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- Deep Integration: why do it and why so difficult

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Shallow Integration

• Getting rid of tariffs, quotas and other direct barriers to trade ie at the Frontier

• But many “domestic” measures can have equivalent effect
  – Subsidies to local firms
  – Discriminatory taxes
  – Measures and rules which are harder for foreign than Domestic firms to comply with
Border barriers are not simple

- Administrative requirements at borders can be tricky
- How are good valued for charging tariffs?
- If there is preferential tariff what are the rules of eligibility (Rules of origin) and what certification is needed to prove compliance?
- Even in the EU till full Internal market there were customs checks and France tried to stop Japanese cars produced in other EU countries being imported to France
- In a “Customs Union” who gets the tariff revenue?
Deep Integration

• ‘Deep’ integration involves:
  - Finding the appropriate institutional framework for dealing with public policy issues and/or
  - Removing 'behind the border' barriers between preferential partners to create a ‘common economic space’ (‘thick’ markets)

• Deep integration is important largely because of potential links to productivity gains that go beyond standard analysis of comparative advantage (gains from specialisation that lead to investment and productivity gains).

• This means that gains from deep integration can (potentially) far outweigh gains from shallow integration
Why deep integration in FTAs?

- FTA may initially focus on shallow integration but they do require an institutional framework and can be the first step to the creation of a “common economic space”: with elements of ‘deep’ integration.
- Increasingly therefore FTA negotiations and agreements include provisions on a variety of non-tariff measures (NTMs), or ‘behind the border’ barriers
- Analogously to changes in tariffs, changes in NTMs within a FTA may also likely affect the trade of an excluded country (which might be you) - but this can be hard to assess
- There is no commonly accepted definition of what to include under the category of NTMs but typically these might be provisions (Harmonisation or approximation or mutual recognition) on
  - standards and technical barriers to trade including ob testing and certification procedures
  - Customs procedures and rules of origin
  - Access to government procurement
  - competition policy,
  - trade facilitation
  - trade in services,
  - investment,
  - free movement of people or capital,
  - environment and labour standards,
  - intellectual property
Why is deep integration difficult: the impact of standards – some examples from European Integration

• A true “internal market” must have and ensure enforcement of rules such that anything made in any part of it can be assumed acceptable in any other part
• Product health and safety rules can act to exclude imports – whether by intent or not
• Unpasteurised cheese versus pasteurised beer?
• European Court of Justice spent decades declaring various national rules unjustifiable barriers and forced member states to legislate for the Internal Market, harmonising where necessary, agreeing Mutual Recognition if not
• Note the heavy institutional structure - a European Court of justice with direct effect on market operators not just a dispute settlement mechanism between states
Deep Integration: market access vs improving business climate

• Changing domestic rules has 2 impacts
  – Better market access – both ways
  – Better business climate *if chosen norms are appropriate*

• Winners: firms already able to match international rules; firms led to become so; importers; consumers who want international “standards” to apply

• Losers: firms who can’t comply; consumers who prefer cheap old local system
“Standards” as barriers or facilitators

- Standards are just standardised definitions (inch, kilogramme, kw) etc.
- As such they should be facilitators.
- They are only NTBs when made mandatory by regulations.
- Harmonisation of standards or regulations does not guarantee market access without agreement on
  - Conformity assessment (CA)/testing and certification
  - Accreditation (verification of CA)
- EU requires that all food imports and some processes comply with its rules anyway (eg traceability)
- NB private standards dominate many sectors
Not just standards

• Standards are definitions
• Regulation makes them mandatory
• Testing and conformity assessment rules specify how you can prove if you comply
• Accreditation verifies that these rules have been met in a partner country
Testing and certification

- Problems for food exporters in conformity assessment and certification. HACCP (Hazard Analysis and Critical Control Point, is a system designed to help business operators look at how they handle food and introduces procedures to make sure the food produced is safe to eat). Is the basis of the US FDA and EU rules.
- If bilateral mutual recognition is agreed, no recognition for third countries bodies. Advantage for EU and US exporters.
- Private conformity assessment. Globalgap, initially European, now includes US supermarkets.
- HACCP and Globalgap rely on 3rd party certification bodies (SGS or BSI)
- EU and US have similar systems but they are not identical. FTA might imply a move towards mutual recognition of conformity assessment. But little progress.
Achieving Deep integration in practice

• Examples from the EU and US experience
Making it work

- **National treatment** in GATT – any rule you like but apply it evenly to everyone. Eur Ct of Justice found this allowed too many de facto obstacles.

