

## THE EFFECTIVENESS OF NON-TARIFF MEASURES IN REGIONAL FREE TRADE AGREEMENTS

Miss Natsuda Kiripet  
Graduate Student, Thammasat International Trade Law and Economics Program  
Thammasat University, 2 Prachan Road, Bangkok 10200 Thailand  
Email: [nokyoongnatsu@gmail.com](mailto:nokyoongnatsu@gmail.com), Tel: +668-6665-7916

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### ABSTRACT

*Non-Tariff Measures (NTMs) are barriers of international trade which each country can determine regulations unilaterally. Formulations of NTMs in free trade area were underpinned by the exemption under Article XX (General Exceptions) of the GATT, and have to apply to all parties following Non-discrimination rule too.*

*From UNCTAD report, the numbers of NTMs are continually increasing while the tariff measures are declining; as an effect of "Free Trade Agreement" objectives to reduce or eliminate customs duties on mutual trade but each country wants to protect goods and entrepreneur in its domestic market so they have to prevent import by using NTMs. World-leading NTMs users are the biggest players in the international markets, including the United States, European Union, Japan, and China.*

*When all the countries mentioned above implement theirs NTMs, developing or small countries, whose economies depend on exports goods, are affected. Some NTMs cause a big trouble to entrepreneurs in these countries, but they have not enough bargaining power to negotiate with NTMs implementers.*

*Regional Free Trade Agreements (RTAs) is a method to empower to all benefit-losing countries. According to Article XXIV of the GATT 1994, it is allowed all members to set up the RTAs, such as Customs Union or Free-trade Area, in order to increasing free trade. The basic of economic integration is expanding the market size and exploit economies of scale. Moreover, RTAs has a stronger bargaining power than standing alone. This paper identifies whether RTAs has a power to enhance NTMs or not on existing NTMs in RTAs.*

Keywords: Non-Tariff Measures (NTMs), Regional Free Trade Agreements (RTAs)

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### INTRODUCTION

One of the main regulations of international trade is Non-tariff measures (NTMs). The numbers of users continue to increase since tariff measures have the decreasing role in free trade area. NTMs are widely used between developed and developing economics on products such as agricultural food products, electronic products, and processed foods products. The substantial impact was on developing countries, which having lower standard than big counties. Their adjustment costs to improving their products following non-tariff measures are significant. After NTMs being enforced, most of studies examine how these measures affect to trade or how much trade values were changed, but there is no study on how effective non-tariff trade measures should be.

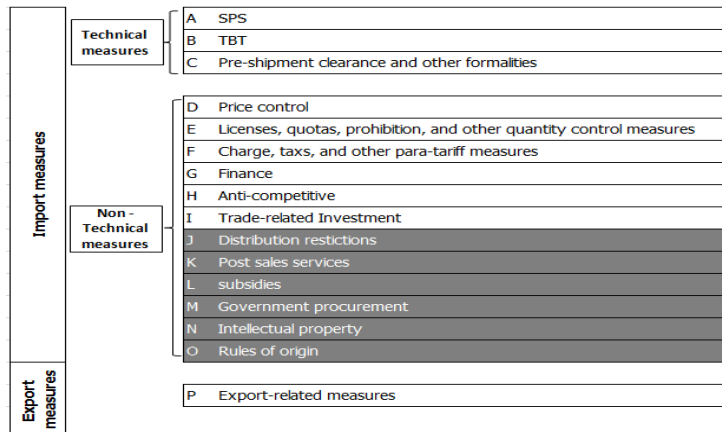
### NON-TARIFF MEASURES IN NOWADAYS USAGE

The data on NTMs was started since 1980s by UNCTAD (United Nations Conference on Trade and Development). The latest data on 2010, NTMs are classified into two groups by the MAST (the Multi-Agency Support Team), the organization was established by UNCTAD for collection and revision of NTMs, as below (see figure 1);

**Group one** Import measures: subdivide to two groups are **Technical measures** (such as Sanitary and Phytosanitary Measures (SPS) Technical Barriers to Trade (TBT) and Pre-shipment clearance and other formalities) and **Non-Technical measures** (such as price control, licenses, quotas, prohibition, and other quantity control measures, charge, taxes, and other para-tariff measures.)

