The transatlantic regulatory relationship:

limited conflict, less competition and a new approach to cooperation

Alasdair R. Young

Sam Nunn School of International Affairs, Georgia Institute of Technology

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The European Union and the United States are considered the world's two regulatory great powers and regulatory differences are the most significant impediments to most transatlantic economic activity. In part as a result there are common perceptions that the transatlantic regulatory relationship is fraught and that the EU and US are competing to spread their regulations around the world. This chapter argues that neither is the case. Transatlantic regulatory trade disputes are extremely rare and represent a tiny fraction of transatlantic economic exchange. Regulatory competition between the EU and US is also rare and when it occurs it is inadvertent, the product of market forces. As regulatory differences are the main source of friction in transatlantic economy, the EU and US have invested considerable effort in addressing them. Rather than trying to eliminate the differences, they have sought to mitigate the costs stemming from them. Even those modest aims have been difficult to achieve, and successes have come under only rare circumstances. Lately, however, the EU and US may be embarking on a new period of regulatory cooperation, one less focused on the technical differences between their rules and more focused on what shared objectives they have, particularly in relation to China.

Key words: conflict, competition, cooperation, regulation, transatlantic, European Union, United States

The European Union and the United States are considered the world's two regulatory great powers (Sapir 2007: 12; Drezner 2007: 35-6). As they both have relatively open economies and their economic relationship is very complex (see Eliasson this volume), regulatory differences are the primary grit in the transatlantic economy. These differences sometimes result in high-profile trade disputes and contribute to perceptions of regulatory competition. Regulatory differences have also prompted extensive efforts to mitigate their adverse economic effects through cooperation. This chapter surveys transatlantic regulatory conflict, competition and cooperation.

It advances four complementary arguments. First, transatlantic regulatory conflicts are the exception rather than the rule, although regulatory differences are a persistent source of trade friction. Second, transatlantic regulatory competition is extremely rare and largely inadvertent. Third, transatlantic regulatory cooperation has struggled to address differences rooted in very different domestic political contexts. Fourth, a new, more fruitful, approach to transatlantic regulatory cooperation may be emerging in which there is less emphasis on resolving relatively small differences between specific rules and much more attention to what the EU and US have in common in terms of shared regulatory objectives. That development has been spurred by increased concern about China's efforts to shape the global regulation of new technologies.

This chapter begins by explaining the origins of transatlantic regulatory differences. It then turns to the consequences of those differences and the bilateral efforts to address them. It then pivots to consider the extent to which the EU and US engage in regulatory competition with each other. It then identifies indications of a new approach to transatlantic regulatory cooperation that focuses on shared values rather than technical differences. The chapter concludes by taking stock of the state of the transatlantic regulatory relationship.

The (inadvertent) origins of limited regulatory conflict

The EU and the US are often depicted as having fundamentally different approaches to regulation (Bradford 2020: 39 and see Petersmann this volume; for reviews see Young 2009: 668-669; Wiener 2011a: 7-23; Vogel 2012: 24-34). Informed by this perception of fundamental differences and by a number of high-profile transatlantic disputes, the transatlantic regulatory relationship is frequently depicted as highly conflictual, even amounting to "system friction" (for a review see Young 2009: 670). Neither of these conventional wisdoms, however, is accurate.

First, transatlantic regulatory differences do not stem from fundamental differences. Rather, each jurisdiction's regulatory choices are highly contingent. Enduring differences – such as tolerances for risk in general and attitudes towards government intervention – cannot explain variation in the relative stringency of regulations across issues or over time or within jurisdictions. While the EU has more stringent regulations on some issues – such as genetically modified crops, chemicals, and climate change – the US has more stringent rules on others – such as choking hazards in food and particulate matter in air pollution (Wiener and Almanno 2015: 104). In addition, the US tended to regulate more aggressively than the EU to protect the environment and consumers until about 1990 after which the positions reversed (Vogel 2012: 24-34). Further, some EU member state governments, such as Poland's, are much less enthusiastic about addressing environmental problems, including climate change than others, such a Germany's. In the US, California has adopted regulations on animal welfare, the environment, and privacy that are closer to EU rules than to US laws. Moreover, Democratic administrations tend to have policy preferences much closer to European preferences on a range of regulatory issues, most notably the environment, than do Republican ones. Relative regulatory stringency is far more variable than assumed systemic differences would suggest.

