

**Multi-Agency Support Team (MAST) Meeting on Non-Tariff Measures
(NTMs) Classification**

5-6 October 2016, UNCTAD

Working Group on Distribution and Post-Sales Services: Chapters J and K

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The importance of identifying the range of complementary services that are vital for delivery of goods was pointed out by the Chair of the WG. The four questions were presented on: Whether the existing NTMs classification adequately covers 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.

It was noted that under current classification, the first sub-chapter of the Chapter J on Distribution Services, which is J1 Geographical restriction is not related to services, and thus by nature is different from J2 and K measures that are services related. Also it was noted that the sub-chapter under Chapter H on Measures Affecting Competition, H 2 Compulsory use of national services is actually related to services restrictions.

It was stated that both the presence of restrictions and the absence of pro-competitive regulation can pose a barrier to trade in goods. The relevant measures related to distribution and post-sales services could be grouped under three broad groups as following: Barriers to entry – Measures restricting foreign entry; Denial of access – Measures denying access to local providers; and Absence of pro-competitive regulations – No measures ensuring non-discriminatory and reasonable access to services.

Barriers to entry in their turn, can fall under 4 different modes of supply that are mode 1 Cross – border supply; Mode 2 – Consumption abroad; Mode 3 – commercial presence; Mode 4 – Presence of natural persons and at the same time under any of the following classes of measures: Conditions on market entry; Conditions on operations; Barriers to competition and Regulatory transparency.

In order to avoid the duplication of the work done in trade in services field, and ensure the efficiency, division of labour between organizations in data collection on different aspects services trade shall be delineated.

Some difficulties associated with the classification of services that affect goods was stressed, noting that the line between good and services is sometimes blurred, and in particular, with the rapid development of technology.

During the technical meeting of the WG, it was noted that the scope of each measure shall be identified and it should be ensured that all measures are mutually exclusive.

Each current measure under chapter J and K has been analysed during the meeting:

J1 Geographical restriction

It was noted, that under the current classification, the first sub-chapter of the Chapter J on Distribution Services, which is J1 Geographical restriction is not related to services, and thus by nature is different from J2 and K measures that are services related.

It was pointed out, that there can be restrictions based on other criteria besides geographical region, such as restrictions based on age groups (to whom and where it can be sold by importers or responsibility of importers to ensure to whom and where the products can be sold).

Also an example of a different type of restriction was brought up: Restrictions on importers not to sell the specific products to unlicensed/unauthorized persons/entities. For example, the prohibition imposed on importers not to sell drugs and pharmaceuticals except to licensed pharmacies (meaning they should not sell drugs to unlicensed pharmacies or supermarkets etc.).

So the proposal was made to rephrase the title and definition of the measure J1 to better identify the scope of the measure so as it would include all restrictions imposed on importers related to the sale of goods (to whom and where they can be sold).

The proposed version:

J1 Restrictions on importers related to the sale of goods

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 the restriction on distribution services . (Restrictions on distribution services would be covered under J2)

J2 Restriction on Resellers

The proposal was made that J2 shall cover all the rest of the measures that are related to restrictions of distribution services, that are not directly imposed on importer but rather are imposed on distributors.

It was noted that the current title and definition of the measure do not adequately reflect the substance of the measure and are quite confusing, so they should be revised.

The restrictions on distribution services could be divided into two main categories, Denial of access (Measures denying access to local providers) and Barriers to entry (Measures restricting foreign entry).

The example provided for the measure in the current classification would belong to the above mentioned group on Denial of access.

The proposed version:

J2 Restrictions on Distribution Services

J21 Denying access to domestic distribution networks

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 the imported products). This might create additional costs and barriers for the importers of certain products who would have preferred to rely on domestic distribution networks.

J22 Prohibition /Restriction on setting up separate distribution networks

Restrictions or prohibitions to establish or use separate 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 separate distribution networks .

K Restrictions on Post-Sales Services

Measures restricting producers of exported goods to provide post-sales service in the importing country

Example: *After sales servicing on exported TV sets must be provided by a local service company of the importing country.*

According to the definition provided in the current classification, the measure K would belong to “barriers to entry” group, which means it is a measure restricting foreign entry. However, as stated before the restrictions on post-sales services as well, could be divided into two main categories, Denial of access (Measures denying access to local providers) and Barriers to entry (Measures restricting foreign entry).

Post-sales services could include installation work, maintenance and repair services of various categories of goods and they do not belong to single category but are rather disbursed among different categories of services sectors in the GATS classification.

The proposed version:

K Restrictions on Post-Sales Services

K1 Denying access to domestic Post-sale services points

Denying 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 might negatively affect the importers of certain products who would have preferred to rely on domestic post-sales services points.

K2 Prohibition /Restriction to set up own post-sales services networks

Restrictions or Prohibitions to establish or use separate 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 separate post-sales services networks.

H2 Compulsory Use of National Services: insurance, transport and other services

It was noted that H2 measures under the Chapter H are actually related to services. Thus the question was raised whether we shall think of moving them under the umbrella of Services chapters.

Important questions raised:

- Should we concentrate only on Mode 3, which is a commercial presence, or also on other modes of supply? Since other modes of supply, in particular, cross-border supply is gaining more and more prominence, we might think to include the other modes in the classification too.
- Should we include both horizontal and product/sector specific restrictions, or horizontal restrictions should be kept out of the scope to provide feasibility for data collection within NTMs context?
- Should we focus only on the regulations that regulate and mention specific product groups-related services?
- Should we also include Absence of pro-competitive regulations, which means “No measures enquiring non-discriminatory and reasonable access to services”? It was noted that as the NTMs classification/data collection is based on the requirements in existing legal texts, focusing on the absence of measures, would be problematic.