

# THE TREATMENT OF NTMS IN TRADE ANALYSIS: A CRITIQUE OF THE MAINSTREAM APPROACH AND AN OUTLINE FOR AN ALTERNATIVE METHODOLOGY

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## Abstract

Non-Tariff Measures (NTMs) have become centre-stage with the new generation of trade agreements like TTIP. These are procedures, laws and regulations other than tariffs or quotas that impede international trade and investment. In the trade literature as well as empirical trade impact assessments, NTMS are typically treated as a cost item to business only. Only more recently has a more nuanced understanding of NTMs emerged that also takes into account the social benefits of regulation by way of cost-benefit-analysis. We purport to show that the standard methodology used for NTMs is still methodologically insufficient. The paper argues in favour of applying a methodological approach that allows for the issues of incommensurability and non-compensability of values to be systematically incorporated into analysis, suggesting social multi-criteria evaluation as a promising tool to use.

Keywords: *trade policy, trade impact assessment, non-tariff measures, social cost-benefit analysis, multi-criteria evaluation.*

JEL Codes: *F13, F14, F17*

## I. Introduction

During the last years, major industrialized countries have embarked on negotiating a new generation of free trade agreements (FTAs). These new trade agreements aim at what Robert Lawrence has termed ‘deep integration’, that is “integration that moves beyond the removal of border barriers” (Lawrence 1996: 8). These new FTAs include *inter alia* CETA (Canada-EU Trade Agreement), TPP (Trans-Pacific Partnership Agreement) and TTIP (Transatlantic Trade and Investment Partnership Agreement). They are indeed very comprehensive and include a plethora of topics and issues, including services & investment liberalization, public procurement, and cooperation in all matters of trade-related regulations with a view to dismantle so-called unnecessary regulation or harmonize diverging regulations between the EU and US.

Since trade and investment between much of the industrialized world is already very open, trade liberalization in the conventional meaning of the term is only a minor issue in these negotiations. Average tariff rates between the EU and US, for instance, already stand at less than 3% for manufactured goods (BMWT/ifo 2013, p39). Hence, removing remaining tariffs will have only limited effects. Most of the economic effects are expected to come from the elimination, harmonization or mutual recognition of regulations. Therefore the focus of negotiations lies on *non-tariff measures* (NTMs). According to the conventional definition, these are procedures,

laws and regulations other than tariffs or quotas that impede trade and investment, respectively, between two countries.

Efforts towards deep integration started already with the Uruguay Round of the GATT, e.g. in the fields of intellectual property rights and government procurement. More recent efforts during the WTO Doha Round, particularly in the areas of investment liberalization, competition law, or domestic regulation in services, were however stifled by developing and emerging country opposition (Nölke and Claar 2012). Thus, efforts towards deep integration trade agreements were redirected to the bilateral and regional level, with the US and EU proactively pursuing this regulatory agenda in their bilateral trade policies since the mid-2000s. The regulatory agenda of the EU in these bilateral agreements has gradually become more comprehensive, with TTIP and CETA arguably constituting the most advanced examples of deep integration trade agreements.

Mainstream economic theory suggests that the alignment of NTMs will entail cost savings which will transfer into higher income and growth. Not surprisingly, then, mainstream trade economists have devoted considerable efforts to including NTMs in assessments exercises of the effects of FTAs. On a conceptual level, mainstream trade economics treats NTMs either as a cost to business or as a rent accruing to companies, the removal or alignment of which raises economic welfare. However, NTMs which come for instance in the form of sanitary and phytosanitary measures, or health and safety standards at work, arguably confer a benefit to society. As Beghin *et al.* (2012: 360) write: *'The message remains that when market imperfections are present, the interface between NTMs, trade and welfare is more complex than the simple dominant mercantilist message.'* Thus, as we wish to argue, a proper treatment of NTMs in trade impact assessments would call for an analysis of both costs and benefits of NTMs for society. In other words, in addition to the cost savings for businesses, the consequences of a NTM alignment for the social benefits that this NTM has so far conferred upon society have to be explicated. This is the more pertinent, since the new generation trade agreements foresee the establishment of institutionalized regulatory cooperation between the parties. Deliberately conceived of as 'living agreements', for instance under TTIP a regulatory cooperation council shall be set up which consults over both existing regulations and new regulatory proposals (European Commission 2013c). The new regulatory agenda will hence not only be constrained to regulatory alignment in the form of harmonization of standards, mutual recognition or recognition of equivalence, but to the development of new standards and regulations as well as to 'simplification', i.e. the scrutinizing of existing regulations, that parties consider hostile to its interests (Stoll, Holterhus and Gött 2015). Arguably, this might result either in regulatory improvements or deteriorations. Against the backdrop of a recent history of business-driven initiatives at deregulation, and the enhanced role of these new technocratic bodies, both critical scholars as well as civil society organizations in the EU are concerned that de-regulation, i.e. the watering-down or outright elimination of regulation might be the predominant outcome.<sup>1</sup>

