

# ATPC

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**No. 25**



Economic Commission for Africa

## African Trade Policy Centre

# Non-Tariff Barriers – Their Prevalence and Relevance for African Countries

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# Summary

Meaningful market access requires a reduction in all kinds of barriers to trade. In this context, it is commonly argued that 'core' non-tariff barriers (NTBs) to trade fell considerably in the aftermath of the Uruguay Round of the GATT negotiations, 'core' NTBs referring to the use of non-automatic licensing, quotas and tariff quotas, voluntary export restraints and price control measures. In recent years, however, there has been a resurgence of concern about the application of NTBs, especially regarding the use of a 'new generation' of import controls by the industrialized nations, such as antidumping measures and phytosanitary, labour and environmental standards. There is a parallel concern that the target of these new generation NTBs is no longer essentially other industrialized nations - now the target would seem to be increasingly developing nations. This is certainly the case with the Newly Industrialising Countries (NICs) and developing countries with enormous export capacity, like China and India. But from the evidence surveyed in this study, it is also increasingly true for the African continent. The objective of this paper is to outline the most important NTBs facing African countries, describe ways of quantifying them, and summarise the empirical evidence. Policy advice is subsequently drawn on the need for African countries to be more vigilant on these issues in future negotiations of the World Trade Organization (WTO).

The increasingly strict standards applied in Organization of Economic Cooperation and Development (OECD) countries are often justified as a response to growing consumer pressure for safer goods. This paper argues that it is difficult to square such arguments with the tendency in many industrialized countries of poor enforcement and in some cases, actual relaxation of domestic food and environmental safety standards. Regarding anti-dumping measures, sub-Saharan African (SSA) countries have suffered tremendously from the impact of dumping by firms based in Quad countries (Quad countries are Canada, the European Union, Japan and the United States), exporting subsidized products to their markets. Yet, with the exception of South Africa, not a single case of dumping has been brought against a Quad country for these practices. This suggests that the WTO anti-dumping legislation does not function properly. A number of suggestions are made to make anti-dumping law more effective and less biased towards the interests of developing countries.

Developing countries are also increasingly facing labour or environmental standards imposed from outside, particularly those linked to trade and market access agreements. The key challenge for African countries is to strike a balance between adequate national legislation and avoiding covert protectionism through excessive regulation. On the rules of origin, the paper reviews a number of recent studies which show how the effectiveness of preferential market access agreements are undermined by the inclusion of strict rules of origin.

Finally, African countries are not only victims of the growing prevalence of NTBs – they are also prone to using NTBs themselves to keep out exports of other African countries. The paper argues that African countries apply NTBs in a way that deeply damages the prospects for intra-regional trade. The paper will thus explore these two dimensions to NTBs in Africa – those that threaten African exports to the industrialized countries, and those that impede trade among regional groupings within Africa.

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# I. Introduction – The Issues in Context

Meaningful market access requires a reduction in all kinds of barriers to trade. It is commonly argued that ‘core’ non-tariff barriers (NTBs) to trade fell considerably in the aftermath of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) negotiations. ‘Core’ NTBs refer to the use of non-automatic licensing, quotas and tariff quotas, and the euphemistically -called ‘voluntary’ export restraints as well as price control measures such as variable charges, minimum prices or voluntary export price restraints. At the end of the 1990s, Michalopoulos (1999:50) could claim that “it is probably fair to say that the pervasiveness of core non-tariff measures in developed country trade regimes is at its lowest point in more than 50 years.”

In recent years, however, there has been a resurgence of concern regarding the application of NTBs, especially the use of a ‘new generation’ of import controls by the industrialized nations, such as antidumping measures, phytosanitary, labour and environmental controls, and rules of origin. There is a parallel concern that the target of these new generation NTBs is no longer other industrialized nations (as was the case, for instance, in the 1980s with the imposition of the euphemistically named Voluntary Export Restraints on Japanese exports to the United States) - now the target would seem to be increasingly developing nations. This is certainly the case with the Newly Industrializing Countries (NICs) and developing countries with enormous export capacity, like China and India, which correspondingly pose a greater challenge to existing ‘mature’ industries in the developed countries in sectors such as electronics, textiles, footwear, etc.<sup>a</sup> One of the best illustrations here are the ‘safeguard’ measures taken under Article XIX of the GATT by the United States and the European Union (EU) in 2002 to protect their steel industries, measures subsequently deemed illegal by the World Trade Organization (WTO).

The evidence surveyed in this study demonstrates that African countries are increasingly suffering the impact of this new generation of NTBs, particularly with regard to phytosanitary controls and quality standards. This is especially true for African countries that depend on one or two primary commodities for the bulk of their export earnings. For such countries, the potential loss of trade through the imposition of higher standards in the export market can run into millions of dollars. It is thus not surprising that product standards are highlighted as one of two important concerns by African leaders in the ‘NEPAD Market Access Initiative’ document (2002) (the other being OECD farm subsidies) (Millennium Project, 2005:182).

Nobody of course would negate the importance of guaranteeing minimum food safety standards or quality standards – indeed, it is customarily a statutory obligation on the part of authorities throughout the world to ensure that food stuff or other products present no major health risks for their citizens, and that goods meet certain minimum quality standards.<sup>b</sup> Milton Friedman (1980) is well known for voicing the opinion that, however well intentioned in principle, regulations are likely to be used against

rather than for the interests of consumers. His argument is simple but alluring. He argues that businesses have a powerful, vested interest in lobbying government to get regulations set to suit their own interests. Consumers, on the other hand, are multitudinous, not generally organized, and do not have the same vital interest in making changes to regulations. There is, in other words, an unequal power base between consumers and companies when setting regulations.<sup>c</sup>

A similar dilemma confronts Africa – African countries have been unable to participate in the setting of standards and regulations in a way that is not harmful to their industries. African countries have become, in the words of one report (World Bank, 2003:xxi), ‘standard-takers’, being “forced to accept and try to meet international standards, reacting to ever-changing standards that do not accommodate unique constraints pre-existing in the local environments.” It is true that WTO legislation acknowledges this problem, and during the Uruguay Round of the GATT, the Sanitary and Phytosanitary (SPS) Agreement was negotiated which requires agricultural exports to meet standards laid down by international standard-setting bodies such as the Codex Alimentarius (the joint World Health Organization and Food and Agricultural Organization [WHO/FAO] body responsible for setting food standards).

However, developed country experts, many from the corporate sector, currently dominate these standard-setting bodies. Moreover, for many agro-food products there is a paucity of international standards. Indeed, the vast majority of food safety and agricultural health measures notified to the WTO during 1995-99 had no international standard at all (Roberts et. al., 1999, cited in Jaffee and Henson, 2005:95). As we shall later discuss, although there have recently been important attempts to address these problems, such as the setting-up in 2002 of the Standards and Trade Development Facility (STDF) (a joint initiative of the FAO, World Organization for Animal Health [OIE], World Bank, WHO and WTO), in this paper we argue that such initiatives have so far been insufficient to deal with scale of the problem. The issues are similar with regard to the setting of labour and environmental standards. Meeting basic labour and environmental standards is of course essential if a dangerous ‘race to the bottom’ is to be avoided, whereby developing countries end up competing by offering to undercut salaries, working conditions or environmental controls in order to attract footloose international investment. Nevertheless, there are already a number of documented cases of regulators in the industrialized countries setting the standards so high that developing country exporters have had difficulties in complying. Although there is undeniably a fine line between what might be considered a justifiable or unjustified standard, in this paper we suggest that developing countries in general, and African countries in particular, need to exercise particular caution in any international negotiations which touches on these issues.

The challenge for African exports posed by a new generation of NTBs does in fact go beyond excessively strict or arbitrary setting of standards. African exports have been seriously constrained by the complex and strict rules of origin associated with preferential market access agreements such as the EU’s Everything but Arms (EBA) initiative, and the United States’ African Growth and Opportunity (AGO). Rightly or wrongly, these preferential deals are generally highly valued by African countries (Mold, 2005). But there is a growing

consensus that rules of origin have been undermining the effectiveness of such agreements to enhance the export capacity of poor developing countries. In the case of generally small, undiversified, economies of sub-Saharan Africa, excessively strict rules of origin can impede the usefulness of preferential agreements to exporters. They can, in other words, be considered another particularly divisive form of NTB.

Finally, although this concern is currently more theoretical than a reality for most sub-Saharan countries<sup>d</sup>, the paper also points to the potential dangers from the inappropriate use of anti-dumping measures. Article 17.6 of the WTO Agreement on Anti-dumping has practically excluded anti-dumping cases from the normal dispute settlement process by restricting the role of the dispute settlement panels. As a consequence, industries in developed countries have tended to use with increasing frequency the provision of anti-dumping investigations for protectionist purposes (Das, 2003:104-5). Many developed countries remain opposed to any restriction being placed on their right to protect their industries from what they regard as 'unfair competition.' The Doha Declaration treads carefully on this point, speaking only of 'clarifying and improving disciplines' already in existence' (Grimwade, 2004:29). Although African countries are rarely involved in such cases, the mere threat of potential anti-dumping action constrains the ability of developing countries to move into new sectors and export markets, particularly in 'mature' industries like toys, textiles, footwear, and simple electronics which would represent a logical first step in the path towards the diversification of sub-Saharan economies.

