

# *Issue Report*

## Transparency of Nontariff Measures in Food and Agricultural Trade

In recent years, increasing scrutiny has been given to nontariff measures in food and agricultural trade, which are often used to protect domestic producers from import competition. New nontariff measures are arising due to opportunities for expanded trade and emerging science and technology, as well as evolving consumer preferences regarding process attributes of internationally traded goods.

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

A November 2010 workshop on transparency and good regulatory practice in nontariff measures examined these questions.

### ***What transparency problems exist with nontariff measures?***

The two most important categories of nontariff measures with respect to transparency are measures associated with SPS and technical barriers to trade. Import regulations are often derived from domestic regulations—such as requiring pasteurization for dairy products or controlling the use of genetically modified organisms (GMOs). These regulations are often designed to address perceived market failures relating to human, animal or plant health. While elimination of these measures is not an option, transparency is important for exporters.

The World Trade Organization's (WTO) agreements on SPS and technical barriers to trade include transparency provisions, such as required notification of new or changed measures. However, domestic regulators in developing countries are often unaware of such international requirements. Multiple agencies may be involved in framing and implementing a country's regulations, and inter-agency communication may be difficult. The regulatory framework is often more transparent in OECD countries than in developing countries, and it is easier for other countries to have formal input into the domestic rule-making process.

In addition to costs imposed on exporters in collecting information about nontariff measures, there can be compliance costs attributable to lack of transparency in how regulations are interpreted and enforced. Conditions of entry for imports sometimes change from day to day or vary from port to port, and those at regulatory agency headquarters may be unaware of actions being taken at the border. This can give rise to "port shopping" where exporters seek out the most favorable points of entry in each country. The quality of human capital in import agencies, particularly in developing countries, may be an issue, as well as outright corruption in the implementation of measures in any country.

The WTO notification process is not costless, and this may deter developing countries from keeping notifications up to date. Efforts to reduce "red tape" and trade facilitation initiatives can play a role in increasing transparency in these countries.

International organizations, such as Office International des Epizooties (OIE), the International Plant Protection Convention (IPPC) and the Codex Alimentarius Commission, play an important role in establishing internationally recognized animal and plant health and food safety standards.

However, countries differ in their views on the extent to which standards should be science based, and on the interpretation of scientific evidence used to justify standards. There are also differences of opinion on whether standards should be identical or merely equivalent across countries. The application of standards can be heavily influenced by domestic political objectives, such as the protection of domestic industries or the promotion of food self-sufficiency, or by broader international relations.

### **Information on nontariff measures**

WTO obligations generate 800 to 1,200 SPS notifications per year, with notifications totaling 8,476 between 1995 and 2009. The level of disaggregation used by countries in notifying SPS measures varies by country. Some provide a single notification for standards for residues of a particular chemical on a range of crops, while others notify each crop separately. An SPS notification can indicate a new or changed regulation, one not based on an international standard, or one for which an international standard does not exist. Bilaterally agreed standards must also be notified. To date, 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 equaled 73% of the total in 2009.

Technical regulations and conformity assessment procedures for technical barriers to trade notifications are similar to SPS. Between 1995 and 2009, 11,590 notifications were submitted of technical regulations and conformity assessment procedures for both agricultural and non-agricultural goods. Annual notifications have varied between 600 and 1,400, and display an upward trend. Since 1995, 110 WTO members have notified at least one technical barrier to trade measure.

It is difficult to say how many of these notified SPS and technical barriers to trade measures can be considered unnecessary barriers to trade. Since 1995, 271 Specific Trade Concerns have been raised in the Technical Barriers to Trade Committee and 302 in the SPS Committee. The Specific Trade Concerns indicate the possibility that certain measures may constitute unnecessary obstacles to trade.

