NON-TARIFF MEASURES WEEK
NTMs: The Good, the Bad, and the Ugly

14-15 October 2019

WTO: E-commerce, NTBs and Trade Facilitation

by

Mr. Alejandro Gamboa-Alder
Secretary of the Council for Trade in Goods

The views expressed are those of the author and do not necessarily reflect the views of UNCTAD
WTO: E-commerce, NTBs and Trade Facilitation

Non-tariff Measures Week

NTMs: The Good, the Bad and the Ugly

UNCTAD

Palais des Nations, Geneva, 14-15 October 2017

Alejandro Gamboa-Alder
Secretary of the Council for Trade in Goods
Electronic Commerce and the WTO

Since 1998:
• Second WTO Ministerial Conference
• Work Programme established by the GC
E-Commerce: Definition

“the production, distribution, marketing, sale or delivery of goods and services by electronic means”

[...] WP includes the consideration of issues relating to the development of the infrastructure for electronic commerce

Source: WTO Work Programme on Electronic Commerce (WT/L/274)
Where do discussions on e-commerce take place in the WTO?

At the General Council and its subsidiary bodies:

- The CTG
- The CTS
- TRIPs Council
- The CTD
NTBs and the WTO
NTBs: Definition

No agreed WTO definition.

All measures - other than “tariffs” - that discriminate or restrict market access / used to protect a domestic industry (negative definition).

Measures vs. Barriers vs. Restrictions
2. What is the rationale for negotiating NTBs in the WTO?
Reasons to negotiate NTBs

• Avoid circumvention, nullification and impairment of tariff commitments (i.e. preserve the “value” of the tariff concessions)

• Balance between architecture and administration

• To limit trade disputes between Members: transparency and non-discrimination.
When do measures become barriers?

1. Lack of transparency
2. Discriminatory treatment (MFN or NT)
3. More restrictive than necessary
E-Commerce and NTBs: What is the issue?
MARKET PLACE/E-PLATFORM

OR

EXPORTER

IMPORTER
WTO Rules and Trade in Goods
3. What WTO rules govern NTBs?

- GATT/94 Provisions
- WTO Agreements
GATT Provisions:

- National Treatment on Internal Taxation and Regulations (Article III)
- Freedom of transit (Article V)
- Anti-dumping and Countervailing Duties (Article VI)
- Customs valuation (Article VII)
- Fees and formalities connected with trade (Article VIII)
- General elimination of quantitative restrictions (Article XI)
- Restrictions related to balance of payments (Article XII)
- Subsidies (Article XVI) and State Trading Enterprises (Article XVII)
- Emergency actions, i.e. “safeguards” (Article XIX)
The GATT 1994 is technology-neutral

NO specific provisions in the current rules concerning physical products traded electronically.

GATT rules do not currently allow Members to provide different treatments to goods based on the manner in which products are sold, purchased or traded.
• Goods sold or marketed by electronic means but delivered physically across borders, are subject to the existing WTO commitments and provisions related to trade in goods.

• In other terms, the rules apply equally to all transactions, including those resulting from e-commerce.

• Principles such as non-discrimination, transparency would equally apply regardless of the way in which physical goods have been traded.
GATT and E-commerce

Underlying issue the CTG's discussion:

Characterization of certain electronic transmissions of products that can be provided in either physical or electronic form, e.g. books, software, films, magazines, newspapers, etc.

Whether they are goods or services has practical consequences for market-access related issues (e.g. imposition of customs duties, valuation for customs purposes, determination of origin, regulations based on international standards, and import licensing)

WTO provisions in the goods area would be relevant for electronic transmissions where and insofar as the content of these transmissions could be qualified as goods
Other WTO provisions

GOODS AGREEMENTS: Annex I A of the Marrakesh Agreement:

- Agriculture
- Technical Barriers to Trade (TBT)
- Sanitary and Phyto-sanitary (SPS)
- Rules of Origin (ROO)
- Customs Valuation (CVA)
Other WTO provisions

GOODS AGREEMENTS: Annex I A of the Marrakesh Agreement:

- Import Licensing Procedures (ILPs)
- TRIMs
- Pre-shipment Inspection (PSI)
- Trade Remedies (anti-dumping, Safeguards, Subsidies)
- Trade Facilitation Agreement (TFA)
- Others
  - ITA
There are clearly conceptual links between E-commerce and TFA and aspects of mutual relevance. TFA should aim at clarifying and improving relevant GATT aspects with a view to "further expediting the movement, release and clearance of goods, including goods in transit." (GATT Arts. V, VII and X)

No specification was made in terms of particular trade modes, but it was very much with a GATT-focused mind that negotiators set the terms of the negotiating exercise, deciding that the prospective new Agreement should essentially be based on three above-mentioned GATT provisions.
Article 7:1:2 (Pre-arrival processing) which states that "Each Member shall, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents.";

ii. Article 7:2 (Electronic Payment) which provides that "Each Member shall, to the extent practicable, adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees, and charges collected by customs incurred upon importation and exportation.";
iii. Article 10:2:1 (Acceptance of copies) which states that "Each Member shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for import, export, or transit formalities." The Article goes on to say that "Where a government agency of a Member already holds the original of such a document, any other agency of that Member shall accept a paper or electronic copy, where applicable, from the agency holding the original in lieu of the original document."; and

iv. Article 12 (Customs Cooperation) which allows Members to take certain actions by resorting to electronic means
Agreement on Trade Facilitation

Other TFA provisions relevant to e-issues

Art. 1.2 Information available through internet

Art. 3 Advance rulings which may be requested in written form (including by electronic means)

Art. 8 Expedited shipments (expedited release of at least those goods entered through air cargo facilities) PLUS de minimis shipment value or dutiable amount for which customs duties and taxes will not be collected

Art. 10.4 the SW
Thank you