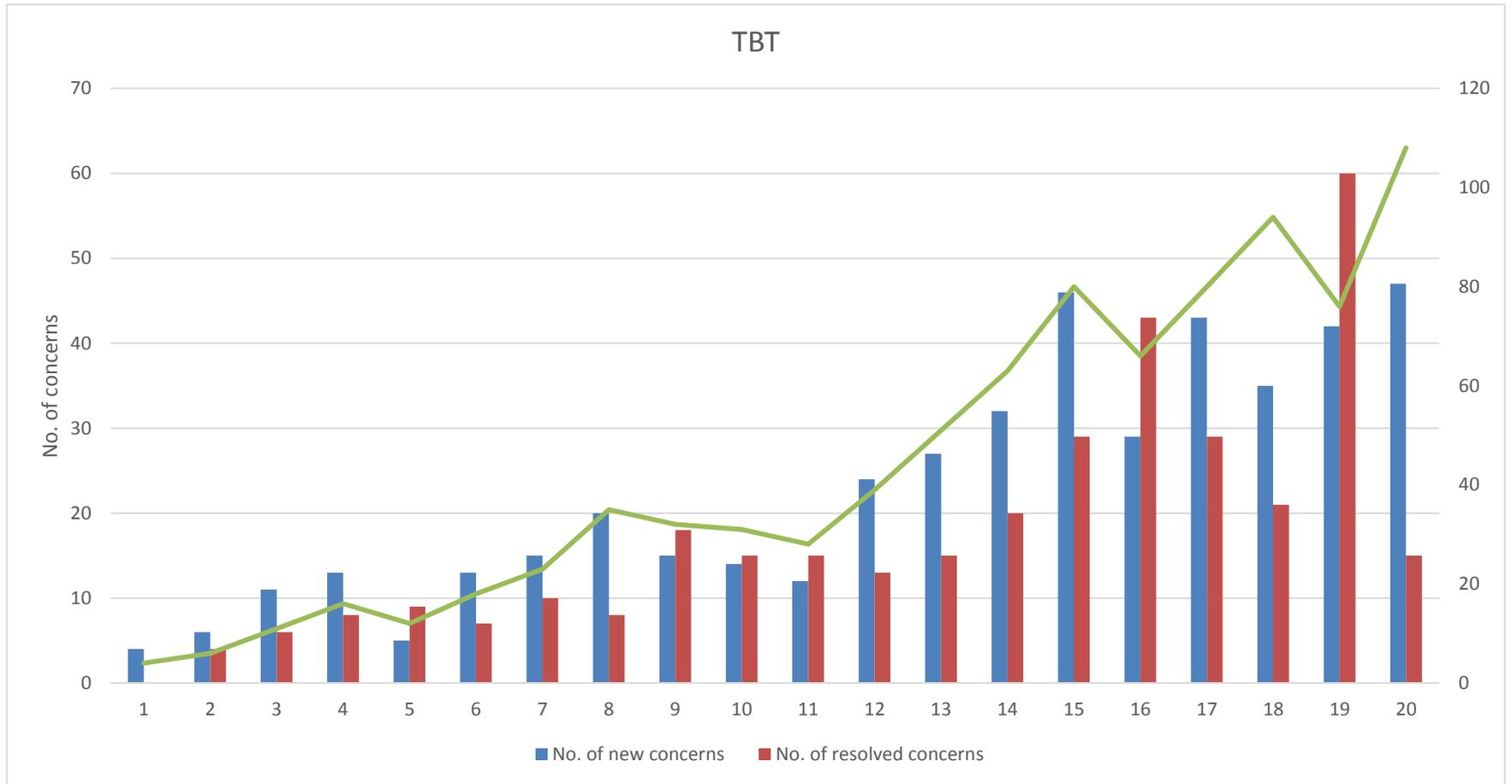
SPS Trade Concerns, 1995-2014



Source: Ederington and Ruta (2016)



