Summary Notes
Workshop on Improving the Transparency of Nontariff Measures in Food and Agricultural Trade

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Waugh Auditorium, Economic Research Service, USDA

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Nontariff measures (NTMs) in food and agricultural trade have come under scrutiny in recent years. In many cases NTMs protect domestic producers from import competition. New NTMs are arising due to new trade opportunities and emerging science and technology, as well evolving consumer preferences regarding process attributes of internationally traded goods.

Compared to import tariffs and tariff-rate quotas, where tariff schedules are generally decided in advance and publicly available, NTMs are the result of regulatory procedures adopted in various trading countries. These procedures often suffer from a lack of transparency and openness, and do not reflect input from all stakeholders, particularly importers and exporters. Sanitary and phytosanitary (SPS) measures, as well as technical barriers to trade (TBTs), can be defined in a way that leaves significant discretion to regulators. Regulatory procedures that are poorly designed or simply not followed create considerable uncertainty for companies involved in international trade.

The objective of this one-day workshop was to shed light on transparency and good regulatory practice in NTMs affecting food and agricultural trade, and how transparency can be increased. The workshop brought together a group of 35 participants from the food industry, agribusinesses, government, and universities who deal with NTMs on a regular basis. The focus was on SPS and TBT measures.

Discussion at the workshop was organized into five sessions:

1. What are the transparency problems with NTMs and why are they important?
2. What information about NTMs do we have and what are we missing?
3. What can we learn from industry case experience?
4. How can economic studies of NTMs be used to increase transparency?
5. What reforms could increase openness and transparency in NTMs?

Each session was led by several “discussion openers” but there were no formal papers. Informed but informal cross-cutting dialogue was the workshop objective. In that spirit, these brief notes prepared by the conference organizers convey some of the tone and content of the discussion without seeking the formality or precision of more technical or complete proceedings. We thank the Farm Foundation, the Economic Research Service, USDA, and the U.S. International Trade Commission for their financial support of the workshop. The workshop program and full list of participants are included at the end of this summary.
Background: Avenues for resolution of NTM conflicts among countries

NTMs have become increasingly important for trade in food and agricultural products and there are multiple paths by which countries seek to resolve conflicts. Prior to the conclusion of the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade (GATT) in 1994 which resulted in the creation of the World Trade Organization (WTO), agricultural trade was subject to a range of NTMs. These included measures such as quotas and variable levies as well as measures related to animal and human health, food safety and quality issues, and mandatory product standards. Use of these measures was relatively undisciplined.

The Uruguay Round Agreements recognized that disciplines had to be imposed on the diverse NTMs as well as on tariffs, export subsidies and domestic support. During the negotiations a successful proposal was made to convert many existing NTMs to tariffs; commitments were made to reduce tariffs; disciplines were imposed on the value of export subsidies and the volume of subsidized exports; and some disciplines were introduced on the levels of the most trade-distorting forms of support. In addition, the WTO Agreements on the Application of Sanitary and Phytosanitary (SPS) Measures and on Technical Barriers to Trade (TBT) imposed disciplines with respect to measures that address health, safety, environmental, and product quality concerns. These WTO agreements recognized that NTMs allow countries to achieve legitimate objectives, but that they should not be implemented in such a way as to pose unnecessary obstacles to trade.

If a country believes that another WTO member is not satisfying its obligations under the WTO agreements, a number of sequential steps can be taken:

1. Informal bilateral contacts to try to remedy the problem
2. Diplomatic intervention (a démarche or complaint lodged through diplomatic channels)
3. Multilateral representation (raising the issue in the WTO’s Agriculture Committee, the WTO’s TBT or SPS Committees, or other relevant committees)
4. High level political intervention (e.g., at the head of state level)
5. Use of WTO dispute settlement proceedings.

Step 5 can take many years. For non-WTO countries steps 3 and 5 do not apply. In addition to these measures, steps may be taken through avenues provided in bilateral or regional trade agreements (e.g., the North American Free Trade Agreement).

Session 1: What are the transparency problems with NTMs and why are they important?

Although there is a range of NTMs for which transparency can be an issue, the two most important categories are measures associated with SPS and TBTs. Import regulations are often derived from domestic regulations such as requiring pasteurization for dairy products or controlling the use of genetically modified organisms (GMOs). They are often designed to address perceived market failures relating to human, animal, or plant health. While the
elimination of measures is not an option in such cases, transparency is important for exporters. Many regional trade agreements (RTAs) seek to be “WTO+” (include strengthened provisions) in terms of their requirements.

