Regulatory Divergences

Increasing barriers to trade and a growing source of trade disputes

- Tariffs (apart from agriculture) are no longer a significant barrier to trade between developed countries
- Differences or divergences in domestic regulations (product standards) are now a more significant impediment to trade and investment
- Regulatory divergences
  - Impose costs on producers/exporters
  - Impose costs on consumers
  - Create trade barriers
  - A growing source of potential and actual trade disputes

Regulatory Divergences - a source of Trade Disputes

- Problems of regulatory divergences within customs unions or federal states handled by
  - Convergence/harmonisation (EU)
  - Mutual recognition of standards (MRA/TTMRA)
- How can trading partners such as the EU and Australia with different regulatory cultures resolve or defuse trade disputes over impact of domestic regulation?
- WTO remedies – TBT, SPS agreements
  - Oriented to; international standards
  - Risk assessment and scientific justification obligations
  - And recourse to dispute settlement (DSU)
- Can potential disputes be defused by preventive action?

EU/US Regulatory Cooperation – a Case Study

- Transatlantic regulatory cooperation between the EU and the US provides best available case study
- EU and US: Comprise 60% of global GDP and 40% of global trade
- Transatlantic trade and investment flows world’s largest
- Objective: deepen trade integration and defuse potential trade disputes over regulatory divergences through
  - Convergence of regulatory policies
  - Comparable cost/benefit, impact/assessment analyses
  - “Best practice” solutions to regulatory divergences
  - Mutual recognition of standards

Achievements/assessment

- Process ongoing for 15 years – many initiatives – false starts - much to learn from:
  - Initial focus on cooperation between regulators
  - More effective with addition of business, consumer groups
  - Elevation to policy level in more recent years, a positive
  - “Transatlantic Economic Council” (2007) elevated process to Ministerial level
- Mixed results
  - Deepened dialogue, positive
  - Limited progress: MRAs, “early warning”
  - Backward steps: Sarbanes-Oxley, REACH

What are the lessons?

- EU/US experience demonstrates challenge of task
  - Important it’s happening – transatlantic market integration
  - Deeper regulatory integration, especially between EU/US, key to next phase of globalisation
  - Regulatory integration best pursued between OECD countries with comparable development and health/safety standards
- What are the lessons of the EU/US effort?
  - Requires persistence, requires flexibility
  - Requires business/policy level and even political involvement to yield results
- Provides useful example for Aust/EU but daunting challenge
Way ahead for Australia/EU?

- For Australia and EU major challenge is different regulatory cultures
  - EU increasingly oriented to harmonisation
  - Aust (NZ) have chosen mutual recognition path
- Other major challenge for Australia is importance of EU in global market
  - With scope to export its regulatory culture
- Australia’s mutual recognition credentials important element in dialogue with EU
- Do partners such as Australia and the EU with such different regulatory cultures need to live with trade problems created by regulatory divergences?