

Lessons from the EU Internal Market

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The TTIP: Towards Regulatory Convergence?

Bruegel

July 18, 2013

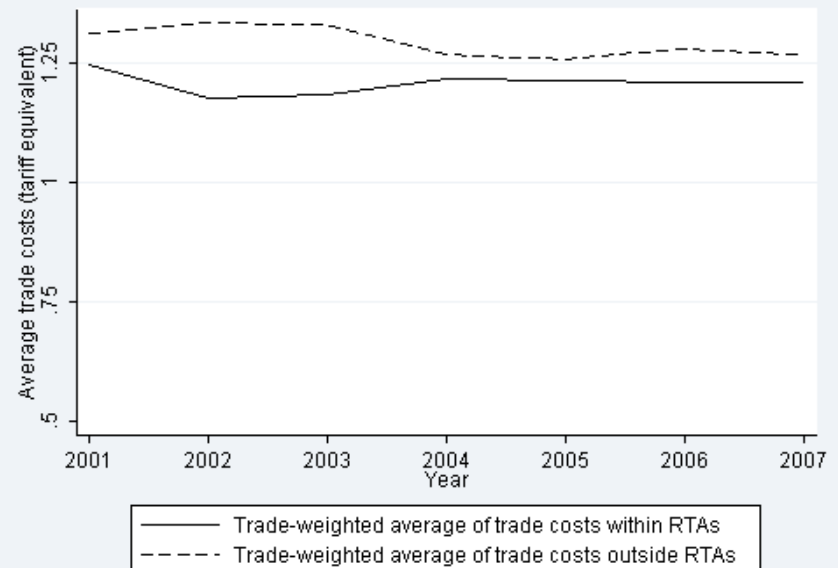
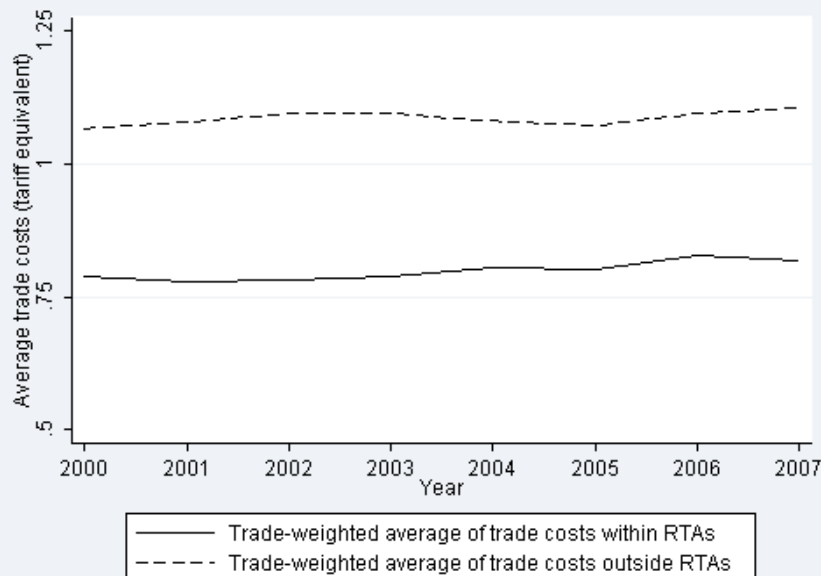
Brussels

Mega-PTAs and regulations

- All ‘mega-preferential trade agreements’ (TPP, TTIP, Japan-EU, ECFA) focus on regulatory issues => inter-actions harder to assess than in the case of tariffs.
 - *caveat*: tariff issues will not be easy (US peak tariffs/EU TRQs).
- Regulatory issues cover:
 - norms (industrial goods), sanitary and phyto-sanitary (SPS) measures;
 - regulations in services;
 - regulations in public procurement.
- Overview of the presentation
 - where are we? => difficulties of the Internal Market.
 - what can/should we do? => ‘unconditional’ mutual recognition. Such an approach requires ‘mutual evaluation’ as a condition (2006 Services Directive), allows for exceptions (transitory or definitive) and requires a mechanism of reviews.

