
Moving beyond the Border

Introduction and Overview

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Over the last three decades, traditional barriers to trade – import tariffs and quantitative restrictions (QRs) – have fallen dramatically. Globally, average applied import tariffs are less than 10 percent, and are well below 5 percent in Organisation for Economic Co-operation and Development (OECD) countries. Quantitative import restrictions have become rare outside of agriculture and even there today mostly take the form of so-called tariff rate quotas where higher tariffs apply once a certain quantity of imports (the quota) has been exceeded. Many inputs used in production are duty-free if imported. The decline in tariffs and QRs was a driver of a boom in international trade flows in the 1990s and 2000s and supported major changes in the structure and composition of world production and trade as this came to be organized in global value chains (GVCs). Tariff reductions, complemented by technological and managerial advances, drive firms to specialize in specific tasks and activities. International supply chains and production networks are the mechanisms through which this process of specialization is organized, with production occurring – and value being added – in multiple countries that are part of a chain or network.

One consequence of global trade liberalization is that barriers to international competition today have come to be associated with differences in regulatory policies that increase the costs of engaging in cross-border sales. Increasingly, emphasis is placed on behind-the-border policies and their impact on cross-border economic activity. This change in emphasis can be seen in the evolution of trade agreements, where more recent agreements are far more comprehensive than earlier ones. (See Dür, Baccini, and Elsig, 2014.) It also can be seen in a shift in the work program of trade ministries and international organizations away from relatively simple analysis of tariffs and quotas to a more challenging set of questions tied to regulatory cooperation and regulatory diversion and regulatory

heterogeneity. In addition, bilateral cooperation on regulatory matters poses challenges for third countries that are less clear-cut than discriminatory tariff policy. (See Francois, Hoekman, and Nelson, 2015.)

Lurking behind the impact of nontariff measures (NTMs) on cross-border integration is the underlying politics driving the relevant regulatory structures. To the extent these measures are designed deliberately to act as barriers to trade and investment, they are often referred to in the literature as nontariff barriers (NTBs). However, this is a narrow view on what is really the broader question of the impact of NTMs (both intended and unintended) on economic integration. Indeed, while tariffs, trade subsidies, and related policy instruments that are clearly discriminatory measures are usually driven by the politics of protecting domestic industry from foreign competition, domestic regulatory structures are driven instead by a desire to protect consumers from substandard products, to protect farmers from animal and plant pathogens, or to ensure prudent regulation of service providers. As such, the impact on foreign suppliers may be unintentional, or even seen as a necessary element of ensuring domestic policy goals. This in turn means there is scope for international cooperation to minimize unintended consequences of regulation (such as through mutual recognition or even common regulatory decisions).

The contents of this volume address many of the challenges posed by the heightened relevance of NTMs to the world economy. These challenges include basic questions of benchmarking policy in terms of NTMs, quantifying the impact of those NTMs on trade and investment, negotiating on NTMs, and finally approaches to regulatory cooperation and targeting regulatory divergence. The final chapters focus on challenges that NTMs pose for the ability of the rules-based trade and investment system to keep up with the evolution of the global economy itself.

In the first section of the volume (Part I) we focus on the basic issue of benchmarking NTMs and their impact on market access. In Chapter 2, Marie-Luise Rau and Achim Vogt focus on the availability of NTM data for goods, taking stock of the key NTM databases by elaborating on the kind of NTM information actually provided, and the advantages and disadvantage of the data and their interpretation. They also identify gaps in the data and explore options for reconciliation, mapping future directions for research in this area.

Compared to goods, the classification and benchmarking of market access in services is far less developed. Yet, it has become increasingly clear that restrictions on services trade and investment impact not only trade in services, but also trade in goods as well. Lack of detailed

information poses unique challenges when identifying priorities for negotiation and regulatory cooperation. From the data we have, we know that in the case of services, there is a substantial gap between commitments made both in the General Agreement on Trade in Services (GATS) and in regional agreements compared to actual policy. For this reason, while Chapter 2 is focused on NTMs affecting goods, in Chapter 3 the spotlight is turned to services. Here, Peter Egger, Joseph Francois, Bernard Hoekman, and Miriam Manchin focus on the impact of policy uncertainty due to binding overhang, or the gap between bound commitments on policy and actual applied policy in international trade agreements as they relate to services, on effective market access. The authors argue that a renewed push to reduce binding overhang in a World Trade Organization (WTO) context may yield not only a basis for future negotiated gains, but also immediate gains in market access. Like goods, security of market access through effective bindings matters.