The broad scope of the regulatory agenda of the new generation FTAs thus fundamentally changes the nature of trade policy. Far away from being a policy field dealing with a limited set of rather technical issues like tariffs and quotas, the new trade agenda touches upon highly sensitive public policy areas like food safety, public health labor and environmental regulations. Trade policy has thus become a controversially discussed public issue with new stakeholders questioning its impacts upon democratic governance and social welfare.

In this paper, we will firstly scrutinize the analytical treatment of NTMs as trade costs by mainstream trade economics (section II). Some technical improvements by incorporating cost-benefit analysis notwithstanding which will be dealt with in section III, we purport to show that the treatment of NTMs in trade impact

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<sup>1</sup> For a discussion of recent de-regulatory initiatives at EU level, e.g. the REFIT programme or the work of the High Level Group on Administrative burdens ('Stoiber Group'), see Myant/O'Brien (2015). For the concerns of civil society, see e.g. Corporate Europe Observatory, <http://corporateeurope.org/trade/2013/12/regulation-none-our-business>, (20 August 2015)

assessments is still insufficient on methodological grounds. From this we will move on to ask what methodological options for the assessment of social benefits of regulation exist, that go beyond the prevailing approach (section IV). A final section concludes. Our discussion uses some of the most influential studies on the economic effects of TTIP for illustrative purposes.

## II. THE TREATMENT OF NTMs AS TRADE COSTS IN CONVENTIONAL TRADE ANALYSIS

Trade economists have been aware of the importance of NTMs for a long time. But as long as trade liberalisation was largely confined to tariff reduction, the analytical treatment of NTMs was of no particular concern. This changed within the last two decades or so, when it became increasingly evident, that the focus of trade negotiations shifted towards including a growing number of technical standards and regulations, administrative procedures, or services sector liberalisations, the latter being intimately linked to regulatory issues. During the last 20 years a broad literature has emerged which aims at providing various techniques to quantify the economic importance of NTMs. Regardless of the particular metric applied, NTMs are conceptualized as a cost to trade, i.e. as an element that is a restriction to trade. Thus, the principal challenge lies in quantifying the magnitude of this restrictiveness. Once this is achieved NTMs can be added to other components of trade costs. Depending on specific assumptions on the ‘actionability’ of these trade costs, i.e. the degree to which one believes they can be reduced or aligned by a trade agreement, the welfare implications can then be calculated by means of a CGE model, typically.

In their comprehensive survey on the state-of-the-art of NTM measurement, Anderson and van Wincoop (2004:2) define trade costs as ‘all costs incurred in getting a good to a final user, other than the marginal cost of producing the good itself’. This includes the following types of costs: (i) transportation costs, (ii) policy barriers (tariffs and NTBs), (iii) information costs, (iv) contract enforcement costs, (v) currency costs, (vi) legal and regulatory costs, and (vii) local distribution costs. Anderson and van Wincoop (2004) provide an ad-valorem tax equivalent estimate of trade costs in the order of 170% for a representative rich country. These are broken down into a 21% transportation costs, 44% border related trade barriers and 55% distribution costs. Of the 44% border related trade barriers, roughly 8% are associated with tariffs and NTBs, 7% with language, 14% with currency, 6% with information costs, and 3% with security barriers. Given that average tariff levels in advanced industrialized countries are typically below 5%, this estimate implies that NTBs add around 3-4% to the price of a traded good (see Raza *et al.* 2014). However, the definition of NTBs in Anderson and van Wincoop (2004: 11) includes only price and quantity measures, e.g. quotas, quality measures (standards, licensing requirements etc.), and in a broadened definition also threat measures (antidumping and countervailing measures). Thus it is seemingly focussed upon border barriers, i.e. barriers that arise at the point of entry into an economic territory and which are discriminatory in nature.<sup>2</sup>

