

Sanitary and phyto- sanitary measures – valid consumer protection or non-tariff barrier?

Since the conclusion of the General Agreement on Tariffs and Trade (GATT) in 1948 tariffs have been progressively reduced. Although some tariffs still represent a barrier to trade, focus has shifted to the impact of non-tariff measures (NTMs) and non-tariff barriers (NTBs) on trade. High tariffs in the past served to disguise the existence of non-tariff measures that could potentially restrict imports or exports. Increased awareness of NTMs and NTBs can be attributed partly to better monitoring of existing barriers, but also to the introduction of new measures to compensate for the reduction of tariffs that had previously protected domestic industries.

The terms NTBs and NTMs are often used interchangeably. NTMs are generally defined as policy measures, other than tariffs, that may have an economic effect on the trade of goods; changing quantities traded and/or prices. These policy measures may have a sound policy purpose, for instance sanitary and phytosanitary (SPS) measures for consumer protection. It is only when the measures are implemented in such a way as to unnecessarily increase the cost of trade, inhibit trade, or are implemented in a discriminatory or WTO inconsistent way that they become an NTB. This distinction between NTBs and NTMs is often unclear, especially in the case of health and safety regulations and phytosanitary standards. Views may well differ on whether a particular measure constitutes an appropriate response to a legitimate policy concern, or whether it is simply a measure to protect local industries or firms. For this reason, identifying NTBs can be a highly subjective exercise. An importing country might argue, for instance, that a particular health and safety regulation is necessary to protect the welfare of its citizens or the quality of its environment, while an exporting country may



view the regulation as a discriminatory measure, designed to keep its products out of the importing country's market.

Many of the measures which have the potential to restrict trade are imposed to mitigate the effects of genuine market failures. Negative externalities that can arise from unregulated trade may include the introduction of pests which might damage local ecosystems, or human welfare risks posed by specific additives in processed food products. It can therefore be quite difficult to assess whether a particular policy or measure is a form of protectionism if its stated aim is to address such externalities.

Standards and technical regulations are commonly perceived as barriers to trade, particularly due to compliance costs and insufficient resources in African countries. Many poorer countries rely on exports of a limited range of commodities, and regulations which hamper export of these goods can severely damage their economies. There is a plethora of such standards covering agri-food products, which are precisely the type of products in which many developing countries have a comparative advantage. However, a system of standards is fundamental to the functioning of global trade. It reduces information asymmetry, protecting consumers from unsafe products while lowering search and transaction costs. Greater trade in perishable agricultural and food products has given rise to a higher risk of the spread of plant and animal pests and disease and consumption of products contaminated by toxins or chemical residues. SPS measures are adopted to protect consumers from harmful contaminants and organisms in food products and animal and plant health from foreign pests and diseases. However, SPS measures can create restrictions on market access and difficulties for exporters, in particular, for small and medium-sized exporters in developing and least developed countries.

The World Trade Organization (WTO) Agreement on Sanitary and Phytosanitary Measures puts in place disciplines for the adoption and implementation of these measures. Although the agreement acknowledges the right of countries to protect human, animal and plant health, it also promotes transparency and encourages governments to adopt international standards. The agreement states clearly that SPS measures should not be used in "a manner which would constitute a disguised restriction on international trade." Although importing countries are encouraged to use existing international standards, they are nevertheless allowed to adopt stricter regulations if they can provide scientific justification. It is often these stricter regulations and the scientific evidence and risk analysis that are critiqued as being NTBs aimed at restricting imports and protecting domestic industries. Mostly developed countries have been criticised for using SPS measures to restrict agricultural and food product imports to protect their domestic producers. However, developing countries are increasing their use of SPS measures as barriers to trade. Examples from African countries are presented in Box 1.

Box 1: SPS measures on imports from Kenya and Zambia

a) Kenya milk exports to Zambia

In Kenya, dairy farming is reported to be one of the fastest growing agricultural sub-sectors. Kenya is also one of the largest milk producers in Africa. The cost of milk production is very low due to favourable weather conditions that provide good pastures. This makes Kenyan milk highly competitive in the regional market and one of the country's key export products. Zambia has been one of the export destinations for Kenyan milk. However, SPS and food safety concerns have resulted in a temporary ban of Kenyan milk exports to the Zambian market.

A complaint regarding this prohibition was registered on the tripartite online NTB mechanism in May 2010. This complaint has yet to be resolved. It concerns the stricter domestic requirement in Zambia for bacterial loads in imported milk; specifically whether Kenyan milk exports exceed the maximum allowable requirements under the Zambian domestic standard. However, the scientific basis for the stricter Zambian standard is in question. Zambia is looking at the development of its dairy sector with only approximately 15 percent of its dairy potential currently being utilized, but is facing serious productivity and competitiveness challenges. The Zambian dairy industry is faced by significant competition from South Africa and Kenya and it is this challenging competitive environment that has been cited as the true rationale for the current import restriction.

b) Zambia honey exports to South Africa

Organic honey exports from Zambia to South Africa are currently denied market access because the honey is not irradiated as required in terms of the South African honey regulations (Regulation Number 835). Irradiated organic honey loses its 'organic' status. Zambia is well-known for its honey production of which the bulk is certified organic due to the climatic conditions and the traditional processing and harvesting techniques employed by the beekeepers. In terms of the NTB registered on the tripartite online NTB mechanism South Africa only allows imports of honey from Zambia that has been irradiated due to historical evidence of African Foulbrood Disease (AFB) in Zambia. The Zambian industry has repeatedly asked for an exception to the irradiation rule based on analysis undertaken by the South African National Department of Agriculture (NDA) on honey samples from across Zambia revealing that no AFB currently exists in Zambia.

To allow organic imports into South Africa requirements for imports of non-irradiated honey have been drafted by the National Plant Protection Organisation of South Africa. However, these regulations are currently still in draft form and Zambian organic honey is still being denied access. This has led Zambian companies to conclude that the import ban is not based on scientific evidence of risk, but rather as a purely protectionist measure to protect honey producers in South Africa.

Many small and medium enterprises in Africa have not exported to developed economies with SPS standards stricter than internationally accepted standards; exporting rather to regional markets. However, the uptake of stricter SPS standards by some African countries will undeniably result in producers either having to search for new markets or face an increase in the cost of production due to compliance costs. This can have implications for the competitiveness of regional producers, consumers, employment and export growth. Countries should abide by their multilateral commitments, work towards regional harmonization and only in exceptional cases implement scientifically justifiable higher SPS standards. If these obligations are violated effective remedies and dispute settlement mechanisms should be in place.

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