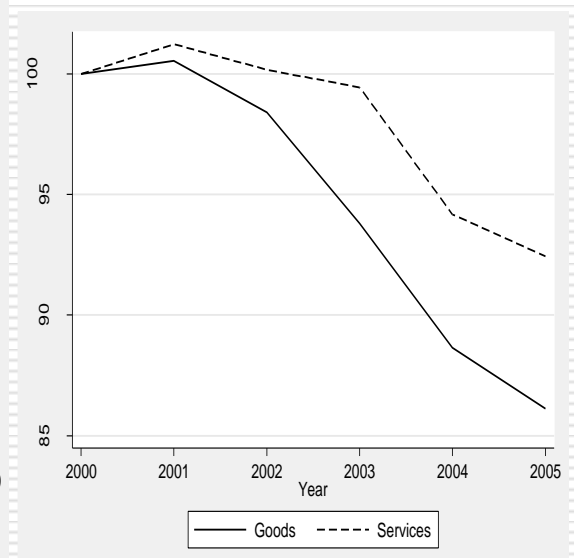
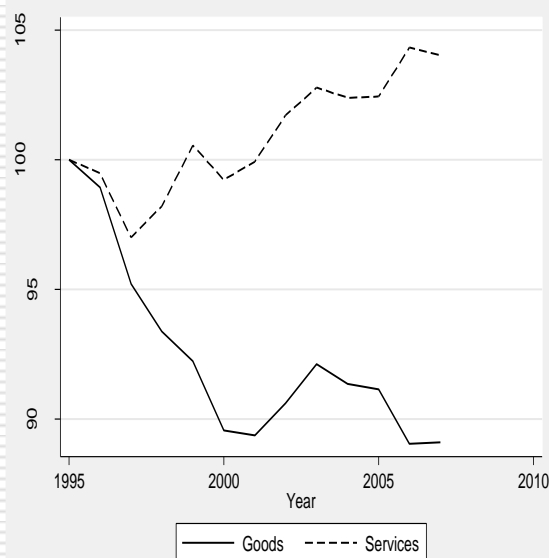
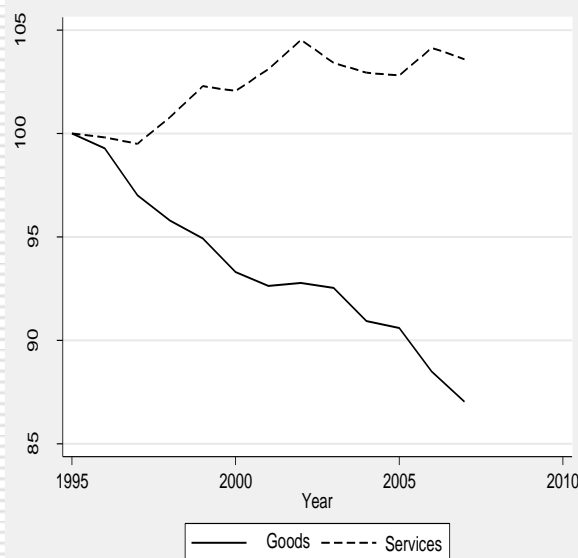
Where are we? (1/6)

- ❑ Preferential trade agreements (PTAs) do not seem so efficient in dismantling barriers.
- ❑ A major difference between goods (left panel) and services (right panel).



Where are we? (2/6)

- ❑ Disappointing performances (based on trade costs) of the EU (left panel) and the US (middle panel) compared to China (right panel, since 2000).