The other side of the coin is that, against a backdrop of unilateral trade liberalization, many African countries have reportedly suffered from import surges over the last two decades, involving items such as foodstuffs, plastic goods and textiles. Surprisingly, however, outside South Africa, not one African country has initiated anti-dumping proceedings against the exporting country. In this paper we reflect upon the reasons why this might be so, and suggest that the procedures for initiating anti-dumping actions are heavily weighted against poor developing countries.

To summarise, then, the objective of this paper is to outline the most important new generation NTBs facing African countries, describe ways of quantifying them, and summarise the empirical evidence. Because of the growing body of evidence that phytosanitary controls are becoming increasingly problematic for African exporters, we devote special attention to this problem. One of the core arguments of this paper is that NTBs represent increasingly serious impediments to African agricultural exports. To the extent that NTBs impede entry into higher value-added products, they also constitute a serious challenge to the structural diversification of African economies. Meaningful negotiations on market access within the context of the Doha Round need to take these considerations fully into account.

However, this paper takes the position that African country's are not only victims of the growing prevalence of NTBs – they are also prone to using NTBs themselves to keep out the exports of other African countries. In this context, it is argued that African countries themselves apply NTBs in a way that deeply damages the perspectives for intra-regional trade. Certainly, there is something inherently

inconsistent in signing commitments to greater regional integration within Africa while simultaneously impeding intra-regional trade flows via administrative and bureaucratic measures. As Joan Robinson once memorably remarked, “just because your trading partner throws stones into their own harbour does not mean that you have to do the same.” The paper will thus explore these two dimensions to NTBs in Africa – those that threaten African exports to the industrialized countries, and those that impede trade among regional groupings within Africa.

## II. The Pervasiveness of NTBs – Measurement Issues

As tariffs have fallen worldwide due to the consecutive rounds of the GATT, as well as processes of unilateral liberalization, attention of policy makers has increasingly turned to NTBs as an impediment to trade. Some authors such as Michalopoulos (cited earlier) argue that the pervasiveness of NTBs has also declined. One comprehensive World Bank Report (Amjadi and Yeats, 1995) claimed that, as a result of the Uruguay Round, NTBs from Organization of Economic Cooperation and Development (OECD) countries faced by African exporters had fallen from around 11 percent of all sub-Saharan exports, to around two percent.<sup>e</sup> The apparent decline in the incidence of NTBs is typically explained in terms of several factors:

1. The tariffication process in agriculture which reduced quantitative controls as well as price related measures such as variable charges (though of course this led to increased tariffs)
2. The termination of Voluntary Export Restraints (VERs) – some, e.g. the VER on sardines by the EU had already been terminated – others were due to expire at the end of 1998.
3. Other ad hoc reductions of NTBs.

Inevitably, however, for countries wishing to protect their domestic markets and producers, the restrictions imposed by the WTO system on permitted tariff levels has led to a search for substitute protectionist instruments. In particular, as we shall document later, there has been an apparent increase in the prevalence of in the use of product standards, phytosanitary and environmental controls, together with a greater predisposition towards using antidumping measures.

Product standards are particularly problematic. Wilson (2001, cited in World Bank, 2003:xxvii) discusses two broad categories of standards – product and process standards. Product standards define characteristics such as quality, safety, and authenticity that goods should possess (e.g. the minimum nutritional content of a food item, the maximum level of pesticide residues, and performance requirements for items like furniture or machinery). Process standards, on the other hand, refer to the conditions under which the products themselves are produced, packaged or refined (e.g. the technical processes used for fishing, the traceability requirements required for meat and some horticultural products, and the working conditions of labourers). Several observers have observed a shift in emphasis, particularly by the EU, from product to process standards (Unnevehr, 2000; Gibbons and Ponte, 2005). All this points to the potentially wide-sweeping nature of technical barriers to trade, and has important implications for the kind of policies adopted to deal with meeting these standards.

Precisely because of their wide-sweeping and often intangible nature, it is often difficult to quantify with precision the pervasiveness of NTBs. Much depends on the definition taken of a barrier to trade. Taking a broad definition, for instance, domestic subsidies in agriculture could be taken to construe an impediment to trade – and certainly there is little doubt that African countries have suffered greatly

from lost export opportunities due to the subsidization of OECD agriculture.<sup>f</sup> Yet the heterogeneous nature of subsidies and price support regimes mean the impact is difficult to quantify precisely. Similarly, the Voluntary Export Restraints (VERs) are rarely, if ever, voluntary, and should also count as a quasi-protectionist instrument. The classic example of the imposition of a VER are those forced upon Japan in the 1980s in order to reduce the exports of automobiles to the US market (Moon, 1999).

Given the self-evident complexity in the different forms of NTBs, the standard approach to quantifying NTBs has tended to be reductionist, involving measuring the wedge between domestic and world prices caused by the existence of NTBs. In this context, Page (1994:44-5) points to four possible ways of approaching the measurement of the costs of NTBs:

1. The direct measurement of the costs of NTBs through modelling;
2. If quotas are assigned to a supplier country or firm, these may have a value, equivalent to a monopoly rent;
3. Relative prices will be altered, so price differentials between the importing and exporting country should indicate the influence of NTBs;
4. The relation between the quantity imported and income (or output or a particular component of this) will be distorted, so measuring actual imports against some 'normal' level may be used.

All of these methods have limitations, however. The first method, modelling, can be unsatisfactory because the barrier may be imposed in the first place precisely because markets are assumed not to work efficiently. Its presence may therefore alter the assumptions of behaviour and responses on which the model was based. It is also not empirically possible to model the impact of certain kinds of NTBs, especially for developing countries, for new products in trade, or for products that have been under controls for many years where the structure of demand and supply are not satisfactorily modelled (something typical of agricultural markets – a key area of interest to African exporters).

Page points out that the other methods can also provide unsatisfactory results because, in the absence of any market equivalent, they effectively give evidence of the present and apparent effect of a barrier, not the level or intensity of the control. They are unsatisfactory in practice because they require strong assumptions about what 'normal' prices or import/income relationships would be. This is particularly problematic for commodities which suffer enormous variability in international markets (Bora, Kuwahara and Laird, 2002:9). Finally, in dealing with the new range of 'product standards' which are being introduced, the impact of NTBs may not be captured in these calculations simply because of the incapacity of the developing country to comply with the regulations. So the developing country will never be able to export.

One of the most straightforward ways of dealing with the problem is to calculate the frequency index, an approach which accounts only for the presence of the NTB, without considering the value of the imports affected. Expressed algebraically, this is

$$F_{jt} = \left[ \frac{\sum (D_{it} \cdot M_{it})}{\sum M_{it}} \right] \cdot 100$$

where  $D_i$  reflects the presence of an NTB on the tariff line item,  $M_i$  indicates whether there are imports from the exporting country  $j$  of good  $i$  and  $t$  is the year of measurement (Bora, Kuwahara and Laird, 2002:6).<sup>5</sup> Using this approach, the evolution of NTBs by broad category over the period 1994-2004 is shown in Table 1. The data is derived from the most comprehensive collection of publicly available information on NTBs, UNCTAD's Database on Trade Control Measures, included within the World Integrated Trade Solution (WITS). The basic distinction made in Table 1 is between core and non-core NTBs: in other words, the difference between what might be considered as the old generation of NTBs (e.g. quantitative restrictions and price control mechanisms), and the new generation of more subtle impediments to trade (e.g. technical standards, or quotas on designated sensitive products). UNCTAD's data reveals the extent of the ascendancy of non-core measures – rising from 55.3 percent of reported NTBs in 1994 to 84.8 percent a decade later. Particularly revealing is prominence of technical measures, which rise from 31.9 percent to 58.5 percent of all reported NTBs. In other words, well over half of all NTBs are now related to the imposition of technical measures and standards.

**Table 1: Evolution of NTB use by broad category, 1994-2004**

TCM code	TCM description	1994(%)	2004(%)
1	TARIFF MEASURES (TRQ, ETC)	5.8	0.3
3	PRICE CONTROL MEASURES	7.1	1.8
4	FINANCE MEASURES	2.0	1.5
417	Refundable deposit for sensitive products categories		0.6
5	AUTOMATIC LICENSING MEASURES	2.8	1.7
6	QUANTITY CONTROL MEASURES	49.2	34.8
617	Prior authorization for sensitive product categories	18.1	17.1
627	Quotas for sensitive product categories	0.2	0.2
637	Prohibition for sensitive product categories	2.5	6.8
7	MONOPOLISTIC MEASURES	1.3	1.5
8	TECHNICAL MEASURES	31.9	58.5
Non-core measures*	5+617+627+637+8	55.3	84.8
Core measures	1+3+4+6+7-(617+627+637)	44.7	15.2
No. of countries		52	97
Total No. of observations	(Number of Tariff Lines)	97706	545078

Source: Based on UNCTAD Trade Analysis and Information System (TRAINS), cited in UNCTAD (2005)

\*Non-core measures are marked in italics

This is the global picture. What about the data on a regional and product-by-product basis? On the basis of same dataset, Bora, Kuwahara and Laird (2002) calculate the frequency index of NTBs facing LDC exports. Given the fact that 35 of the 43 sub-Saharan countries are classified as LDCs, and in the absence of any other more recent calculations, this data can reasonably be interpreted as a proxy for the NTBs affecting SSA exports.