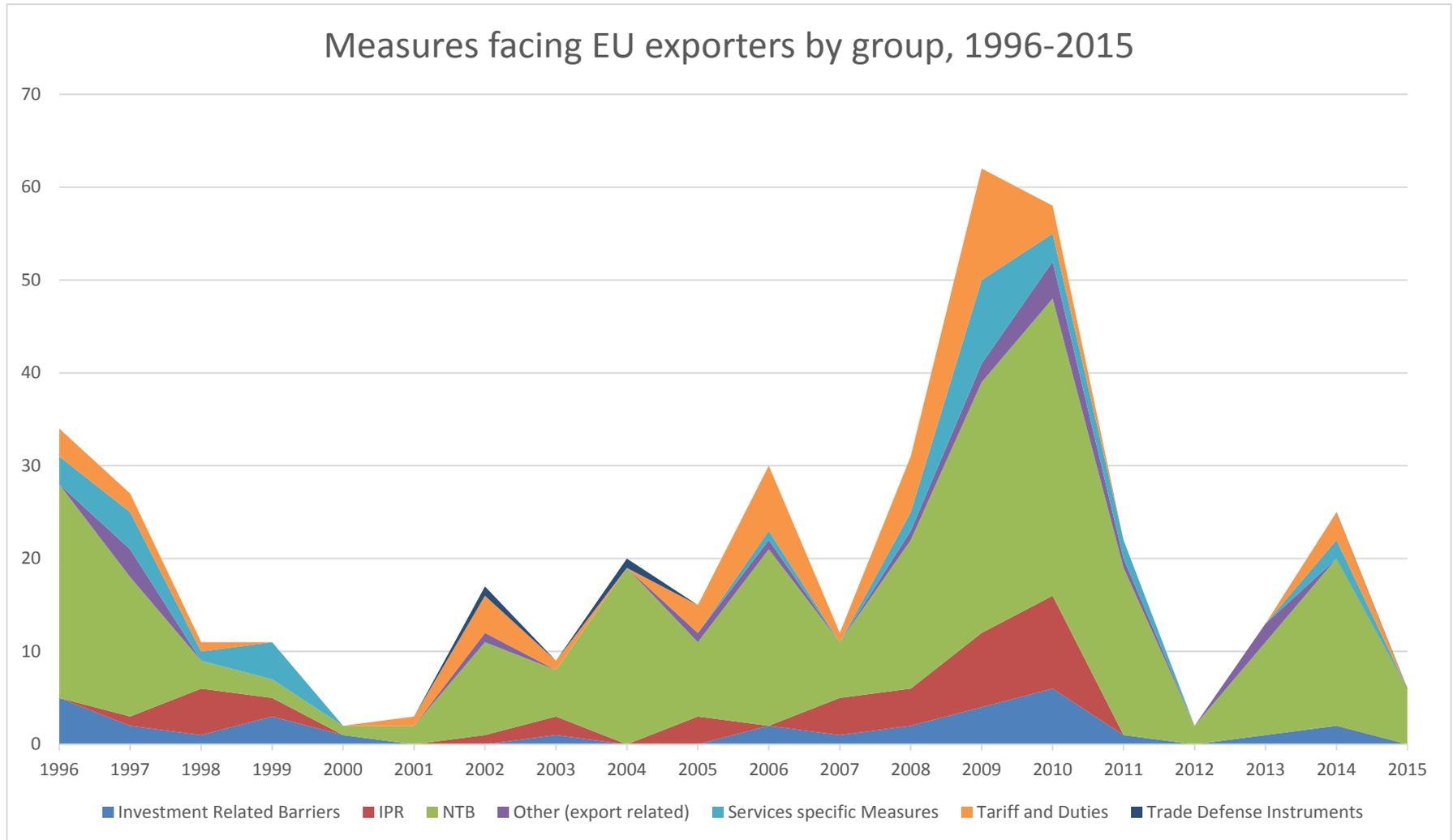
TBT Trade Concerns, 1995-2014



Source: Ederington and Ruta (2016)