If information is not readily available to exporters there is an additional cost involved in obtaining it. Regulations can change frequently, which adds to their cost. The cost of information can range from small to prohibitive, and its significance will depend on the potential size of the market for an exporter. Fixed costs associated with market entry are often larger for foreign firms than domestic firms. Large versus small firms may have different capacities to absorb these costs. Uncertainty may also create a barrier to entry. At the same time, since transparency of regulations is not costless, governments may be unwilling to bear the costs of increasing transparency. The issue from an exporter’s perspective is how much transparency is required, without knowing everything, in order to sell in a particular market.

There are transparency provisions in the SPS and TBT agreements (e.g., notification of measures to the WTO). However, domestic regulators are often unaware of such international requirements. Multiple agencies may be involved in framing and implementing regulations and inter-agency communication may be difficult. Often the regulatory framework is more transparent in OECD countries than in developing countries and it is easier for other countries to have a formal input into the domestic rule-making process.

In addition to the information costs imposed by NTMs there can be compliance costs attributable to lack of transparency in how regulations are interpreted and implemented. Given uncertainties in how regulations will be enforced, assessment of conformity can be difficult and expensive. Conditions of entry for products can sometimes change from day to day or vary from port to port, and regulatory agency headquarters may be unaware of actions being taken at the border by port inspectors. This can give rise to “port shopping” where exporters seek out the most favorable ports in each country. The quality of human capital, particularly in developing countries, may be an issue, as well as outright corruption in the implementation of measures in any country.

Transparency in the implementation of regulations is a key problem, particularly in developing countries. The notification process is not costless and this may deter developing countries from keeping their notifications up to date. The World Bank supports the development of inventories of regulations in developing countries. Efforts to reduce “red tape” and trade facilitation initiatives can play a role in increasing transparency in such countries. The proliferation of FTAs/RTAs may actually increase notifications to the WTO, provide a vehicle for increased involvement of economic and trade agencies in the formation of rules, and also a forum for meetings between regulators (which improves communication on measures and confidence in their application).

Capacity building in developing countries in the context of regional trade agreements can help to increase transparency and to reduce problems associated with NTMs, through assistance with inspection legislation, setting up inspection systems, equivalence, and technical assistance for risk assessment. USDA/APHIS is involved in capacity building in Africa, helping prepare officials there to undertake risk analysis.
International organizations such as OIE and CODEX play an important role in establishing internationally recognized animal health and food safety standards. However, countries differ in their views on the extent to which such standards should be science based, and on the interpretation of scientific evidence used to justify standards. There are also differences of opinion on whether these standards should be absolute or merely equivalent across countries. Finally the application of standards can be heavily influenced by domestic political objectives such as protection of domestic industries or the promotion of food self sufficiency, or by international relations.

Session 2: What is the current availability of information on NTMs?

In this session, three international activities that generate aggregate databases about SPS/TBT NTMs were discussed: the notifications of measures to the WTO; the organizational scheme and country regulation databases being developed by UNCTAD and other international agencies; and the exporter-based country industry surveys being collected in various countries by the Geneva-based International Trade Centre (ITC). Many other national or regional agencies, such as the Foreign Agriculture Service (FAS) of USDA, maintain databases to keep track of NTM issues that are raised by their constituent exporters.

WTO obligations generate 800-1,200 SPS notifications per year, with a total of 8,476 notifications from 1995 through 2009. The level of disaggregation used by countries in notifying SPS varies among countries. Some provide a single notification for standards for residues of a particular chemical on a range of crops, whereas others notify each crop separately. An SPS notification indicates either a new or changed regulation, one not based on an international standard, or a case where an international standard does not exist. Bilaterally agreed standards must also be notified. Thus far 103 members have submitted at least one SPS notification to the WTO (some of the 50 WTO member countries that have not notified are covered by notifications by the European Commission). The share of notifications by developing countries has been increasing and amounted to 73% of the total in 2009 – ten years earlier the share was 20-30%.

