

# VININTELL

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## NON-TARIFF MEASURES: IMPACT ON EXPORTS





Welcome to this edition of VinIntell as a value-added service to members of the SA Wine Industry. The purpose is to provide you, the decision-maker, with meaningful insight into events, trends, opportunities and threats through the analysis of the ever-changing competitive environment. The analytical approach is a multifaceted, multidisciplinary combination of scientific and non-scientific processes.

We trust that this publication will become part of your strategic thinking, strategic planning and decision-making process. You are welcome to send comments and suggestions to the publisher.

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## INTRODUCTION

Companies, including wine producers, are for a number of reasons, motivated to export. These reasons might include the aspects such as a restricted or saturated domestic market resulting in companies seeking larger foreign markets or they want to pursue optimal allocation of resources, greater capacity utilisation, gains from economies of scale and technological advancements due to competitive pressure in foreign markets. To participate in the global economy and export to new foreign markets is however by no means a simple and easy activity and bring with it various challenges. One of the key challenges is obtaining knowledge on an unknown market including macroeconomic information and information on regulatory aspects, competitors and the market. This edition of VinIntell specifically focuses on the issue of non-tariff measures (NTM – a regulatory factor) and how it impacts on international trade and more specifically on trade in agri products. NTM that impact on trade between South Africa and China are specifically highlighted.

## BACKGROUND

As international tariffs are being reduced, increased attention is focused on the role of non-tariff measures (NTM), used in this report interchangeably with the term non-tariff barriers (NTB), in impeding trade flows. In many cases these NTM have always existed, but have become more visible recently due to the reduction in trade barriers. Although the use of NTM is in many cases legitimate (for example to ensure quality or protect consumers' health) they are also sometimes (and even increasingly so) used as protectionist measures. It is usually difficult to clearly determine if the purpose of the regulation is for legitimate or protectionist reasons.

There are differing definitions of exactly what NTM are, but in general they can be regarded as “*government measures other than tariffs that restrict trade flows*”<sup>1</sup>. This covers a range of measures from health and safety measures to a range of regulations associated with trade e.g. transport costs and customs and administration procedures. They may not be directly under the control of governments but are under their influence.

Little is known about their impact on international trade and on exports from developing countries, yet NTMs are likely to play an increasing role.<sup>2,3</sup> Either way, the net result is the same: NTM are important as they are restricting trade. The role of NTM in restricting trade is officially recognised in South Africa. NTM are a concern to exporters and it is important for exporters to know about NTM as they impact on trade promotion and products need to comply with NTM which can change overnight. NTM also impose economic costs that exporters are obliged to incur. Consequently, they are a source of legal controversy, with countries holding divergent views on what should be considered legitimate. This is mainly because of the existence of legal loopholes in the existing rules and guidelines that govern the conditions under which trade restrictions may be applied. NTM are thus a major impediment to international trade and market access, they have become less visible over time and more complex but they also reflect



increasing sophistication of markets e.g. consumers increasingly demand more information about the products that buy from amongst others an ethical and health point of view.

## WHAT ARE NTM?

Non-Tariff Measures are all measures i.e. trade related procedures, regulations and standards, licensing systems, and even trade defence measures such as anti-dumping duties, which have the effect of restricting trade between nations that are not tariff measures. NTM can thus be defined as policy measures, other than ordinary custom tariffs, that may have an economic effect on international trade in goods. They may also affect the price of traded goods or in the quantity of trade goods, or both. After six successive Ministerial Meetings of the World Trade Organisation (WTO), the reduction in barriers to trade has been a particular objective of the various trade negotiations. Since the launch of the Doha Development Agenda at the November 2001 Ministerial Meeting, market access issues on exports of particular interest to developing countries have been given greater prominence. While significant progress has been made in this respect, there nonetheless remains the concern that not all commitments made by the developed countries have been implemented and the expected benefits realised.