Rather, transatlantic regulatory differences are shaped by different legal traditions, different problems that need to be addressed, different regulatory priorities, and different constellations of domestic political actors (Winer and Almanno 2015: 103). Which problems are understood to require action can be influenced by public perceptions of risk, which in turn are affected by events, such as high-profile regulatory failures (Vogel 2012: 291; Wiener 2011b: 540). These factors help to explain differences in transatlantic regulations but which jurisdiction's rules are more stringent is highly contingent.

Second, while there are undoubtably differences in what, how and how stringently the EU and the US regulate different products and services, those differences are small when compared to range of regulations adopted (and not) around the world (Wiener 2011a: 6; Wiener and Almanno 2015: 114). A focus on what is different can mask what the EU and US have in common in terms of shared policy objectives.

Third, and echoing the need to avoid focusing only on problems, the transatlantic regulatory relationship is not nearly as fraught as is commonly assumed. The perception of regulatory conflict is heavily informed by the US's complaints before the World Trade Organization (WTO) against the EU's ban on hormone-treated beef and its moratorium on the approval of genetically modified crops. The US won both complaints and imposed tariffs in an effort to force the EU to lift its ban on hormone-treated beef. In the end the EU changed the form but not the substance of its ban and a dissatisfied US eventually settled for compensation in the form of a quota for hormone-free beef (Young 2021: 76-80). The EU lifted its moratorium on the approval of genetically modified varieties for sale, but the approval process remains too slow for American liking and approvals for cultivation remain stalled and member states can still ban EU-approved varieties (Young 2021: 120-127). The US, however, has not pursued the dispute. Both issues still rankle US farmers although the political heat has gone out of them.

These trade disputes, however, are very much the exception, not the rule. In fact, they are two of only four transatlantic regulatory disputes in more than 27 years of the WTO's existence (through at least mid-2022). Neither of the other two – a US complaint against the EU's ban on the use of anti-microbial treatments for chicken and an EU complaint against a US ban on poultry imports on unspecified safety grounds – were pursued. Trade disputes thus arose concerning a minute proportion of the regulations that the EU and the US have adopted. Even

broadening the lens of a what constitutes a trade dispute considerably to include policies identified as barriers by the other side does not dramatically change the picture. During 1995-2007 (the first 13 years of the WTO) the US Trade Representative identified only 28 of the 676 regulations that the EU notified to the WTO as trade barriers (just over 4 percent), while the EU griped about only 33 of the 2275 regulations the US notified during the same period (just over 1 percent) (Young 2009: 674). The transatlantic regulatory relationship, therefore, is much more peaceful than a focus on the high-profile dispute suggests.

The trials and tribulations of transatlantic regulatory cooperation

That regulatory disputes are rare, however, does not mean that regulatory differences do not matter. Because all goods and services must comply with the rules of the jurisdiction in which they are sold, firms operating in the large, interpenetrated transatlantic economy have to comply with different sets of rules. In some instances, the firm can choose to comply with the more stringent rule and sell in both markets. In other instances, however, the US and EU requirements are incompatible or even contradictory, such as with automobile safety regulations (see Commission 2016: Annexes 1 and 3-7). Service providers operating in both markets may be subject to supervision by two sets of regulators with different performance requirements. Some firms – including airlines and technology platforms – have at times found themselves caught between having to comply with demands for information from US security services and EU requirements to protect their customers' privacy. Such "rule overlap," while rare, presents profound problems for those companies operating in the transatlantic economy (Farrell and Newman 2016).

In addition to the costs of complying with foreign rules there are also costs associated with demonstrating that one's product complies with those rules, including testing and certification costs (Chase and Pelkmans 2015: 30). Such costs particularly deter small and medium sized enterprises (and even not such small firms) from exporting as they do not have the volume of exports that would make incurring these costs worthwhile (Chase and Pelkmans 2015: 30; Workman 2014: iv). Regulatory differences, even minor ones, therefore, can impede trade.

Approaches to international regulatory cooperation

The US and EU have consequently invested considerable effort in trying to mitigate the adverse consequences of different regulatory requirements for their firms. In the absence of a bilateral trade agreement, the transatlantic economic relationship is governed by WTO rules. As noted above, the US and EU have on (rare) occasion sought to address regulatory barriers through WTO complaints, but even rulings favorable to the complainant did little to improve the situation on the ground. Moreover, WTO rules have little purchase on the regulation of services, so much of the value of the transatlantic economy falls outside the reach of multilateral dispute settlement.