The technical regulations and conformity assessment procedures for TBT notifications are similar to SPS, as new or changed requirements must be notified, as well measures not based on international standards, and cases where no international standards exist. The total submitted from 1995 through 2009 was 11,590 notifications of technical regulations and conformity assessment procedures for both agricultural and non-agricultural goods. Annual notifications have varied between 600-1,400 and display an upward trend. Since 1995, 110 members have notified at least one TBT measures. There have been 128 notifications of “agreements” (Article 10.7).

It is difficult to say how many of these notified SPS and TBT measures can be considered unnecessary barriers to trade. Since 1995, 271 Specific Trade Concerns (STCs) have been raised.
in the TBT committee and 302 in the SPS committee. The STCs indicate the possibility that certain measures may constitute unnecessary obstacles to trade.\(^1\)


UNCTAD has been assembling information on NTMs using primary data obtained at the national level, e.g., from ministries responsible for trade, agriculture or the environment. In addition, secondary sources such as country-specific databases and WTO notifications are used. In assembling a database the focus is on the following characteristics:

1. Type of measure – what products are affected
2. Source – particular publication or law specifying the regulation
3. Date of entry into force (or termination)
4. Countries affected
5. Whether the measure is temporary, permanent, or seasonal
6. Purpose
7. Origin – national, international, etc.

The aim is to standardize information across countries (e.g., use the same classification of measures, the same product level, etc.). Local consultants and regional agencies are used in assembling information for developing countries. Public documents and databases provide much of the information for developed countries. Data collection is complete for the EU and Japan and is ongoing for Australia, Canada and the United States. Work is also underway for some African countries.

With this type of database it will be possible to perform various types of analysis, such as: the incidence of various types of measures; how the use of measures changes over time; trade impact analysis; impact on firms (e.g., large versus small); development impacts; judgments on whether measures are legitimate or designed to present a barrier to trade; and input into trade negotiations. However, collection of such databases in a timely and comprehensive manner is costly and faces difficult aggregation and relevance questions.

The ITC emphasizes that a business perspective is crucial in understanding NTMs. Producers need to comply with a wide range of NTMs that vary across products and countries, and can change at a very rapid pace. From a company’s perspective, NTMs generate extra time requirements, uncertainty, and cost, which reduces the competitiveness of their products. Therefore, there is a need to identify NTMs that companies in developing countries experience as barriers to trade, so that they can be understood and addressed.

The ITC uses surveys of companies and additional information to determine what NTMs may pose a barrier to trade, and to provide information to potential exporters. The work is not limited

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\(^1\) Many of these STCs are resolved within steps 1-4 above. At the level of step 5, 37 of the WTO’s dispute settlement cases have cited the SPS agreement in the request for consultations and 41 cases have cited the TBT agreement.
to food and agricultural products. Phone screening is used to identify companies that have experienced problems with NTMs, with follow-up through in-depth interviews. Answers are captured using questionnaires and a simplified multi-agency NTM classification. In-depth country reports are prepared in conjunction with local research institutions. Some of the roughly 30 countries analyzed (or for which work is in progress) are: Morocco, Peru, Uruguay, Paraguay, Hong Kong, Sri Lanka, Rwanda, Malawi and Kenya.

Survey results are analyzed by: 1) main export and import sectors, with a focus on specific products; 2) type of NTM categories, such as SPS, and specific NTM measures; 3) type of problems and problem sources, which might include national challenges, challenges faced in transit, and in partner countries. Additional interviews with relevant stakeholders are conducted. A discussion of the survey findings takes place in the framework of a national stakeholder workshop and results are integrated into other ITC projects, as well as projects by ITC partners.

Results thus far indicate that technical regulations are the measures most cited by companies as trade barriers; a large share of those companies involved in trade are affected; agriculture and perishable products are prominent; measures have an impact on export destinations; more NTMs are reported for intra-regional trade; many of the NTMs have domestic roots; landlocked countries are the most affected; and there is often confusion between public and private standards.