**Group two** Export measures contained one measure is Export-related measures

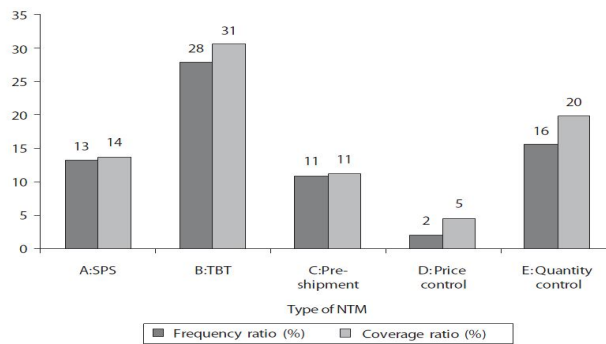
Figure 1 :NTM Classification by Chapter (First tier)



Source: MAST (2009)

There are five NTMs which are frequently implemented in practical (see figure 2), SPS, TBT, quantity control, pre-shipment and price control. NTMs enforcement are different from country or regional to another; for example; (a) high income group, such as EU and Japan: SPS and TBT are the most used forms of NTMs, to protect the quality of life in their country and not to harm consumers and the environment. While the others group, (b) Asia and Latin America, are concentrate on quantitative restrictions (mostly in the form of licensing) (Cadot, Malouche, and Sáez, 2012) more than the others measures to restrict imports; (c) African countries are most affected by SPS and TPT because they have to improve their regulations to be consistent with the major trading partner, the European Union, it is worth-noting that Africa has led to the Pre-shipment measures than other countries due to the problem of corruption to occur in the importing process.

Figure 2 Frequency Index and Coverage Ratios by Chapter of NTM



Source: Gourdon & Nicita (2012)

NTMs are used for many objectives, including the correction of information asymmetries and other market failures (Disdier and Tongeren, 2010), but also for, possibly, protectionist purpose. In some products, only a few NTMs may be found, while other products might have a spreading of NTMs. SPS measures affect most on agricultural products. There are controlling measure such as “From Farm to Table” to ensure the food chain is safety for consumer.

TBT measures are critical issues for manufacturing products like canned food, electronics, and textile. The standard of each industry requires an improvement following TBT measures, such as, The Restriction of the Use of Certain Hazardous Substance in Electric and Electronic Equipment (*RoHS*) for electronic production and Regulation on the Registration, Evaluation, and Authorization of Chemicals (*REACH*) for chemical production.

Although the business sector are facing with difference of non-tariff measures in international trade, the impact of NTMs is identical in the sense that the trade-related costs are increased, making their products less competitive in the destination market. Not only producers in exporting country but businesses and final consumers in the importing country have been affected from increase in costs resulting from NTMs application too.

## NTMs STRUCTURE, BASIC PRINCIPLES OF THE WORLD TRADING SYSTEM

The basic of NTMs enforcement should follow the principles of the world trading system<sup>1</sup> as below;

- (1) **Non-discrimination and (2) national treatment:** Article 2.1 of the Agreement states that “*in respect of their technical regulations, products imported from the territory of any Member be accorded treatment no less favorable than that accorded to like products of national origin and to like products originating in any other country*”. The same principle applies to conformity assessment procedures and related fees and information requirements, which must not discriminate against imported products. Members must respect the confidentiality of information about the results of conformity assessment procedures for imported products in the same way as for domestic products (Art. 5.2.4 and 5.2.5).
- (3) **Transparency:** To help ensure transparency, all WTO Members are required to establish *national enquiry points* (Art. 10) and to *notify* to the WTO Secretariat, discuss and publish technical regulations and conformity assessment procedures which do not exist, which differ from existing international standards, recommendations or guides, or which may have a significant effect on trade of other Members, before they are adopted (Art. 2.9 and 5.6).

Moreover, GATT allowed exception for Discriminatory NTMs by exceptions in

- (4) **Article XX**, which permit a government to maintain measures that would otherwise violate the positive rules of the GATT—for instance, measures that discriminate against or between imports or ban importation of a good. The Article XX exceptions permit measures necessary for, or related to, certain named policies—for instance, measures “necessary to protect human, animal or plant life or health,” measures “necessary to protect public morals,” measures “necessary” (WTO, 2012)

Normally, NTMs should to cover 4 principles mentioned above. A same product but different nations have to meet the same NTMs. The details in NTMs are clear and can justify the reason of enforcement. In fact, not all NTMs are corresponding to these principles, some NTMs are violating the basic rules and seem to “unjustifiable and unnecessary” like example from AFTA Council studied in 2005 by de Dios (2006) as follows:

- “(i) NTMs that are non-transparent, discriminatory in application, without scientific basis, and where an alternative less restrictive measure is available, would require immediate elimination (*red box*);
- (ii) NTMs that are transparent but discriminatory in application which nullify or impair some benefits or obligations of the country, that affect highly traded products in the region or under the 9 priority sectors<sup>2</sup>, that cannot be clearly justified or identified as a barrier, would be subject to negotiation (*amber box*);
- (iii) NTMs that are transparent, non-discriminatory in application, have no alternative measure, have scientific basis, are imposed for public health and safety or religious or national security reasons, are WTO-consistent and reasonable such as sanitary and phytosanitary and environment regulations, are justified and could be maintained (*green box*).”