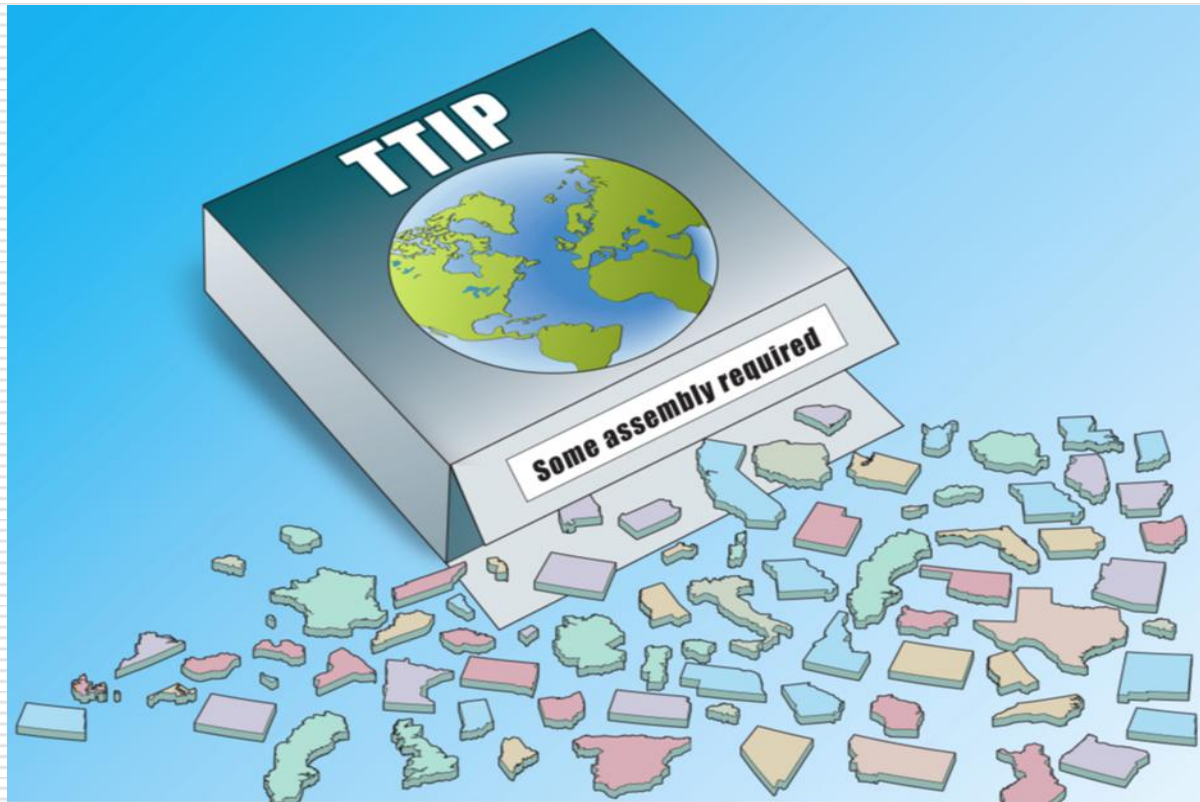
Where are we? (3/6)

- **Product Market Regulation (PMR) indicators (OECD 2008) suggest four key results:**
 - often huge differences between the highest and the lowest PMR indicators,
 - the EUMS with the highest or second highest PMR is always a large ECMS.
 - the EUMS with the lowest PMR always a small ECMS (one exception for Britain).
 - “water in protection” within the EU → lower welfare benefits than estimated (?) but opportunities offered by trans-border coalitions in TTIP/Japan-EU negotiations.

	Highest PMR		Second highest		Lowest PMR	
	PMR	ECMS	PMR	ECMS	PMR	ECMS
Electricity	67.2	Italy	49.3	France	19.5	Denmark
Construction	10.8	Greece	10.7	France	5.8	Sweden
Distribution	56.2	France	51.8	Austria	19.4	Sweden
Hotels, restaurants	12.4	Austria	9.9	Italy	5.4	Sweden
Transpor, /storage	65.4	Greece	51.3	Italy	15.8	Britain
Post, telecoms	32.2	Belgium	29.7	Italy	21.8	Denmark
Financial services	43.9	Austria	38.6	Italy	19.6	Ireland
Real estate	7.6	Austria	6.9	Germany	2.4	Greece
Renting of machinery	53.8	Austria	52.7	Germany	15.0	Sweden
Business services	52.0	Austria	51.0	Germany	15.0	Sweden