The United Nations Conference on Trade and Development is assembling information on nontariff measures using primary data obtained at the national level, e.g. from ministries responsible for trade, agriculture or the environment. Secondary sources are also used, such as country-specific databases and WTO notifications. The aim is to standardize information across countries, e.g. same classification of measures or same product level. Data collection is complete for the European Union and Japan, and is ongoing for the United States, Australia, Canada and some African countries.

The Geneva-based International Trade Centre uses surveys of companies and additional information to determine what nontariff measures may pose a barrier to trade, and to provide information to potential exporters. Survey work has been completed or is in progress in about 30 countries. Preliminary results indicate that:

- technical regulations are most cited by companies as trade barriers;
- a large share of companies involved in trade are affected;
- agriculture and perishable products are prominent;
- measures have an impact on export destinations;
- more nontariff measures are reported for intra-regional trade than inter-regional trade;
- landlocked countries are the most affected; and
- there are often inconsistencies between public and private standards, e.g. those required by retailers.

### **Lessons from industry case experience**

Industry experience with the application of nontariff measures in developing countries shows that the involvement of multiple ministries in preparing regulations can make the situation very complicated for exporters. Key ministries are frequently unaware of international obligations under WTO agreements.

International development and application of SPS measures can be problematic because of “dueling scientists,” i.e. different assessments of risks by scientists using differing frames of reference, studies and opinions. Even when the regulations are transparent, there can be a lack of transparency in their rationale. Decisions often seem to be based on political considerations, given that scientific opinion can differ. Abrupt shifts in negotiating positions on regulations can sometimes occur for reasons involving political relations between the negotiating countries.

In general, large companies have more options for dealing with nontariff measures than small companies, but branded products can be particularly vulnerable. An example is changes which took effect Jan. 1, 2011, to Mexico’s nutritional labeling requirements. The changes were developed without adequate input from NAFTA partners or affected companies. In this case, the lack of transparency was not in the regulations per se but in their implementation through the regulatory process. Given the timing, it was impossible for exporters to obtain prior approval of labels before the new regulation took effect. This experience shows the need for regulatory cooperation and ministerial coordination.

The role of private standards in international trade is increasing. These do not provide the same transparency or protection as national regulations but may be cost-prohibitive for some exporters. ISO certification is expensive and can be a barrier to entry for smaller companies and developing

countries. Companies are adopting private schemes, such as GLOBAL-GAP, to satisfy purchasers in some countries. Private standards are likely to become more contentious in the future, and it is uncertain whether these can be considered through existing WTO mechanisms.