A particular complication of measuring NTMs as trade costs is the lack of direct evidence. Databases which provide information on non-tariff-barriers, like UNCTAD’s TRAINS database, are incomplete and suffer from severe data quality problems. In addition, they provide mainly information on incidence, and not on the trade restrictiveness of a particular instrument. Thus, trade economists have largely resorted to indirect methods of measuring the trade restrictiveness of NTBs. Here, trade costs are inferred from an economic model which links trade flows to observable variables and unobservable trade costs. The most widely applied approach uses the gravity model. The gravity model explains bilateral trade volume by a combination of factors that serve as attractors to trade - most notably the size of an economy as measured by GDP, and factors that make trade more difficult - most notably geographic distance, language or culture. NTMs enter the gravity equation typically

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<sup>2</sup> In contrast, behind-the-border barriers impose costs and constraints on economic activity in a non-discriminatory manner, regardless of whether the product or service is produced domestically or imported.

in the form of a resistance term, i.e. it is assumed that both border and behind-the-border measures impede trade between two countries. Thus, the relative costs of NTMs can be estimated. Upon that basis, an ad valorem tax equivalent of NTMs can be calculated, which however is highly sensitive to the elasticity of substitution taken.

In order to come up with estimates of the trade restrictiveness of NTMs that are substantiated by direct empirical evidence, survey methods have been employed recently. In the case of the impact assessments of TTIP (Trans Atlantic Trade and Investment Partnership), the principal study commissioned by the EU-Commission, Ecorys (2009), conducted a survey among some 5500 business managers and industry experts. The respondents had to assess the trade restrictiveness of its sectoral bilateral trade by assigning a value of between 0 and 100. Upon that basis indices were constructed which were then used to estimate the impact of NTMs on trade and investment flows, or in other words, to calculate trade cost equivalents of existing NTMs. Ecorys (2009: 23) arrive at an average trade estimate of NTMs across sectors of 17 %. This is a multiple of the 3-4% estimate for policy barriers of the Anderson/van Wincoop (2004) paper, referred to above. Obviously, this has to do with the very wide definition of NTMs by the Ecorys study. NTMs are basically understood as “all non-price and non-quantity restrictions on trade [...]. This includes border measures (customs procedures, etc.) as well as behind-the-border measures flowing from domestic laws, regulations and practices...” (Ecorys 2009: xiii).

In a further step, again with the help of experts and regulators, levels of actionability were established, i.e. assessments with regard to “the degree, to which an NTM or regulatory divergence can potentially be reduced...” (Ecorys 2009: 15). Actionability levels were determined to range from 35 % to 70 %, with the average for the EU at 48 % and 50 % for the US. In a last step, these actionability levels were taken as inputs for the CGE scenario estimations of the economic impacts of TTIP, both in Ecorys (2009), but also in later studies, in particular the widely-cited CEPR (2013) study commissioned by the EU-Commission. In the optimistic scenarios, a reduction of actionable NTMs of 50% and 25%, respectively, was typically assumed.

Not surprisingly, the overall welfare effect, which is computed by the CGE simulations, is very sensitive to the assumed actionability level. The higher actionability of NTMs, the higher the welfare gains. Actionability is defined as “the degree to which an NTM or regulatory divergence can potentially be reduced (through various methods) by 2018, *given that the political will exists to address the divergence identified*” (Ecorys 2009:15, *emphasis added*). This definition is highly problematic, since the political process is effectively assumed away, and substituted for by an ad-hoc assessment of a sample of mostly business-related experts, which, given their vested interests in the issues at stake, should be arguably expected to exhibit a certain tendency to both overestimate actionability levels and cost savings to companies. Thus, the determination of actionability levels is basically a more or less sophisticated guess of a group of persons with vested interests, and is not grounded in any kind of robust methodology.