A footnote

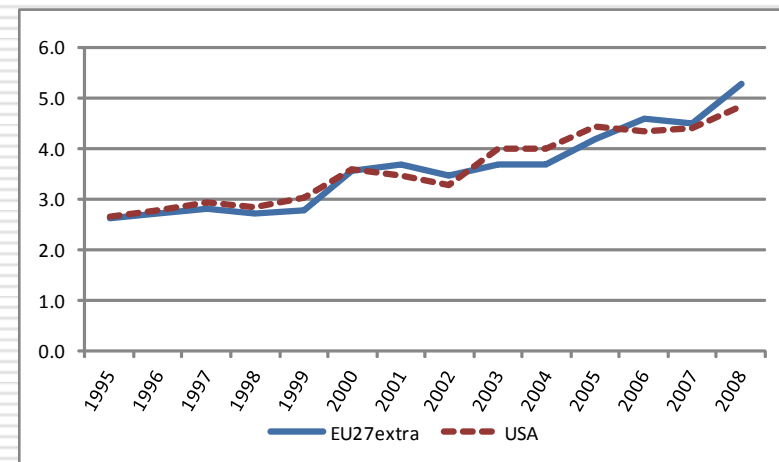
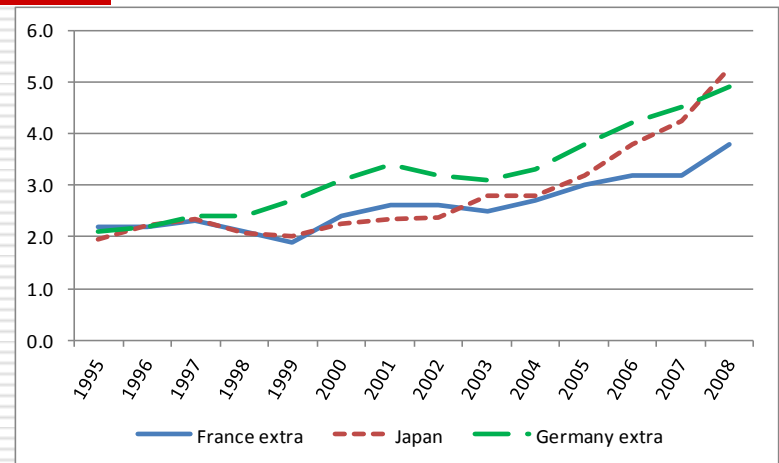
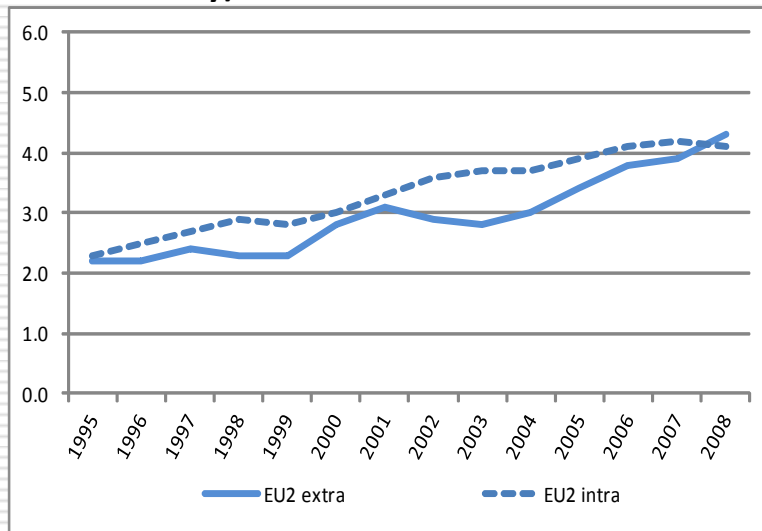
- TTIP: a negotiation among 2 or 78? (Japan-EU: among 2 or 75?)



- Source: Atlantic Council and Bertelsmann Foundation, 2013.