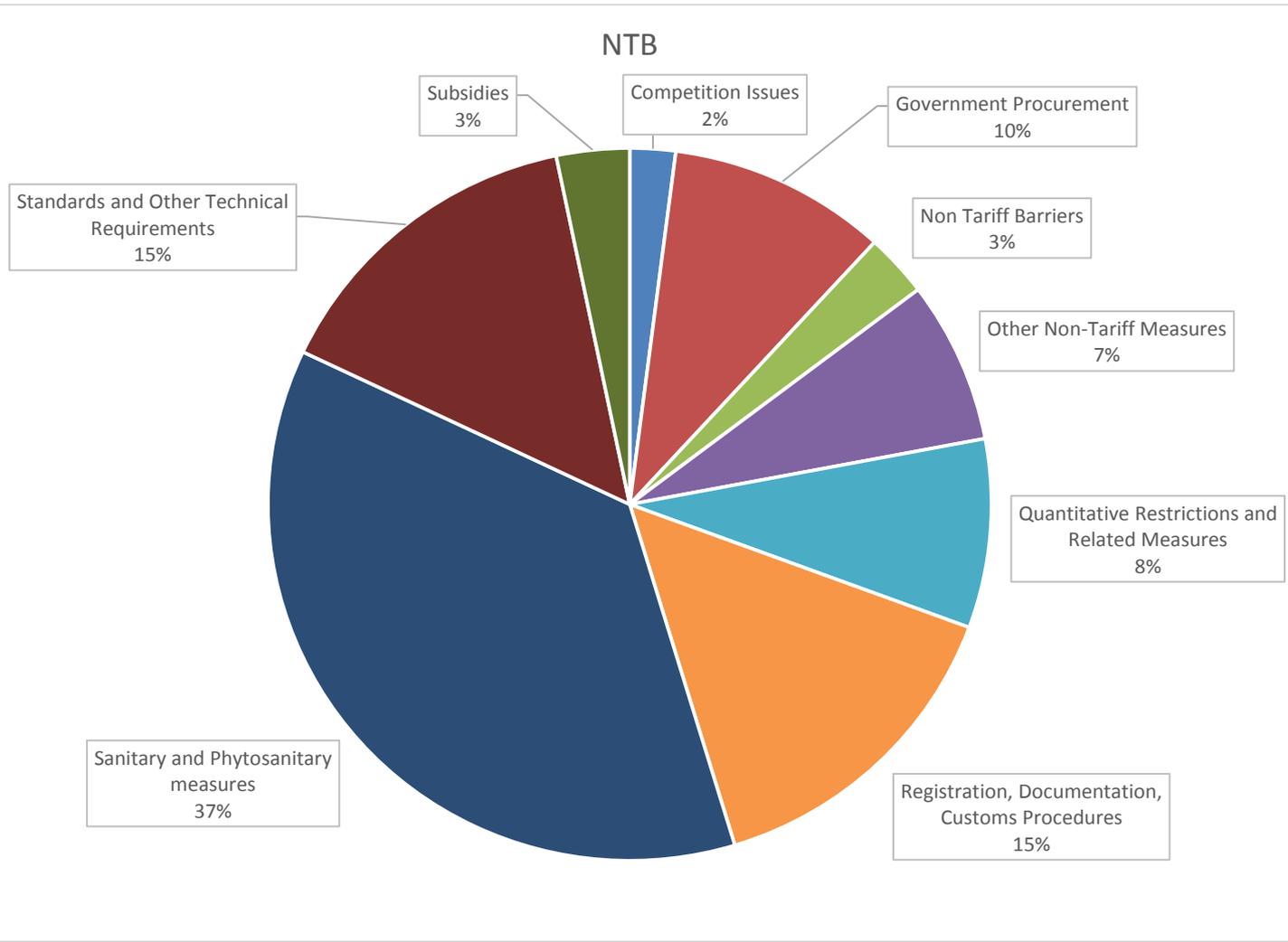
Measures faced by EU exporters



Source: Ederington and Ruta (2016)



NTMs faced by EU exporters



Source: Ederington and Ruta (2016)



NTMs in the 21st Century – the crisis

- Post-crisis intervention measures may include NTMs.
- In response to the crisis, subsidies were rolled out:
 - Bailed out of the banks
 - Specially programmes to encourage consumers to buy specific products.
 - Public procurement behaviours.
- It is difficult to evaluate the true policy motives behind those NTMs.
- This ambiguity in government motivation is further complicated by the increased importance of intermediate goods trade in global value chains.



