

DEBAT

Patrick Messerlin, professeur d'économie et directeur du Groupe d'économie mondiale (GEM) à Sciences Po Paris

Pascal's comment on the misuse of the word "negotiations" is essential. My question to all of you is whether we are not in fact in a process of unilateral liberalisation, because when you are discussing regulations, you want to have the best regulations for your own sake. You do not want to have the best regulations for the pleasure of your partner, but you want the best regulations from your point of view. I am wondering whether in fact TTIP, TTP and all these mega trade agreements are not missing this main point. By the way, this means that we could do something with China in certain sectors or domains. Could we not recognise that we are entering a world where trade negotiators are not only "trade people" but "regulatory people" as well?

John Manley, président et chef de la direction du Conseil canadien des chefs d'entreprise

Let us not be naïve, because these regulatory measures have at their core a purpose of protecting consumers, but they can also be used to protect producers, and what we face in many of these regulatory negotiations is this tyranny of small differences which actually do not make anybody safer in a practical way, except they may make them feel safer occasionally. You have the virtuous paranoids that Pascal has referred to, and that is fodder for all kinds of argumentation which might be quite spurious.

Patrick Messerlin, professeur d'économie et directeur du Groupe d'économie mondiale (GEM) à Sciences Po Paris

John, before the others intervene, since you are in the business, when you talk to the independent regulatory bodies, as opposed to the government, they may well recognise that in fact they would like better regulation? That has happened with the phytosanitary standards; the French regulators would like to have better regulations than the current ones. Are the regulators not good allies in this case?

John Manley, président et chef de la direction du Conseil canadien des chefs d'entreprise

You can find examples where they can be allies. Some regulators also take great pride in having what they consider to be the best system, whereas you can often make a very strong case that regulation is not efficacious, does not do anything but add cost, or essentially functions as a barrier to access to products that are equally good, equally safe, or equally useful.

Bark Taeho, professeur à l'université nationale de Séoul ; ancien ministre du Commerce, République de Corée

I totally agree with Pascal's discussion on precautionary regulation or trade measures, but this is too complicated. We can talk about this, but how can we resolve this? When you get regulators involved in this kind of situation, maybe advanced countries such as the EU or the US can share some commonalities, but if you talk about advanced versus developing countries, regulators are more protectionist than trade negotiators. I know this is a good area to handle, but this is a very difficult reality we have to face.

Patrick Messerlin, professeur d'économie et directeur du Groupe d'économie mondiale (GEM) à Sciences Po Paris

Do you put Korea among the developing countries?

Bark Taeho, professeur à l'université nationale de Séoul ; ancien ministre du Commerce, République de Corée

I am saying that Korea will have similar problems. Take safety regulations on auto parts: even through FTAs, we have to open up all the parts and see whether these regulations apply or not, and it is very complicated. This is my first impression.

Alejandro Jara, Senior Counsel, King & Spalding ; ancien ambassadeur et représentant permanent du Chili, OMC

Let me take as an example the experience over 20 years of negotiations on services and investment, bilaterally or even under the WTO. The evidence of actual liberalisation taking place as a consequence of a trade negotiation is very small. Most of the liberalisation is unilateral, and what these agreements do, at least on a bilateral basis, is capture that bilateral liberalisation and do not allow any back-tracking or rollback. It even has the opposite effect, as a matter of fact: if you change an existing restriction, that becomes the new level of liberalisation. Therefore, you can say you are negotiating, but in practice it does not take place. It binds what you have just done, you keep it there, and if you move, you move only in one direction, more opening, and the virtue of these agreements, bilateral or WTO, is that they prevent any discrimination. However, even so, when you apply regulations in the fields of services and investment, it is almost impossible and makes no sense to apply them on a preferential basis, as Pascal has said.

Pascal Lamy, Président d'honneur de Notre Europe ; ancien directeur général de l'OMC

John is perfectly right that there remains a grey zone between protection and precaution. If I, as a European, tried to export locomotives to Russia, it would not work, because the Russians have very strict specifications that only Russian producers know how to match; this is a confusion between precaution and protection. However, this issue is under the jurisdiction of the WTO. There is a sanitary and phytosanitary agreement; there is a technical barrier to trade agreement in the WTO that establish a balance between the principles of protection and precaution, so if there is an issue there, you have a system that can deal with it.