NTM vary across products and countries and there is no transparency on and easy access to relevant information about the NTM that are applied by the destination market; information is scattered across many sources and often only available in the local language adding to the challenges that exporters face. Exporters seeking access to foreign markets and companies importing products need to comply with a wide range of requirements including technical regulations, product standards and customs procedures. The business sector, particularly in developing countries, often lacks the

### *Tariff*

- *Tax on trade*
- *Usually on imports*
- *Applied by governments*
- *Collected by customers*
- *Expressed in percentage (ad valorem) or in value e.g. R30 per 100g*

**TARIFF**

### *Non-Tariff*

- *Government policies and practices other than customs tariff*
- *Can be for legitimate reasons (health)*
- *Or as a protectionist instruments*
- *In terms of agrifood products, such measures are generally technical, sanitary and quality standards such as protected designations of origin (AOCs), but also include specification of GMOs.*

**NON-TARIFF**



information, capabilities and facilities needed. Meeting the complex requirements and demonstrating compliance with NTM can also come at a considerable cost.

Similarly, national policymakers often lack a clear understanding of what their business sector perceives as predominant obstacles to trade, which can make it difficult to develop appropriate trade-related policies. At the same time, while there is an on-going global effort to increase economic liberalisation that seek to eliminate or reduce tariffs, there has been a steady increase in the number of NTM.<sup>4</sup> NTM can be subjective. For instance, a measure that a particular country has imposed for reasons of legitimate health or environmental concern may be perceived in other countries as fundamentally a trade-restricting measure. Reducing tariff barriers alone will not succeed in providing genuine market access for developing countries. NTM such as anti-dumping, technical barriers to trade and import licensing in developed countries, often pose significant barriers to developed country exports.<sup>5</sup> NTM in developing countries are just as important from a South African exporter viewpoint. Developed countries with relatively lower tariffs are, not surprisingly, the more prolific users of NTM, especially to keep out developing country exports. Developing countries are affected the most by the negative effect of NTMs, not only because regulations are too strict or too difficult to comply with, but also because of the lack of infrastructure necessary to assess whether a product conforms with the given regulation. In order to mitigate the potential negative impact of NTM on trade, it is crucial to increase transparency of NTM and improve accessibility of information for exporters.

According to WTO agreements, the use of NTM is allowed under certain circumstances. Examples of this include the Technical Barriers to Trade (TBT) Agreement or the Sanitary and Phytosanitary Measures (SPS) Agreement,<sup>6</sup> both negotiated during the Uruguay Round. These agreements are meant to allow governments to pursue legitimate policy goals even if this can lead to increased trade costs. Unlike tariff where the extent of the measure is straightforward (for example ad valorem duties) or can be easily calculated (for example ad valorem equivalence [AVE] of specific duties), the impact of NTM is not immediately observable. Their impact differs across countries and sectors, and does not always necessarily imply a decrease in trade.

Sanitary and Phytosanitary (SPS – technical in nature and can include prohibition, measures governing quality and hygienic requirements, production process, and related conformity assessments) and Technical Barriers to Trade (TBT referring to technical regulations, and procedures for assessment of conformity with technical regulations and standards, excluding measures covered by the SPS Agreement) regulations have ambiguous effects on trade. On the one hand, compliance with these regulations can lead to higher costs and prevent market access for exporters. On the other hand, they can raise consumer confidence in the quality of imports, thus increasing demand.



## WHAT ARE NTB?

NTMs are sometimes used as a means to circumvent free-trade rules and favour domestic industries at the expense of foreign competition and then they are called non-tariff barriers (NTBs). NTBs are a subset of NTMs according to the International Trade Centre (ITC) which describes them as being “illegal trade measures (illegitimate)”. There is however not common definition about what constitutes neither a trade barriers nor international consensus about when it is a measure or a barrier and to prove its negative impact. It is also difficult, and sometimes impossible, to distinguish legitimate NTM from protectionist NTM, especially as the same measure may be used for several reasons. Whereas NTM often pursue legitimate policy objectives, if they are overly trade restrictive, they are considered NTBs – they are “certain NTM that discriminate against foreign products, directly or indirectly, de jure or de facto or where trade restrictiveness, whether or not deliberate, exceeds what is required for the measure of non-trade objectives.”<sup>7</sup>

*Sample: “Belgium required that all products are certified and that the farmers follow certain hygienic practices during the production...” Exporter of cashew nuts from Burkina Faso to Belgium, 2010.*

*Sample: France and oranges: Oranges with a light green colour are allowed provided it does not exceed one fifth of the total surface of the fruit.*