Where are we? (4/6)

- Similar disappointing results for public procurement (World Input-Output Data).
- Intra-EU not much better than extra-EU, particularly since the mid-2000s.
- EU slightly better than US since the mid-2000s (problem of composition?)
- Japan is catching up EUMS (France and Germany).



Where are we? (5/6)

- and for OECD trade investment restrictiveness indexes among the EUMS make difficult to believe that intra-EUMS barriers have been seriously eroded (problematic recent data).

		1. Legal services	2. Accounting	3. Architecture	4. Engineering	5. Fixed telecoms	6. Mobile telecoms	7. Construction	8. Distribution	9. Insurance	10. Banking	11. Hotels/Resto	12. Air transport	13. Maritime transp	14. Road transport	15. Electricity
EF	Belgium	22	22	22	22	72	72	22	22	44	44	22	122	248	72	22
EF	France	233	33	33	33	72	72	22	22	138	94	22	198	198	72	322
EF	Germany	22	22	22	22	122	122	22	22	116	72	22	248	198	22	122
EF	Iraly	22	22	22	22	72	72	22	22	88	144	22	494	66	22	122
EF	Netherlands	11	11	11	11	11	11	11	11	55	33	11	411	355	11	611
EW	Austria	348	348	348	348	172	172	172	172	272	172	172	322	472	222	172
EW	Denmark	1000	562	22	22	72	72	22	22	44	22	22	422	22	122	122
EW	Finland	550	550	110	110	110	110	110	110	110	160	110	310	210	154	210
EW	Greece	462	506	462	462	122	122	22	22	88	88	22	522	254	22	1000
EW	Ireland	22	22	22	22	122	122	22	22	88	44	22	466	66	22	1000
EW	Portugal	22	66	22	22	122	122	22	22	116	172	22	1000	122	22	122
EW	Spain	512	66	22	22	322	322	22	22	226	182	22	304	316	22	22
EW	Sweden	556	292	66	66	166	166	66	66	116	116	66	316	266	166	166
EW	Britain	17	17	17	17	17	17	17	17	83	67	17	267	361	17	17
EC	Czech Rep.	125	375	50	50	50	50	100	50	150	150	50	450	100	100	450
EC	Estonia	1000	22	22	22	22	22	22	22	122	22	22	322	366	22	622
EC	Hungary	100	100	100	100	200	100	100	100	150	100	100	500	400	150	200
EC	Latvia	0	0	0	0	0	0	0	0	0	0	0	132	0	100	1000
EC	Lithuania	50	50	50	50	50	50	50	50	50	100	50	350	94	50	650
EC	Poland	225	175	75	75	375	375	75	75	75	325	75	375	75	125	175
EC	Romania	250	50	50	50	150	150	50	50	50	175	50	750	150	50	450
EC	Slovakia	75	375	75	75	72	72	72	72	172	172	72	372	122	72	322
EC	Slovenia	125	125	100	100	200	100	100	100	100	100	100	740	244	100	700
	Norway	405	405	55	55	55	55	55	55	105	105	55	155	455	355	155
	Switzerland	175	100	100	100	200	100	100	100	100	110	100	500	594	150	400
	Turkey	250	150	100	100	100	100	100	100	100	150	100	500	500	100	400
	Australia	250	250	200	200	700	200	200	200	200	300	200	650	500	200	200
	Canada	200	200	150	150	525	525	150	150	200	225	150	675	300	250	350
	Japan	100	100	25	25	286	25	25	25	25	75	25	675	275	25	25
	New Zealand	125	125	125	125	480	125	125	125	125	125	125	574	225	125	225
	US	75	25	25	25	25	25	25	25	175	275	25	650	275	25	125
	China	300	425	100	100	550	450	150	450	350	550	150	550	550	150	750
	India	1000	1000	1000	50	350	350	250	600	450	350	50	550	50	50	150
	Korea	75	75	50	50	400	400	50	50	50	50	50	350	450	50	400
	Mexico	150	425	125	125	425	150	125	125	425	525	125	625	425	125	1000
	Russia	175	175	175	175	400	350	200	100	850	550	100	600	400	200	750
	South Africa	125	125	125	125	650	600	150	150	350	250	100	250	250	300	1000
	Groups of countries [a]															
	EC27	157	75	42	42	106	105	29	29	115	102	29	319	227	47	188
EF	EF	80	24	24	24	86	86	21	21	108	90	21	297	183	37	211
EW	EW	274	139	65	65	122	122	36	36	129	107	36	336	304	53	134
EC	EC	180	182	70	70	215	194	78	70	102	203	70	461	154	107	333
	OECD	221	196	94	94	198	143	74	72	135	157	72	443	280	106	326
	nonOECD	271	175	148	75	229	206	98	140	206	211	71	461	246	188	536

