

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

14-15 October 2019

WTO: E-commerce, NTBs and Trade Facilitation

by

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Non-tariff Measures Week

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UNCTAD

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Electronic Commerce and the WTO

Since 1998:

- **Second WTO Ministerial Conference**
- **Work Programme established by the GC**



WTO OMC

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



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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



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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**?



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1. Lack of transparency
2. Discriminatory treatment (MFN or NT)
3. More restrictive than necessary

E-Commerce and NTBs: What is the issue?



OR

MARKET PLACE/E-PLATFORM



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.**

GATT and E-commerce

- **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

Agreement on Trade Facilitation

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

Agreement on Trade Facilitation

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.**";

Agreement on Trade Facilitation

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