

TTIP's hard core: technical barriers to trade and standards

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[revised after MEPs' comments]

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

TBTs = 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.

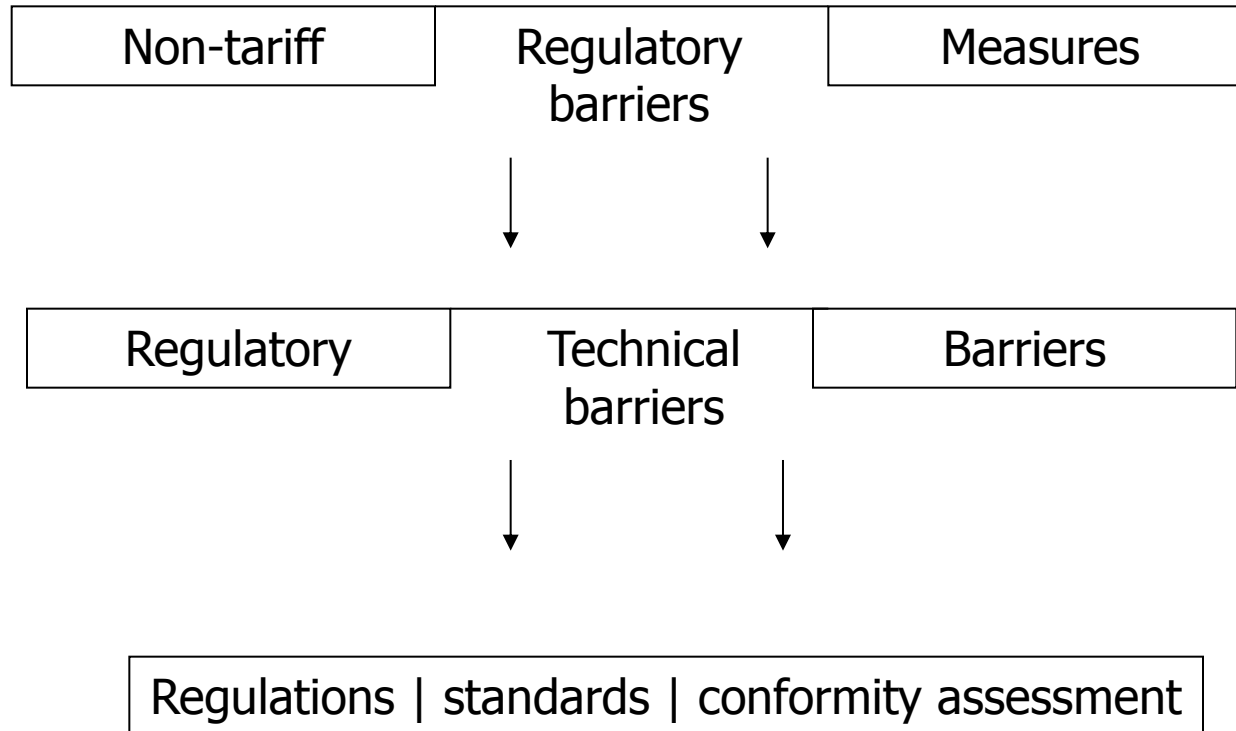
overall (Gov-to-Gov)
dispute settlement

Importance of TBT matters in TTIP

- Economic research shows high costs of TBTs
- 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 TTIP** due to 'halving' 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 >> only few results
- effectively >> 'intrusive' for domestic regulatory regimes
- SHEC (Safety, Health, Environment, Consumer) objectives **not** at issue ; TBTs only about methods/tools
- Two routes so far :
 - >>> MRA [= US/EU Mutual Recognition Agreem. 1998]
 - >>> some specific, isolated successes
- In TTIP, tackle TBTs ***systematically***, at last

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'
- TTIP : to close major gap in positions >> living agreement essential, takes time, flexibility
- Exploit technical reform openings actively
- **NOTE** : defensive interest : no Mut. Rec. of Standards

TBT chapter in basic TTIP treaty

- EU TBT proposal is “SING-EU-plus” : good
- far more ambitious than KOR-US (US FTA template)
- Four critical weaknesses of KOR-US, for TTIP
 - >>> no article on standardisation
 - >>> none on technical regulation
 - >>> nothing on marking & labelling
 - >>> no ‘mobilising’ objective anywhere
- promising on transparency & reg.y coop.n
- **NOTE** : CETA TBT chapter weak (mimics US TTIP ?), except for conformity assessment (strong !)

