

Restrictions on Distribution and Post-Sales Services

Juan A. Marchetti

World Trade Organization

On behalf of Aaditya Mattoo (World Bank), chair of the WG, and
based on joint work with Joscelyn Magdeleine (WTO)

UNCTAD Meeting on NTM Classification, Geneva 25-26 September 2017

At the previous meeting, review of classification based on 4 questions

- Does the existing goods NTM classification adequately cover services-related measures?
- What **measures** should be covered and how should they be classified?
- What **sectors** (and **modes**) should be covered and how should they be classified?
- How should the relevant data be collected?

Services-Related Measures in the Existing UNCTAD NTM Classification

Original focus on...

- J DISTRIBUTION RESTRICTIONS
 - J1 Geographical restriction
 - J2 Restriction on resellers
- K RESTRICTIONS ON POST-SALES SERVICES

But also...

- H MEASURES AFFECTING COMPETITION
 - H2 Compulsory use of national services
 - H21 Compulsory national insurance
 - H22 Compulsory national transport
 - H29 Compulsory national service, n.e.s.

Taxonomy of relevant measures related to distribution and post-sales services

- *Barriers to entry*: Measures restricting foreign entry
 - Of all foreign providers
 - Of foreign exporters of manufactured goods
- *Denial of access*: Measures denying access to local providers
- *Absence of pro-competitive regulation*: No measures ensuring non-discriminatory and reasonable access to services

Types of measures covered and not covered by the current MAST (1/3)

Current coverage	Measures not covered	Proposal
J DISTRIBUTION RESTRICTIONS		
<p>J1 Geographical restrictions Restriction to limit the sales of goods to certain areas within the importing country.</p> <p><u>Example</u> Imported beverages may only be sold in cities having a facility to recycle the containers.</p>	<p>Restrictions based on - other criteria besides other than geographical region, such as restrictions based on age groups - on importers not to sell the specific products to unlicensed/unauthorized persons/entities.</p> <p>Examples</p> <ul style="list-style-type: none"> ➤ Certain pharmaceutical products can only be sold to persons above the age of 21. ➤ Importers can only sell alcoholic beverages to licensed retailers. 	<p><i>J1 Restrictions on importers related to the sale of goods</i> Restriction on the sales of goods to certain areas, to certain age groups or based on other criteria that are imposed directly on the importers and do not constitute a restriction on distribution services (Restrictions on distribution services would be covered under J2)</p>

Types of measures covered and not covered by the current MAST (2/3)

Current coverage	Measures not covered	Proposal
J DISTRIBUTION RESTRICTIONS		
<p>J2 Restriction on resellers Restriction to limit the sales of imported products by designated retailers.</p> <p><u>Example</u> Exporters of motor vehicles need to set up their own retail points, as existing car dealers in the destination country belong exclusively to car producers in that country</p>	<p>Restrictions on entry into distribution services (i.e. restrictions on setting up own distribution network)</p> <p>Examples</p> <ul style="list-style-type: none"> ➤ Retail distribution is reserved to nationals. ➤ Foreign investment in retail distribution is only allowed in single brand retail stores, and is limited to 51%. 	<p>J2 Restrictions on Distribution Services</p> <p><i>J21 Measures restricting access to domestic distribution networks</i> Restricting (including denial of) access to domestic distribution networks, as a result of which imported products have to rely on separate distribution networks (such as retail or wholesale points for imported products). This restriction might create additional costs and barriers for the importers of certain products who would have preferred to rely on domestic distribution networks rather than to establish their own.</p> <p><i>J22 Prohibition/Restriction on setting up own distribution networks</i> Restrictions or prohibitions on establishing or using own distribution networks, as a result of which imported products have to use the local distribution networks. This might create additional difficulties, depending on the conditions of using local networks or adequacy of local distribution networks, for importers of certain products who would have preferred to use or establish their own distribution networks</p>

Types of measures covered and not covered by the current MAST (3/3)

Current coverage	Measures not covered	PROPOSAL
K RESTRICTIONS ON POST-SALE SERVICES		
<p>Measures restricting producers of exported goods to provide post-sales service in the importing country.</p> <p><u>Example</u> After sales servicing on TV sets must be provided by a local service company of the importing country.</p>	<p>Post-sales services could include installation work, maintenance and repair services of various categories of goods. They do not belong to a single category but are disbursed among different categories of services sectors in the GATS classification.</p> <p><u>Example</u></p> <ul style="list-style-type: none"> ➤ Repairs of aircraft engines can only be conducted in repair centers belonging to the manufacturer. 	<p><i>K1 Measures restricting access to domestic post-sale services points</i> Restricting (including denial of) access to domestic post-sales services as a result of which imported products have to rely on separate post-sales services networks (such as installation and assembly, maintenance and repair points). This restriction might negatively affect the importers of certain products who would have preferred to rely on domestic post-sales services points rather than to establish their own.</p> <p><i>K2 Prohibition/Restriction on setting up own post-sales services networks</i> Restrictions or prohibitions to establish or use own post-sales services networks, as a result of which imported products have to use the local post-sales services. This might create additional difficulties, depending on the conditions of using local post-sales services networks or adequacy of local post-sales services, for importers of certain products who would have preferred to use or establish their own post-sales services networks.</p>

And remember...

H MEASURES AFFECTING COMPETITION

- H2 Compulsory use of national services
 - H21 Compulsory national insurance
 - A requirement that imports must be insured by a national insurance company.
 - H22 Compulsory national transport
 - A requirement that imports must be carried by a national shipping company.
- H29 Compulsory national service, n.e.s.

Looking ahead: further questions...

- Should we include only product/sector specific restrictions or also cover horizontal restrictions that apply to a range of products?
- Is it feasible to collect data in accordance with the draft taxonomy? What regulations should we look for and where?
- Should we also cover the absence of pro-competitive regulations, i.e. “measures ensuring non-discriminatory and reasonable access to services”?
 - It was noted at the last meeting that as the NTMs classification/data collection is based on measures in existing legal texts, focusing on the absence of measures would be problematic.
- How far can we rely on pre-existing services databases and collaboration across institutions?
 - For example, the World Bank-WTO Services Trade Policy Database could conceivably cover services sectors that fall under post-sales services.

Thank you!