F. Conclusions

This report has sought to deepen understanding of the role, incidence and effects of non-tariff measures and services measures in the multilateral trading system of the 21st century. Against a background of profound changes in the nature of trade flows and trade patterns, institutions, social and environmental realities, and consumer preferences, the Report has identified the challenges that NTMs and services measures raise for international cooperation and, more specifically, for the World Trade Organization.

The range of non-tariff measures and services measures is vast and well beyond the scope of a single report. In addition to a general analysis of NTMs and services measures, the report has focused therefore on technical barriers to trade (TBT), sanitary and phytosanitary (SPS) measures and domestic regulation in services.

TBT/SPS measures are of interest to producers, traders and consumers alike. They raise specific transparency challenges. A core question is how to address any adverse trade effects of non-tariff measures without impeding the legitimate pursuit by governments of public policy objectives, such as protecting public health. A related question concerns the role of the WTO and other international trade bodies in promoting regulatory convergence as a means of reducing unnecessary trade barriers. These challenges are very similar to those faced by WTO members when they discuss what additional disciplines are required on domestic regulation in services to ensure that it is not more burdensome than necessary to achieve legitimate policy objectives.

Economic analysis provides some insights into why governments use non-tariff measures and services measures. Both types of measure can serve legitimate public policy goals but they may also be used for protectionist purposes. Identifying a government's intent is inherently difficult, particularly in the case of TBT/SPS measures and domestic regulation in services. Welfare economics and political economy analysis help to explain the use of particular measures. The analysis also shows how recent changes in the trading environment, such as the expansion of global production sharing, climate change and the growing importance of consumer concerns in richer countries, affect the use of NTMs. Circumstances can arise in this more complex environment where producer and consumer interests may diverge over the nature of a measure identified to defend a public policy goal.

Assessing the incidence of non-tariff measures and services measures is difficult because of large information gaps. Data are sparse because of the very nature of these measures, which are diverse and often not easy to quantify. Moreover, the fact that governments lack the incentive to provide such information plagues the collection of official data. As far as services are concerned, while commitments in market access and national treatment are known, very little information is available on the regimes that are actually applied. Data limitations are particularly acute in the case of domestic regulation, where the absence of criteria that help to single out the regulatory measures with a significant effect on trade is a complicating factor.

On the goods side, information from official sources does not allow the identification of trends over time in the relative frequency of various non-tariff measures globally or by region. What it shows is the prevalence of TBT/SPS measures in the overall incidence of NTMs. As revealed by recent business surveys, these measures also represent the main source of concerns for exporters in most developed and developing countries. Another insight from business surveys is that exporters generally have more problems with the way in which measures are applied than with the measures themselves.

The incidence of non-tariff measures and services measures is only half of the picture, the other half being their trade restrictiveness. The evidence reviewed in the Report has confirmed that NTMs significantly distort trade, possibly even more than tariffs. This result, however, should be interpreted with caution because it fails to capture the recent changes in trade brought about by the development of global supply chains. More precisely, a general finding is that TBT/SPS measures restrict trade in agricultural products, while the existence of standards often has a positive effect on trade in manufacturing products, especially in high-technology sectors. Moreover, there is a reasonable expectation that harmonization and mutual recognition of standards will increase trade.

In order to identify the challenges that non-tariff measures and services measures pose for the WTO, the Report has spelled out the reasons behind international cooperation on such measures. The traditional theory suggests that policy substitution is a key problem that rules on NTMs in a trade agreement need to address. Shallow integration in the form of simple rules on transparency, national treatment and non-violation (whereby a member may claim that it has been deprived of an expected benefit because of another member's action even if a WTO agreement has not been violated) addresses this problem.

The changing nature of international trade, however, creates new policy considerations that may motivate the need for deeper forms of institutional integration. Also, growing concerns about TBT/SPS measures have brought the issue of regulatory convergence to the WTO, raising a number of difficult challenges. The Report has set out to examine GATT/WTO disciplines as interpreted in dispute settlement, showing that GATT rules on NTMs are generally consistent with a shallow integration approach but that the TBT and SPS agreements promote deeper integration.

