

Classifying Barriers to Trade

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Structure of Presentation

- What is an NTM and possible action against them
- WTO provisions relevant for NTMs
- UNCTAD NTM classification

What is a Non-Tariff Barrier?

- WTO agreements do not provide a definition of NTB
- Common perception- NTB are policy restrictions, excluding customs tariffs, that distort trade.
- NTBs can change-
 - quantities traded;
 - prices.
- Generally NTBs and NTMs used interchangeably

Action against NTMs

- NTMs that do not comply with WTO obligations can be challenged at the WTO.
- Some of the relevant provisions/ agreements
 - Articles XI, XX and XXI of GATT 1994
 - SPS and TBT Agreements
 - Agreement on Import Licensing Procedures

Article XI

- No prohibitions or restrictions other than duties, taxes or other charges ... shall be instituted or maintained on the importation of any product or on the exportation or sale for export of any product...
- Exceptions –
 - critical shortage of food, temporary surplus of agriculture and fisheries products, BoP situations etc.
 - Article XX /XXI exceptions

Article XX: General exceptions

- Article XX provides a list of ‘General Exceptions’, which permit WTO Members act in a manner that would otherwise violate WTO obligations.
- Contains 2 sections –
- Introductory paragraph (chapeau)
- List of specific exceptions (a – j)

Article XX: Some general exceptions

- (a) necessary to protect public morals
- (b) necessary to protect human, animal or plant life or health
- (f) imposed for the protection of national treasures of artistic, historic or archaeological value
- (g) relating to the conservation of exhaustible natural resources

Article XX: chapeau

- General exceptions are subject to the requirement that such measures are not applied in a manner which would constitute a means of **arbitrary or unjustifiable discrimination** between countries where the same conditions prevail, or a **disguised restriction** on international trade

Article XXI

- Nothing in GATT prevents any contracting party from taking any action which it considers necessary for the protection of its essential security interests

SPS Agreement

- Members shall ensure that any SPS measure is applied **only to the extent necessary** to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence.
- SPS measures should not **arbitrarily or unjustifiably discriminate** between Members where identical or similar conditions prevail; and shall not be applied in a manner which would constitute a **disguised restriction** on international trade

TBT Agreement

- Technical regulations are not prepared, adopted or applied with a view to or with the effect of **creating unnecessary obstacles to international trade**.
- Technical regulations shall **not be more trade-restrictive than necessary** to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, *inter alia*: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment.

Agreement on Import Licensing

- Import licensing is defined as administrative procedures requiring the submission of an application or other documentation as a prior condition for importation
- Import licensing procedures are in addition to requirements for customs purposes
- Licensing procedures shall not be administered in such a manner as to have **restricting effects on imports** subject to licensing

Classification of NTMs

- NTMs come in many different forms
- No internationally accepted classification system exists
- NTM classification by Multi Agency Support Team (MAST) perhaps closest to an 'international consensus' .
- MAST members- UNCTAD, FAO, IMF, ITC, OECD, UNIDO, World Bank, WTO etc.
- MAST classification is comprehensive and perhaps most representative
- Prescribes a **top-down** 3-tier **hierarchical** structure

Top Tier NTBs (i)

- Sanitary and Phytosanitary Measures
- Technical Barriers to Trade
- Pre-shipment Inspection and other Formalities
- Price Control Measures
- Licences, Quotas, Prohibitions and other Quantity Control Measures
- Charges, Taxes and other Para-tariff Measures
- Finance Measures
- Anti-Competitive Measures

Top Tier NTBs (ii)

- Trade-related Investment Measures
- Distribution Restrictions
- Restriction on Post sales services
- Subsidies (excluding export subsidies)
- Government Procurement Restrictions
- Intellectual Property
- Rules of Origin
- Export Related Measures

Middle Tier: SPS Measures

- Prohibitions or restriction of products or substances for SPS reasons
- Tolerance limits for residues and restricted use of substances
- Labeling, marking and packaging requirements
- Hygienic requirements
- Treatment for elimination of plant and animal pests and disease-causing organisms in the final product (e.g. post-harvest treatment)
- Other requirements on production or post-production processes
- Regulation of foods or feed derived from, or produced using genetically modified organisms (GMO)
- Conformity assessment related to SPS
- SPS measures n.e.s.

Middle Tier: TBT Measures

- Prohibitions or restrictions on products or substances for TBT reasons
- Tolerance limits for residues and restricted use of substances
- Labeling, marking and packaging requirements
- Regulation on genetically modified organisms (GMO) (for reason other than food safety) and other foreign species
- Product identity requirement
- Product quality or performance requirement
- Conformity assessment related to TBT
- TBT measures n.e.s.

Middle Tier: Price Control Measures

- Administrative pricing
- Voluntary export price restraints
- Variable charges
- Anti-dumping measures
- Countervailing measures
- Safeguard duties
- Seasonal duties
- Price control measures n.e.s.

Middle Tier: Charges, Taxes and other Para-tariff Measures

- Customs surcharges
- Service charges
- Additional taxes and charges
- Internal taxes and charges levied on imports
- Decreed customs valuations
- Para-tariff measures n.e.s.

Bottom Tier: SPS Hygienic requirements

- Microbiological criteria on final product
- Hygienic practices during production
- Hygienic requirements nes

Bottom Tier: Para-tariff Measures, Service charges

- Customs inspection, processing and servicing fees
- Merchandise handling or storage fees
- Services charges nes

Bottom Tier: Para-tariff Measures, internal taxes and charges on imports

- General sales taxes
- Excise taxes
- Taxes and charges for sensitive product categories
- Internal taxes and charges on imports

Conclusions

- Conformity of an NTM needs to be established based on an examination of various WTO agreements/ GATT provisions.
- Systematic classification of NTMs would facilitate deeper research, enhance understanding, assist in exploring solutions and be a step towards quantifying their impact.

Thank You