By way of summary, the assessment of NTMs by mainstream trade economics is so far marked by a number of serious deficiencies. Firstly, the scope of NTMs remains unclear. While in the standard academic debate, NTMs have been defined as border measures referring to barriers such as quotas, quality measures (standards, licensing requirements etc.), and in a broadened definition also to threat measures (antidumping and countervailing measures), the more recent literature extends that considerably. Here, behind the border measures, i.e. domestic laws and regulations are also included. Since behind-the-border measures are by definition non-discriminatory – at least on a *de-jure* basis - this raises considerable theoretical problems. A significant part of the latter have to be considered as production costs and not as trade costs. If this is true, then it is questionable whether they should be included in a trade impact assessment at all. One could counter that trade in services as well as investment liberalisation, which have become an integral part of new generation FTAs, are *de-facto* impeded by domestic laws and regulations, which differ between countries, regardless of whether they constitute production or trade costs. However, since firms encounter different NTMs in trade than

in investment, NTM impact assessments would have to account for that by distinguishing between NTMs related to trade and NTMs related to FDI. While NTMs related to trade would basically refer to border barriers, NTMs related to FDI would encompass behind-the-border measures, i.e. domestic laws and regulations.

This distinction notwithstanding, the economic argument for aligning FDI-related NTMs through FTAs remains blurry. While in the case of trade, mainstream economic theory suggests an increase in welfare, no general theory exists for FDI. This is particularly true for portfolio investment, which usually is considered to fall under the scope of the definition of investment in investment agreements. It is by now common knowledge that financial liberalisation can exacerbate if not trigger financial crises, as evidenced by the multitude of financial crises of the last 30 years. Thus it is an open theoretical question whether investment liberalisation through alignment and/or elimination of investment-related NTMs, *aka* domestic laws and regulations, increases economic welfare and growth. This question becomes the more pertinent, once we consider key areas of domestic law making, such as labour laws, environmental regulations or health and safety standards at work, where apart from the costs to business, these regulations do have significant social benefits. Looking at NTMs as trade costs only thus risks ignoring these other relevant benefits.

The trade policy debate has addressed the problem of non-discriminatory behind-the-border measures in the context of investment agreements and services trade. In the framework of the WTO both the GATS and the TRIMS agreements aim at disciplining the use of domestic measures that impede trade. Article VI of GATS, for instance, introduces the concept of 'measures of general application affecting trade in services', and stipulates *inter alia* that such measures 'do not constitute unnecessary barriers to trade'. For specific types of such measures, in particular qualification requirements and procedures, technical standards and licensing requirements, Article VI.4. GATS provides for the development of 'disciplines'. These shall ensure that such measures are 'based on objective and transparent criteria', and are 'not more burdensome than necessary to ensure the quality of the service'. In other words, multilateral guidelines shall be elaborated for specific domestic regulatory instruments that are *nota bene* non-discriminatory according to the definition of the WTO. With the exception of accounting services, no such disciplines have been elaborated since the entry into force of the GATS agreement in 1995. The main reason has been political resistance by WTO Members to the concept of the necessity test included in Article VI.4 as an excessive constraint on domestic regulatory autonomy.

With the new-generation FTAs encompassing both trade and investment liberalization, behind-the-border measures that include laws and regulations in key areas of public policy will inevitably become targeted by those social actors with a vested interest in leveling the playing field for business across borders, that is, transnational capital. Whether they will be discussed as costs to business only or seen as conferring benefits upon society will surely have a strong impact upon the future direction of trade policy.