Where are we? (6/6)

- The often neglected/forgotten but key aspect: implementation.

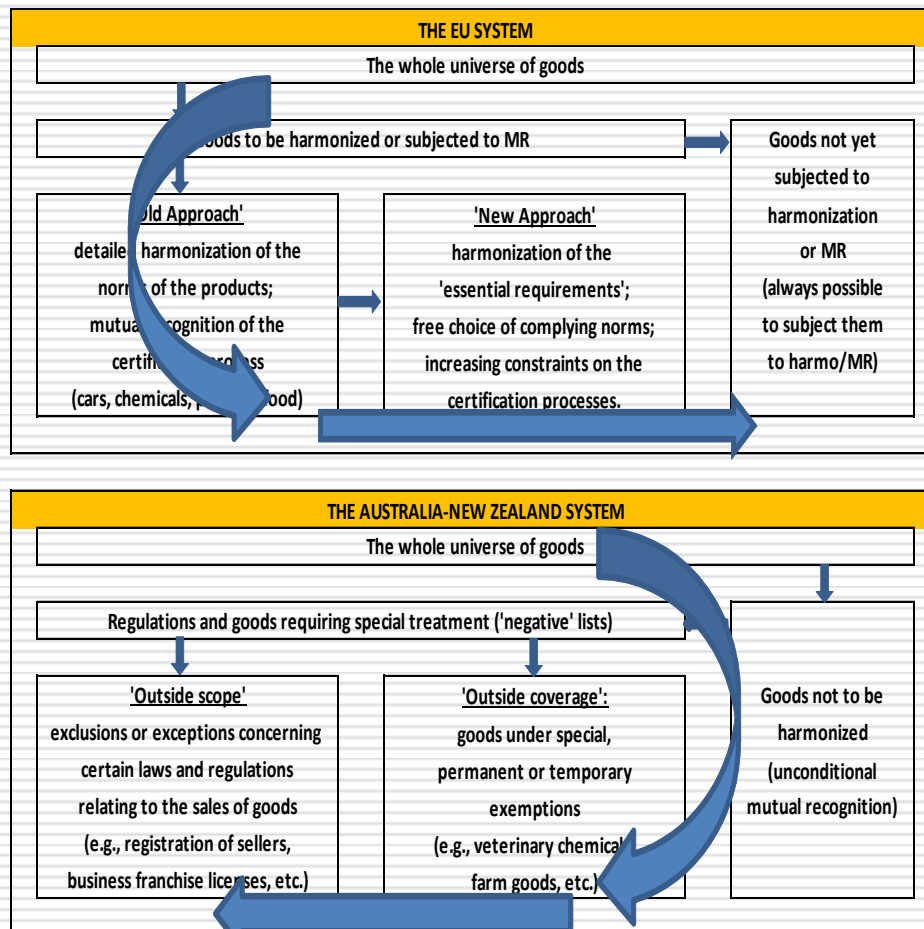
EU Members States by cohort		EU Partners	
EUMS	Rank	Partner	Rank
EC-1973	7	Singapore	1
		Korea	8
		Canada	13
		Malaysia	18
EC-1995	19	Japan	20
EC-2004b	24	Taiwan	25
EC-1958	41		
EC-2004a	50		
EC-1980s	58		
EC-2007	66		
		China	91
		Argentina	113
		Russia	120
		Brazil	126
		India	132

Options and perspectives

- **Two opposite perspectives when looking at regulatory differences:**
 - “negative” way (minimize costs of foreign producers): what to do when a domestic regulation affects firms outside of the regulating jurisdiction?
 - “positive” way (maximize gains of domestic consumers): what would—should—be the preferred choice of regulators who adopt the increase of the welfare of their fellow citizens as the key criterion of their decisions? Welfare flows from both price and variety competition.

