Trade and Public Policies: NTMs in the WTO

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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

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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.
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.
Tokyo Round (1973-79) was the 1\textsuperscript{st} successful round of negotiations on disciplines on NTMs.

- Members’ growing concerns of NTMs frustrating market access conditions
- Disciplines on quantitative restrictions, \textbf{technical barriers to trade}, customs (e.g. \textit{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

Measures facing EU exporters by group, 1996-2015

Source: Ederington and Ruta (2016)
NTMs faced by EU exporters

Source: Ederington and Ruta (2016)
NTMs in the 21\textsuperscript{st} 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 21\textsuperscript{st} 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.
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