

CHAPTER 1: Non-tariff measures: definitions and basic facts

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A. Overview and learning objectives

This chapter is an introduction to the types of non-tariff measures (NTMs) firms may have to face when producing domestically or when trying to export to some specific market and destination. It provides some definitions accepted by major international institutions and reviews the main multilateral agreements monitoring the use of technical regulations. Some figures about the prevalence and the perceived stringency at the firm level of NTMs are also discussed.

In this chapter you will learn what NTMs are and what types of NTMs governments can impose. You will also get some idea of their prevalence and stringency as perceived by firms.

B. Analytical tools

1. Definition of non-tariff measures

NTMs are policy measures, other than ordinary customs tariffs, that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both.⁴ NTMs are playing an increasing role in international trade because of the reduction in tariffs worldwide via successive agreements under the General Agreement on Tariffs and Trade/World Trade Organization (GATT/WTO), and due to growing consumer concerns about food safety and quality, and environmental protection.

NTMs include a wider set of measures than non-tariff barriers. Furthermore, the term “non-tariff barriers” is generally used to describe discriminatory (protectionist) measures, while NTMs do not necessarily reduce trade and welfare. As will be seen later in this practical guide, NTMs can in fact be trade and/or welfare-enhancing.

NTMs can be diverse and may target very different objectives. Import licenses or quotas aim to complement or substitute for tariffs, while sanitary and phytosanitary (SPS) measures or technical barriers to trade (TBT) often have non-trade objectives and aim to correct for market failures (e.g. health and consumer safety, and pollution and the environment). Despite the absence of trade objectives, SPS measures and TBTs may affect trade costs through associated procedural requirements.

What should be kept in mind, however, is that SPS measures and TBTs are in most circumstances adopted to regulate the domestic market. Most of these measures apply to both domestic and foreign goods indistinctly. What is often neglected is the impact this type of measures would have on domestic production and not only on imports. This dimension can not be easily treated mostly due to poor availability of relevant data.

⁴ Non-tariff measures also apply to services and can affect trade flows as in the case of goods. In order to assess the impact of NTMs on trade in services, however, a specific empirical framework is necessary and, its study would require a distinct practical guide.

NTMs are complex instruments, and the analysis of their effect is also becoming increasingly difficult. NTMs act through multiple channels of influence and have multiple effects not only on trade but also on welfare and income distribution. Their impact may also interact with market structures because NTMs can segment markets and generate market power.

2. Non-tariff measures and the World Trade Organization: agreements on sanitary and phytosanitary measures and on technical barriers to trade

At the international level, NTMs are governed by two WTO agreements: the SPS and TBT Agreements. The SPS Agreement entered into force on 1 January 1995.⁵ Implementation for developing countries was delayed by two years and for least developed countries by five years. The SPS Agreement pursues two main objectives. First, it recognizes the sovereign rights of WTO members to provide the level of health protection they deem appropriate. Second, it ensures that NTMs are not used as disguised restrictions on international trade. To achieve both objectives, the agreement encourages members to base their measures on international standards, guidelines, and recommendations, where they exist (Article 3.1). These organizations include, for food safety, the joint FAO/WHO Codex Alimentarius Commission; for animal health, the Office International des Epizooties; and for plant health, the FAO International Plant Protection Convention. If international standards, guidelines or recommendations do not exist, or if countries want to adopt measures that achieve a higher level of health protection, then they must be able to demonstrate that their measures are based on an “appropriate” risk assessment (Article 3.3). In cases where relevant scientific evidence is not available, a country may provisionally adopt measures on the basis of available pertinent information (Article 5.7). Furthermore, the measures should be applied only to the extent necessary to protect health, and arbitrary discrimination between countries where similar conditions prevail is forbidden (Article 2.3). Countries must notify all new or changed SPS regulations at a draft stage, publish regulations, and ensure that an enquiry point exists (Annex B).

The WTO Agreement on Technical Barriers to Trade (“TBT Agreement”), which entered into force in 1995, is the multilateral successor to the Standards Code, signed by 32 GATT contracting parties at the conclusion of the 1979 Tokyo Round of Trade Negotiations.⁶ The purposes of the TBT Agreement can be broadly described as: (1) assuring that technical regulations, standards and conformity assessment procedures, do not create unnecessary obstacles to international trade, while (2) leaving Members adequate regulatory discretion to protect human, animal and plant life and health, national security, the environment, consumers, and other policy interests. Article 1.5 of the TBT Agreement excludes SPS measures from its scope meaning that a TBT measure cannot be an SPS measure and vice versa. However, the scope of the TBT Agreement is expected to be considered in relation to the SPS Agreement. The TBT Agreement defines three categories of measures: technical regulations, standards, and conformity assessment procedures. The main objectives of the TBT Agreement involve promoting the use of international standards (Article 2.4) and promoting mutual recognition of requirements and conformity assessment procedures between WTO members (Article 6.3). Furthermore, discrimination between countries where the

⁵ For the text of the SPS Agreement, see https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm.