Regarding Taeho's point, what matters in this new world, where the issue is about regulatory convergence, is who the standard setter is, where the world standard for car safety equipment is established. There are a few areas in the international system today where there are multilateral standards; take the Codex Alimentarius used for food safety, which is a joint operation between the World Health Organisation and the Food and Agriculture Organisation. You have a multilateral standard in some areas of food safety, which is usually rather low - it is usually the lowest common denominator - and nobody is obliged to remain there, and can go above in a precautionary way.

Taking the example of car safety equipment for example, if Europeans and Americans agree on car crash test parameters, which is one of the purposes of the transatlantic negotiation, so-called, this will become the de facto world standard, and Korea, Japan and China will have to adjust to this standard, because both Europe and the US are big car producers, and both Europe and the US are big car importers. Taking the example of food safety, I have no doubt that China, for instance, will import Euro-US food safety standards, because they need this for political reasons in order to reassure their consumers, as they have had lots of problems with food safety over the last ten years. But I am not sure that China will accept a Euro-US standard on 7G mobile.

These examples are relatively simple issues, which are technical and rational issues having something to do with science, but if you look at the other end of the spectrum, a lot of these precautionary regulations have to do with culture, not with reason but with passion, like GMOs or data privacy. The US and EU, to take these examples, have fundamentally different views as to whether GMOs are good or bad, and this is a value scale, or whether data privacy should be protected or not, and this is very difficult and probably, by the way, beyond reach for the moment.

Finally, on Alejandro's point, the principle of the WTO is that you cannot discriminate against foreign producers. Precaution works fine with this principle, as long as you do not discriminate between your domestic producers and foreign producers on the grounds of precaution, which you should not do, because it is about precaution, not protection. Therefore, in many ways, the multilateral principles are much easier to implement, like the most favoured nation, which is not a problem in precautionary terms, because you treat everybody the same, so in principle it is easier. The problem, again, is that the machinery to get to regulatory convergence is different, not least because it will not be trade negotiators who will establish pesticide residue standards. These guys know nothing about pesticide residue standards, Ractopamine in pork, or crash tests for cars; this rests with regulators, so this also changes the political economy of the negotiation.

Shotaro Oshima, président, Institute for International Studies (IIES) et professeur, Graduate School of Public Policy, University of Tokyo

Thank you so much for this wonderful and informative panel. I have a very simple question. There was a reference to regulation over data privacy. The new trading sphere is, not dominated, but influenced very much, by the Internet, cyberspace. Could each of you say a word about the future of trade politics in the area of cyber trade?

Benjamin Lancar, ENA

My question regards the issue of the French cultural exception. I wanted to know whether you consider this as a sustainable exception or a short-term exception in the ocean of globalisation.

Pascal Lamy, Président d'honneur de Notre Europe ; ancien directeur général de l'OMC

Regarding the second question, I am happy that John is on this panel, because it is not a French issue, but a French and Canadian issue. Canadians in their trade agreements with the US, which as we know are wide-ranging and very deep, have preserved cultural diversity, and for a simple reason. I am not saying this because I am French, but because it is my own experience. The notion that the larger the market the better it is for the consumer does not always work, and probably not in culture, so there are good reasons to believe that trade opening is great for tyres or shirts or socks, but it may not work the same way for cultural goods and services.

Regarding data privacy, we could have lived during different centuries with different views on whether data privacy should be protected or not and how, and it has to do with the perception of individual freedom, the relationship to the rights of the state, etc., but that is over; with data mining and the huge commercial value of data files which are exchanged all over the place, there has to be some sort of common approach, and if you do not have that, some will believe that their data is being poached, and others will believe that this is just blunt protectionism. However, this is terribly difficult, because it is culture, it is even philosophy, it is ideology, and that gets to the fundamental question of how much convergence on value issues will you need in the future to keep opening trade and benefiting from the efficiencies of globalisation.

We have done the easy job, which is getting rid of measures which are ideologically flat, like tariffs, because bicycles are the same everywhere, cut flowers are the same everywhere, and scrap metal is the same everywhere. We are now entering a phase where, in order to keep benefiting from globalisation, i.e. larger markets and larger economies of



scale, we have to look at issues which are much more sensitive. The politics of trade negotiations were complex in the past, and they are now going to be much more complex in the future, but the price of resolving these difficulties is also much higher now than it was before.