In terms of broadening available information on NTMs, it was discussed that it is often difficult to determine whether a particular measure is really burdensome for exporters and to determine whether a particular measure is more important for exporting to country A rather than country B. It may be that surveys, for example, reveal more about differences in export competencies among companies than about the measures per se. Companies may be reluctant to provide information on NTMs in response to a survey if they believe that their knowledge about NTMs or their ability to handle them confers a competitive advantage (asymmetric information). Current efforts to broaden the data available are often costly and there is a tendency to focus efforts on countries for which information is relatively accessible. NTMs for some developing countries (e.g., India) are particularly difficult to disentangle due to the active role of both federal and state governments. For these reasons it seems inevitable that aggregate databases can only contribute so much, particularly in terms of supporting analysis of the impacts of NTMs. Micro approaches, such as case studies, must play an important role in the analysis of NTMs. For researchers, transparency of data (access to existing information, notifications of updates) is an important issue.

**Session 3. What can we learn from industry case experience?**

Those involved in exporting agricultural and food products are often concerned by restrictions that are generated by “crisis” conditions, e.g., food safety scares, since the impact of these tends to be dramatic. However, there are longer term issues raised by NTMs, for example, whether systems for traceability of products need to be developed. In addition, concern may focus on a relatively narrow range of products – those that are particularly subject to NTMs or for which such measures may be particularly important.
Experience with the application of measures in developing countries (the example of Vietnam was cited) shows that multiple ministries are frequently involved in preparing regulations and that their involvement makes the situation very complicated. Key ministries are frequently unaware of international obligations under WTO agreements.

In terms of mutually-agreeable international development and application of SPS measures an issue is often created by “dueling scientists,” i.e., different assessments of risks and requirements by individuals in different countries with differing frames of reference, studies, and opinions. Although regulations may turn out to be transparent, there can be a lack of transparency in the rationale for the regulations adopted. Decisions often seem as much based on political considerations as based on science, given that everyone has a scientific paper to cite. Sometimes, abrupt shifts in negotiating positions can occur; such a case involving a past longstanding negotiation between the United States and China was described in some depth.

Transparency in NTMs involves more than simply having a database of measures or notifications. It requires knowledge of how companies are affected by these measures. Generally large companies have more options for dealing with NTMs than small companies, but their branded products can be particularly vulnerable. A recent example was provided by changes to nutritional labeling in Mexico. New requirements scheduled for introduction in 2011 were developed without adequate input from NAFTA partners or input from affected companies. In this case the lack of transparency was not in the regulations but in the implementation through the regulatory process. Given the timing it was impossible for exporters to obtain prior approval for their labels before January 1, 2011, at which point the labeling was required to be used. This was a case where “everything should have gone right but actually went wrong.” This experience shows the need for regulatory cooperation and ministerial coordination. For companies, the micro detail – what information is required on labels in this case – and timely access to this information is a critical issue, as is the issue of regulatory coherence and cooperation.

Developing a rule-making process that is transparent, satisfies international obligations, and allows other countries and exporters adequate time to comment on proposed regulations before they go into effect is a challenge for developing countries.

The role of private standards is increasing. These do not provide the same transparency or protection as national regulations but may be cost-prohibitive for some companies. ISO certification is expensive and can be a barrier to entry for smaller companies and for developing countries. Companies are adopting private schemes, e.g., GLOBALGAP, to satisfy purchasers in some countries. Private standards are likely to become more contentious in the future, but whether they will be taken up by the WTO is uncertain because they are private.

4. How can economic studies of NTMs be used to increase transparency?

Turning from industry experience to academic investigations, the tendency in economic studies has been to use aggregate analysis to examine NTMs. Gravity models have been widely used, and perhaps overused, for situations in which reality is “messy” and the optimal NTM is not zero. Attempting to proxy NTMs by tariff equivalents in economic models is both a difficult and
potentially flawed exercise. In addition, symmetry of trading costs between trading partners does not apply.

In examining NTMs it is important to take into account what valuation consumers place on measures and whether externalities exist that justify their use. It is difficult to determine, for example, whether customs procedures are unnecessarily restrictive using aggregate data. Harmonization in examining procedures is often difficult, with the exception of such features as sampling protocols. Harmonization in SPS policies can also be a challenge, an example being pest inspection and identification. Quarantined pests differ across countries and flexibility is always needed to address urgent concerns.

Disaggregated analysis can contribute to an improved understanding of SPS measures. An examination of sanitary rules for livestock exports from the U.S. shows that the costs of required tests can vary significantly across states even for a single species (e.g., tests conducted across state lines can be more expensive for out-of-state clients), and more so across species. Within NAFTA, Canada and Mexico have different regulations, and standardization of requirements would reduce costs for U.S. exporters. However, in evaluating the importance of these costs the argument can be made that the appropriate basis of comparison is not to free trade but rather to autarky (no trade), because that is the alternative if requirements are not met. For an exporter, these costs can be viewed as either trade insurance or as a regular cost of doing business. Some studies show a high rate of return to USDA inspection operations in terms of avoided rejections of imports.