Several observations can be made on the results in Table 2. Firstly, in so far as LDC exports are concerned, Quad countries apparently impose NTBs far more systematically than African countries. In agriculture commodities, the incidence is more than twice as frequent as in SSA countries, covering 42 percent of exports compared to only 18.6 percent for SSA countries. Indeed, African countries do not use NTBs to protect their agricultural sector to the same extent as other regions – only South Asia uses NTBs with less intensity. In minerals and fuel commodities, by contrast, the frequency of NTBs applied by Quad countries is far less, affecting only 6.5 percent of exports. In relative terms, the really significant protection is to be found in manufacturing goods, where NTBs are applied to 17 percent of goods (compared to less than 2 percent in the case of African countries). This implies that NTBs in manufacturing are applied 8 times more frequently in the Quad countries than in the average SSA country. Finally, it is worth pointing out the quite large dispersion in the application of NTBs within sectors – for instance, over two thirds (68.6 percent) of knitted or crocheted articles exported from LDCs to the Quad countries have to confront an NTB. NTBs are apparently applied in a selective way, on particular products rather than across-the-board. That increases the potentially damaging nature of these restraints on trade, for it suggests that they are applied in an arbitrary way to protect particular industries.



**Table 2: Frequency of non-tariff measures facing LDC exports**

Description	Developed countries	South Asia	Middle East and North Africa	Latin America and the Caribbean	Europe and Central Asia	East Asia and the Pacific	Sub-Saharan Africa	Quad
<b>Agricultural and fishery products</b>	<b>48.24</b>	<b>14.87</b>	<b>57.69</b>	<b>34.24</b>	<b>32.93</b>	<b>24.42</b>	<b>18.58</b>	<b>41.98</b>
Crustaceans (live)	58.64	8.33	75.00	30.98	43.56	22.22	20.00	50.00
Other fish	64.49	14.07	75.16	30.96	43.85	22.87	20.28	55.43
Edible fruit and nuts	53.95	19.21	54.61	37.09	32.36	24.21	28.20	54.67
Coffee and substitutes with coffee	32.25	17.86	44.64	28.10	20.63	26.19	18.18	21.43
Oil seeds and miscellaneous grain, seeds and fruits	53.93	14.20	68.55	40.75	38.49	28.71	25.12	37.41
Other agricultural and fishery products	43.50	11.11	52.08	35.28	28.59	32.87	17.80	27.50
Minerals and fuels	6.72	3.29	5.73	6.64	6.72	4.52	0.16	6.53
Ores, slag and ash	1.74	0.98	3.31	9.93	10.03	6.05	0.00	1.47
Crude and refined petroleum oil	26.88	22.73	28.13	14.53	38.01	17.75	4.55	12.19
Other minerals and fuels	4.55	0.00	0.00	18.33	0.00	11.11	0.00	0.00
Manufactures	10.67	7.20	10.96	11.68	7.15	5.57	1.74	16.78
Rubber, leather and footwear products	12.71	4.44	13.70	11.30	7.26	1.82	2.36	15.80
Wood and wood products	17.33	13.82	8.73	18.94	3.23	8.74	2.69	28.76
Cotton products	9.09	16.67	6.25	36.67	0.00	11.11	4.55	25.00
Knitted or crocheted articles	30.46	16.59	17.43	17.82	18.27	4.78	7.02	68.64
Non-knitted or crocheted articles	30.89	16.53	17.96	18.35	19.02	8.26	2.27	66.15
Diamonds	9.09	11.67	12.50	0.67	31.11	11.11	9.09	12.50
Other manufactured products	14.78	9.48	19.04	11.88	14.50	8.68	4.39	13.83
Other products not elsewhere specified	13.27	7.42	15.30	13.70	9.12	7.65	3.19	16.52

Source: Bora, Kuwahara and Laird (2002:18).

What implications does this pattern of protectionism have for African exports? Firstly, there is clearly a heavy emphasis on NTBs against agricultural exports, the principle area of comparative advantage for

African countries. Secondly, manufactured trade is also very much affected, providing an important disincentive to diversification. In addition, the sheer unpredictability in the application of these measures causes very significant problems to the diversification through exports of developing countries' productive structures.

In summary, the empirical data available suggests that NTBs are being applied in a systematic pattern which unfairly impedes exports from Africa and other developing regions. Indeed, the industrialized countries have apparently been far more agile in imposing NTBs on imports than African countries than vice-versa, an unsurprising finding given the vast differences in institutional capacity that exist. Moreover, although in principle African countries have the ability under WTO legislation to impose quantitative restrictions on trade in, for example, the case of import surges which disrupt domestic markets, or in the case of environmental or health risks, in reality they are not usually in a position to do so – aid-dependent nations in Africa are generally fearful of implementing any measures that may upset donors – and there have been numerous documented cases of covert pressure being put on African nations in response to policy measures which jeopardise the economic interests of the donor countries.<sup>h</sup> The leverage of a typical African nation to impose NTBs is thus severely constrained. In the following section, we will examine the nature of these new NTBs, in the form of anti-dumping measures, phytosanitary, labour and environmental legislation.

### III. The New Protectionism –

#### a) Phytosanitary regulations

With regard to both the United States and the EU, the empirical data shows that in recent years there has been a very large increase in the number of detentions under phytosanitary controls. As Africa's leading export market, more stringent controls by the EU are particularly worrying. In the EU, for example, the number of notification/alerts increased more than six-fold between 1998 (230 cases) and 2002 (1520). This increased incidence of rejections reflects a combination of factors including the tightening and/or harmonization standards, application of new standards for hazards formerly unregulated and (perhaps most significantly) substantially increased capacities for inspection/enforcement (Jaffee and Henson, 2004:18).

Subsequently, in recent years African exporters of horticultural and food crops have suffered a number of serious cases of prohibitions of their products. To cite a few examples that illustrate the extent of the problem:

- Large-scale Kenyan horticultural farmers have reportedly been discussing the possibility of relocating to neighbouring Ethiopia because of the strict trade and hygiene rules imposed on them by the EU. The horticultural trade is currently worth around US\$ 500 million a year to the Kenyan economy. But at the start of 2005, new chemical and hygiene standards were imposed on Kenyan exporters of horticultural products. Exporters are now required to hire European-based audit and pre-shipment inspection firms to certify “Minimum Residual” levels of produce before it is shipped out of Kenya, thus incurring higher expenses.<sup>i</sup>
- According to a team of World Bank economists, new harmonized European standards on aflatoxin B1 – a common contaminant affecting agricultural products – could jeopardise African exporters of nuts, cereals and dried fruits reportedly worth US\$670 million a year (Otsuki et. al., 2001). Subsequent research shows that the health risks involved have been shown to be insignificant.<sup>j</sup>
- Under preferential market access, Botswana has built up a substantial export industry of chilled and frozen boneless beef. But they are threatened by the loss of the foot and mouth disease status (Stevens and Kennan, 2004).
- Like the Kenyan case, Zambian vegetable exports are at risk from new EU regulation on the residual levels of various chemical pesticides. Although Zambia has various institutions and a legal framework in place that should enable compliance with regulations, problems are widespread: the communication of regulational changes by the European Commission is inadequate, technical facilities for monitoring are lacking, and the research and investment capacity in alternative pest management strategies is low (Achterbosch and van Tongeren, 2002:31).

- In 2002, despite having to face a severe drought and food-shortages, Zambia was also reportedly forced to turn down food aid from the United States because of fears that genetically-modified seeds would escape into the food system, thus threatening exports to the EU (Stevens and Kennan, 2004). Current EU legislation obliges imports to be 99.9% free of any GM elements. Whereas GM-technologies are widely applied in the US, they are currently heavily restricted within the EU.
- In 2001, Spain rejected consignments of South African white fish due to an alleged outbreak of 'parasite infestation'. South African exports were similarly affected in 1994, when France implemented EU Council Directive 91/493/EEC, the main EU legislation governing health requirements of fishery products. Whereas other member States had given third countries time to prove compliance with the requirements of the Directive, the ban was implemented overnight in the French market). The suspicion at the time was that both the French and Spanish governments were trying to appease fisherman who have been protesting at cheaper imports (World Bank, 2003:xxxv).
- European regulations regarding citrus black spot (CBS) is believed to be seriously constraining South African exports of citrus fruits. CBS is perceived to be difficult to overcome because the fungus that causes black spots on the fruits can develop at any stage of production, even after the export processes have been concluded. These spots are said to merely detract from the appearance of the fruit and are harmless to consumers. Moreover, South Africa has been exporting citrus fruits to Europe for over 70 years without any serious health issues (World Bank, 2003:xxxvii).
- Another well-documented case is the Lake Victoria Fish Industry (Box 1). The cost of the losses to the Ugandan economy alone of the fish ban which lasted from March to July 1999 was estimated at about US\$ 36.9 million. This figure excludes the loss to fishermen due to reduced prices and fishing which could total approximately US\$1 million per month. Out of 11 factories that were operational before the ban, three closed down and the remaining factories operated at 20 percent capacity. The decline in production resulted in about 60 percent to 70 percent of those employed in the industry losing their jobs. About 35,000 people involved in fish-related activities (e.g. fishermen, fish mongers, and transporters), as well as indirectly generated income and employment lost (World Bank, 2003:xi).