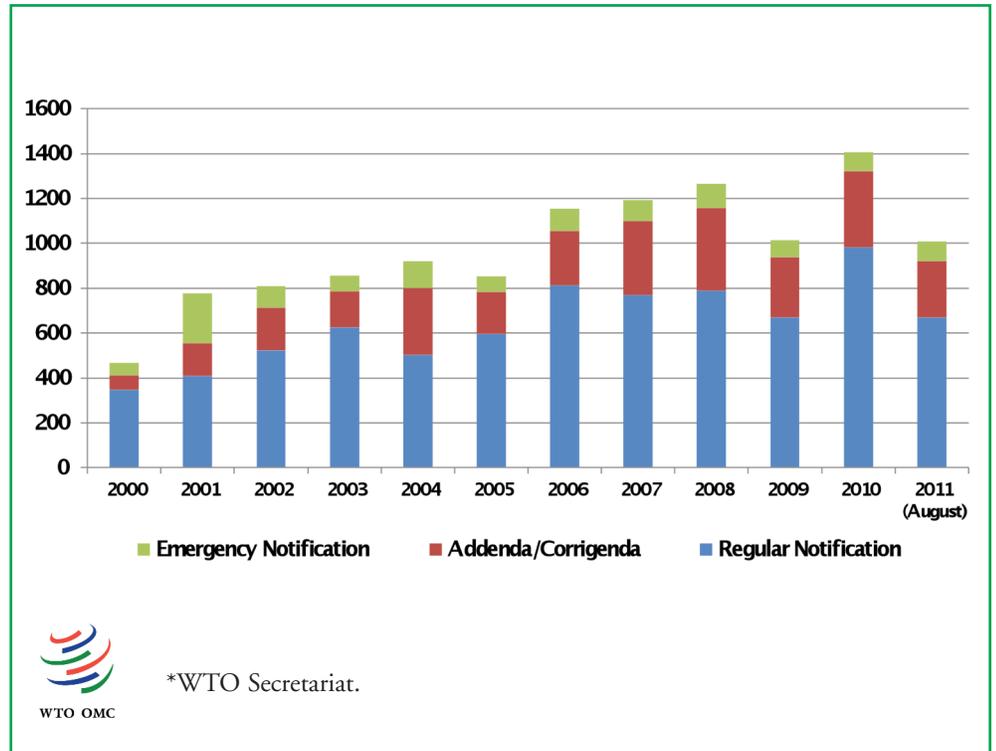
### Studies to increase transparency

The tendency in economic studies has been to use aggregate analysis to examine nontariff measures. Gravity models assume that trade flows should be primarily determined by the geographical and institutional proximity of markets. Gravity models have been widely used, and perhaps overused, for situations in which reality is “messy” and the optimal nontariff measure is not zero. Attempting to proxy nontariff measures by tariff equivalents in economic models is both a difficult and potentially flawed exercise. In addition, the common assumption of symmetry of trading costs between trading partners often does not apply.

In examining nontariff measures, 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 SPS policies can also be a challenge, an example being pest inspection and identification where even such features as sampling protocols can differ and are difficult to compare. Quarantined pests differ across countries and flexibility is always needed in order 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 United States shows that the costs of required tests can vary

**Figure 1: SPS Notifications Submitted per Year\***



**Figure 2: Technical Barriers to Trade (TBTs) Regular Notifications Submitted per Year\***



significantly across states—for a single species and across species. Within NAFTA, Canada and Mexico have different regulations. The standardization of requirements would reduce costs for U.S. exporters. Some studies show a high rate of return to domestic USDA inspection operations in terms of avoided rejections of imports.

## Options for reforms

Roughly 30% to 40% of the issues in the WTO with respect to technical barriers to trade relate to food and agriculture, and this percentage is likely to increase. Quality standards are at the top of the pyramid, and it is increasingly apparent that an effective mechanism for considering such standards is needed. For SPS, meat and livestock products have been particularly important recently, with the cases of restrictions on U.S. exports of beef to Japan and Korea and poultry meat to Russia. Import approval, particularly in Russia, has been linked to the country's objective to develop its

domestic industry and to broader issues in political relations with the United States.

Several initiatives could be adopted to further improve transparency:

- Introduce a system of indicators for identifying and classifying different types of nontariff measures, for example through the WTO.
- Use trade agreements to improve regulatory processes and their transparency.
- Conduct WTO workshops on key issues, an example being a 2010 workshop of the WTO Tariff Barriers to Trade Committee on regulatory cooperation.
- Make greater use of bilateral contacts for exchanging information, encouraging dialogue on system design, and provide technical assistance to developing countries.
- Make full use of information technology (databases, Internet) to improve transparency.

## Conclusions

Important transparency issues arise in the design, evaluation and implementation of nontariff measures 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 measures. Nontariff measures 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 ensure that legitimate measures can be employed to address health, safety, environmental and product quality concerns, while at the same time keeping international markets open, promises to keep nontariff measures under continued scrutiny in the years ahead.

## The Source

This report summarizes discussions at a November 2010 workshop on transparency and good regulatory practice in nontariff measures affecting food and agricultural trade, and how transparency can be increased. The workshop was organized by Farm Foundation, NFP in collaboration with USDA's Economic Research Service (ERS) and the U.S. International Trade Commission. Participants included about 35 representatives from the food industry, agribusinesses, government and universities who deal with nontariff measures on a regular basis.

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