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Non-Tariff Measures (NTMs): An Overview

U.S. exporters' access to foreign markets increasingly depends on compliance with a diverse array of non-tariff measures (NTMs) that governments have designed to achieve various public policy objectives. As tariffs on international trade have decreased globally, NTMs have become central to market access concerns and trade negotiations. While trade rules permit the use of NTMs to ensure consumer health, protect the environment, and safeguard national security, some information suggests that some governments impose these measures primarily to protect their domestic industries from foreign competition.

Some economists and policymakers contend that foreign governments' misuse of NTMs is outweighing the positive effects of reduced tariffs. Some Members of Congress have expressed interest in understanding these measures, NTMs' potential to reduce U.S. businesses' opportunities to export, innovate, and support jobs, and how NTMs are addressed within the rules-based, global trading system. Congress may also consider ways to reduce potential burdens from U.S. and foreign NTMs in an effort to bolster trade.

What Are Non-Tariff Measures (NTMs)?

While there is no official definition, NTMs generally encompass all mandatory government requirements, rules, and regulations that impose informational, compliance-related, and procedural costs that affect trade flows of goods and services. The United Nations Conference on Trade and Development (UNCTAD), among other international organizations, defines NTMs as "policy measures, other than ordinary customs tariffs, that can potentially have an economic effect on international trade in goods [by] changing quantities traded, or prices or both." This broad definition includes measures that are as different from each other as they are collectively different from tariffs. However, beyond such a definition, ultimately, most policies can affect trade. NTMs can both hinder and facilitate trade.

Some observers have remarked that while multilateral trade negotiations and free trade agreements (FTAs) have reduced tariffs, domestic pressures for protection against imports are more likely to result in a government's enactment of NTMs. For instance, these observers contend that firms in an import-competing industry might pressure a government to impose more stringent regulations if these firms would find it easier than foreign competitors to comply with those regulations. These and other protectionist measures are generally referred to as non-tariff barriers (NTBs). NTBs discriminate against foreign products and suppliers to the advantage of domestic ones. Although some NTMs can be defined as NTBs (e.g., quotas or import prohibitions), whether other forms of NTMs can be considered NTBs depends largely on how they are implemented or applied. Health standards, for example, are not categorized as NTBs except when they are applied arbitrarily and with the implicit intent to restrict imports. In practice, it is challenging to distinguish between permissible and protectionist NTMs, as one country's stated policy concerns may be seen as disguised protectionism or trade-distorting by its trading partners.

Types of NTMs

The UNCTAD International Classification of NTMs follows a taxonomy of policy measures that have the potential to affect trade (**Figure 1**). Import-related NTMs are classified as "technical" or "non-technical." Technical measures comprise sanitary and phytosanitary measures (SPS), technical barriers to trade (TBT), and pre-shipment inspections. These NTMs are not necessarily discriminatory because they generally apply to both domestic and imported goods and are often motivated by safety, health, national security, and related domestic policy concerns. They may also serve to correct for market failures (e.g., by reducing information asymmetries through qualitative measures like labelling requirements) and to protect the environment (e.g., by restricting imports of pollutants). Non-technical measures include traditional trade policies such as quotas, subsidies, and trade remedies (e.g., measures to address unfairly traded goods).

Figure 1. International Classification of NTMs

IMPORTS	Technical Measures	• Sanitary and phytosanitary measures
		• Technical barriers to trade
		• Pre-shipment inspection and other formalities
	Non-Technical Measures	• Contingent trade-protective measures
		• Non-automatic import licensing, quotas, prohibitions, quantity-control measures and other restrictions (excl. SPS and TBT)
		• Price-control measures, including additional taxes and charges
		• Finance measures
		• Measures affecting competition
		• Trade-related investment measures
		• Distribution restrictions
		• Restrictions on post-sales services
		• Subsidies and other forms of support
		• Government procurement restrictions
		• Intellectual property
		• Rules of origin
EXPORTS		• Export-related measures

Source: Figure by CRS based on UNCTAD.

Closely related to NTMs, procedural obstacles are practical challenges related to how NTMs are implemented and/or enforced. These may include understaffed ports of entry, long delays in certification, or lack of adequate information on regulations. Research has suggested that it is often the procedural obstacles associated with NTMs that are most burdensome to exporters, rather than NTMs themselves.

NTMs and World Trade Organization (WTO) Agreements

In response to the rise of NTMs, governments have developed bilateral and multilateral frameworks regulating their use. Most trade agreements address different types of NTMs. Three relevant WTO agreements are the: General Agreement on Tariffs and Trade 1994 (GATT), Agreement on Technical Barriers to Trade (TBT Agreement), and Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). GATT provisions seek to ensure that WTO members abide by trade liberalization commitments and do not reimpose protection through domestic policies (e.g., NTMs) that discriminate against imports. The TBT Agreement aims to standardize technical regulations and their application. The SPS Agreement requires members to base measures for the protection of human, animal, or plant life or health on international standards. Both the TBT and SPS Agreements restrain members from applying standards that are "more trade-restrictive than necessary to achieve a legitimate objective." (A member's NTM that is inconsistent with its WTO obligations could potentially be applied under one of GATT Article XX's general exemptions (or Article XVIII), for example.)