The next section of this volume (Part II) is concerned with the assessment and benchmarking of regulatory policy and the possible impact of negotiated agreements affecting NTMs. In Chapter 4, Mahdi Ghodsi and Robert Stehrer combine the type of data covered in Chapter 2 with recent data on global production linkages to examine the impact of policy when transmitted across GVCs. In the presence of GVCs, import policies affect not only the directly targeted trading partners, but also third countries through international industrial linkages. This is the case for both tariffs and NTMs. The chapter analyses the effects of NTM trade policy instruments in the global economy. Their integrated analysis of trade costs and global production linkages yields insight on the impact of NTMs on growth in labor productivity.

Chapter 5 focuses on the analysis of NTM trade impact assessments. In the chapter, Eddy Bekkers and Hugo Rojas-Romagosa provide a critical overview of the two main approaches used to estimate NTM reductions associated with the implementation of free trade agreements. They use recent assessments of the Trans-Atlantic Trade and Investment Partnership (TTIP) as a reference set, detailing the role that NTM-related cost reductions estimated in different impact assessments of the TTIP play in the findings of such studies. They compare and analyse the main differences in these estimations and how these differences affect the overall estimated economic impact of the TTIP. They find that accounting for differences in the expected NTM reductions explains much of the discrepancies regarding the overall potential economic effects between different impact assessments of the TTIP. This highlights the importance

of future research to better map changes in NTMs in trade agreements into changes in trade costs, if we are to identify priorities in addressing trade impacts of NTMs through negotiated agreements.

Chapter 6 focuses specifically on government procurement. This is an area where governments traditionally use a mix of price preferences for domestic suppliers and localization (local content) requirements. The use of such policies is to some extent constrained for members of the WTO Agreement on Government Procurement and for countries that have included procurement policy disciplines in their preferential trade agreements. In Chapter 6, Simon Evenett and Anirudh Shingal provide an analysis of findings based on the data from the Global Trade Alert team on public procurement policy changes undertaken since November 2008. They focus in particular on policy changes that alter the relative treatment of domestic firms vis-à-vis foreign rivals and demonstrate that procurement policy is a frequently used NTM with adverse effects on foreign suppliers.

Chapter 7 examines methodological issues related to how we benchmark NTMs and their impact on market access. In the chapter, Igor Bagayev and Ronald Davies work with some of the datasets covered in Chapter 2, focusing on NTM coverage ratios for the 2008–14 period in the European Union. Trade-weighted coverage ratios are commonly used when estimating the effect of NTMs on trade flows and other outcomes. Because they weight by import shares, for a given sector they can vary across countries even when actual policies are the same. While trade shares can depend on several factors, here the authors link them to income distribution. They find not only that the variation in coverage ratios is linked to income inequality, but also that this relationship is consistent with NTMs primarily on luxuries. This points to the need to include a focus on income distribution when benchmarking the effects of NTMs.

The third section of the volume (Part III) is concerned with the legal and institutional contexts of NTMs. The focus here is not only on how context affects policy reform efforts, but also how NTMs are themselves a limiting factor in the operational effectiveness of multilateral and preferential cooperation and treaties.

In Chapter 8, Fabio Artuso describes how some Association of South-east Asian Nations (ASEAN) countries have leveraged their commitments under the ASEAN Trade in Goods Agreement (ATIGA) and the WTO Trade Facilitation Agreement to collect, classify, and publish information on NTMs. The establishment of institutional mechanisms to

promote interministerial coordination in view of establishing Trade Portals for the publication of NTMs is emphasized as a critical element. Interministerial collaboration, backed by a clear legal mandate, is also considered fundamental to tackle effectively review and streamlining of NTMs. A concerted effort to develop regulators' capacity is necessary to improve NTM design and enforcement, in order to limit their potentially negative impact on a country's competitiveness and/or on its population's welfare.

In Chapter 9, Robert Basedow evaluates the contribution of collaborative efforts to identify and agree on what constitutes Good Regulatory Practices – such as *ex ante* regulatory impact assessments, *ex post* evaluations, and stakeholder consultations – to reducing regulatory divergences across countries and reducing related trade costs. The chapter first offers a theoretical evaluation of the strengths and weaknesses of Good Regulatory Practices to deal with regulatory frictions and trade costs. While Good Regulatory Practices have the potential to make an important contribution to limit unnecessary regulatory differences and trade costs, they cannot and should not do away with certain types of regulatory differences. Second, the chapter then discusses how OECD countries actually use Good Regulatory Practices to identify and to limit regulatory divergence. The findings suggest that even OECD countries with highly developed regulatory systems still struggle to mainstream trade considerations in the rule-making process. The chapter concludes with a discussion of the potential contribution of the WTO and recent preferential trade agreements such as the Comprehensive and Progressive Agreement on Trans-Pacific Partnership (CPTPP) to enhance the use of Good Regulatory Practices.