⁶ For the text of the TBT Agreement, see https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm.

same conditions prevail is forbidden, and the same requirements must be applied to domestic and imported goods. Finally, notifying countries must publish all their TBTs and establish enquiry points (Article 10.1). Although a clear distinction between SPS measures and TBTs is made in the agreements' texts, governments often draft and implement broad regulations that contain some requirements covered by the TBT Agreement and others by the SPS Agreement.

It is the purpose of a particular measure that determines whether that measure is subject to the disciplines of the SPS or the TBT Agreement, and not the particular product or category of product under consideration. Two examples provide an illustration of the distinction between SPS measures and TBTs: a regulation dealing with the treatment of imported fruit to prevent pests from spreading is classified as an SPS measure, while a measure focusing on the quality, grading, and labelling of imported fruit is a TBT measure. Similarly, a measure specifying the materials that can be used to make bottled water safe for human health, for instance to avoid contamination of the water by toxins in the material used, is covered by the SPS Agreement, while a measure describing the permitted sizes for the same bottle to ensure standard volumes falls under the TBT Agreement.

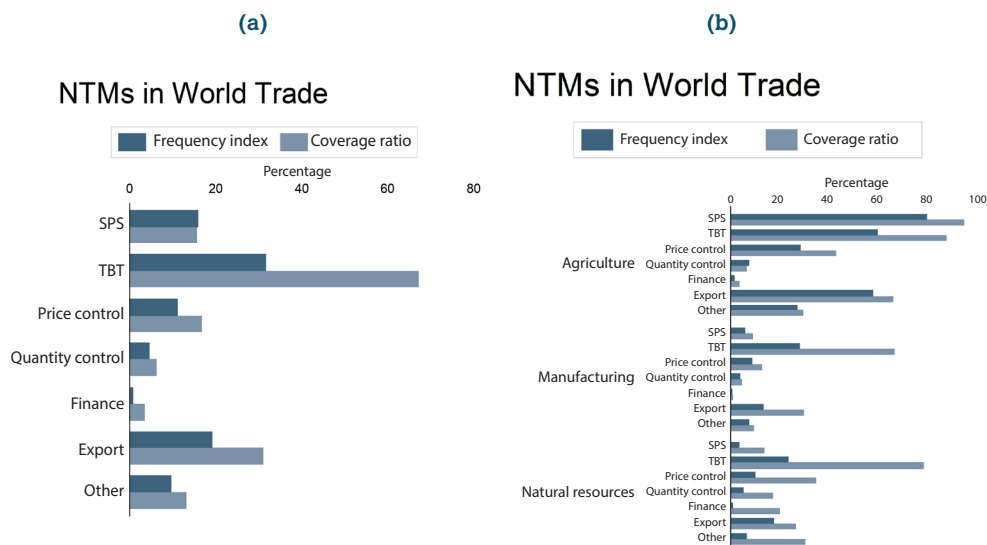
Both the SPS and TBT Agreements contain provisions on technical assistance as well as special and differential treatment to help developing countries implement the measures and take advantage of them. Despite this support, developing countries encounter difficulties in the implementation process.

3. Non-tariff measures: fact-finding

As discussed in the next Chapter, information about NTMs can be retrieved from several sources. All of them however suffer from some weakness that must be taken in consideration when analyzing facts and empirical results based on these various sources. Information about NTMs is often obtained from official national and international sources. It could also be obtained from more subjective sources such as specific surveys. The former type of information could allow us to identify the most prevalent types of measures applied in various countries and their predominance. The latter type of information could help us identify those measures representing possibly severe obstacles either to production or to trade or both. Impeding measures of this sort are often qualified as burdensome measures.