### **III. TAKING INTO ACCOUNT THE BENEFITS OF REGULATION – COST-BENEFIT ANALYSIS**

In addition to the technical criticisms we have just outlined on the prevailing methodology used to assess the cost savings of regulatory alignment, a fundamental concern here relates to the methodological approach in more general terms. First and foremost, most of the mainstream treatment of NTMs implicitly assumes that a substantial dismantling and alignment is possible without a change to the regulatory quality, i.e. the ability of a certain regulation or standard to safeguard a defined public policy goal. Only upon that basis, Ecorys (2009) is for instance able to restrict itself to estimating the savings to companies, while completely neglecting the concomitant social costs. Consequently, it arrives at in general small, but positive welfare gains.

Overall, we think that using such an approach is not warranted, given that a considerable fraction of the gains derived from regulatory alignment happens -as in Ecorys (2009) - in exactly those sectors, e.g. chemicals,

cosmetics and pharmaceuticals, or food and beverages, where substantial and partly incommensurable differences in regulatory approaches and standards exist between countries. Any dismantling must have an effect on regulatory standards and thus infer a cost upon that society, which ends up with a lowered standard. As institutional economist K.W. Kapp already observed in the 1950s and conceptualized in the notion of “social costs of business enterprise”, a change in a standard will always alter the distribution of costs and benefits between social actors, e.g. between firms and consumers (Kapp 1963). Similarly, also firms might be unevenly affected by regulatory change. The latter might e.g. favour big companies, while inferring an additional burden on small companies.

As is generally recognized in economic theory, typically regulations serve a public policy goal. If that regulation is changed – either dismantled or aligned to some other standard, its effectiveness in serving the public policy goal will eventually be affected. This might infer a social benefit, if the new standard is higher than the old one, or a social cost, if the new standard is lower than the old one or has been eliminated without substitution. At a general level, social costs might come in the form of temporary adjustment costs, e.g. for harmonising and implementing legislation, or be of a long-term nature to society, e.g. if standards for poisonous chemicals were relaxed and resulted in higher public health costs because of a higher incidence of allergies amongst the population.

That the alignment or elimination of NTMs will eventually result in a welfare loss to society, in so far as this elimination threatens public policy goals (e.g. consumer safety, public health, environmental safety) or corrects for market failure, has been recognized by the more recent mainstream literature. Schlueter *et al.* (2009) stress, that the welfare effects of standards and regulations are *a priori* unclear. Upon the basis of this recognition, Beghin *et al.* (2012: 360) propose a partial equilibrium cost-benefit framework to discern the trade and welfare effects of NTMs, domestically and internationally. Specifically, willingness-to-pay based on experimental consumer valuations is employed to account for the welfare loss of NTM removal. Upon that methodological basis, the same group of authors provides empirical welfare assessments for NTMs in food and agriculture (van Tongeren *et al.* 2010). However, the results derived severely hinge on data availability and are thus not conclusive.

In addition, certain regulations do not only promote welfare, but are directly conducive to international trade, e.g. labour and environmental standards under fair trade schemes. By applying the Trade Restrictiveness Index-approach of Anderson and Neary (2005), Beghin *et al.* (2014) estimate that such trade-enhancing NTMs affect 12% of HS 6-digit lines and that 39% of these, i.e. 4,7% of the lines, exhibit negative ad-valorem equivalents (AVEs), indicating a net trade-facilitating effect of these NTMs in the respective sectors. Unsurprisingly, such negative AVEs are observable for chemicals, pharmaceuticals and agri-foods. This casts considerable doubt on the predominant view that NTMs are trade impeding by nature.

In contrast to the trade literature, cost-benefit analysis (CBA) has been employed widely in the economic assessment of public policy. In the United States, for instance, federal legislative proposals are routinely assessed by way of CBA. The results of assessment exercises, such as those undertaken by US regulatory agencies would suggest that social benefits of regulations clearly outweigh their economic costs. A review of all economically significant US regulations over the period 2000 – 2012 conducted by the Office of Information and Regulatory Affairs (OIRA) has come to the conclusion that benefits outweighed costs in every year and did so by a factor of more than six on average over the whole period (OIRA 2010, cited in Myant and O’Brien 2014: 29).