Continuing with the issue of regulatory divergence (and convergence), Bernard Hoekman and Stefano Inama examine rules of origin (RoO) in Chapter 10. In their implementation, RoO can work as nontariff measures, neutralizing what might otherwise be trade liberalization efforts with other instruments (such as preferential tariff reductions or agreements to discipline the use of antidumping actions). The chapter examines the causes of the long-standing deadlock in the WTO on multilateral harmonization of nonpreferential RoO, and reviews trends in RoO included in recent preferential trade agreements (PTAs) involving the EU and/or the USA. These trends reveal a steady and substantial movement toward adoption of similar approaches and illustrate that cooperation to reduce the trade-impeding effects of differences in RoO across jurisdictions is feasible. The authors argue that from a trade facilitation

perspective, such cooperation can and should pursue greater convergence between preferential and nonpreferential RoO, building on the developments observed in recent PTAs.

In Chapter 11, Manfred Elsig and Sebastian Klotz focus on sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT) in the new generation of PTAs. Using a text-as-data approach, they analyze the TBT and SPS chapters of the Canada–EU Trade Agreement (CETA), the TPP, and the TTIP, addressing three questions: First, how much does innovation versus imitation of the WTO characterize the CETA and the TPP? Second, to which extent do these two PTAs present templates for the TTIP? And third, in which areas do the EU and the USA converge and diverge? The authors find that in all three PTA initiatives, negotiators rely more heavily on texts from previous agreements when designing the TBT chapter in comparison to the SPS chapter. In both chapters in the TPP treaty, they identify a considerable prominence of legal texts from existing trade deals, predominantly from treaties the USA is a signatory to. By contrast, CETA negotiators relied less on previous PTAs and appear to have developed a more innovative approach to TBT and SPS. The EU draft proposals for the TBT and SPS chapters of the TTIP rely heavily on the CETA text. Interestingly, the TPP plays a fairly limited role in the US draft proposal for the TTIP, even though it was an agreement largely written by the USA and was virtually contemporaneous with the TTIP talks. Finally, the authors show that the EU and USA tend to converge on general topics such as the objective, scope, and coverage of TBT and SPS in the TTIP but diverge when it comes to more detailed items such as standard-setting processes and conformity assessment procedures.

China's entry into the WTO and its incomplete and uncertain transition into a market economy have reestablished the "interface question" as one of fundamental importance for the multilateral trading system – and one that illustrates the salience of NTMs and NTM-related multilateral disciplines. In Chapter 12, Chad Bown uses the USA–China relationship as a case study to examine how countries are only indirectly addressing the underlying issues. It introduces data on US use of nontariff barrier policies – antidumping and countervailing duties – to assess whether a potential change in China's nonmarket economy (NME) status reduces the United States' access to special trade policies in a way that might result in a sudden surge in imports from China. It then considers the potential consequences of a failure by the United States and the existing WTO membership to negotiate a solution to the NME issue with China.

It concludes by raising systemic concerns for the WTO of a failure to seriously address the long-run interface question.

Finally, in Chapter 13 Thomas Bollyky and Petros Mavroidis argue that institutional dimensions of the WTO need to be adjusted in order to reflect the decline in tariffs and other border restraints to commerce and the emerging challenges of advancing freer trade and better regulatory cooperation in a world economy dominated by GVCs. This chapter therefore builds on the findings of Chapter 4 linking NTMs along value chains to labor productivity trends and Chapter 9 on good regulatory practices. The authors argue that addressing these challenges requires an integration strategy that they refer to as the “new WTO Think.” This strategy is more of an evolution rather than a revolution, as it remains rooted in the original rationale of the General Agreement on Trade and Tariffs (GATT) of reducing the negative externalities of unilateral action and solving important international coordination challenges. At the same time, they see it as more inclusive of regulators and nonstate actors and more flexible and positive in its means. Because it does not require fundamental rethinking of the current regime, their proposals are more likely to be feasible to implement by WTO members. In particular, Bollyky and Mavroidis advocate that the WTO should embrace the confluence of shared social preferences and trade, where it exists, as a motivation for advancing international regulatory cooperation. The WTO should also multilateralize the important regulatory cooperation occurring in smaller clubs of like-minded countries and better facilitate the use of plurilateral agreements where consensus across all WTO members is not yet possible.