- Identifying the motive behind NTMs becomes especially important in a crisis situation because it can easily lead to beggar-thy-neighbour policies.
- It is argued that countries play coordination games would have achieve the best welfare.
- Monitoring NTMs and policy coordination are essential.
- The recent financial crisis may affect the motivation to pursue regulatory convergence in the financial services sector.



NTMs in the 21st Century – climate change

- Facing the issue of climate changes, countries may also employ NTMs as mitigation actions against global warming.
- Without a binding international agreement, two related concerns emerge:
 - Carbon leakage refers to a situation in which reductions of greenhouse gas emissions by one set of countries (“constrained” countries) are offset by increased emissions in countries which do not take mitigation actions (“unconstrained” countries).
 - The possible loss in competitiveness of firms or industries in countries which take more stringent mitigation measures.



- Linked trade with other NTMs might achieve the original policy target and correct the externalities.
 - Example: CITES,
 - Border adjustment measures: match the cost to comply with domestic regulations
 - Subsidies on green R&D.
 - Regulatory measures
- The close link between these two issues confronts us with one of the main themes of this report: distinguishing between the pursuits of public policy goals and of domestic producer interests.



NTM in the 21st Century – food safety

- Consumers worldwide grow their interests in food safety.
 - Demand driven development: preferences, scandals.
 - Supply driven development: supply chains, traceability
- Trade Impacts
 - Compliance cost and loss of economy of scale
 - New value added
 - Market power
 - How to manage the impacts?



Policy Cooperation

- Challenges of understanding and measuring trade effects
- Historically, regulation of NTMs in trade agreements has addressed the problem of tariffs being replaced by NTMs -- a policy substitution problem
- GATT rules on national treatment and non-violation complaints could largely address the policy substitution issue
- Shallow integration is mostly sufficient in this regard, with considerable emphasis on non-discrimination
- But the intensification of public policy concerns has moved emphasis beyond policy substitution



- Increased interdependency, including the rise of global supply chains, have created a need for deeper forms of institutional integration to address distortions affecting trade and investment
- The increased prominence of public policies driven by consumer concerns has also created a need to develop rules to identify efficient and legitimate uses of NTMs
- The SPS and TBT Agreements are “post-discriminatory” agreements that go in the direction of deeper integration
- They promote harmonization through the use of international standards
- They include the need to ensure that requirements are not unnecessarily trade restrictive



Challenges for the WTO

- The deeper integration approach in the SPS and TBT Agreements goes a long way towards addressing changes in the global economic environment...
- ...but it is not without problems:
- First, strong encouragement to follow international standards creates tensions (for example because of different national preferences and/or developmental realities)
- This raises the question where and how regulatory convergence should take place



- Second, WTO adjudicators may have to infer motive in a member's domestic regulatory choices to decide whether a measure is discriminatory
- Recent Appellate Body reports (*US - Clove Cigarettes*, *US - Tuna II* and *US - COOL*) clarify the role of “regulatory purpose” for the analysis of national treatment in the TBT Agreement
- The report argues that limiting the protectionist application of NTMs requires better integration of economic and legal analysis



- Transparency provisions in the WTO agreements help address the problems raised by the opacity of NTMs but they are not sufficient
- Notifications in particular do not provide adequate information on a number of NTMs
- Compliance with notification obligations is insufficient, contributing to a lack of adequate transparency
- The I-TIP portal is a good start to improve accessibility, but more to be done.
- Relying on third party information will help in the short-run but in the long-run the data insufficiency problem needs to be addressed in the WTO



- The responsibility of governments with respect to private standards and the role of the WTO are not clear
- Negotiations on domestic regulation in services have turned out to be very difficult to conclude, mainly because of concerns with regulatory autonomy
- Capacity building is a vital part of improving international cooperation both on TBT/SPS measures and on domestic regulation in services (preferences do not help)
 - The Standards and Trade Development Facility (STDF) is effective and could be extended to the TBT area
 - The Enhanced Integrated Framework and Aid for Trade Initiative are also provide opportunities here

Thank you