Spurred by persistent friction stemming from regulatory differences and recognizing that the WTO was ill-suited to addressing them, the EU and US constructed a series of frameworks for regulatory cooperation. Transatlantic regulatory cooperation began with the Transatlantic Declaration in 1990 and accelerated after the New Transatlantic Agenda (NTA) in 1995 and the Transatlantic Economic Partnership (TEP) in 1998. These efforts created a web of new bilateral channels for political and policy dialogue. They extended from bilateral summits at the highest political levels to an NTA Task Force at the operational level of policy-specialist officials. In 2007 the EU and US, in an effort to give greater political impetus to regulatory cooperation,

created the Transatlantic Economic Council (TEC). The unsuccessful Transatlantic Trade and Investment Partnership (TTIP) negotiations (2013-16) were the most recent and most ambitious attempt to address transatlantic regulatory differences (see Eliasson this volume). International regulatory cooperation, however, is very difficult and these transatlantic efforts have produced limited results.

Because the adverse trade effects of domestic regulations are usually side-effects of realizing other policy objectives, they, unlike tariffs, cannot simply be traded away. Regulatory cooperation, therefore, focuses on how to liberalize trade while still achieving the underlying public policy objectives (OECD 2013: 15). There is a tendency in the literature on international regulatory cooperation to assume that the means to square this circle is through harmonization – the adoption of a common rule by both parties (Koenig-Archibugi 2010: 416; Winslett 2019: 101). Adopting a common rule, however, entails adjustment costs -- regulators need to change their rules and producers must adapt their products to new requirements (Büthe and Mattli 2011: 12; Drezner 2007: 45-7; Krasner 1991: 336; Winslett 2019). If the common rule is the same as that of one of the partners, there are also distributional implications, as one party benefits from greater market access at no cost, while the other bears all of the costs in exchange for the benefit of a larger market. These adjustment costs and distributional implications mean that regulatory harmonization is very difficult to agree and it is rarely pursued (OECD 2013).

Harmonization, however, is only one form of regulatory cooperation (OECD 2013: 22). Parties can mitigate the adverse trade effects of their rules by accepting that the other's rule as it stands is equivalent in effect to its own. Mutual acceptance of equivalence avoids the adjustment costs of harmonization but is often viewed as deregulatory by civil society organizations that doubt whether the parties' rules really are equivalent in effect and expect firms of both parties to

comply with which ever requirement is less demanding. Regulators may also not be persuaded that the other's rule really is equivalent in effect or, if it is, that the rule is enforced effectively. Regulatory coordination can also include aligning data and testing requirements and accepting the other party's certifications of conformity. These steps can lower the costs firms incur for complying with different rules. Most international regulatory cooperation, therefore, is not nearly as ambitious as the pursuit of harmonization.

The experience of transatlantic regulatory cooperation

In line with wider international experience, the US and EU have never seriously attempted regulatory harmonization, although US agricultural interests have pushed for the EU to align its food safety rules with those of the US. There has been greater, although still limited, transatlantic interest in agreeing common rules where neither has yet regulated. In this instance, there are no adjustment costs, although both parties still have to implement any agreement through their respective domestic processes. These efforts have not borne much fruit, with electric vehicle standards, agreed within the World Forum for Harmonization of Vehicle Regulations, being the most significant example.

Rather, the most ambitious transatlantic efforts at regulatory cooperation have focused on establishing the equivalence of the two jurisdictions' rules. Under the 1999 Veterinary Equivalence Agreement (VEA) EU and US regulators agreed on a product-by-product basis, which of the exporter's rules achieved the importing party's level of sanitary protection. Many more EU measures were accepted as equivalent by the US than the other way around (McNulty 2005: 6). In 2004 the US and EU established the equivalence of their maritime equipment regulations (Commission 2013: 5). This agreement was made possible by prior alignment of

rules through the International Maritime Organization. In 2011 the EU and US concluded the Agreement on Cooperation in the Regulation of Civil Aviation Safety, which requires acceptance, in most cases, of findings of compliance and approvals made by the other party and agreement that the other party's standards are 'sufficiently compatible to permit reciprocal acceptance of approvals and findings of compliance with agreed upon standards' (Eisner 2016: 34). The US's Federal Aviation Administration only gradually accepted that the authorities in all EU member states could be relied upon to make correct determinations. Trust had to be established. Efforts to establish the equivalence of US and EU automobile regulations during the TTIP negotiations foundered because analysis revealed that the two sets of regulations, while largely equivalent in effect, had important areas of difference (Young 2017). Equivalence, therefore, rests on both the rules establishing that the rules are actually equivalent in effect and both sets of regulators trusting their counterparts to effectively enforce those rules.