### **Box 1: The Lake Victoria Fish Industry**

Lake Victoria is the second largest freshwater lake in the world, with an annual fish harvest estimated at 400,000–500,000 metric tons, worth \$300–400 million. The lake is shared by Uganda, the United Republic of Tanzania and Kenya. Fishing is mainly carried out by individual fishermen and small-scale establishments, supplying both local consumers and exporters. These three East African countries operate more than 30 factories that process Nile perch for export mainly to the EU (which absorbs about 60 per cent) Canada, Japan, Israel and the United States. East African fish exporters have been adversely affected by frequent bans in the EU markets. Between 1994 and 1999, a total of four bans were imposed on fish exports from the three countries over SPS standards. Sanitary conditions at many fish landing sites, in some fish processing plants and in other establishments where fish is handled prior to export, were judged to be unsatisfactory by European Commission quality control inspectors. In 1997, for instance, the EU responded to a cholera outbreak in East Africa by imposing a ban on fish imports from any country in the region, without first investigating the potential dangers involved. Following the intervention of the WHO, which pointed out that fish were an unlikely means of transmitting cholera, the ban was rescinded. Because of the ban, capacity utilization at fish processing plants fell to barely 50 per cent and, in the case of the United Republic of Tanzania, the workforce in the fish processing plants was reduced by about 40 per cent. The issue of frequent bans by the EU has caused severe adverse social and economic effects for the three countries, leading to unemployment, depressed prices and the loss of export earnings, losses which Uganda and the United Republic of Tanzania can least afford. With regard to public health concerns, in particular cholera outbreaks, which triggered some of the bans, the WHO Director-General stressed “the almost non-existent risk to countries importing food from cholera-affected countries”.

Another ban was imposed on 16 January 1998 by the European Commission on the importation of fresh, frozen and processed fishery products from the United Republic of Tanzania, Kenya, Uganda and Mozambique, again on grounds of concern for public health. Nevertheless, it was reported that over 2,000 tests and inspections by the European Commission of the United Republic of Tanzania’s fish processing establishments before 6 January 1998 had failed to produce positive tests of any of the alleged bacteria. Moreover, the EU notification, G/SPS/N/EEC/4, circulated on 4 March 1998, conceded that no international standard, guideline, or recommendation existed on the subject (although there are specific recommendations by both WHO and FAO). In its complaints to the WTO regarding the ban, the United Republic of Tanzania questioned its consistency with Articles 2.2 and 5.7 of the SPS Agreement. Recommendations by Codex and the International Commission on Microbiological Specifications for Food (ICMSF) did not consider import prohibition as an appropriate response to the alleged public health concern.

Yet despite all this evidence in favour of the affected countries, none felt in a position to be able to use the WTO’s Dispute Settlement Mechanism against the EU. Commenting on the limited possibilities of taking legal action in this case, an anonymous WTO delegate from one of the countries implicated stated that

“the WTO formally objected to this notion [that the fish were infected with cholera] because there was no scientific proof that our fish was infected. Yet we could not afford to go through the dispute settlement process with the EC for various reasons. We eventually settled the matter bilaterally with the EC after suffering huge losses of fish exports. Really, the power of enforcement of the rulings coming out of the dispute settlement system is based on your capacity to retaliate against a country that has bent the rules. As a small country, however, the impact of retaliating against a big country is virtually nil, though some developing have been able to do this with some amount of success.”

Sources: UNCTAD (1999:144), Oxfam (2002:104-05), Jawara and Kwa (2004:7)

A particular problem in all these examples is that there is little predictability in these issues: standards and import rules are often changed during the course of a few months. Salvador Namburete, Vice Minister of Industry and Commerce for Mozambique, called the EU standards a “moving target” (cited by Kipe, 2003: 4). The Minister recalled the story of a shrimp exporter who met all standards and import regulations when the ship left the port, but by the time the ship reached the EU the standards had changed and the cargo was not unloaded.

Finally, there is the issue of the increased costs due to compliance. In one study, it is estimated that compliance costs can be as high as ten per cent of the overall production cost for some agricultural goods (DFID, 2001). However, that is just an average.<sup>k</sup> In particular cases, cost increases can be far higher. Moreover, there is a general concern that the challenge of rising standards is marginalising smaller player, especially producers, traders, and processors, as well as smaller industries as a whole (Jaffee and Henson, 2005; Gibbon and Ponte, 2005). For instance, smallholder producers who had an approximate 40 percent share of Kenyan green beans, snow and snap peas into the UK supermarket trade in the mid-1980s, had by 2001 been virtually eliminated from these chains both in Kenya and Tanzania. In a continent like Africa still largely dependent on small scale producers, and with the bulk of the poverty concentrated in rural producing regions, such trends are potentially very damaging to the prospects for poverty reduction. Examples of increased compliance costs involved have been well-documented by both the World Bank (2003) and Gibbon and Ponte (2003:Chapter 5):

- In the case of the Ugandan honey industry, it has been reported that up to US\$300 million will be required for the construction of processing facilities and the purchase of equipment necessary to upgrade a honey-processing centre owned by Uganda Honey Association in Kampala so that its conform to ISO standards for food safety. This amount excludes the costs of airtight cans and protective gear needed by farmers, setting up of local centres to train farmers in apiary management systems, improving awareness and upgrading production processes.
- In relation to the UK-destined fresh vegetable chain, buyer demands for extended shelf life and ‘good agricultural and handling practices’ entail that exporters make substantial capital investments in central packinghouses (costing about \$500,000). In addition, growers now have to provide cool stores at field level to store the crop between picking and packing, something which can be extremely expensive.
- In the Ugandan coffee industry, the average firm’s production costs are said to increase by about 200 percent if compliance costs for good quality coffee are included.
- In the Kenyan flower industry, the cost of flowers that are grown in high investment structures and green houses, and are required to meet the stringent standards of the importers/consumers, are ten times higher on average than the costs of flowers grown under normal field conditions.

In the light of the evidence cited above, it is clear that African countries need to be especially vigilant with respect to the setting of standards. Two reasons stand out (Das, 2003:107): Firstly, it has to be

ensured that the standard is not being set at too high a level for meeting the objectives of safety and other requirements. Caution is needed over this because firms and producers in the developed countries may be inclined to set very high standards which they can easily satisfy, but which may be very difficult for producers in developing countries to adopt because of their financial and technological handicaps. Secondly, any international standard-setting body may not be very familiar with the conditions prevalent in developing countries and consequently their special attributes in respect of their products, production process and materials may be ignored. It is therefore necessary for developing countries to participate in the working out of international standards. The problem is that so far attempts by developing countries to be more active within the standard setting bodies have been resisted by the industrialized countries. Before the Seattle meeting of the WTO in 1999, India sought a decision that only standards developed by the relevant international bodies with the involvement of developing countries would be treated as international standards for the purposes of the SPS and Technical Barriers to Trade (TBT) Agreements. According to Jawara and Kwa (2004:46), “this was refused by the major powers”. The situation is complicated by the fact that there is a paucity of international standards for many agro-food products. Indeed, the vast majority of food safety and agricultural health measures notified to the WTO during 1995-99 had no international standards at all.<sup>1</sup>

The industrialized countries typically justify their stance by suggesting that they are simply responding to pressure from consumers. The standard argument regarding food safety and phytosanitary controls is that “in recent years, there has been increasing awareness of health risks related to food consumption. It has become a clear objective of governments in some countries and regions, such as the United States and the EU, to maintain a low levels of this risk” (Achterbosch and Tongeren, 2002:6). Article 20 of the General Agreement on Tariffs and Trade (GATT) does indeed allow governments to act on trade in order to protect human, animal or plant life or health, provided they do not discriminate or use this as disguised protectionism. In addition, there are two specific WTO agreements dealing with food safety and animal and plant health and safety, and with product standards. In recent years, the number of technical regulations and standards adopted by countries has grown significantly. According to the WTO,

“Increased regulatory policy can be seen as the result of higher standards of living worldwide, which have boosted consumers’ demand for safe and high-quality products, and of growing problems of water, air and soil pollution which have encouraged modern societies to explore environmentally-friendly products” (WTO, 2004).