Information gathered from collected regulations prevailing around the world suggests that among the different types of NTMs, SPS measures and TBTs are the most predominant. Together, SPS measures and TBTs cover more products and trade value than price- and quantity-control measures. Furthermore, TBTs are more prevalent than SPS measures as shown in panel (a) of Figure 1 below: on average, they cover 30 per cent of a country's products and about 65 percent of imports, while SPS measures cover about 17 per cent of both products and imports. However, if we decompose them by product groups as reported in panel (b) of Figure 1, agri-food products are more affected by SPS measures than by TBTs. The opposite is observed for the Manufacturing and Natural resources sectors. Export measures are also frequently applied to imports in general and to agricultural products in particular.

Figure 1: Prevalence indicators of non-tariff measures, by type and broad product category



Source: UNCTAD secretariat calculations based on UNCTAD TRAINS I-TIP data.

Note: Data are based on multiple year observations the latest available year being 2015.

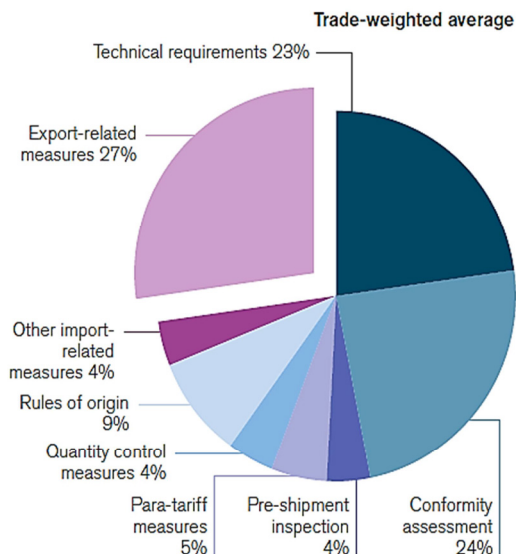
Figure 2 illustrates the importance of SPS measures and TBTs. It presents the breakdown of NTMs by type of measure. Data come from surveys conducted by the International Trade Centre (ITC) in 2010 among firms in 11 developing and least developed countries. Burdensome NTMs include measures applied both by importing countries and by exporters' home countries. The figure reports the trade-weighted average of NTMs and not the simple mean. The latter may give undue weight to smaller countries at the expense of larger ones. Indeed, some tiny country in terms of trade may be extremely restrictive as compared to a larger country absorbing a significant share of world trade. Taking the simple average would imply giving the same weight to a marginal country and to a country supposed to be more representative of the regulatory stringency affecting world trade. The trade-weighted average controls for this issue. The weights are the value of each country's exports in 2010. SPS measures and TBTs correspond to the sum of the categories "technical requirements" and "conformity assessment." They represent nearly half of all NTMs seen as burdensome by exporters in surveyed countries.

Interestingly, burdensome NTMs differ among export markets. For developed export markets, exporters from developing and least developed countries consider that SPS measures and TBTs represent three-quarters of burdensome NTMs. For developing export markets, this share is only one-half as shown in Figure 3.

ITC surveys are based on interviews with exporters in developing and least developed countries. The responses may therefore not represent the concerns and experiences of businesses in other countries. There have been some analyses on NTMs seen as burdensome by United States and

European exporters. According to WTO (2012), SPS measures and TBTs appear to be a major concern for European exporters (representing 52 per cent of all reported issues). For exporters in the United States, the equivalent share is much lower (22 per cent). The reason for this gap must be interpreted with care as interviews in both countries were not undertaken using precisely the same methodological approach especially in terms of sampling methods.

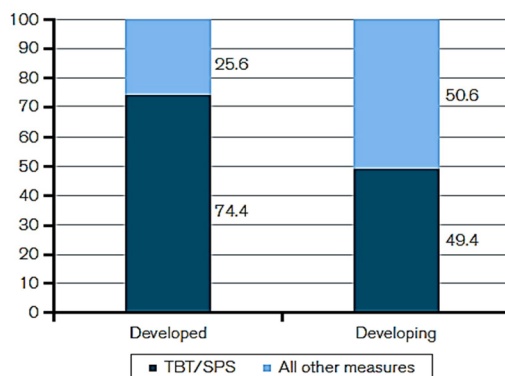
Figure 2: Burdensome non-tariff measures, by type of measure, 2010 (in per cent)



Source: WTO (2012).

Note: Based on business surveys by the International Trade Centre. The sample includes 11 developing and least developed countries.

Figure 3: Burdensome non-tariff measures, by type of country, 2010 (per cent share of SPS measures and TBTs in import-related non-tariff measures)



Source: WTO (2012).

Note: Based on business surveys by the International Trade Centre. The sample includes 11 developing and least developed countries.