The US and EU officials have also established equivalence to mitigate the adverse effects of their financial regulations for the other's firms (Peterson et al 2005: 31). For instance, the US Securities and Exchange Commission (SEC) modified how it regulated financial conglomerates, large financial services groups engaged in both banking or investment and insurance, such that the Commission was willing to consider it equivalent to the EU's 2002 Financial Conglomerates Directive (Bach and Newman 2007: 838; Posner 2009: 673). This meant that their activities in Europe could be regulated by the US rather than being supervised by European regulators. In 2007 the SEC deemed European accounting standards acceptable for European firms seeking to list on American stock exchanges, rather than require them to use US accounting standards (the EU already accepted US standards) (Pollack and Shaffer 2009: 99; Posner 2009: 672). These

efforts eased the implications of regulatory differences for financial firms operating across the Atlantic.

EU and US officials have sought unsuccessfully to find a similar framework to overcome the implications of rule clash for the transfer of personal data (see Fahey and Terpan this volume). Under successive EU laws – the 1995 Privacy Directive and the 2016 General Data Protection Regulation -- the transfer of personal data from the EU is restricted to jurisdictions whose laws provide equivalent protections or require firms to take bespoke steps. The EU and US's have sought to agree a framework that provides protections equivalent in effect to the EU's that US companies can choose to comply with and thus benefit from unimpeded data flows. The 2000 Safe Harbor Agreement and the 2016 Privacy Shield, however, were both struck down by the European Court of Justice for not actually being equivalent in effect particularly because they did not provide sufficient protections for European citizens given the ability of the US government to require private firms to turnover personal data on national security grounds. In March 2022 the US and EU announced a political agreement on a replacement for the Privacy Shield, but it remains to be seen whether its provisions are sufficiently equivalent to EU requirements to survive a legal challenge.

The US and EU have also sought to reduce the costs associated with complying with their different rules. Towards that end, in 1998 the US and EU concluded six sectoral mutual recognition agreements (MRAs). Under these agreements the EU agreed to accept American certification bodies' determinations that American products comply with EU rules and vice versa. Despite their limited objectives, only three MRAs – those covering telecommunications equipment, electromagnetic compatibility of equipment and appliances and recreational craft – became operational. The MRAs were so difficult to implement because the US and EU have

very different systems for certifying products (Egan and Nicola 2022). In 2017, however, the European Medicines Agency and the US Food and Drug Administration concluded an agreement that enables them to accept the other's inspections of medicine manufacturing facilities' compliance with good manufacturing processes (GMP). The regulators saw this agreement as a way to free-up resources that can be redeployed where the need is greater (FDA 2017). This agreement was easier to implement than other MRAs as government agencies are responsible for certification in both jurisdictions. As with aviation safety, however, it took some time for the US regulator to accept that the regulators of all of the EU's member states could be trusted with the task.

Top-down efforts at regulatory cooperation such as under the New Transatlantic Agenda and in the TTIP negotiations have been largely unsuccessful. This is not because of the inability of the US and the EU to agree common rules, for they have not tried. Rather the challenge has been persuading regulators (and courts) on both sides that the regulations really are equivalent in effect, especially in terms of their implementation and enforcement. Nonetheless, there have been some notable successes when regulators have seen the benefits of cooperation and taken the lead, as they did with respect to pharmaceutical factory inspections and aviation safety.

The US-EU Trade and Technology Council (TTC), which was launched in 2021, is the latest top-down attempt to advance transatlantic regulatory cooperation, although such cooperation is not the main focus of the TTC (see Eliasson this volume). Moreover, the TTC is explicitly forward looking and is not intended to address existing regulatory differences (Dombrovskis 2021; Hamilton 2022), which have been the main focus of transatlantic regulatory cooperation to date. Rather, the focus is on greater transatlantic cooperation in responding to the challenge posed by China's technological rise (see below).

Great power (regulatory) competition

Given their status as regulatory great powers and their regulatory differences, the EU and the US are often perceived to be engaged in regulatory competition around the world. This is a rather one-sided competition with the EU much more actively engaged than the US. Bradford (2012: 5) claims that the EU is 'the predominant regulator of global commerce' (see also Barker 2020; Bradford 2020: 101 and 167). The impression of the EU's regulatory influence is echoed in the press, with, for example, The *New York Times* (19 October 2013: A1) calling the EU a 'regulatory superpower' (see also the *Wall Street Journal*, 23 April 2002 and 26 October 2007; Kang 2022).