In the light of both the economic and the legal analysis, the Report has identified several challenges for international cooperation, and the WTO more specifically. First, the transparency of non-tariff measures and services measures must be improved and the WTO has a central role to play with its multiple transparency mechanisms. Secondly, current WTO disciplines may not always strike the right balance between policy commitments and flexibility. For instance, economists argue in favour of a more

prominent role for non-violation complaints. Lawyers, in turn, observe that WTO members generally do not take this path, preferring to challenge the NTM on the basis of the specific rule it allegedly violates. Thirdly, more effective criteria are needed to identify why a measure is used. Better integration of economic and legal analysis may help achieve this goal.

Fourthly, the rise of global production sharing poses additional challenges for the multilateral trading system, calling for deeper integration. When interaction between firms in a supply chain involves bilateral bargaining on input prices, policies affecting the conditions of sale at one stage also affect the profits of producers at all other stages. This implies that international cooperation should go beyond market access and cover the broader set of policies affecting the conditions of sale at all stages of the supply chain. Moreover, global production sharing intensifies cross-effects and complementarities between trade in goods and trade in services. This raises the question whether such effects are sufficiently taken into account in the current negotiating framework.

A number of challenges arise more specifically in relation to cooperation on TBT/SPS measures and domestic regulation. Addressing the adverse trade effects of such measures requires regulatory convergence. As discussed in the 2011 *World Trade Report*, part of this convergence takes place at the regional level and part of it at the multilateral level, raising the question of the optimal distribution of roles. The path to convergence is not always an easy one, since it is more than a mechanical matter of policy design, and can involve national differences in social preferences and priorities. The approach in the TBT and SPS agreements of encouraging the adoption of international standards can create precisely this kind of tension.

Another issue relates to private standards. Anxiety has arisen in relation to the role that market power can play in private standard-setting and the possibility that private standards develop into government-mandated norms that may be unduly influenced by interest groups. The role of governments and of the WTO with regard to such standards would seem to be in need of clarification.

As for negotiations on domestic regulation in services mandated in the General Agreement on Trade in Services (GATS), these have turned out to be very difficult to conclude. One way to overcome concerns with regulatory autonomy, which seem to be a main stumbling block, would be to define a necessity test.

Lastly, capacity building is a vital element in improving international cooperation on TBT/SPS measures and on domestic regulation in services. In the SPS area, the Standards and Trade Development Facility has proven to be successful and the question has arisen as to whether the model could be replicated in building capacity relating to standard-setting, technical infrastructure and the development of regulations in the TBT area. In the area of domestic regulation in services, there is a need for capacity building to strengthen the ability of regulators to identify, design and implement policies that address market failures, undertake regulatory impact assessments and share knowledge on good practices.

The Report has covered a lot of ground but it has by no means addressed all the issues surrounding non-tariff measures in the context of international cooperation. Some of the important questions touched upon, but not pursued in much depth in the Report, are listed below.

- The Report has made a strong case for improved transparency internationally in the field of non-tariff measures. This includes properly designed and observed notification procedures. However, since the administration of NTM measures can be as important as their design, is there scope for a different approach for dealing with administrative obstacles *per se*?

- The share of trade in intermediate goods in total trade has increased over the last few decades. How does the fragmentation of production across national borders affect incentives to use non-tariff measures? What are the trade effects of NTMs along value chains?

- There seem to be increasing complementarities between trade in goods and trade in services driven by global production sharing. How relevant are these complementarities? Do they require a new framework of analysis and new forms of cooperation?

- It is argued that considerable scope exists for improving domestic regulatory practices. What would be the effect of such improvements on the need for international cooperation?

- NTMs are a "moving target" and their mix is constantly evolving. Some measures, such as those related to intellectual property protection, government procurement, investment and finance measures, are not covered in this report. What challenges do these measures raise for the WTO?

- A main theme of this report is regulation aimed at achieving public policy objectives. How much of their regulatory autonomy are national governments willing to delegate to international institutions?

- A lot of the activities of the SPS and TBT committees involve information sharing, in particular on best practices. How effective is this as a mechanism of international cooperation, for

instance to increase transparency or build capacity? The specific trade concerns mechanism in the TBT and SPS committees goes beyond information sharing. Does it help resolve conflicts? Should it be used as a model by other committees?