This primarily owes to the fact that regulatory costs have been shown to be in general very small, even for ambitious projects such as the EU chemicals regulation REACH (Ackerman and Massey 2004), while the benefits of regulation for society are often very high, though difficult to express in purely monetary terms, or as Ackerman and Heinzerling (2004) have put it, they are in effect “priceless”. But even if one subscribed to

conventional CBA, the results of typical evaluation studies such as those undertaken by US regulatory agencies would suggest that social benefits of regulations clearly outweigh their economic costs.

It should thus be expected that a systematic consideration of the social benefits of regulation would substantially change the overall balance of any assessment of the costs and benefits of the removal or alignment of NTMs. In the best of cases, regulatory alignment in a trade agreement might lead to an improvement of regulatory standards. Since regulations are predominantly seen as a cost to business, in TTIP as well as most other trade agreements, we would however contend that risks for downward levelling of regulation should be expected to be preponderant. Given the high social benefits of regulation, even minor regulatory changes might dwarf the welfare gains of most new generation trade agreements, or even worse, shift the overall balance into the negative.

#### **IV. THE METHODOLOGICAL LIMITS OF MAINSTREAM APPROACHES**

In our discussion so far, we have laid open a fundamental flaw of the mainstream treatment of NTMs, namely that NTMs are typically seen as a cost item only. Though in the more recent literature it has been acknowledged that NTMs also infer benefits upon society, insofar as they correct for market failures, the analytical treatment has been focussed on CBA with the aim of estimating the monetary value of those benefits and costs. This raises some serious methodological and epistemological problems, to which we will now turn.

Neoclassical economics, of which CBA forms a part, is firmly rooted both in methodological individualism and utilitarianism. As such, basically every kind of regulation or administrative procedure can be subjected to the kind of economic cost-benefit calculus outlined above. There is, for instance, no inherent limit in this approach to assess the economic costs and benefits of slave or child labour. Taking a less controversial example, from the neoclassical standpoint it is perfectly feasible to ask whether the fact that in most of Continental Europe annual paid leave amounts to 5 - 6 weeks, while in the US it is typically 2 weeks only, constitutes a cost and thus impediment to international economic activity, *aka* a NTM. Similar can be said about other labour standards, environmental regulations or tax policy. As a matter of fact, this approach has been extensively applied in key international policy documents, perhaps most notoriously in the *Doing Business Report* of The World Bank. For instance, the report has for many years categorized paid annual leave as follows: (i) excessively flexible (<15 days), (ii) balanced (15-21 days), (iii) semi-rigid (21-26 days), and (iv) excessively rigid (>26 days) (The World Bank 2013). Thus, the implied policy recommendation is that a 'social optimum' with regard to paid annual leave would lie somewhere in the order of 15 – 21 days. The problem here is not to concede that for workers in some countries this would constitute an improvement, or to criticize that this would weaken labor standards in some other countries. Instead, the crucial point is that mainstream economic theory implies that it is possible to express all the relevant dimensions of a phenomenon in monetary terms. Besides, an additional implication is that trade-offs can be handled by means of monetary compensation. In other words, it assumes the strong comparability or *commensurability* as well as the compensability of values (see Martinez-Alier, Munda and O'Neill 1998). This is true regardless of whether CBA is applied to labour standards, environmental regulations, or health and safety regulations.

However, economic value expressed in monetary terms is just one of many dimensions of value that are typically present in a situation of social choice. Coming back to our example of paid annual leave, such other types of values could be the social value of devoting time to family life, the cultural value of engaging in cultural or religious activities in one's community, the political value of participating in some political activity, etc. Thus, basing a decision on the duration of paid annual leave only on its cost to business would amount to methodological reductionism, since it leaves out other relevant dimensions. Of course, one could use willingness-to-pay to monetize the economic value workers attribute to an additional day of vacation and

balance these with the cost to business. Would citizens accept such a CBA exercise as the exclusive basis for a political decision on the issue? We doubt it. Such decisions are strongly influenced by political interests, which in turn are shaped by collective systems of beliefs about what more recently has once again become discussed under the umbrella term of *the good life* (see Skidelsky and Skidelsky (2012) for an overview). CBA will thus potentially condense any kind of value dimensions into a monetary value, but this measure will not fully represent all the dimensions of social value inherent in typical collective choices.