In general, more can be learned about the transactions costs imposed by NTMs through micro analysis and this can be an important input into regulatory assessment. Economic analysis can play a useful role in understanding the impact of particular measures. A catchy phrase about Australia “Nature made it unique; Quarantine keeps it that way” makes a point. But it does not resolve the issue of costs and benefits of specific measures.

Policymakers will often ask for a more aggregate assessment on the importance of a particular type of measure and its impact. Even though it may be difficult to determine when an NTM is “unnecessarily” restrictive, improved transparency of measures at the domestic level (what is the domestic impact of a particular measure?) is probably the key to understanding the importance of NTMs.

Session 5. What reforms could increase openness and transparency in NTMs?

Part of this discussion explored changes over time in the U.S. approach to SPS regulatory decisions. It was argued that the U.S. has adapted its regulatory process to make it more efficient and transparent. Process changes introduced in 1987 that made rule-making necessary were designed to increase transparency, but they introduced delays of up to four years into the regulatory decision-making system. In 2007 a notice-based approach was adopted which expedites the process for some decisions. This approach is now applied to fruit and vegetable imports and may be extended to propagated materials. If a request is made to import a product, any existing risk assessment is published and an opportunity is provided for public comment. If
there are no substantive objections permits will be issued for the imports. The new approach has speeded up the reauthorization of imports after disease events in exporting countries. This has eased the regulatory workload, but notice-based decision making has not replaced rule making for decisions with the most substantial potential impacts.

A large proportion of the issues in the WTO with respect to TBTs relate to food and agriculture (e.g., nutritional labeling, organic standards, labeling of wines and spirits). Roughly 30-40% of the issues are currently in this area and that percentage is likely to rise. Quality standards are at the top of the pyramid in this area and it is increasingly apparent that an effective mechanism for considering them is needed. Some of the key issues are:

- Regulations are sometimes not published (a possible improvement would be to make it a requirement that regulations should be published in at least one of the official WTO languages, although this would be very difficult to achieve for developing countries)
- Regulatory coherence – particularly among different ministries or domestic agencies
- Improved domestic impact analysis of regulations (e.g., is ISO a barrier, does legislation need to be modified in order to reduce costs?).

For SPS, meat and livestock products have been particularly important recently, with the cases of beef for Japan and Korea and poultry meat for Russia. Import approval, particularly in Russia, has been linked to broader issues of political relations with the United States.

There are several initiatives that could be adopted to improving transparency further:

1. Introduction of a system of indicators for types of measures (e.g., through the WTO)
2. Use of trade agreements to improve regulatory processes and their transparency
3. Holding WTO workshops on key issues, an example being a recent workshop of the WTO TBT Committee on regulatory cooperation
4. Greater use of bilateral contacts for exchanging information, encouraging dialogue on system design, and providing technical assistance
5. Making full use of information technology (databases, Internet) to improve transparency.

**Conclusion**

Transparency issues arise in the design, evaluation, and implementation of NTMs affecting food and agriculture. No single workshop or set of negotiated “rules for making the rules” will ever eliminate controversies about the promulgation or implementation of these measures. NTMs will continue to evolve in response to emerging trade opportunities, new risks, new science, and new consumer demands. This will put strains on scientists, policy analysts, governments, and industry. The need to resolve the difficulty of implementing legitimate measures to address countries’ health, safety, environmental, and product quality concerns while keeping international markets open promises to keep these measures under continued scrutiny in the years ahead.
This workshop brought a group of experienced participants from the food industry, agribusinesses, government, and universities who deal with NTMs on a regular basis together to share their perceptions and knowledge about past experience and ways to improve the transparency of NTMs in the areas of SPS and TBT measures. This short note is intended to convey a glimpse of the workshop dialogue. The hard work needed to improve regulatory processes lies in the day-to-day and strategic activities and evaluations of those engaged in efforts such as those of the workshop participants. The “further learning” to which this workshop points comes from much more reflection on this body of activity and analysis.