## NON-TARIFF MEASURES CLASSIFICATION

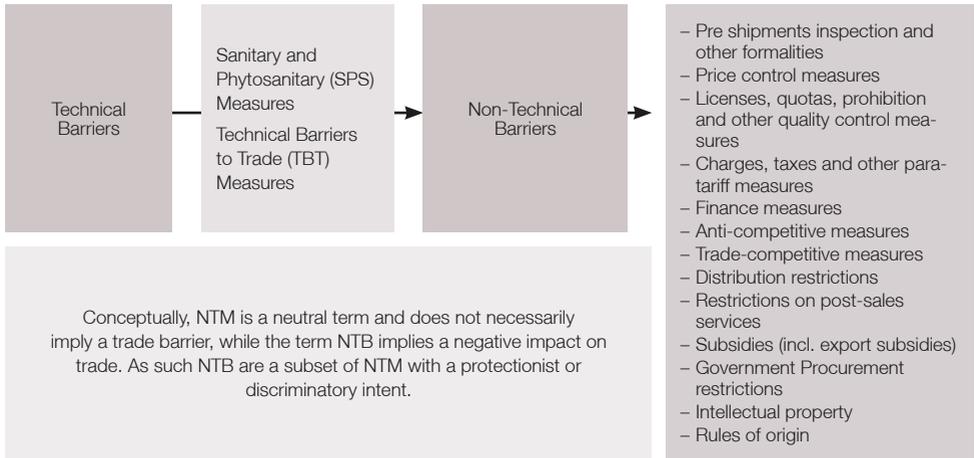
### SANITARY AND PHYTOSANITARY MEASURES (SPS) EXAMPLES

- Prohibition on import of poultry from countries affected by avian flu.
- Liquid eggs should be pasteurized or otherwise treated to destroy all viable *Salmonella* microorganisms;
- Live animals required to be quarantined for two weeks before entry into the territory

Given the varying nature and complexity of NTM, it is necessary to have a common, global NTM classification system. To facilitate the collection and dissemination of information on NTM applied by individual countries, a system of NTM classification was prepared by a group of technical experts from eight international bodies<sup>8</sup> in 2008, with subsequent revisions in 2009 and 2012. This classification first categorises NTM into two broad categories, technical (SPS and TBT) and non-technical measures, which is followed by 16 chapters (see figure 1).



FIGURE 1: NTM CATEGORIES



Source: ITC

### TECHNICAL BARRIERS TO TRADE (TBT) EXAMPLES

- Importers of “sensitive product” such as medicines, drugs, explosives, firearms, alcohol, cigarettes, game machines, etc. may be required to be registered in the importing country;
- Refrigerators need to carry a label indicating its size, weight as well as electricity consumption level.
- For a product to be identified as “chocolate”, it must contain a minimum of 30% cocoa.

Technical measures (Chapters A and B) refer to product-specific properties such as characteristics, technical specifications and production process of a product. It also includes conformity assessment methods, which affirm the compliance of a product to a given requirement. These technical regulations are generally aimed at ensuring quality and food safety, environmental protection and national security, and at protecting animal and plant health.

Non-technical technical measures (Chapters C to P) do not refer to product-specific properties but to trade requirements, such as:

- Pre-shipment inspection (mandatory quality, quantity and price control of goods prior to shipment from the exporting country);



- Contingent trade protective measures (including measures aimed at ‘unfair’ foreign-trade practices, contingent upon the fulfilment of certain procedural and substantive requirements – anti-dumping, countervailing and safeguard measures);
- Non-automatic licensing, quotas, prohibitions and quantity-control measures other than for SPS or TBT reasons;
- Price control measures, including additional taxes and charges e.g. CO<sub>2</sub> emission charge on motor vehicles;
- Financial measures e.g. imports of construction materials are allowed only if payments may be made through the foreign direct investment fund;
- Measures affecting competition aimed at granting exclusive or special preferences or privileges to one or more limited group of economic operators;
- Trade-related investment measures e.g. in the production of automobiles, locally-produced components must account for at least 50% of the value of the components used;
- Distribution restriction e.g. they may be controlled through additional licence or certification requirements;
- Subsidies i.e. financial contribution by a government or government body to a production structure, being a particular industry or company, such as direct or potential transfer of funds (such as grants, loans and equity infusions), payments to a funding mechanism and income or price support;
- Government procurement restrictions e.g. government office has a traditional supplier of its office equipment requirement, despite higher prices than similar foreign suppliers;
- Intellectual property which covers patents, trademarks, industrial designs, lay-out designs of integrated circuits, copyright, geographical indications and trade secrets;
- Rules of origin which cover laws, regulations and administrative determinations of general application applied by governments of importing countries to determine the country of origin of goods; and
- Export-related measures are all measures applied by the government of the exporting country to exported goods, including both technical and non-technical measures.<sup>9</sup> It includes export taxes, export quotas and export prohibitions.<sup>10</sup>