Transatlantic regulatory competition: From inadvertent to non-existent

The most common form of transatlantic regulatory competition is inadvertent and driven by market forces. Anu Bradford (2012; 2020) has coined the term the "Brussels effect" to capture the influence of EU rules beyond its borders. The "Brussels effect" describes how companies modify their products or services to comply with EU's stringent rules and sell them around the world. The logic underpinning the Brussels effect is that the EU's market is too valuable for foreign firms to ignore. It also tends (at least in certain domains) to adopt the world's most stringent standards, which it is able to enforce effectively. Having gone to the trouble of developing a product or service to comply with the EU's requirements, companies sell the same product or service worldwide as it will exceed the requirements of jurisdictions with less stringent rules. A crucial specification associated with the Brussels effect is how feasible or costly it is for a company to differentiate a product or service for different jurisdictions, what Bradford (2020: xv) calls "divisibility". If the product or service is not divisible, then a company

will have a particularly strong incentive to meet the EU's requirements irrespective of where it plans to sell its product or service.

A more profound form of regulatory influence is when governments align their rules with the EU's (Young 2015a). This process, known as "trading up" (Vogel 1995) or the "de jure Brussels effect" (Bradford 2020), depends on the domestic politics of the other jurisdiction. Whether rule alignment occurs depends on the incentives for the externally oriented firms to lobby for change in their home market (the incompatibility of home and EU requirements; the domestic competitive advantage they might gain from a rule change); the presence of other actors that favor the rule change for other reasons; the strength of opposition to the rule changes; and how difficult it is to adopt change (the number of veto players). Although other countries and some US states, most notably California, have adopted EU-style rules, the US as a whole has largely been immune to the de jure Brussels effect (Vogel 2012: 283). This form of regulatory competition is passive and is driven by market forces.

Data privacy, particularly the EU's General Data Protection Regulation (GDPR), is a commonly cited example of the Brussels effect (see Bradford 2020: 142; Burwell and Propp 2020: 2; Garcia Bercero and Nicolaidis 2021: 12). Firms around the world have clearly adapted their privacy practices to comply with the EU's requirements. Many governments have also aligned their privacy rules with EU requirements, but here the process is not that purely of market-based competition. Rather, the Commission actively vets governments' privacy rules to see if they provide equivalent protection to the EU's, what Jarlebring (2022: 539), calls "regime vetting." Regime vetting creates an extra incentive for domestic rule change, but it is rare. It is also intended to ensure the effectiveness of EU protections (to prevent data "leakage") rather than as a form of regulatory imperialism.

By contrast, the Commission (1996: 4; 2006: 5; 2015b; 2021: 16) has long expressed rhetorical commitment to exporting EU rules through trade agreements. Getting trade partners to adopt EU regulations would both eliminate regulatory obstacles to European exports and create new barriers to the imports from jurisdictions that do not follow EU rules. It would thus give EU firms a considerable competitive advantage. This is what the Trump Administration had in mind when it expressed its desire to stop the EU from exporting its food safety regulations (USTR 2019: 2). Reflecting Commission rhetoric, many scholars depict the EU as exporting its rules and thus engaging actively in regulatory competition (Piermartini and Budetta 2009: 291; Stoler 2011: 217; Melo Araujo 2016: 25; Meissner 2018: 43). Despite the Commission's rhetoric, however, the EU, has not actually actively sought to export its rules except through its association agreements and accession processes (Woolcock 2007; Young 2015; 2022). The closest the EU comes to exporting its rules in its conventional trade agreements is to encourage its partners to accept the equivalence of United Nations Economic Commission for Europe automobile safety standards (Young 2022). Moreover, accepting the equivalence of UNECE standards does not preclude the EU's partners from accepting another jurisdiction's (i.e., the US) rules as also equivalent. Thus, there is a considerable gap between the rhetoric and the reality of EU rule export. Moreover, the US does not actively export its own regulations (Young 2022). Trade agreements, therefore, are not instruments of transatlantic regulatory cooperation.