- So EU tried **Harmonisation** – same law everywhere. Even EU-6 found it hard to agree.

- Internal Market based on **Mutual Recognition** of equivalence but
  - needs agreement on basic minima so hard to apply with 3rd countries and even accession candidates.
  - Needs **mutual recognition of conformity assessment**.
    - 10 years from EU Turkey Customs Union to Conformity assessment MRA
    - Limited agreement in Korea-EU FTA
Binding character?

- Sapir et al find few provisions that are subject to binding wording eg “shall” and create meaningful obligations (e.g. not just “shall consider”).
- What is the point of detailed but non-binding or binding but ill-defined or non-constraining provisions?
- NB Garcia Bercero argues EU is gradually extending binding DS in its FTAs, even tho’ new areas excluded and little use made.
- Association Agreements provide for binding decisions by councils.
- US has less inflation but NB controversies over investor-state provisions.
Result: very little binding DI

- Most agreements disappointing in this area (Sapir et al; Bourgeois et al; Houtman)
- EEA is exceptional case but required loss of sovereignty
- Even EU Chile just lays pathway to mutual recognition
- Only EU Korea contains MR of CA
- EU-India ambitious but slow –aim seemed to be internal regulatory upgrading
- EU Competition cooperation provisions fall well short of US-Australia
- Only Cariforum accepted deep EPA.
Deep integration in the EU

- Rome Treaty provided for “approximation” (=harmonisation) of laws to complete the Common Market but laid down unanimity in Council of Ministers to do it. Slow progress.
- ECJ struck down national rules that obstructed trade, even if there was no discrimination and laid down that “Mutual Recognition” should be the default.
- The Council adopted the Internal Market Plan in 1986 only adding to the treaty aims that of an area with no frontiers:
  - 300 specific measure to be adopted under Single Eur Act by QMV
  - General Acceptance of Mutual Recognition
- But still gaps, especially in services and pub. procurement
Deep Integration: the example of EU & US FTAs

- EU securing agreements in FTAs it can’t get at WTO: broad but weak coverage
- Competition policy to prevent local monopolies and cartels undermining new entrants: EU usually asks for this
- Standards EU asks partners to adopt EU norms BUT soft obligations and compliance does not guarantee mutual recognition of conformity assessment except in EU-Korea, EU Turkey
- Good if you want to upgrade for domestic reasons
- Aspects of investment policy
- Environment and labour: usually strict enforcement of own laws needed
- IPRs: US & EU keen to see TRIPS +
NAFTA vs EU Approach

• NAFTA very much based on National Treatment
  – No harmonisation
  – Very weak dispute settlement
  – Very much a free trade agreement not a CU

• EU seeks some form of harmonisation of rules
• NAFTA excludes numerous subnational entities
• US Canada agreed to go metric many years ago
  – Canada but did US did not
EU-US Experience

• Very limited success so far
• Ambitious sounding competition agreement but limited application of “positive comity”
• Framework agreement on Mutual Recognition of Conformity Assessment but little sectoral implementation
Sub “Federal” obligations

- EU-Mauritius services EPA study 2003 – mode 4 required MS visa
- 37/50 US States signed up to WTO GPA rules
- Patchwork of state commitments to FTAs
  www.ustr.gov/sites/default/files/REVISED%20Appendix.pdf
- NAFTA covers US/Mex/Canada federal GP
- Canadian provinces did not commit to GPA but 2010 Canada US procurement agreement (CUSPA), exempted Canadians from Recovery Act “Buy American” rules and opened Canadian provinces to US bids
- Canadian opposition to EU CETA focusses on EU wish to open provincial procurement.
- EU-Canada MRA failed due to provincial refusal
EU US MR status 2013

• “In the MRA between the EU and the USA, a transitional period was established for exchange of information between the parties, and to build confidence and understanding of each other's procedures for designation of CABs and evaluate the ability of the CABs to carry out their duties.