Other WTO agreements, as well as U.S. FTAs, also aim to address various bureaucratic or legal issues that could involve hindrances to trade, such as rules of origin, subsidies, public procurement, investment, intellectual property rights (IPR), import licensing, customs valuations, and pre-shipment inspections.

Trade and Economic Effects

Despite NTMs' widespread use, many argue the diversity and complexity have prevented a full understanding of their prevalence and effects on trade and economic welfare. NTMs have varied effects that cannot be easily generalized or measured. These effects are often subtle, indirect, and case-specific. For example, the application/administration of NTMs is generally country-specific; identical NTMs may have different effects depending on their implementation and enforcement. Additionally, a lack of information on NTMs complicates the assessment of their impact on trade. Efforts led by UNCTAD (data collection) and the WTO (notification mechanisms) have sought to address these challenges. At the same time, notification mechanisms, for instance, are generally incomplete and relevant information on NTMs is often embedded in legal and regulatory documents, making the gathering of data and comparison between countries difficult and costly. Unlike tariffs, NTM data are not merely numbers that can be easily integrated into economic models. The uncertainty originating from the knowledge gap on NTMs tends to reinforce the perception of potential deleterious effects.

Analytical studies often conceptualize NTMs as additional costs to trade. Regulations, for instance, can increase the cost of exporting, particularly if they differ significantly from those applied at home. Firms wishing to export may face additional trade costs related to identifying and processing information on relevant requirements in the target market (information costs); adjusting the product or production process to the requirements of the importing country (specification costs); and proving that they have met these requirements (conformity assessment costs). These costs could then lead to trade diversion (if market share increases for those exporting countries already complying with the standards), trade creation (if standards affect import-demand positively in the country imposing the regulation), or trade destruction (if foreign producers are unable to comply with the NTMs or if imports are replaced by domestic products). For example, when NTMs compel exporters to abide by a set of product specifications designed to improve consumer awareness, the measures might reduce competition from noncompliant firms as demand for products from compliant exporters increases.

U.S. Assessment of Foreign Trade Barriers

Every year since 1985, the Office of the U.S. Trade Representative (USTR) has published the *National Trade Estimate Report on Foreign Trade Barriers* (NTE Report). This report catalogs "significant" foreign trade barriers—formal and informal—affecting U.S. exports of goods and services, e-commerce, cross-border data flows, foreign direct investment, and protection of IPR. While it addresses trade barriers in general, the discussion and analysis tend to focus on NTMs with trade and investment implications. USTR bases the report on information compiled by the interagency Trade Policy Staff Committee and provided by members of the private sector trade advisory committees, U.S. embassies abroad, and the public in response to USTR notices published in the *Federal Register*. The 2023 NTE Report covers 64 foreign markets, which together comprise 99% of U.S. goods trade and 66% of U.S. services trade. Focus areas in the 2023 report include agriculture, digital trade, industrial policies, technical barriers, and labor. Some of the alleged barriers are new, whereas others reflect longstanding U.S. concerns and have been included in prior iterations of the report.

Considerations for Congress

During the past five decades, some Members of Congress have sought to reduce the often-unintended costs of NTMs for U.S. exporters, while supporting provisions in U.S. FTAs and GATT/WTO agreements that preserve the right of countries to regulate imports to meet certain objectives, such as health or environmental protection. In recent years, some Members have also shown an interest in negotiating high-level commitments with U.S. trading partners to increase transparency and openness in the development of NTMs. This has particularly been the case as the United States seeks to respond to standard-setting practices of other countries that may have global reach or contain aspects that they consider to be unduly protectionist and discriminatory.

Should Members of Congress seek to engage with the Biden Administration to shape the U.S. policy towards trade barriers, Members may consider whether or not to call on the Administration to intensify U.S. efforts to monitor and address tariffs and NTMs. Such efforts could focus on measures that may be inconsistent with trade agreements to which the United States is a party, or that otherwise may be seen as unjustified or as significant barriers to U.S. exports. Members may also encourage the Administration to work with trading partners to update trade agreements and develop cross-cutting disciplines on regulatory practices that have been known to support economic growth, market integration, and removal of trade barriers. This includes the promotion of greater transparency in the development of regulations, evidence-based analysis/decision-making, and a whole-of-government approach to regulatory management. Congress may also examine ways to increase regulatory compatibility in specific sectors through a range of tools (e.g., mutual recognition agreements) aimed at reducing or eliminating regulatory differences with major trading partners that U.S. policymakers and stakeholders deem unnecessary, while taking into account U.S. interests in health, safety, and environmental protection.

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