

LESS COSTLY REGULATORY DIVERGENCE: TBTs and horizontal cooperation in TTIP

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STRUCTURE

- Why TBT matters are so important in TTIP
- Address TBTs in earnest, after 20 yrs of 'little'
- Broad offensive EU interests in TBTs
- TBT chapter in a basic TTIP Agreement
- Harmonisation of technical regulations, rare
- Harmonisation of standards, encouraged
- Mut. Rec.n of regulations, no; 'equivalence' (?)
- MR of standards never 'wholesale', but openings
- More/wider MRA & 'soft' regulatory cooperation

What is TTIP ?

chapeau/objectives/
principles

Market Access

Regulatory Cooperation

Rules
(facilitating im/ex, FDI)

goods trade/
customs duties

regulatory coherence

sustainable devel.

services trade

technical barriers to trade

energy & raw matls.

public procurement

SPS – food safety; animal &
plant health

customs / trade faciln.

rules of origin

Specific sectors:
chemicals ICT
engineering medicines
med devices text & clot.
vehicles

SMEs (no real rules)

invest. protection + ISDS

competition rules

IPRs & G.I.

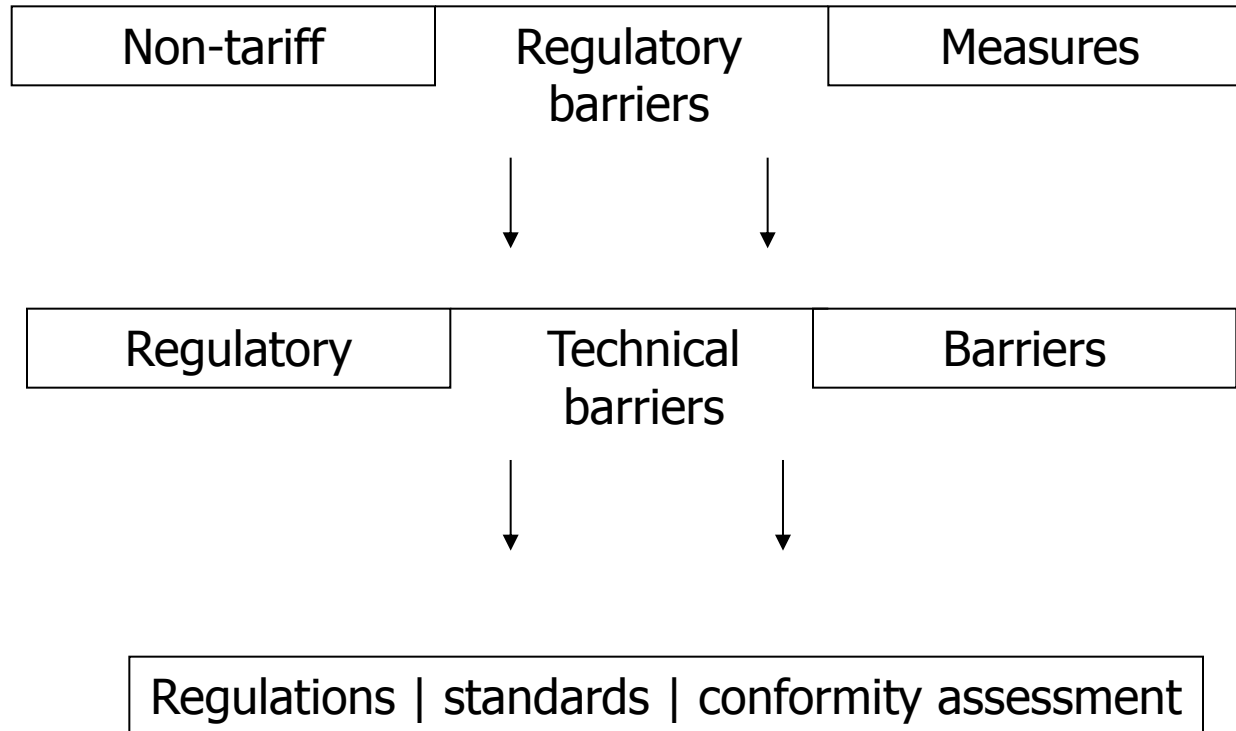
overall (Gov-to-Gov)
dispute settlement

TBTs matter a lot in TTIP

- Economic research shows high costs of TBTs
- Rough estimates of the TBT costs as % of invoice price (so-called 'tariff equivalent')
- Are in range of some 15 % up to 72 %
- *(large) multiple* of average US or EU tariffs
- Not easy to remove TBTs entirely
- Still, ...even 'half' yields large economic gains
- 56 % of econ. gains of TTIP due to lower TBTs

What are technical barriers?