However, such an argument could be construed as being disingenuous, shifting the blame towards consumers in order to exonerate governments for imposing these regulations. It is in any case difficult to square such arguments with poor enforcement, and in some cases a tendency to actually relax food and environmental safety standards. There is also much evidence which points to the poor enforcement of existing legislation. To cite some examples,

- In Brittany, France, with the additional impact of factory farming, nitrate concentration in watercourses increased tenfold (from 4 to 40 mg/l) between 1970 and 1999. Pollution by pesticides tends to be even more harmful to health and the environment – three quarters of Brittany’s water resources are above the ceiling of 0.1µg of pesticides per litre. According to recent investigations, 10 percent of French fruits and vegetables presented pesticide residues and 8 percent were above the authorized ceiling (Herman and Kuper, 2003:30-31).
- In a study carried out in 1992-3, the Washington DC-based non-profit research organization Environmental Working Group found that residues of 66 pesticides on 42 different fruit and vegetable crops sold in the United States were at levels higher than legally allowed. Overall, 5.6 percent of all the fruits and vegetables tested were contaminated at levels higher than legally allowed. In 13 percent of the violations, the use of the pesticides involved were totally prohibited. An author of the report stated that ‘a disturbing number of fruit and vegetable growers routinely break the law’ (cited in Ashton and Laura, 1999:183).
- In 1997, the British government agreed to raise the permitted levels of a chemical called glyphosate in soy beans destined for human consumption by a factor of 200 times. Glyphosate is an organophosphate, and the active ingredient of Roundup, the world’s best selling herbicide, manufactured by Monsanto. It is also said by some medical authorities to pose a significant danger to human health. In 1999, the Journal of the American Cancer Society reported that exposure to glyphosate led to increased risks of contracting a type of cancer called non-Hodgkins lymphoma, the incidence of which has increased in the US by 80 percent since the early 1970s and has been linked to long-term exposure to pesticide residues (Monbiot, 2000:64).
- In the United States, it has been estimated that the companies which produce personal toiletries and cosmetics are responsible for adding no less than 60 potentially carcinogenic materials to household cleaners and cosmetics (Epstein, 2004). In 1997, a study carried out in the United States of a sample of 100 chemicals out of 486 produced in large quantities found that 63 percent had no published carcinogenicity data at all, 86 per cent lack immune system toxicity data and 90 percent had not been tested for their impact on children (cited by Douthwaite, 1999:162).<sup>m</sup>
- In the UK, ‘mad cow disease’ or bovine spongiform encephalopathy (BSE) was first diagnosed in British cattle in 1986. Since the early 1980s, sheep processing wastes were incorporated into animal feed concentrates. But the sheep offal (brains and spinal cord) contained scrapie, a long-standing disease among sheep. Although cattle are vegetarians, this high protein animal feed was subsequently fed to cattle. The consequences were disastrous. Thousands of cattle were infected and, by 1996, 158 000 cattle had died. By 1996, at least ten Britons aged 18-41 years had died from a type of Creutzfeldt-Jakob disease which was probably caused by eating beef contaminated with BSE. Yet despite the widespread publicity about the problem, contaminated high-protein animal feed was being fed to pigs and chickens up to March 1996 (Ashton and Laura, 1999:120).

Given this set of circumstances, it is perhaps then no surprise that many of the major food safety scares in recent years have had their origin in the industrialized countries themselves. The list is a long one. For



instance, in the late 1980s, there was the beef hormone scare in Italy and the UK; in the early 1990s, there was the E.Coli outbreak in fast-food hamburger chains in the United States; in the mid-1990s, there was the brain-wasting disease associated with BSE in the UK; in 1999 there was the alarm of dioxins in animal feed in Belgium; in the United States there are still isolated, but repeated incidents of BSE; and in Spain in 2001 there was alarm over contaminated olive oil. As one UN report put it, “the increasing, pervasive use and spread of chemicals to fuel economic development is causing major health risks, environmental contamination, and disposal problems...Environmental emergencies involving chemicals appear to be steadily increasing” (cited in Douthwaite, 1999:162).

Against this backdrop, there would seem to be a profound inconsistency in demanding risk-free flowers and fruits from African exporters, while permitting in the industrialized countries apparently lax standards of control over domestic producers, and simultaneously consenting to the consumption of enormous quantities of potentially dangerous processed foods, household products, cosmetics, etc. If human health were the highest priority, it would seem logical to impose more stringent health standards in the domestic market, not to penalize African exporters. Moreover, the argument that the industrialized countries have an increasing tendency to use phytosanitary controls as covert protectionism is reinforced by “general impressions (that) suggest that many countries, both industrial and developing, have a lower tolerance for certain animal and plant health risks from imports than from domestic sources” (Jaffee and Henson, 2005:94). One instance cited is that a broad array of countries have a near-zero tolerance for salmonella in imported poultry products yet this pathogen is widely present in domestic supply chains.<sup>n</sup>

**Table 2: Fertiliser Use, Regional Comparisons, 2001**

	<b>FERTILISER USE KG/HECTARE ARABLE LAND</b>
World	98.3
Asia and Pacific	163.2
Latin America and Caribbean	84.8
Near East and North Africa	70.9
Sub-Saharan Africa	12.6
Developed Market Economies	121.3
• Belgium/Luxembourg	343.2
• France	226.5
• Netherlands	451.9
• UK	337.8

Source: FAO, 2004

The irony of the situation is that the African continent is, to all intent and purposes, a much healthier environment for the production of commodities and food products.<sup>o</sup> In comparison with the industrialized countries, pesticide and fertilizer use is generally insignificant in SSA. Fertilizer use is, for instance, around one-eighth of the world average, and about 3-5 percent of the usage in the average European country (Table 2). Potentially, the conditions for food and agricultural production in Africa are far more ecologically sustainable than in the case of the industrialized countries. Providing issues regarding certification are resolved satisfactorily, and given the considerable mark-up which is available for ecologically-produced goods, this could prove to be a potential dynamic growth area for African exporters.

## **b) Anti-dumping Measures**

One of the most utilized forms of NTB in recent decades by the industrialized countries (and increasingly so by developing countries, especially the larger ones like China, India, and Brazil) has been the imposition of anti-dumping or counter-veiling duties on imports (Grimwade, 2000:297). Indeed, there has been a veritable explosion in the total number of anti-dumping investigations initiated by WTO Members over the last decade (Millennium Project, 2005:147). Although African countries are usually neither the targets nor the initiators of anti-dumping measures, they still represent a veiled threat to their exports. Moreover, developing countries can incur huge costs defending themselves against dumping charges in developed countries. This is because the antidumping rules are based on the practices of developed countries and are very complex; and because gathering data on the facts of the case can be a cumbersome and costly process, especially when the country is obliged to hire expensive legal experts to defend itself (UNCTAD, 1998: 79).

The imposition of anti-dumping duties on products which are sold abroad at less than its 'normal value' (i.e. market value) was initially countenanced under Article VI of the GATT, provided that the importing country can demonstrate that such imports have caused 'material injury' to its domestic producers. This provision was superseded by the new Anti-Dumping Code (Article 17.6) which took effect on January 1, 1995. The problem with the legislation has been in determining the 'normal value': Various formulas exist to determine the normal value – including the standard cost plus 'reasonable' mark-up formula. However, the application of these measures has often been self-serving. As Stiglitz (2002:173) remarks of the US case, due to

“the way the dumping laws are typically implemented, countries can be charged with dumping even when they were – from an economic point of view – not dumping. The US estimates costs of production using a peculiar methodology, which, if applied to American firms, would probably conclude that most American firms were dumping as well; but worse, the Department of Commerce, which acts simultaneously as judge, jury, and prosecutor, estimates costs based on what it calls BIA, best information available, which is typically that provided by the American firms trying to keep out the foreign competition”.

From the point of view of most sub-Saharan countries, antidumping legislation principally matters from a 'defensive' rather than 'offensive' stance. Rightly or wrongly, many African countries share the perception that their domestic industries have been undermined by the predatory practices of firms from developed countries. In the southern and eastern African region, for example, several LDCs have complained about firms from a more advanced developing country which have allegedly dumped goods on their markets to the detriment of local industries, while keeping their own markets off-limits through a labyrinth of tariff and non-tariff measures. As one UNCTAD Report suggests (1998:80), “this is thus one area that requires urgent action to halt the process of de-industrialization which is alleged to be taking place in the economies of several LDCs as a result of trade liberalization attributed to the Uruguay Round agreements.” The concerns are also particularly relevant to cases of the dumping of subsidized agricultural products on African markets. Examples of this practice are widely documented (e.g. Rice, 2004, Oxfam 2002).

Thus although African countries are not a major 'victim' of anti-dumping measures taken against their own producers, there is certainly grave concern over the unequal access to this instrument. Official data from the WTO confirms the impression (Table 3). Over the period 1995-2004, African countries were subjected to 69 anti-dumping cases, the industrialized countries making most use of this instrument being the EU and the United States (13 and 16 cases respectively). The majority (50) of these involved South Africa, although Egypt was also a major target, registering 10 cases. Only 7 cases were intra-African (i.e. where both countries involved were African). Pointedly, although there are grave concerns expressed by African LDCs about the impact of dumping on their domestic markets, South Africa has been the only country to bring any anti-dumping cases in front of the WTO. This fact clearly testifies to the one-

sided nature of this policy instrument – only the more developed countries have the institutional capacity and political weight to bring these cases forward.