• Passage from the transitional to the operational phase has taken place for the following sectors:
  – Recreational Craft as of 01/06/2000
  – EMC and Telecom as of 14/12/2000”

Agreement OJEC L 31 of 4/02/99
TTIP: Rather low ambitions on TBT SPS and CA in the latest HLG report: No reference to MR or harmonisation: barely WTO+

• “An ambitious “TBT-plus” chapter, building on horizontal disciplines in the WTO Agreement on Technical Barriers to Trade (TBT), including establishing an ongoing mechanism for improved dialogue and cooperation for addressing bilateral TBT issues. The objectives of the chapter would be to yield greater openness, transparency, and convergence in regulatory approaches and requirements and related standards development processes, as well as, inter alia, to reduce redundant and burdensome testing and certification requirements, promote confidence in our respective conformity assessment bodies, and enhance cooperation on conformity assessment and standardization issues globally.”

• “An ambitious “SPS-plus” chapter, including establishing an on-going mechanism for improved dialogue and cooperation on addressing bilateral sanitary and phytosanitary (SPS) issues. The chapter will seek to build upon the key principles of the World Trade Organization (WTO) SPS Agreement, including the requirements that each side’s SPS measures be based on science and on international standards or scientific risk assessments, applied only to the extent necessary to protect human, animal, or plant life or health, and developed in a transparent manner, without undue delay.”

EU US Regulatory Issues: Difficulties in Deep integration in action

- Competition Policy: EU has tried to get multilateral rules and bilateral cooperation; US much more reliant on unilateral
- SPS historically different points of view cf. Beef Hormones, GMOs
- IPRs: US-EU no longer both going down track of strengthening IPRs – software and business methods patents US reverting to EU styles
- Mutual recognition of conformity assessment – framework agreement. Little progress at all
- Financial services
- Cultural industries
- Communications, net neutrality
- Database directive, data security
SERVICES

• Trade barriers are all about domestic rules which are not always just barriers & may have valuable aims

• GATS has opt-in by sector (positive list) on services trade by “modes”
  – from the territory of one Member into the territory of any other Member (Mode 1 — Cross border trade);
  – in the territory of one Member to the service consumer of any other Member (Mode 2 — Consumption abroad);
  – by a service supplier of one Member, through commercial presence, in the territory of any other Member (Mode 3 — Commercial presence); and
  – by a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member (Mode 4 — Presence of natural persons).”

• Little if any multilateral progress on services integration since Uruguay round. TiSA and inclusion of services in TPP and TTIP a response to this. All propose negative list approach (opt-outs by sector)
MFN, RTAs and MRAs in services

- Separate scheduling of *Liberalisation, national treatment* under GATS
- Without derogation rules must be MFN (even closed sectors).
- Exception: Article V on RTAs requires substantially all trade covered; slightly tighter wording than GATT XXIV on 3rd country impact
- Sectoral Mutual Rec Agreements on *equivalence* OK if non discriminatory. GATS Art VII distinct provisions
- Harmonisation harder
- MRAs very much about professional qualifications
Financial Services

- Much industry self regulation and discussion outside trade, eg accounting standards
- But US seems very anxious to preserve regulatory autonomy: “U.S. Wants Financial Services Off Table in EU Trade Talks”  WSJ July 15 2103
  - http://online.wsj.com/article/SB10001424127887323394504578607841246434144.html
- What if US insists on Glass-Steagel?
- Basel+ capital requirements?
- UK autonomy desired
- Complexities here deserves a presentation on their own!
Some sectoral arrangements

- Aviation: Open Skies. Still some limits on foreign ownership
- Maritime no progress
- MR of architects qualifications 2005
- EU – US AEO Mutual Recognition 2102, security in transport services for some operators
- Doctors in US - state registration needed
- Not always so easy within EU!
How much regulatory sovereignty should countries give up?

• Regulations often have protectionist effect but usually have some positive benefits as well
• You have to comply with partners’ product standard to export
• To join EU for example you must obey all the rules – and this may both improve your efficiency and raise costs
• Is it right for EU to demand as condition of allowing imports that production processes also respect EU social and environmental norms?
  – NB many FTAs require that partners apply their own laws
• EU FTAs and WTO rules do not go very far to constrain regulatory sovereignty but have some impact
Conclusion

• Tariffs are designed to be transparent in effect and as a result (via GATT and preferential agreements) are becoming less important especially among OECD countries

• so the challenge for trade liberalisation is getting rid of regulatory barriers

• But we must remember regulations also have a non protectionist purpose and reflect genuinely different local public policy objectives so we may never eliminate all such barriers

• RTAs of “like-minded” partners may be able to go further to facilitate deeper integration of markets