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## **The impact of trade protectionism**

The American economy has benefited immensely from open trade and globalization. Through international trade agreements and some laudable examples of unilateral liberalization, the United States has adopted historically low tariffs. But while mercantilist economic policy is out of vogue these days, special interests have not stopped in their quest to use the power of government to protect themselves from import competition. An increasingly common and less transparent mechanism for achieving protectionist ends has emerged in this post-tariff world—regulatory protectionism.

Protectionism is just one form of political privilege that grants a competitive advantage to domestic producers over their foreign counterparts. Regulatory protectionism is defined as the use of regulatory policy to discriminate against foreign firms in a way that is not necessary to achieve a legitimate, nonprotectionist objective[2]. It can also be thought of as the motivating force behind the imposition of such regulations.

Recent high-profile examples, include a ban on flavored cigarettes from Indonesia; a country-of-origin label requirement for beef that prevents efficient integration of U.S. and Canadian supply chains; a food safety inspection regime for catfish that imposes huge burdens on importers; labeling rules for dolphin-safe tuna that are stricter for Mexican tuna; record-keeping requirements meant to prevent illegal logging that are impossible for lumber importers to follow; and a longstanding ban on commercial trucks operated by Mexican nationals on U.S. roads.

Perhaps the most important deterrents to regulatory protectionism are increased vigilance and skepticism of regulatory proposals. Support from the domestic industry raises a bright red flag that a proposed regulation does more to pick winners and losers than to protect consumers or improve national welfare. The lack of a plausible theory of market failure is another red flag that should evoke calls for a closer look at the consequences of a new regulation. Ultimately, advocates of consumer welfare should be more open to the possibility that no regulation is needed at all to meet their goals.

Unnecessary government actions will by definition always be more restrictive than necessary and provide opportunities for commercial interests to seek special privilege at the expense of the U.S. and global economies.

By all measures regulatory protectionism is costly and growing. An analysis by the United Nations Conference on Trade and Development and the World Bank showed that technical barriers affect 30 percent of international trade, and Sanitary and Phytosanitary (SPS) measures affect about 15 percent, including more than 60 percent of trade in agricultural products[5]. Moreover, it showed that the use of non-tariff measures is widespread and increasing.

Regulatory protectionism imposes significant, often hidden costs on the U.S. economy. A 2010 study commissioned by the Office of Advocacy at the Small Business Administration claimed that the annual cost of all federal regulations to the U.S. economy in 2008 was close to \$1.8 trillion[3]. The share of those costs attributable to the damage from regulatory protectionism is difficult to measure empirically, but case studies examining the cost of individual regulatory trade barriers suggest that the aggregate cost runs into the billions of dollars per year.

For example, the U.S. Food, Conservation and Energy Act of 2008 (popularly known as the “2008 farm bill”) included provisions requiring country-of-origin labeling (COOL) on all imported beef, chicken, lamb, pork, and goat meat and certain perishable commodities sold in retail outlets in the United States. The mandatory COOL regulations on U.S. agriculture have inspired a number of quantitative studies. Economic consulting group Informa Economics estimated that COOL would cost the U.S. beef industry between \$1.058 and \$1.265 billion per year, and the U.S. pig meat industry between \$167.5 and \$228 million per year [4]. Again, the costs to the U.S. economy would be greater still, as those figures don’t include the consumers’ losses. Another study of COOL estimated damage to the U.S.–Mexico tomato trade at between 14 percent and 32 percent of dollar value, partially undermining the NAFTA tariff reductions and reducing consumer welfare when consumers have a mild or no preference for U.S. over Mexican tomatoes[1]. And in a broader study using advanced economic modeling techniques, a group of agricultural economists estimate that the COOL regulations would decrease U.S. agricultural production, exports, imports, and

national welfare (the latter by about \$212 million per year from 2004 levels)[1]. Global agricultural trade, production, and welfare would fall, too.

Between January 2010 and June 30, 2012, the United States made 520 notifications to the Technical Barriers to Trade (TBT) Committee (of which 337 were addenda or corrections) and 537 notifications of SPS measures (92 of which were corrections, 13 “emergency” measures and 432 regular notifications)[6]. Notwithstanding these openness efforts, over the same period, three WTO dispute settlement proceedings related to TBTs (Clove cigarettes; COOL; and Tuna-Dolphin II) were taken against the United States.

Although no SPS disputes were initiated against the United States in the review period, other WTO members have raised concerns about American SPS measures, especially the FDA Food Safety Modernization Act and its implementing regulations. China cited the SPS Agreement in its dispute settlement case against U.S. barriers to poultry. The United States in turn has used the offices of the WTO to object to measures taken by several WTO members.

Opponents of imposing regulatory discipline through international trade law rely on two persistent myths. The first is that bringing existing U.S. laws into compliance with WTO rules will necessarily weaken environmental and safety regulations. The second is that responding to WTO dispute settlement decisions by reforming U.S. law amounts to a transfer of sovereignty from the United States to international bureaucrats. These myths can have a strong impact on the public and lawmakers across the political spectrum, and they are both totally false.

Critics of U.S. involvement in the WTO and the resulting acceptance of trade disciplines exaggerate the impact of trade rules on U.S. regulatory autonomy and national sovereignty. As a member of the WTO, the United States has pledged only to avoid protectionist and unfairly discriminatory regulation, not all regulation that impacts trade. Moreover, U.S. courts are not permitted to give effect to WTO law or judicial decisions against the United States. Congress maintains its role as the ultimate decision maker on U.S. trade policy regardless of the international obligations of the United States.

WTO members recognized that domestic political forces are sometimes too powerful to resist, even when they call for economically harmful policies. While critics of U.S. membership in the WTO claim that the rules limit U.S. sovereignty and expose American consumers to harmful deregulation, the truth is that WTO law strikes a very good balance between two compatible aims shared by most of the world's governments: to regulate domestic economic activity and to prevent harmful protectionism in both foreign and domestic markets.

To be sure, following WTO rules does make imposing trade restrictions politically more costly, and in that sense compliance may force policymakers to be more thoughtful when designing and implementing policies. Those who wish for a strong and broad role for government in the economy may lament the speed bumps the WTO puts in the way of trade restrictions, but free traders should by and large welcome the WTO and the role it plays in regulating the regulators.

Paying closer attention to the need to avoid protectionism in the policymaking process could help the United States keep its regulations free of protectionist influence and prevent international friction. Ideally, this would occur at the initial legislative stage with Congress accepting WTO obligations in good faith. Barring that unlikely scenario, there are still other steps in the lawmaking process where trade rules can improve the content of U.S. regulation.

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