**Table 3: Matrix of Anti-dumping Cases Involving African countries, 1995-2004**

Exporting Country	Argentina	Australia	Brazil	Canada	EU	India	New Zealand	South Africa	Thailand	United States	Totals:
Algeria	0	0	0	0	1	0	0	0	1	0	2
Egypt	0	0	0	0	6	0	0	3	0	1	10
Libya	0	0	0	0	2	0	0	0	0	0	2
Malawi	0	0	0	0	0	0	0	1	0	0	1
Mozambique	0	0	0	0	0	0	0	1	0	0	1
Nigeria	0	0	0	0	0	1	0	0	0	0	1
South Africa	10	4	2	5	4	6	3	0	1	15	50
Zimbabwe	0	0	0	0	0	0	0	2	0	0	2
Totals	10	4	2	5	13	7	3	7	2	16	69

Source: Sadni-Jallab (2004), from WTO sources

Further evidence of this is given by the Millennium Project (2005:148), who note that if the level of trade is taken into account, the bias against imports from developing countries becomes even more evident: on this basis developing countries are six times more likely to be targeted by industrial countries than vice-versa.<sup>p</sup> The observed bias in the use of antidumping against poorer developing countries underscores the importance and urgency of disciplining the use of this instrument. A number of solutions are proposed by Das (2003:104-105) and in the Millennium Project (2005:148-150).

1. Firstly, by restricting the role of the dispute settlement panels, Article 17.6 of the Agreement on Anti-dumping has practically excluded anti-dumping cases from the normal dispute settlement process. The panels, in such cases, can only determine whether the anti-dumping authorities have established the facts properly and whether their evaluation of the facts has been unbiased and objective. They have no powers to overturn the interpretation of the domestic authorities. In disputes on other subjects, panels have a much broader role, particularly in determining whether a county has violated its obligations under a particular agreement. This basic role is denied to the panels in anti-dumping cases. As a consequence, there is a need to restore the anti-dumping cases to the normal dispute settlement process.

2. Secondly, because the mere initiation of anti-dumping procedures are costly to developing country

exporters, a provision in the agreement should be established for financial compensation if the complaint is found to be frivolous or non-substantiated. At present, petitions for antidumping measures by domestic industry are not subject to prohibitions on ‘double jeopardy’ – if one petition fails, minor re-specification generates a valid new petition and a new investigation.

3. Finally, Article 5.8 of the Antidumping Agreement requires that allegedly dumped imports from developing countries should represent more than three per cent of the total imports of the product in order to be subject to antidumping measures. As the Millennium Project (2005:149) points out, this so-called *de minimis* threshold is particularly perverse for developing countries’ exporters: as soon as it is passed, import-competing firms lodge antidumping complaints that generally lead to protectionist measures. In order to avoid expensive litigation for developing countries, the *de minimis* provision should be raised to a much higher threshold level. And the threshold for exports from the poorest countries could be higher than that for exports from developing countries.

These suggestions, while helpful, would not however avoid the difficulties for African countries in legitimately using anti-dumping measures to avoid subsidized imports disrupting their domestic markets. And as long as the industrialized countries retain their inflexible stance regarding the refusal to countenance a reduction in agricultural subsidies, this is going to continue to be an issue of dispute. For instance, while the EU claims to have made trade fairer by reducing its exports subsidies, many of these subsidies have often merely been shifted into other agricultural subsidy programmes that ultimately have the same effect (Jawara and Kwa, 2004:27, Gibbon and Ponte, 2005:55). Particularly difficult for African countries is the issue of how to avoid dumping via third countries.<sup>9</sup> Given the scale and the implications for African farming of massively subsidized food imports from the OECD countries, one would have expected African countries to have used anti-dumping legislation extensively. Yet, as we have seen, this has not been the case. Aid-dependent countries are simply not in a sufficiently strong position to use the anti-dumping mechanism – political pressure, the threat of retaliations, and ‘arm-twisting’ from the industrialized countries are practices which are all too prevalent.

This highlights an important fact – that WTO legislation is in fact full of clauses and mechanisms, such as the Dispute Settlement Understanding, which for poor developing countries are essentially non-operative. In the Doha Round, these fundamental impediments in the functioning of the global trade system should be addressed if developing countries are to remain as enthusiastic supporters of its expansion.

### **c) Rules of Origin <sup>r</sup>**

Ever since the schemes were first introduced in the 1970s, non-reciprocal preferential access for developing countries to the markets of the developed countries has had both its detractors and defenders. However, there is an emerging consensus that the potential gains from the enhanced market access have been very

much constrained because of excessively strict rules of origin. Rules of origin oblige beneficiary countries to prove that a high percentage of the value-added has been created within national territory, thereby restricting sourcing from third countries. For small, structurally relatively un-diversified developing countries in Africa whose manufacturing sector is dependent in large measure on production inputs, this obviously limits the capacity to export. Rules of origin and related administrative procedures have almost remained the same since the early 1970s, when preferential margins were significantly higher than at present. Some earlier studies conducted in developed countries quantified the cost needed to comply with administrative requirements related to origin as three per cent of the value of the goods concerned. In a more recent study, Estevadeordal and Suominen (2003) estimate that the administrative costs of compliance for rules of origin correspond to a tax (i.e. a duty) of between two percent and 5.7%. In some sectors where the preference margin is small, this is enough to completely offset any advantages from the preferential access.

Moreover, the total economic cost of applying strict rules of origin impeding the utilization of most competitive inputs is expected to be much higher in the poorest developing countries. As a result, manufacturers and exporters often opt for exporting under MFN conditions and forgo preferences (UNCTAD, 2003: xii). Excessively strict rules of origin has been a repeated criticism of market access agreements signed by the EU, which have ended up undermining the developmental potential of the said agreements (Brenton, 2003; Inama, 2003; Kipe, 2003). The same criticism has often been made of US African Growth and Opportunity Act (AGOA). Mattoo et. al. (2002) estimate that the benefits of AGOA for Africa would be about five times greater if exporting countries were not subject to the restrictive rules of origin imposed by the United States.

#### **d) Environmental and Labour standards**

Another thorny issue in trade negotiations in recent years has been whether trade rules should include minimum standards regarding labour market standards (wages, working hours, recognition of unions, etc). The subject is also pertinent to attempts to apply environmental standards on trade flows. If environmental standards provide additional incentives for export competition in pollution-intensive industries, and if developing countries do not place the same emphasis on domestic environmental quality, then free trade may result in a 'race to the bottom' in regulation. But the costs of such international-imposed standards for developing countries may be very high in terms of exports foregone. A World Bank study by Wilson, Otsuki and Sewadeh (2002) finds that a trade agreement on a common environmental standard would cost a developing country substantially more than an OECD country. Developing countries would, on average reduce exports of five pollution-intensive products by 0.37 percent of GNP. This represents 11 percent of annual exports of these products from the 24 studied countries.

Particularly controversial has been the proposal to impose trade sanctions through the WTO on countries that violate 'international labour standards'. It is worth pointing out that positions cut across

well-established lines on this issue. Critics of globalization frequently argue that through the imposition of standards the industrialized countries are introducing a form of covert protectionism because poor developing countries will be unable to trade competitively without the ability to exploit their cost advantage in the provision of low wage labour. In this context, such critiques find echo in the positions of many orthodox trade economists like Bhagwati (2002:56-61).

However, other critical authors (e.g. Klein, 1999, Bakan, 2004) insist on the contrary – that sweatshop labour is an affront to human dignity and needs to be prohibited. Reflecting these concerns, there has been increasing demand among international customers for “social audits”. Some customers now require reports from inspection bodies that confirm that suppliers comply with local labour laws. In Kenya, for instance, processed foods from Del Monte were restricted in the European market due to concerns over worker safety and standards (World Bank, 2003:xxxviii). Another example is that South Africa’s exporters of citrus fruits are required to meet EURECAP requirements relating to services provided to workers (e.g. washing facilities and portable toilets for every 600 metres in the orchard).

Although such legislative moves may appear to be welcome, the possibility that some of these labour and environmental standards may amount to legislative overkill (and covert protectionism) needs to be considered seriously. From a historical perspective, there is certainly a degree of hypocrisy in insisting on the immediate application of minimal labour standards when it has been shown that in the developed countries the eradication of abuses such as child labour took centuries to achieve (Chang, 2002: 104-110). Another danger is that externally imposed standards to eradicate such abuses may well end up driving such practices underground. It might, for instance, force vulnerable children into more degrading or dangerous work. Dismissing children (or not employing them in the first place) can be tantamount to sentencing them to starvation. And not only the children, but their entire families too: children in Third World Countries are often their families’ primary wage earners (Hertz, 2001:196). However, to leave workers in a legal vacuum in the poorest developing countries is not a reasonable or just alternative either. The reality of labour markets, both in the industrialized and, more crucially, in developing countries, is that power relations on both sides of the market determine job opportunities and levels of pay and that a mismatch quite clearly exists between labour and capital which is tilted in favour of the more powerful (Sengenberger and Wilkinson, 1995:131). Moreover, from an historical perspective, labour laws and regulation have proved fundamental in improving the lot of workers and labourers.<sup>5</sup>

The key challenge, therefore, is to strike a balance between adequate legislation and avoiding covert protectionism through excessive regulation. In such a context, African countries are understandably mistrustful of labour standards being imposed from outside, particularly when linked to trade and market access agreements. This suggests that the first-best solution would be the imposition of legislation to protect worker rights at the national level. Yet in the past the International Financial Institutions (IFIs) – principally the World Bank and IMF - have frequently maintained that African labour markets already suffer from overregulation. In an extensive review of the subject, Van Der Hoeven and Van Der Geest

(1999:22) argue that this is misleading – in general African labour markets have shown enormous wage flexibility, and African wages, taking into account the depreciation of the currencies, are amongst the lowest in the world market. It would seem advisable that African countries review the situation regarding basic worker rights, particularly those working in precarious sectors or in dangerous industries such as mining or the oil industry. Pre-empting externally imposed standards through international trade by imposing respectable minimum labour standards would appear to be a preferable and socially equitable strategy.



