

TTIP: challenges & opportunities for IMCO in TBT matters

Jacques PELKMANS

Senior Fellow CEPS & Director Foundation EUROSCOPE

Brussels, European Parliament, IMCO/INTA, 24 February 2015



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 proposals to both sides for careful 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

invest. protection + ISDS

SMEs (no real rules)

competition rules

IPRs & G.I.

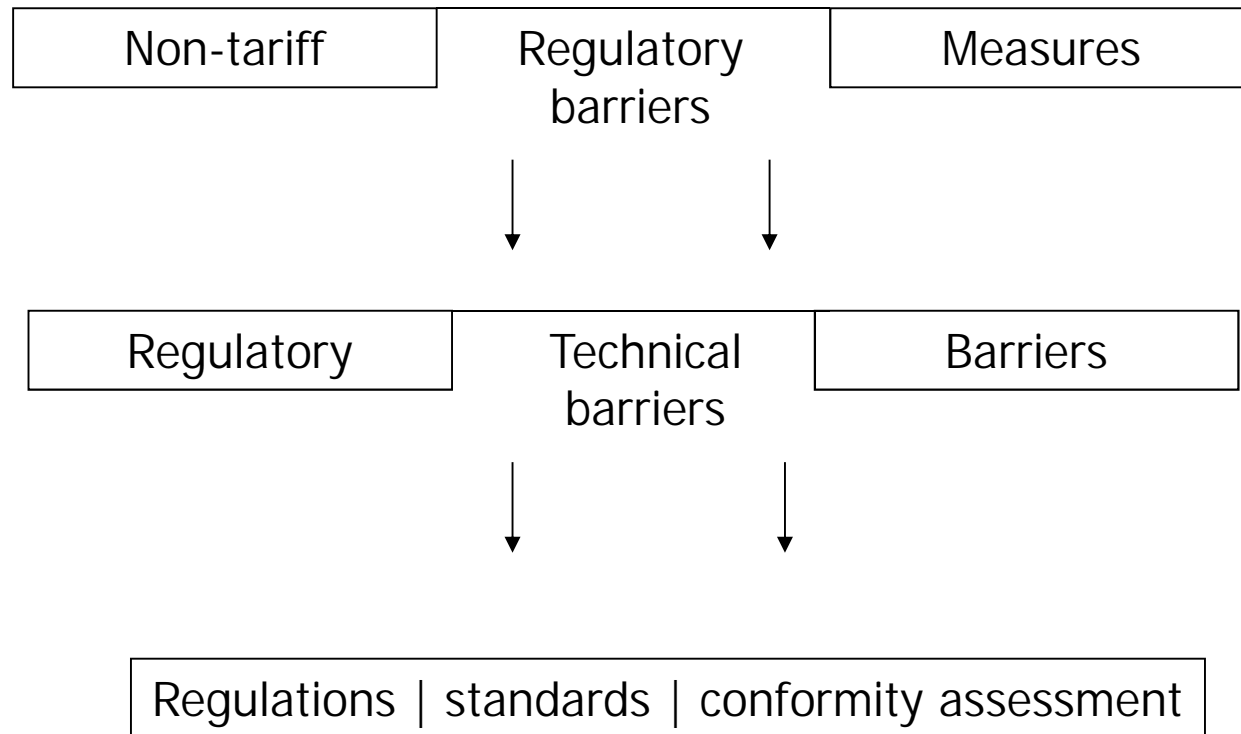
overall (Gov-to-Gov)
dispute settlement

Importance of TBT matters 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, nine 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'
- TTIP : to close major gap in positions >> living agreement essential, takes time, flexibility
- Exploit 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 & reg.y coop.n

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 >>> compatible in TTIP >>> to be rooted in legislative processes

Harmonisation of standards

- cooperation of EU & US standards bodies can lead to (more) harmonised standards, best via ISO/IEC and programming
- and /or a US arrangement with ISO/IEC on simultaneous standard development (if non-existent yet), like Europe already does a lot

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

- Is 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)
- On the other hand, EU firms want more ‘flexibility’ when US regulators choose a standard for regulation
- Review of US OMB Circular A-119 should give options for European standards, link to TTIP

Conformity assessment, managed by some US regulators

- Ongoing review of how the CABs of OSHA (called NRTLs) work
- Or perhaps 'malfunction' ,
- Provides possibilities for improvement

- Better still in an 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 well 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
- Link with (a) horizontal regulatory chapter, (b) based on ‘Better Reg Principles’



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**’
- >>> (vi) Risk reductions are the ‘benefits’ in SHEIC terms ; ‘net’ benefits justify Regulation ; **benefits always FIRST**

Better REG lowers trade costs (2)

- >>> (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