The EU Single Market in Goods: Between Mutual Recognition and Harmonisation?

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Overview

- A quick look at the debate on regulatory competition (mutual recognition) vs. regulatory harmonisation:
  - An interesting asymmetry between goods and services.
  - The EC “long march” - “Old” vs. “New” Approach
  - Both are a mix of harmonisation and mutual recognition.
- The difficult relations between the EC and the third countries.
- Still huge gap between what is going on in the EC and what would be desirable from a consumers’ welfare perspective.
- The optimal balance between regulatory competition and harmonisation is not necessarily a stable state over time.

Regulatory competition vs. harmonisation: pros and cons (1)

- Regulatory competition vs. harmonisation: two opposite ways to look at this issue:
  - “Negative” way (minimise costs): what to do when a domestic regulation affects firms outside of the regulating jurisdiction?
  - “Positive” way (maximise gains): what would—should—be the preferred choice of regulators who chose the increase of the welfare of their fellow citizens as the key criterion of their decisions?
- Pincus (2009): “through mutual recognition, the States are simultaneously certifying that there are no essential differences in their regulations, while acting as though there are sufficient differences to justify maintaining their own, different regulations.”
  - From price competition to variety-based competition.

Regulatory competition vs. harmonisation: pros and cons (2)

- Argument 1 (thetical)
  - A theory: A country is involved in trading with several goods of varieties and regulations.
  - Cassis de Dijon ruling (1979): increased varieties of goods and services.
- Argument 2 (rules vs. implementation)
  - Managing harmonisation— adopting harmonised regulations and enforcing them in an “inconsistent” way (maximise variety).
  - It is general agreement that harmonised regulations are better than the pre-existing ones.
- Argument 3 (future: risk behavior)
  - Elasticity of demand, public interest that it intends to protect.
- Convergence or not? (the EC perpetual question)
  - The optimal balance between regulatory competition and harmonisation is not necessarily a stable state over time and ever.”

The EC “long march”

- Differences between the two Approaches
  - Old Approach: New Approach: Mutual Recognition of ECMS regulations or firms' own checks on other ECMS regulations
  - ECMS capacity to impose mutual recognition is likely to have a greater value in larger, more heterogeneous markets.
  - Cassis de Dijon ruling (1979) => increased varieties as no.1 gain from EC (1960s-70s).
  - ECMS capacity to impose mutual recognition is the best solution if the benefits of harmonised norms (assuming an optimal balance) are greater than the costs of enforcing these norms.
- Differences in imposing costs?
  - Old Approach’s: narrowly defined products when moving to ECMS creates additional costs, New Approach’s: a wider range of products with the risk of inconsistent essential requirements.
- Differences in discrimination?
  - New Approach: new by which products more efficient ECMS create less discrimination.
- Differences in producing costs?
  - ECMS capacity to impose mutual recognition (have the potential to protect interests that are not the public interest).
- New Approach: less discriminatory - but if the problem is less systemic, its costs are much wider when it occurs.
- New Approach: better adapted, depending on the uncertainty of the essential requirements.
Coverage of the two Approaches:

<table>
<thead>
<tr>
<th>Protection levels</th>
<th>Nbr of tariff lines</th>
<th>Avg. of all tariffs (m.)</th>
<th>Avg. of maxim. tariffs (m.)</th>
<th>Peak of tariffs (m.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Old Approach</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Farm and food products</td>
<td>2135</td>
<td>17.2</td>
<td>113.2</td>
<td>659.4</td>
</tr>
<tr>
<td>Industrial products</td>
<td>1777</td>
<td>4.8</td>
<td>20.9</td>
<td>89.9</td>
</tr>
<tr>
<td>All products</td>
<td>3897</td>
<td>11.9</td>
<td>77.6</td>
<td>659.4</td>
</tr>
<tr>
<td>New/Global Approach</td>
<td></td>
<td></td>
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<tr>
<td>Farm and food products</td>
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</tr>
<tr>
<td>Industrial products</td>
<td>2843</td>
<td>2.0</td>
<td>7.1</td>
<td>14.0</td>
</tr>
<tr>
<td>All products</td>
<td>2843</td>
<td>2.0</td>
<td>7.1</td>
<td>14.0</td>
</tr>
</tbody>
</table>

Not to be quoted

Going back and forth?

- The pendulum back to harmonization in the recent years
  - Implementing the New Approach: more common rules for authorized (“notified”) bodies (e.g. of the “black sheep”) and on market surveillance (police).
- But also some converse shifts from the Old to the New Approach => a “Brownian” movement?

International comparisons

<table>
<thead>
<tr>
<th>Layer</th>
<th>1. Observance of the key principles of liberal trade policy</th>
<th>2. Information exchange procedures</th>
<th>3. Recognition of conformity assessment procedures</th>
</tr>
</thead>
<tbody>
<tr>
<td>II</td>
<td>Recognition of conformity assessment procedures, testing, test reports (MLAs)</td>
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<td>Recognition of conformity assessment procedures, testing, test reports (MLAs)</td>
</tr>
<tr>
<td>III</td>
<td>Deeper essential requirements with (non-mandatory) harmonized standards</td>
<td>Deeper essential requirements with (non-mandatory) harmonized standards</td>
<td>Deeper essential requirements with (non-mandatory) harmonized standards</td>
</tr>
<tr>
<td>IV</td>
<td>Full harmonized technical specifications</td>
<td>Full harmonized technical specifications</td>
<td>Full harmonized technical specifications</td>
</tr>
</tbody>
</table>

Provisional conclusions

- Some progress, but still huge gap between what is going on and what is desirable from the consumers’ welfare perspective.
- No agreement at the level of layer III and IV (except EEA-EFTA).
- Fear of “black sheep” generating a “regulatory dumping” both within the EC and between the EC and the rest of the world.
- The belief that stricter regulation at the EC level could solve problems of enforcement at the level of some ECMS: tends to magnify the problems, rather than to solve them. Alternative: “contact points”?
- What is desirable is mutual recognition as “unconditional” as possible (but, economically sound limits to mutual recognition to be dealt with by competition policy).
- What could be done to improve the situation?
  - Better understand the political economy point in these matters (REACH).
  - Improved impact assessment of costs and benefits (REACH case, nanoparticles).
  - Improved impact assessment of costs and benefits should be solved by benchmarking the ECMS institutions in charge of the enforcement.
  - Impaired bodies trusted by the people as a substitute to (too) strict rules.
  - Mutual recognition remains highly desirable and as unconditional as possible. The best dose of conditionality would be the “equivalence” of the legislations in presence (layer IV) => “mutual evaluation” in the Services Directive.

Thank You for Your Attention