## IV. NTBs as Impediments to Intra-regional trade

Finally, it is worth stressing that African countries are not simply the victims of NTBs – they also often apply NTBs in a way which are damaging to their own developmental progress. In particular, an enormous number of trading opportunities are lost through the imposition of NTBs to intra-regional trade. This has been a persistent theme of ECA publications (e.g. UNECA, 2004). It is true that over the last two decades tariffs have come down sharply in most African countries (Clarke, 2005). But NTBs, in the shape of administrative bottlenecks, continue to impede the free flow of trade between African countries.

Unfortunately, NTB data is only available for a few African countries. Hinkle, Herrou-Argaon and Kubota (2003:13) note that the most comprehensive existing data set on NTBs, UNCTAD's Trade Analysis and Information System (TRAINS) contains comprehensive and reliable data for only one African country (Cameroon). Faced by these limitations, Table 4 gives some information on coverage of customs and trade regulations in eight African countries, gleaned from investment climate surveys for small and medium-sized enterprises (Clarke, 2005). Since most exports for these firms are to neighbouring countries, it gives an approximate idea of the impediments to intra-regional trade. In most of the African countries covered in these surveys, enterprises involved in exporting were significantly more likely to say that trade and customs regulations were a serious obstacle than exporters in the three Asian countries in the sample. Whereas about 40 percent of the enterprises involved in exporting claimed that customs and trade regulations were a serious obstacle in the eight African countries, only 28 percent of exporters did the same in Asia.<sup>1</sup>

**Table 5: Customs and trade regulations and days for exports and imports to clear customs**

	% of enterprises reporting trade and customs regulations are a major or very severe problems		Days for exports and imports to clear customs (average)	
	Exporters	Non-Exporters	Exports	Imports
<b>Africa</b>	<b>40.1</b>	<b>32.6</b>	<b>6.1</b>	<b>9.9</b>
Ethiopia	44.0	34.9	5.6	14.7
Kenya	47.0	39.1	4.5	9.6
Mali	28.0	17.1	5.4	8.5
Mozambique	55.6	47.4	9.4	10.8
Senegal	37.9	35.4	6.4	7.3
Tanzania	41.2	26.6	11.7	18.5
Uganda	36.4	24.1	3.5	5.1
Zambia	30.7	36.3	2.2	4.8
<b>Asia</b>	<b>27.9</b>	<b>11.7</b>	<b>3.8</b>	<b>5.4</b>
China	32.3	9.6	5.4	7.5
India	16.9	11.5		
Philippines	34.6	13.9	2.3	3.3

Source: Investment Climate Surveys, cited by Clarke (2005:28)

As the cornerstone of regional integration, intra-regional trade is unquestionably a priority for African countries. The old myth that African countries have similar endowments, produce a similar range of commodities, and so there is little scope for mutually beneficial trade, needs to be exploded. There are enormous potential benefits from expanding regional trade. The recent Commission for Africa report notes that the Africa's internal market for agricultural products could be worth as much as US\$ 50 billion a year, almost three times the US\$ 17 billion annual income from exports to the rest of the world (Commission for Africa, 2005:82). The scope for mutually beneficial trade in manufactured goods and services is similarly enormous. Because productivity differences are relatively small, there is likely to be far more synergies and possibilities of constructive competition between Kenyan and Tanzanian manufacturing industry than between Kenya and, say, the EU.

In this context, African countries should not be deceived about the ultimate objective of the contemporary trade facilitation agenda. Trade facilitation is currently being driven by the realization of the industrialized countries that in order to make further headway in the penetration of developing country markets, they need to tackle the remaining NTB impediments to imports by streamlining procedures, reducing documentation, harmonizing and automating import procedures, etc.<sup>u</sup> African countries need to respond strategically to such notions. In the face of quite serious balance of payments constraints in many African countries, the best way forward is to prime regional over multilateral liberalization. More energetic postures in pursuance of promoting intra-regional trade would be beneficial, as would the full-hearted endorsement of programmes such as the NEPAD infrastructural projects. Fortunately, there is a growing realization that promoting regional integration more aggressively than in the past is essential if growth rates in the region are to accelerate. Cross-border developments such as the Maputo Corridor, which entwines the economies of Mozambique and South Africa, are de facto illustrations of this.

Regional economic communities are also playing an increasingly active role. In 1999, for instance, the Common Market for Eastern and Southern Africa (COMESA) conducted a survey examining NTBs within the COMESA region. Subsequently, COMESA adopted 100 quality standards as a measure to promote trade in the region.<sup>v</sup> The adopted standards are intended to minimize disputes among trading member states, block out hazardous products, minimize dumping and enhance market accessibility for products from the region. Some of the products which will benefit from the new standards include food for infants and children, canned sweet corn, mangoes, strawberries, wheat flour, sorghum grain, peanuts, avocados, maize and maize meal. The new standards will be circulated to member states with a recommendation that they adopt them as their national standards.<sup>w</sup> Measures like these need to be encouraged and emulated across sub-Saharan Africa if regional integration is to fulfil its potential as a powerhouse for the development of the region.

## V. Conclusions

In reviewing the relevant literature into the nature and consequences of NTBs, this paper has stressed the heterogeneous nature of the barriers to trade. Simply because considerable progress has been made reducing tariff barriers through multilateral and bilateral trade negotiations over the last forty years does not mean that considerable barriers to trade do not continue to impede exports. We have argued that African countries are especially vulnerable to such 'new protectionism', particularly with regard to product and safety standards, rules of origin, labour and environmental standards, and anti-dumping legislation.

Much of the evidence we have reviewed here is admittedly anecdotal. But the nature of NTBs means their precise measurement is elusive. However, it would seem clear that African countries have frequently suffered the consequences, through lost export markets, of NTBs imposed by the industrialized countries. They have also endured many problems associated with dumping on their own markets, particularly of subsidized agricultural products, but also of manufactured goods. So far, WTO legislation has proved ineffective in dealing with these situations. There is an additional problem which has not been mentioned in this paper, and that is the fact that much of the standard setting has been carried out outside the framework of traditional rules and regulations, and is in fact being increasingly set on a unilateral basis by multinational firms. In this context, Gibbon and Ponte (2005) document the rise in influence over the last decade of buyer-driven value chains in Africa, whereby Northern supermarkets have been able to impose greater and more extensive conditions on production and process standards. This is possible now in part because the liberalization of agricultural markets has fragmented producer associations in developing countries, and meant that multinationals are now increasingly able to push the costs of their ceaseless drive for competitiveness onto producers, at the expense of the expulsion of many small-scale producers from producer chains and a growing squeeze on profits for developing country producers.

Fortunately, there is at least a growing international acknowledgement of some of these problems. The Standards and Trade Development Facility (STDF) established in mid-2002 as a joint initiative of the FAO, OIE, World Bank, WHO and WTO, is an example of the new initiatives being tabled to tackle the poor capacity of developing countries to deal with product standards. The STDF is both a financing and co-ordinating mechanism, bringing together the standard setting organizations designated by the SPS Agreement as reference bodies in the area of food safety (CODEX), plant health (IPPC) and animal health and zoonoses (OIE). In order to help poor developing countries meet these sets of product standards, the STDF currently provides grant financing of up to 90 percent of project costs available for private and public organisations.

However, in view of the scale of the problem, the low level of initial funding, and the fact that many of the previously mentioned codes are not legally-binding ones, we would suggest that initiatives like these are

not sufficient to deal with the scale of the problem. For instance, despite the fact that the EU imposes very strict controls on SPS, there is a small derisory programme of funding by the EU for enhancing capacity in trading standards for developing countries (Watkins, 2004). Moreover, as we have seen, product standards tend to be ‘moving targets’, ones which the poorest developing countries are ill-equipped to deal with. Through the SPS Committee’s complaints procedure, the WTO has so far only received five counter-notifications from low-income countries, with the vast majority being brought by a handful of developing countries, in particular Argentina, Brazil, Chile and Thailand (Jaffee and Henson, 2004:23).

One way of at least initiating a solution to the problem is by stressing the extent to which this is a shared problem – a potentially serious impediment to trade for the developed countries too. In 1996, the US Department of Agriculture, drawing on the expert opinions of staff and other regulatory personnel, found that “questionable” technical barriers (measures judged to have no scientific basis) were inhibiting US exports of agricultural and food products to some 62 countries. More than 300 market restrictions were identified as constraining exports valued at \$5 billion, equal to around seven percent of US agricultural, food and forestry trade in 1996 (Jaffee and Henson, 2004:100). The industrialized countries should realize that it is in their own interests to abide by international norms on these issues.