If we accept this fundamental methodological point, two directions for applied research seem feasible. Either we concentrate on economic assessments by using CBA or similar methods, and leave it to the political process to bring in other social aspects that need to be contemplated as part of a collective decision process. Or we try to broaden our methodological approach so as to include these other dimensions of value more systematically.

The first option would constitute a step forward in comparison to the prevailing approach, insofar as it would imply a more 'enlightened' form of methodological reductionism – of the sort 'we economists know that we cannot grasp social phenomena in their full complexity by our standard methodology, but unfortunately we cannot do any better than that'. A necessary complement of this approach would be, in our judgement, to explicitly call for a deliberative policy process where these other qualitative dimensions could be considered. Undoubtedly, from an epistemological point of view, this approach is unsatisfactory, at least if the pretension of economic science is both to fully understand social reality and offer advice on rational economic policy-making. Besides, given the superior position of science as a source of legitimation in modern society, any standpoint that is substantiated by scientific knowledge enjoys an advantage over other standpoints in public debate, thus biasing the Foucaultian *order of discourse*.

The second option would consist in finding an alternative methodological approach that would try to comparatively assess all value dimensions of a collective choice problem through some consistent procedure. This approach will have to be able to deal with the problems of incommensurability and of non-compensability of values. One method to use for that purpose is social multi-criteria evaluation (see e.g. Munda 2008). Based on the concept of weak comparability of values it allows for making decisions even in the absence of a unitary standard of measurement (monetary or otherwise), i.e. in a context of plural values. Non-compensability refers to situations, in which certain values cannot be compensated, i.e. traded-off against some other value (Martinez-Alier, Munda and O'Neill 1998). This is particularly pertinent where certain deeply-held values have become enshrined as laws or human rights. Thus, for instance, the prohibition of slave or child labor must not be traded off by an FTA against some economic benefit. Multi-criteria evaluation allows for the operationalization of such situations of non-compensability. Alternatively, certain elements of social values might be considered superior to others, such that hierarchies of values might be defined. Thus it might be feasible to define basic human rights, or in the ecological domain, certain sorts of natural resources or eco-system services as critical and thus non-compensatory, while other social standards or ecological amenities are in principle considered compensatory.

## **V. CONCLUSIONS AND POLICY RECOMMENDATIONS**

The relevance of these methodological as well epistemological issues for the current trade policy debate should be self-evident. Indeed, more far-sighted trade policy-makers have recognized their importance already some time ago. For instance, former EU Trade Commissioner and WTO Director General Pascal Lamy's (2004) proposal on 'collective preferences' already addressed many of these issues. It argued that certain values societies hold are essentially incommensurable. Lamy wanted to spur a discussion on the scope of these collective preferences and their treatment in trade policy, since he expected these issues to become more important for global



governance in the future. Though it triggered some appreciative responses at the time (e.g. Charnovitz 2004), apparently interest in the discussion has subsequently vanished.

*Pro futuro*, trade impact assessment will have to incorporate the manifold properties of NTMs both more systematically and by way of a more sophisticated methodological approach than at present. NTMs is a catch-all phrase for a very diverse set of standards, regulations, laws and procedures. They range from very detailed technicalities to questions of major societal relevance. Conventional cost-benefit approaches have proved inapt to tackle the methodological challenges inherent in such exercises (Ackermann 2008). Instead, they must be complemented by other approaches, for instance social multi-criteria analysis that are able to consistently deal with the problems of incommensurability, non-compensability and fundamental uncertainty all of which are expected to appear in such an evaluation exercise. This is particularly pertinent for areas such as labor and social standards, environmental regulations and public health policies. With the scope of new generation FTAs increasingly becoming concerned with investment liberalisation, core areas of domestic regulation will inevitably become targeted under the label of behind-the-border measures.

With regulatory issues ranging among the top priorities of the current trade agenda, comprehensive as well as methodologically sound regulatory impact assessments should thus become an integral part of future trade impact assessment exercises in the European Union.

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