The latest of WTO trade report year 2012, they also pay attention to NTMs and have the project to co-operation on NTMs according to 3 reasons below;

**First**, the transparency of NTMs must be improved and the WTO has a central role to play with its multiple transparency mechanisms.

**Secondly**, more effective criteria are needed to identify why a measure is used. Better integration of economic and legal analysis may help achieve this goal.

**Thirdly**, the increase in global production sharing poses additional challenges for the multilateral trading system, calling for deeper integration.”

Same opinion with WTO annual report 2012, transparency of NTMs have to clear and find the way to eliminate NTMs in red box and harmonize the standard of NTMs together by co-operation in regional.

<sup>1</sup> Source: WTO TBT Agreement, WTO Regional Trade Gateway and WTO TBT Committee.

<sup>2</sup> In that paper thus seeks to identify the non-tariff measures affecting trade in goods among ASEAN members in the nine priority goods sectors, namely fisheries, agro-based, wood-based, textiles and apparel, healthcare, rubber-based, automotive, electronics, and information and communication technology or ICT.

## THE ROLE OF RTAs TODAY

WTO is a biggest multilateral trade agreement in the world that all members are guaranteed to receive the gains from free trade. But it is quite hard for 157 countries, the information update on August 2012, could agree in the same thing. The Doha round substantiate this, after 10 years, WTO cannot reach any considerable decision. It seemed to be the longest negotiation and lead to the rise of free trade agreements too. *Regional trade agreements (RTAs)* have become increasingly prevalent. As of 15 January 2012, 511 notifications of RTAs had been received by GATT/WTO. Nevertheless, WTO rules (Article XXIV) also allow the possibility of regional integration and bilateral agreement for members who wish to liberalize at a quicker (WTO, 2012).

Sample of RTAs among the well know are the European Union (EU), The North American Free Trade Agreement (NAFTA), The Southern Common Market (MERCOSUR), The Association of Southeast Asian Nations (ASEAN) Free Trade Area (AFTA) and The Common Market of Eastern and Southern Africa (COMESA).

The conclusion of RTAs by UNESCAP<sup>3</sup>(UNESCAP, 2009) was separated to two sides of RTAs. First, advantages of RTAs

- RTAs are quick means of delivering concrete benefits from trade in specific sectors
- May lead to net trade creation if commitments are wide in scope and deep; go beyond WTO commitments and within countries ability to implement
- RTAs provide useful learning ground for complex multilateral negotiations
- May lead to specialization and economic efficiencies (economies of scale)
- May stimulate FDI (especially from non-RTA member countries) and technology transfer
- May have indirect effects: economic and industrial restructuring; wider economic cooperation
- Positive effects higher the bigger the membership in the RTA and the deeper and wider the commitments towards integration
- Increased bargaining power in WTO, though trade interests of all members may not be the same
- Benefits for small countries; land-locked countries

And disadvantages of RTAs

- Track records of RTAs is mixed
- Trade diversion may be higher than trade creation
- Dispute settlement procedures in RTA may conflict with WTO Dispute Settlement Understanding
- WTO principle of non-discrimination is undermined
- Creation of vested interests may be stumbling block to MTS as multilateral negotiations lead to preference erosion
- Proliferation of North-South RTAs may lead to erosion of advantages
- Negotiation (human and financial) costs may be high(er) leaving fewer resources for multilateral negotiations (high opportunity costs)
- RTAs tend to impose political agendas on weaker trading partners
- Multiple overlapping RTAs with different rules of origin are difficult to monitor; may be contradictory and may not be cost effective
- New and emerging RTAs are often WTO-"plus" and may not be in developing countries interests
- Asymmetric benefits
- Compliance costs may not justify the benefits for smaller companies
- Many issues, e.g. agriculture often not covered, best discussed multilaterally
- Implementation often lacking

UNESCAP concludes that the disadvantages outweigh the advantages, but the RTAs still has an important role in international trade. The empowerment of trade negotiation and more bargaining power make developing countries do not deny RTAs.