At the same time, African countries are also often guilty of harming their own interests by putting up administrative impediments to intra-regional trade. In principle, at least, a broad consensus exists among African countries that promoting intra-regional trade should be a priority. Yet the pervasive nature of intra-African NTBs is equivalent to ‘shooting oneself in the foot’ – regional integration can never be achieved while such barriers are allowed to remain. While it is true that, under pressure from bilateral and multilateral donors, much attention has been dedicated to removing or reducing the administrative and technical barriers to imports from the industrialized countries, arguably far less attention has been paid to specifically dealing with NTBs that impede trade from neighbouring countries. We therefore urge African governments to review the current situation and look deeply into the NTBs which specifically inhibit regional trade, with the objective of minimizing such restraints.

Finally, on a positive note, given the right external support from donors, Africa could actually convert its comparative disadvantage in the application of pesticides, fertilizers, additives, etc. into an advantage. Because of their high relative cost, and the extremely limited ability of African farmers to afford such products, Africa is currently the continent with the lowest level of use of these chemicals. In view of the growing demand in the industrialized countries’ markets for ‘ecologically-produced’ foods, this represents an opportunity for African agricultural exporters to ‘move up-market’ – the price premium on ecologically-produced goods is high. But the certification issue raises its head again here. For instance, the Organic Accreditation Service of the International Federation of Organic Agriculture Movements costs US\$ 14,000 a year (Millennium Project, 2005:156). Financial support would be needed to help African producers obtain the necessary certification. Under the right circumstances, however, in the future the etiquette ‘Produce of Africa’ could prove to be a boon.

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## Endnotes

- a In the fallout from the Cancun meeting, for instance, the United States reportedly ‘punished’ China by imposing quotas on imports of Chinese bras, bathrobes and knitwear, as well as slapping on provisional duties of 28-46 percent on Chinese televisions for alleged dumping (Jawara and Kwa, 2004: xi).
- b This does not mean of course that authorities have necessarily fulfilled this role very effectively or conscientiously. The belated reaction of Western governments against the tobacco industry, many decades after the damaging effects of smoking became known, is a case in point.
- c Friedman’s position in reality reiterates the more elaborate theory of Mancur Olson (1971) regarding *The Logic of Collective Action*, in which the author analyses the intrinsic difficulties of large diffuse social groups to articulate policies or positions in their own best interests.
- d The exception being South Africa which, as we shall explain later, has been caught in anti-dumping cases with increasing frequency.
- e Curiously, the authors cite the case of the tiny island of Reunion (pop. approximately 700,000), a French overseas Departement, as an example of the way in which NTBs had fallen dramatically – from affecting an estimated 83 percent of Reunion’s pre-Uruguay Round exports to zero afterwards. However, in an African context the small island economy of Reunion could hardly be considered representative, and elsewhere in the same paper the authors concede that for a number of African countries the Uruguay Agreement would not imply any reduction at all in NTBs. The authors also raise a number of concerns related to NTBs on fish, chemicals and energy products (which were bypassed by the Round), and also argue that stricter regulations on safeguards and the use of antidumping duties are necessary “to ensure that these measures were not substituted for those eliminated.”
- f An argument frequently made nowadays is that because many African countries are actually net food importers, they thus benefit from OECD subsidies (which make their food imports correspondingly cheaper). Arguably, this is a perverse and ultimately misleading conclusion: It confuses the static situation now, with the dynamic situation overtime. Up until the late 1970s, Africa was a net food exporter of food and agricultural products. The deficits opened up in the 1980s and 1990s after African governments liberalized their trade regimes, under considerable pressure from the Bretton Woods institutions. They pursued this policy despite the threat of competition from massively subsidized OECD farm exports. See *The Economist*, ‘Punch up over handouts’, March 26th 2005,

and the subsequent correspondence of this author 'Down on the Farm', Letters, April 16th 2005).

- g The disadvantage of the frequency index is that it does not reflect the relative value of the affected products and thus cannot give any indication of the importance of the NTBs overall, or, relatively among different export items. Thus for African countries with an export structure typically concentrated on a few export products, it is likely to understate the relative importance of NTBs.
- h Most of the examples of this are anecdotal, and veiled 'threats' are not published – the warnings are given verbally through diplomatic channels. See Jawara and Kwa (2004:Chapter 6).
- i 'Kenyan horticulture sector eyes Ethiopia in light of EU regulations', by Samuel Maina, The Sub-Saharan Informer, Vol IV No. 004, February 18-24, 2005, page 1.
- j The conclusions presented by Otsuki, Wilson and Sewadeh (2001) on the impact of aflatoxins are questioned by fellow World Bank staff Jaffee and Henson (2005:108). They argue that the baseline African exports in dried fruit and nuts, and cereals is implausibly high (standing at \$472 million and \$298 million respectively). Certainly, the estimated figure of total exports potentially affected (\$667 million) seems excessive. Whatever the precision of the figures, however, the issue is certainly an important one for countries highly dependent upon the export of these commodities.
- k A report written for the Standards and Trade Development Facility, based on World Bank research, suggests that whereas the costs are relatively easy to estimate (in terms of the expense of upgrading laboratory infrastructure, processing facilities and investments in farm-level facilities, etc.), the alleged benefits for producers (in terms of access to more remunerative markets etc.) are much harder to compute. According to this study, the estimates that the costs of complying with SPS standards initially ranges from 0.5 to 5 percent of the multiyear value of trade, and thereafter a value of between 1-3 percent of annual sales. No estimates are given of the alleged benefits (STDF, 2005).
- l With specific reference to horticultural products, Roberts and Krissoff (2003) found that over the same period two-thirds of notifications involved measures for which there was no recognized international standard and that many involved maximum pesticide residue levels.
- m One of the major problems confronting the authorities is that, in order to assure safety, it is necessary to test combinations of such chemicals. To test the thousand most common toxic chemicals in unique combinations of three would require at least 166 million different experiments. Reportedly, even the United States currently has the capacity to conduct only a few hundred such tests a year.
- n Jaffee and Henson (2005:94) in fact come to some rather contradictory conclusions on current trends. They also argue, for example, that "there is anecdotal evidence that regulatory oversight

is substantially more stringent on domestic supplies in certain products. For example, there is no official requirement in the United States for border testing of cereals or nuts for the presence of aflatoxins. Private-sector testing for aflatoxin levels in cereals is commonplace in the domestic market, however, with frequent price discounts being applied by buyers.” Beyond the example of aflatoxins, however, they provide no evidence to support this affirmation and indeed provide a number of counterexamples that suggest the opposite conclusion.

- o Some buyers in the horticultural industry in Africa now demand descriptions of environmental circumstances and the location in which a product is grown (World Bank, 2003:xxviii). Presumably, if the product is cultivated near to a polluted urban area or a major road, then buyers will not purchase the produce. Yet in Europe similar measures would imply taking out of agricultural production huge swathes of land, something which no one is currently contemplating.
- p There has also been an alarming increase in the number of anti-dumping cases brought by more developed developing countries, such as India and Brazil, against poorer ones.
- q An example described at length by Rice (2004) involves the suspected transshipment of wheat flour proceeding from the EU and the US to Kenya via Egypt. Egypt and Kenya both belong to the Common Market for Eastern and Southern Africa (COMESA), which allows its members tariff-free access for commodities as long as 45 percent of the product originates in the exporting country. But in 2000, the Kenyan Government became extremely concerned about increases in the volumes of cheap, duty-free wheat flour imported from Egypt, undercutting local prices and having a negative impact on Kenya’s wheat farmers. As Egypt’s production costs for wheat are high, Rice (ibid.) concludes that the Egyptian producers were using transshipments of cheap subsidized imports from the EU and US and other countries to supply the Kenyan market.
- r This section is drawn from Mold (2005).
- s See, for instance, the classic text by Polanyi (2001) on the key role of regulation on the development of markets in the industrialized countries. See also Standing (1999).
- t According to the African Development Bank (2004:177), there is some evidence that suggests the severity and use of intra-African NTBs was reduced significantly during the 1990s. For example, in the process of tariffication of NTBs, Tanzania apparently increased average tariffs during the 1980s, but the net effect was to liberalize imports.
- u It has even been suggested that the real objective of facilitating trade is to limit the ability of customs authorities to question the transaction value declared by Northern multinationals. Developing country governments would thus be constrained in their attempts to limit tax evasion through transfer pricing. According to Jawara and Kwa (2004:44), this issue has been on the table since the

Tokyo Round, when the Quad tried to push through ‘rules’ that would virtually disarm the customs administration of developing countries and force them to accept the invoices of multinationals and their agents unquestionably as ‘transaction values’.

- v Although standards and technical regulations are not among the foremost causes of low levels of cross-border trade, the World Bank (2003:xi) documents some examples. For example, an incident of a Kenyan ban on imports of one-day old chicks from Mauritius because of alleged detection of Avian Encephalomyelitis in two shipments was not back up by appropriate test evidence or detailed risk assessment. No notification of the action was made to the WTO by Kenya, and the matter was settled before the case reached WTO’s dispute settlement body
- w “Comesa Adopts 100 Quality Standards”, by Elias Biryabarema, The Monitor (Kampala), 28 March 2005.

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