That said, both the US and the EU have long sought to induce their trade partners to improve their labor and environmental protections (Postnikov 2019). The EU seeks to promote the ratification and implementation of multilateral environmental agreements and core labor standards through its GSP+ system of trade preferences and through establishing dialogues under the sustainable development chapters of its trade agreements. The US tries to export its domestic

standards in trade agreements that have sanctioning mechanisms. While there are important differences in which standards the EU and US promote and how they promote them, their objectives – strengthening labor and environmental protections in their trade partners -- are compatible and potentially complementary, so there is no transatlantic regulatory competition in this regard.

The Commission's 2021 trade policy review (Commission 2021: 13) suggested a more general shift towards seeking to export EU rules through unilateral trade measures. These efforts are particularly associated with promoting sustainability and include measures such as proposals for a carbon border adjustment mechanism (CBAM), to discourage deforestation, and to exclude forced labor from EU value chains. Such efforts are also consistent with US objectives – if the EU succeeds the US also benefits -- and so do not represent regulatory competition, although the EU's CBAM is a potential source of transatlantic tension if US efforts to address climate change are not considered sufficient and US exports face new levies as a result. Active transatlantic regulatory competition, therefore, is not a thing.

A new approach to transatlantic regulatory cooperation in competition with China

While depictions of transatlantic regulatory competition are overblown, there is brewing regulatory competition between the EU and the US on one side and China on the other. Policymakers on both sides of the Atlantic have expressed concern about China's efforts to overcome the West's technological advantage (Commission 2021: 14; NIC 2021: 54). In this context, the US government (USCE&SRC 2020: 5) and the European Commission (2022) are alarmed by China's efforts to secure important leadership positions in the key international standard setting bodies and to increase dramatically its participation in those bodies' committees.

Setting international standards is seen as giving a jurisdiction's firms a competitive advantage as all other firms have incentives to use that standard (Commission 2021: 16; EPSC 2019: 7; Sinkkonen and Sinkkonen 2021: 47). Standard setting is also viewed as a way of shaping technologies in ways that help to protect a jurisdiction's interests and values, such as protecting privacy or curbing security threats (EPSC 2019: 7; Seaman 2020: 15; USCE&SRC 2020: 105). Thus, shaping international standards is politically important.

In response to China's activities the U.S.-China Economic and Security Review Commission's (2020: 23) recommended that Congress take steps to improve the effectiveness of the US in international standard setting. The EU's 2022 standard strategy calls for better coordination within the EU and closer cooperation with like-minded countries, including the US, to offset China's more "assertive" approach (Commission 2022: 6). In May 2022 under the auspices of the TTC the EU and US launched the Strategic Standardisation Information mechanism "to encourage engagement in new standardisation opportunities and explore taking coordinated action if standardisation activities pose a challenge to EU- U.S. strategic interests and values" (U.S.-EU 2022: 8).

In addition, as part of their ceasefire over the US's Section 232 tariffs on steel and aluminum the US and EU agreed to work with "like-minded" governments on a Global Arrangement on Sustainable Steel and Aluminum." Part of that objective is to agree a standard for low-carbon-intensity steel and aluminum (Fefer 2021). The intention to exclude steel and aluminum imports from nonparticipants that do not meet that standard or do not meet market-oriented conditions or that contribute to excess capacity. Thus, the US and EU are seeking to cooperate on standard setting as part of responding to what they see as the distorting effects of Chinese over capacity in aluminum and steel.

Thus, while EU-US regulatory competition is rare and inadvertent when it does occur, the EU and US are cooperating actively to confront what they perceive as China's challenge.

Conclusion

The transatlantic regulatory relationship is not nearly as politically fraught as is commonly thought. High-profile regulatory disputes are very much the exception. While regulatory differences do create trade frictions, the two sides recognize that regulatory differences have their origins in different domestic politics, which means that they are difficult to change and to a considerable extent the two side accept that differences will persist. That is why WTO regulatory disputes have been so rare and why the EU and US have not pursued regulatory harmonization. Rather, they have sought to mitigate the adverse trade effects of regulatory differences. These efforts have been most successful when regulators have seen the benefits of cooperation (primarily in terms of burden sharing) and are persuaded that their rules or processes are equivalent in effect and appropriately implemented.

In addition, despite some concerns, the US and EU do not actively engage in regulatory competition with each other. What competition there is is largely inadvertent and the product of market forces. The EU and US are, however, gearing up to cooperate to resist China's efforts to shape global rules. This shift entails focusing less on the technical differences between them and emphasizing their common regulatory objectives.

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