Bark Taeho, professeur à l'université nationale de Séoul ; ancien ministre du Commerce, République de Corée

Regarding the question on e-commerce or cyber-commerce, I am not an expert on this, but I already spoke about the inefficient distribution system for major items in Korea, and we are now allowing our consumers to buy directly from all kinds of global supermarkets and department stores. We designate a total amount – USD 300 or USD 500, I do not know exactly - and for that they can buy directly from abroad. Actually, this is putting a lot of pressure on our department stores and shops that sell luxury items. People are now travelling abroad and compare the prices, and they can come back home and buy directly from foreign shops. Therefore, I think this is making some contribution to benefiting consumers in addition to the FTAs we are putting in place.

John Manley, président et chef de la direction du Conseil canadien des chefs d'entreprise

Before I jump into the cultural discussion, one of the interesting things that has evolved in cyberspace is the difference in practices around protection of data which is stored, and this is particularly the case with some of the implications of the Patriot Act in the US, which gives government quite generous access to data storage; I think that may be what Pascal is alluding to in part. What is happening is that this is actually distorting how large data is managed, so that companies that provide software and other services, including data storage and data storage facilities, are increasingly having to undertake contractually that data for which they are responsible will not find its way through their storage facilities into a jurisdiction where governments have access to it. You could say it will increasingly become a trade-distorting reality, but it is rooted in some of those principles that we were talking about.

Regarding culture, I did not particularly want to jump into it, because my view does not necessarily reflect that of the Canadian Government, including that of which I was a member. What happened is that we devised systems that worked very well in a world in which the spectrum for delivery of broadcast, distribution of films, and so on, was limited. We now have a world in which the spectrum is unlimited, in which you have broadcasting or narrowcasting through the Internet, in which any movie anywhere can be available any time without restriction through Internet services. For example, some of the measures in the Canada-US FTA, which were continued in NAFTA, which gave some protection for Canadian cultural industries, were just ineffective. They are still there, but for a small country beside a large market, as Canada is beside the US, if we want our own cultural industries we will have to directly subsidise them, which is entirely permissible but which accounts for the lack of scale in a market that is one-tenth the size.

Good luck on TTIP, but it is something that will have to be looked at from an evolutionary point of view, because the truth is that we have a very dynamic and engaged cultural industry in Canada, and we have a broad appreciation of our stars, especially when they move across the border to the US. However, Canadian consumers buy US productions in much larger numbers, so if you want it, you will have to pay for it in a subsidy process in my view.

Alejandro Jara, Senior Counsel, King & Spalding ; ancien ambassadeur et représentant permanent du Chili, OMC

Regarding the question on the French cultural exception, culture is like agriculture, and the word has the same root. There are very good reasons why agriculture and culture should be protected and promoted; the question is the instrument used to do that. For example, in many places where beneficiaries of cultural special treatment, they love screen quotas and rents, and dislike systems of direct subsidisation, which in my view would be the best way to do it, because it is more direct, more transparent, and at the end of the day more competitive.

For example, in my country, Chile, they just established a norm whereby 20% of the music broadcast must be Chilean, and it really makes no sense, because the definition of domestic music includes a Chilean conductor who has recorded a piece of French music by Debussy with an orchestra in Spain, the whole production taking place in Italy, so the only link to the country is the nationality of the conductor. Therefore, it would be much better if all the promotion and all the protection is done through different instruments. For example, in agriculture it is perfectly permissible, and it should be, for farmers to be subsidised, but not in a way which creates more distortions to trade or becomes more trade-restrictive. Therefore, in France and many other places which deal with this cultural exception, it sometimes comes very close to protectionism of certain cultural industries at the expense of others, whereas there are other instruments which are less trade restrictive.

Regarding data privacy, by the same token, there are conflicts and problems of different cultural approaches, as Pascal has said, and perhaps we need more international cooperation, but the one thing which I am pretty convinced of is that the answer does not lie in requiring that the data or the servers be localised in a particular jurisdiction, because then what we are really practising is protectionism in the name of data privacy.

Bark Taeho, professeur à l'université nationale de Séoul ; ancien ministre du Commerce, République de Corée

The Korean case could be a good example as far as cultural industries are concerned. We opened up our cultural industries, and now we have young people all over the world promoting so-called K pop, dramas and all kinds of things, so maybe this could be a good example of successful market opening even for cultural industries.

Patrick Messerlin, professeur d'économie et directeur du Groupe d'économie mondiale (GEM) à Sciences Po Paris

You could not have said it better. A colleague of mine, Dr Jimmyn Parc, has written a paper on the Korean cinema policy. Korea is the best counterexample to France, with its very low subsidies, a screen quota totally ineffective ... and a thriving cinema. In short, trade policy has forced Korea to count only on its own forces, without protection and for the best of its consumers and producers.