## RTAs' RESPONSE TO NTMs

RTAs has involved rising up NTMs. While tariffs have been reduced through multilateral trade negotiations, NTMs have emerged as alternative measures to protect domestic industries, particularly in the 1970s and 1980s in response to the drastic tariff reductions in developed countries (Ando & Obashi, 2009). They finalize that, in ASEAN, some products are more likely to be highly protected than others through a complicated manner by applying multiple NTMs.

Recently studies said, there are two factors to rise of technical regulation (TBT). First, tariffs have come down with their lock-in under the multilateral agenda and bilateral and regional preferential agreement, reducing their prevalence as trade policy measure. Second, trade grew rapidly in the 1990s and 2000s, which growth was driven by a mix of technological change and

<sup>3</sup> The United Nations Economic and Social Commission for Asia and the Pacific

policy reforms, the government are increasingly called upon to respond to a variety of concerns raised by members of society in many areas, including the environment, animal welfare, and food safety, and are urged to develop technical regulations (Gourdon & Alessandro Nicita, 2012).

There is another study in Africa to find out an African perspective of bilateral and regional trade agreements. The final result confirmed

“Technical regulations are on the rise and can be used as instruments of commercial policy in unilateral, regional, and global trade contexts”

*and* “The Agreement recognizes that countries have the right to establish protection levels that they consider appropriate, for example, to safeguard human, animal or plant life or health or the environment. As such, the Agreement does not prevent countries from taking measures necessary to ensure that these levels of protection are met” (Meyer, Fenyes, Breitenbach, & Idsardi, 2010).

RTAs induce an increase in NTMs. The intra-trade between regions are facing NTMs to protect domestic producers and pursuing non-economic objective, such as the protection of public health and consumer protection. What is the point of establishing the free trade area if , in practice, more and more trade measures are applied?

### RTAs ENHANCE NTMs' EFFECTIVENESS

What is the effectiveness of NTMs? This paper determines the scope under 4 principles: *non-discrimination, national treatment, transparency and Article XX*, including reduces excessive NTMs in regional trade agreements together.

The EU is a good sample for enhancing effectiveness of NTMs. They created new law (harmonized legislation) which is adopted when existing rules, mostly on health, safety, or environmental protection, differed too much across members, and starting in 1985, physical barriers (border checks and customs formalities) were eliminated. They also developed and applied the principle of mutual recognition in standards that facilitate free intra-EU trade in goods. The commitment was expand when Central European Free Trade Agreement (CEFTA) members that aim to join the EU have committed to eliminate NTMs with the EU, means that their system are converging, which in the long-run will eliminate TBTs in the bloc (World Bank, 2012: 116-117)

The ASEAN also had a project to harmonize the TBTs measures called “the ASEAN Consultative committee on Standards and Quality (ACCSQ)” has endeavored to harmonize national standards with international standards (e.g. ISO, IEC and ITU International Standards) and implement mutual recognition arrangements (MRAs) on conformity assessment to achieve its end-goal of “One Standard, One Test, and Accepted Everywhere” (Lesser, 2007).

Samples of EU and ASEAN were successful in compromising national regulations because of they have representatives to join committee, body, or network. Such institutions generally monitor the implementation of the provisions of the agreement, develop proposals for future improvements, facilitate the exchange of information, and serve as consultative forums on NTMs issues. In addition, such institutions sometimes also co-ordinate harmonization initiatives and manage further co-operation among parties.

Although, in the early stage when RTAs started NTMs numbers were increase, finally they find the way to compromise their regulations together. For instance, ASEAN Blueprint<sup>4</sup> for “Single Market and Production Base” aim, there are two actions to harmonized NTMs in the regional, (a) *enhance transparency of Non-Tariff Measures (NTMs); and (b)work towards where possible having regional rules and regulations consistent with international best practices*. They are important task to all parties have to talk and plan to improve the regulations together. Trade-off is important role in decision to finalize, all parties have to consider between gain and loss to their counties, especially long term benefits to all parties – consumer health, manufacturing, environment and government. When RTAs agree to harmonize and enforce reasonable NTMs, some conflicting NTMs were eliminated, the existing NTMs will be standardized and suitable to utilize in international trade area.

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<sup>4</sup> “ASEAN Economic Community Blueprint” Jakarta: ASEAN Secretariat, January 2008. General information on ASEAN appears on-line at the ASEAN Website : [www.asean.org](http://www.asean.org)

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