Four options reducing TBTs

Harmonisation
of technical
regulations

Harmonisation
of (technical)
standards

Mutual Recognition
of technical
regulations

Mutual Recognition
of (technical)
standards

Harmonisation of technical regulation

- Few FTAs do this (even NAFTA, next to none)
- Yet, it does happen, in ‘cooperative modes’, in international fora (for given SHEC objectives)
- UN-Econ. Comm. for Eur.(ECE) for cars and for ICT equipment
- Int. Maritime Org.n for marine equipment (also with USA)
- medical devices (IMDRF, the regulators) and medicines (ICH & PIC/S), major progress simplifying costly procedures
- Can TTIP promote more harmonisation ? If REGn of ‘equivalent scope’ is prepared, COM >>> compatible in TTIP >>> rooted in legislative processes ; possible but rare

Harmonisation of standards

- (A) cooperation of EU & US standards bodies for harmonised standards, best via ISO/IEC and joint bilateral programming
- Is (strictly) not a treaty affaire ;
- Which bodies should cooperate?
>>> the 3 ESOs with ANSI or only leading US bodies ?
- (B) plus US arrangement with ISO/IEC on simultaneous standard development, like Europe already does a lot [in Dresden/Vienna]
- So far, hesitation and little enthusiasm

Mutual recognition of regulations

- Mutual Recognition [=MR] as in single market
- **Cannot** be pursued in TTIP
- There is no free movement and no Atlantic 'supreme' court
- special TTIP legal regime for this MR?
>>> not worth it and probably not even feasible
- Possible, but not discussed : '**equivalence**' agreement, case by case only (see veterinary)

On 'equivalence' agreements

- 'Equivalence' [=EQ], WTO TBT agr.t, little used
- Equivalence looks like M.R., but only partly so
- 1. EQ decided by *import* country, MR implies exports based on rules of *export* country
- 2. EQ case-by-case, MR by 'equivalent' *objectives* ; alternatively, EQ positive list, MR negative list
- 3. same 'instrumental objectives' for a product
- 4. same effectiveness + trust in 'equal diligence'
- Ex.: US/EU veterinary EQ ('98); organic standards ('12); aircraft cert. ('09)
- So far, no proposals for industrial goods

Mutual Recognition of Standards

- Could be a 'threat' (esp. to EU); **don't** !
- (i) Undermines single-standard I.M. ;
- (ii) brings EU zero advantages in US market
- However, in 2 ways, enhance current EU system (not change it), giving options for US
- And....proposal >> EU firms more 'flexibility' by US regulators for standards for 'regulation'
- Review of US OMB Circular A-119 should give options for European standards, link to TTIP

Conformity assessment, US regulators

- US Review is ongoing, how Conf. Asst. Bodies of OSHA (called NRTLs) work
- EU should demand:
 - >>> free choice between these NRTLs
 - >>> no duplication of tests of components
 - >>> discipline UL and prevent abuse of dominance
- **Better still, TTIP as upgraded MRA, but with regulator-to-regulator leadership**
- CETA Protocol – now the largest MRA in the world – shows that MRAs can be upgraded

Regulatory cooperation, better than you surmise !!

- ‘joint cooperation article’ may prove valuable
- Why ? Lessons from post-MRA developments
- TBTs to be addressed on wide spectrum of ‘modes of regulatory cooperation’ [see OECD]
- Treaty commitments do not always work better ; reason : **trust** among regulators
- Link with (a) horizontal regulatory chapter, (b) based on ‘Better Regulation Principles’



THANK YOU !