## FINDING INFORMATION ON NTMS THAT AFFECT PARTICULAR PRODUCTS

As mentioned earlier, information on NTM is scattered across different national, regional and international sources. Depending on the destination country, finding information could be easier or more difficult. It is advisable to take time and effort to perform proper desk research to obtain an overview and understanding of NTM that need to be complied to. The reality that NTM can rapidly change adds to the burden of exporters. Business associations, export council, chambers of business and commerce and the Department of Trade and Industry (the dti) might



have additional information. Talking to exporters to a specific market might be an option but they might be reluctant to share sensitive information. The WTO also has tools and applications that could be helpful as does the World Bank.

## IMPACT OF NTM ON AGRI EXPORTS TO CHINA

The main agri products exported to the Chinese market include wine, citrus, grapes, pears and plums.<sup>11</sup> The following is a summary of the NTM that emerged from the study. The findings of the survey were categorised into the cost of doing business in China as experienced by the respondents, the NTB when exporting to China, and other constraints and general comments made by the respondents<sup>12</sup>:



- Unnecessarily strict Sanitary and Phytosanitary requirements and high protocol on fruit quality, while the lack of a phytosanitary agreement between China and South Africa is an exacerbating factor as is directing shipments to Hong Kong via the grey channel and thus not following a direct route to China.
- Cold chain sterilisation requirements: According to the results of the survey mentioned earlier, this can probably be viewed as the biggest NTB that South African exporters face. Products are subjected to extended periods of cold treatment which can arguably damage the quality of the product and the shelf life and negatively impact on selling a product in such a competitive environment. Costs associated with such requirements are high thus negatively affecting the profitability of such an export opportunity.
- High logistics costs: In comparison to other countries, exporting to China comes in at a higher cost, both for shipping and transport requirements. The geographical location of countries like Australia places South Africa at a disadvantage. Players such as Australia and New Zealand have been penetrating the Chinese market for longer and are more familiar and experienced with this market than South Africa.
- Lack of distribution channels within China: Whereas some exporters have established their own distribution centers in China, distribution channels within the Chinese market are generally difficult to obtain. There is also a lack of local intermediaries in China which are important for exporters to be effective.
- Accreditation period: For grape producers the accreditation currently takes place every three years. This hampers new grape growers from accessing the market, who must wait for years to be accredited by China.
- High import tariffs: Survey respondents indicated that one of the main reasons for the small market presence in China is due to the high import tariffs levied on fruit products.



- South African exporters also find it difficult to enter the Chinese market due to a general lack of government support. Major competitors for South Africa in China include countries that receive agricultural subsidies and those that have or are currently negotiating FTAs with China.
- Regulatory aspects such as the Chinese tax laws and the dim prospects for proper reform and intellectual property (IP) issues on trademarks.

Then there are factors that cannot be regarded as a NTB affecting exports to China, but do act as a significant expense of doing business with Chinese parties. A lack of understanding of the Chinese market, cultural differences and the difficulty of finding creditworthy customers have been mentioned as challenges to South African exports penetrating the Chinese market. Chinese culture is complex and unknown, but a better understanding and respect for different customs can be a valuable asset to exporters. Local intermediaries can assist and inform this process.<sup>13</sup> Then there is the impact of exchange rate fluctuations; although they cannot be regarded as a NTB affecting exports to China they are a significant expense of doing business with Chinese parties. It can be argued that since cold-treatment protocol for China is such a long and time-consuming process it makes for extra time to which the exporting company is exposed to changes in the exchange rate.

## CONCLUSION

It is clear that NTM and NTB pose a significant challenge to exporters whether to a developed or a developing market. Exacerbating the challenge is the fact that NTM change continuously and often within a short period. Furthermore, NTM are country specific and need to be researched as such. From an exporter point of view performing effective market intelligence is therefore crucial for the export success. The availability of detailed and accurate market information on potential and existing markets is a first step in ensuring that new markets can be accessed and grown successfully.





## ENDNOTES

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