- **Three basic options for dealing with regulatory differences:**
 - harmonization (the EU until the mid-1980s),
 - conditional mutual recognition (CMR): the EU with Cassis de Dijon version 1 .0.
 - ‘conditionality’ is defined by a core of harmonized rules or requirements;
 - hence, the core has to be negotiated.
 - Unconditional mutual recognition (UMR): Australia-New Zealand in goods and the EU Services Directives with Cassis de Dijon version 2.0.
 - ‘unconditionality’ requires a ‘mutual evaluation’ which should be a trust building exercise among the two negotiating partners.

Conditional vs. unconditional mutual recognition



UMR and mutual evaluation

□ Guidelines for mutual evaluation in services (2006 EU Services Directive)

□ Article 14. Prohibited requirements:

- discriminatory requirements based directly or indirectly on nationality or location of the registered office;
- prohibition on having an establishment in more than one Member State, or equivalent;
- restrictions on the freedom of a provider to choose between a principal or a secondary establishment;
- conditions of reciprocity with the Member State in which the provider already has an establishment;
- authorization conditional to a case-by-case application of an economic test;
- direct or indirect involvement of competing operators, including within consultative bodies, in the granting of authorisations, or equivalent;
- obligation to provide or participate in a financial guarantee or to take out insurance from a provider or body established in their territory;
- obligation to have been pre-registered for a given period.

□ Article 15. Mutual evaluation of requirements to be based on:

- conditions for access: quantitative or territorial restrictions (population, minimum distance); specific legal form; requirement on shareholding; limited to particular providers; a ban on having more than one establishment; minimum number of employees; fixed minimum/maximum tariffs to comply with; obligation to provide joint services.
- verification of the fact that these requirements satisfy the following conditions: non-discrimination; necessity, except overriding reason related to the public interest; proportionality.
- apply to services of general interest only insofar no obstruction to the particular tasks.

Basic questions (1/2)

- **Question 1: focuses on past economic development**
 - the two-way interaction between varieties of goods/services and varieties of regulations; regulations as the ‘legal’ capital of firms (=> firms always want the other to adopt their national norms).
 - Cassis de Dijon ruling (1979) on “equivalent measures” => echoes the perception of increased varieties as no.1 gain from EC (1960s-70s).
 - mutual recognition is likely to have a greater value in larger, more heterogeneous entities (like the EC or mega-PTAs) than in smaller, more homogeneous ones (like Australia).

- **Question 2: focuses on future risk behavior**
 - mutual recognition as an instrument accommodating the precautionary principle.
 - independent “bodies” emerge as key trust-building entities.
 - the case of horse meat in beef food.

Basic questions (2/2)

- **Question 3: focuses on the trade-off ‘new rules vs. implementation’**
 - **harmonizing or negotiating a core of conditions means (i) adopting harmonized regulations and (ii) enforcing them in an harmonized way.**
 - **often based on two unchecked assumptions:**
 - **harmonized regulations are necessarily better than the pre-existing non-harmonized ones => forgets the political process of harmonizing.**
 - **harmonized regulations are necessarily enforced in a harmonized way.**
 - **hence the possibility that the benefits of harmonized norms (assuming that they are better than the pre-existing competing norms) are smaller than the costs of enforcing these new norms.**

- **Two final remarks about ‘regulatory convergence’?**
 - **it does not look a ‘natural’ process over time and/or geography:**
 - **regulatory divergence may be good news (regulatory innovations);**
 - **rarely one regulation is better than all others (retail case).**
 - **how can harmonization be a meaningful operational concept when negotiating sequential mega-PTAs?**

Thank you for your attention