[TBT & SPS, horizontal REG Coop.n, seven sectorial TBTs]



Addressing EU/US TBTs in earnest

- 20 yrs: US/EU attempts >> less costs of TBTs
- Doing this effectively is ‘intrusive’ in terms of domestic regulatory regimes
- Technical reforms about methods, at times
- Two routes so far : MRA and ad-hoc successes
- In TTIP *systematically*, at last
- BUT nothing to do with SHEC objectives
- Addressing TBTs is on regulatory instruments

Offensive EU interests in TBTs

Best served by

(a) ambitious approach, as proposed by EU

(b) strongly worded aim, as driver of basic TBT chapter + TBTs addressed in 'living agreement'

- For closing major gap in positions >> **living agreement** essential, takes time, flexibility
- Exploit ongoing domestic technical reform openings actively

TBT chapter in basic TTIP treaty

- EU TBT proposal is “SINGEU-plus”: good
- far more ambitious than KORUS (US FTA template)
- Four critical weaknesses of KORUS, for TTIP
 - no article on standardisation
 - none on technical regulation
 - nothing on marking & labelling
 - no ‘mobilising’ objective anywhere
- promising on transparency & regulatory cooperation

Harmonisation of technical regulation

- Few FTAs envisage or realise technical harmonisation (even NAFTA, next to none)
- Yet, it does happen, in ‘cooperative modes’, in international fora (for given SHEC objectives)
 - Such as UN-ECE for cars and for ICT equipment
 - IMO for marine equipment (also with USA)
 - medical devices (IMDRF) and medicines (ICH & PIC/S), major progress costly procedures
- Can TTIP promote more in selected areas ?

If REGn of ‘equivalent scope’ is prepared, COM >>> to be made compatible in TTIP >>> rooted in legislative processes

Harmonisation of standards

- cooperation of EU & US standards bodies can lead to (more) harmonised standards, best (a) via ISO/IEC and (b) programming
- a US arrangement with ISO/IEC on joint standard development (if non-existent yet), like Europe already does a lot (in Dresden/Vienna agreements)
- might improve the extremely low adoption of ISO/IEC standards in the US [IEC 72 % against 2% ; ISO 31 % against 1% ; many US standards based on ISO/IEC but with local deviations]

Mutual recognition of regulations

- this is MR as exists in the single market
- **Cannot** be pursued in TTIP
- There is no free movement and no Atlantic 'supreme' court

- special TTIP regime for this MR? not worth it

Mutual Recognition of Standards

- often framed as a ‘threat’ (esp. to EU)
- True, if conceived as wholesale, blanket MR
- However, in 2 ways, current EU system can be enhanced (not changed), giving options for US standards (under strict conditions)
- EU firms want more ‘flexibility’ when US regulators choose standards for regulation
- Ongoing Review of US OMB Circular A-119 should give options for European standards, link to TTIP

Tackle costly conformity assessment

- Ongoing review of how the CABs of OSHA (called NRTLs) work or perhaps ‘malfunction’
- No acceptance for components, exclusionary abuse of dominance, fragmentation (US states, counties)
- TTIP: possibilities for improvement
- Better still in an upgraded MRA, but with regulator-to-regulator leadership
- CETA Protocol – the world’s largest MRA – shows that MRAs can be upgraded & widened

Regulatory cooperation, better than you surmise !!

- ‘joint cooperation article’ valuable
- Why ? Lessons from post-MRA developments
- TBTs to be addressed on wide spectrum of ‘regulatory cooperation’ [see next slide, OECD]
- Treaty commitments do not always work better
- Link with (a) horizontal regulatory chapter, (b) based on ‘Better Reg Principles’

Ladder of International regulatory cooperation





THANK YOU !

Better Regulation lowers trade costs

- Better Regulation principles now well-established; I discuss 10 x
- here, focus on risk regulation for goods (56 % of economic gains of TTIP, CEPR study 2013) ; much of this applies to services, too
- **BR principles** include :
 - i. REGn **justified by market failures** - SHEIC objectives matter for removing market failures, the instruments can be many ;
 - ii. **risk-based** (and not hazard based); see also (v)
 - iii. rigorous, independent **risk assessment** always comes first ;
i.o.w.
B.R. is always **evidence-based** with highest analytical standards
 - iv. scientific risk assessment does not mean that risks are exactly known, at times, very large **ranges of probabilities**
 - v. SHEIC **objectives** are essentially about '**risk reduction**'

Better REG lowers trade costs (2)

- vi. Risk reductions are the 'benefits' in SHEIC terms ; 'net' benefits justify Regulation ; **benefits always FIRST, not 'costs'**
- vii. REGn only **after rigorous and open RIAs**, with meaningful options, cost/benefit quantification if feasible ;
- viii. should include e.g. US/EU stakeholders ; open consultation
- ix. **pre-cautionary principle** should be a **last-resort**, even then with the best-possible risk assessment, equally rigorous RIAs and a sunset/review clause ;
- x. joining **international standardisation** and allowing such standards (unless unfit for SHEIC objectives) to underpin SHEIC, is crucial