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Trade Disputes between China and the EU —An Overview and Its Implications

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China and the EU are of major weight in today's world economy. These two trading partners are involved in big volume trade which not only benefits consumers on both sides, but also brings about frictions in many forms. Simple as it seems, however, I believe there are deeper political implications (which are suspected to be of protectionist nature) behind these trade disputes besides the straightforward economic influences.

The EU is losing its comparative advantage in many industries. And that's where trade defense instruments, such as anti-dumping, are most employed. On the other hand, the EU is a flagship in areas concerning sustainable development, green technology, intellectual property rights protection, etc.. And that's where new forms of trade barriers are emerging, such as technical barriers to trade and intellectual property rights protection. Its ambition to once again dominate the developing agenda at the international level is becoming a major factor on its act of posing non-tariff trade barriers to developing countries, in this study, especially China.

This paper focuses on three major disputed areas, namely, anti-dumping, **technical barriers to trade, and intellectual property rights protection**, to reveal how the EU is trying to protect its domestic industries at the expense of trade. Under the title of technical barriers to trade, a part is included to introduce a new type of technical barriers to trade, the green barriers. This paper is a positive study of the current situation in China-EU trade.

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... 2.2.1 It Is Complicated: the EU's Dedication to Technical Barriers to Trade

Due to reasons like local customs, tastes, and concerns with safety, environmental protection, animal rights, and sustainable development prospect, technical barriers to trade are laid in order to regulate exports from foreign producers. As one major factor in regard to market access, the World Trade Organization was the first to take into account such a factor that may have a negative impact on international trade. In GATT 1947, there is only a general reference to technical standards and regulations enclosed in Article III, XI, and XX, binding that the contracting parties should apply equal treatment of imported products in accord with national regulations and standards.⁸³ As practice over time, a GATT working group which was set up to evaluate the impact of non-tariff barriers in international trade concluded that “technical barriers were the largest category of non-tariff measures faced by exporters.”⁸⁴ **The current most widely quoted international agreement on technical barriers to trade is the Agreement on Technical Barriers to Trade (TBT), or the Standards Code. It settles down rules to follow in the preparation, adoption and application of technical regulations, standards and conformity assessment procedures.**

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Just like with anti-dumping mechanism in the EU, even though Agreement on Technical Barriers to Trade (TBT) is the main international instrument adopted in this area till now, EU sought to structure its system with unifications. **Complying in major content with the Standards Code, the EU system is most famous for its guiding principle of drafting such policies and regulations, the “precautionary principle”. It was first released in Communication from the Commission on the Precautionary Principle in 2000, establishing that in practice the principle is defined, not treaties. Its scope is defined “much wider and specifically where preliminary objective scientific evaluation, indicates that there are reasonable grounds for concern that the potentially dangerous effects on the environment, human, animal or plant health may be inconsistent with the high level of protection chosen for the Community”.**⁸⁵

However, the motive for passing such a strategic policy is more than the benevolent sympathy for the health of either human beings or natural entities. **It goes further into the political sphere as a tool to preempt new market. Why so? As revealed in an American report, the technical barriers to trade premised on the precautionary principle are preventing many American products from entering the European market. The regulations and standards set up for the alleged benevolence are**

actually “ignoring free market principles, such rules arguably also violate the terms of three WTO agreements: the Sanitary and Phytosanitary (SPS) Agreement; the Technical Barriers to Trade (TBT) Agreement; and the General Agreement on Tariffs and Trade (1994)... in addition, environment, health, and safety regulations and standards... are being used to further the EU’s global economic agenda under the guise of ‘sustainable development’ as articulated by the various agencies and programs of the United Nations”.⁸⁶

84 See WTO website, at <http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm>.

85 See “Communication From The Commission: On The Precautionary Principle”, available at <http://ec.europa.eu/dgs/health_consumer/library/pub/pub07_en.pdf>.

86 See Kogan Lawrence, “Europe, China and the Use of Standards as Trade Barriers: How Should the US Respond?” p1, June 3 2005, available at <<http://www.itssd.org/Correspondences/LKogan-ITSSDtestimony-6-3-05-HouseScienceComm.pdf>>.

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It is put quite plainly by Wolfgang Clement, former Federal Minister of Economy and Labour of Germany, the biggest exporter in the EU, saying that “standardization (as one of the three technical barriers to trade) is also extremely relevant for the individual participants in economic processes, since *whoever makes the standards controls the market*. In times of increasing globalization and rapid technological development, the role of standardization in opening up new markets will become increasingly important.”⁸⁷

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... 2.2.3 Penny Wise, Pound Foolish: A Strive to Occupy

A penny less of low price imported commodities means a penny more European customers have to pay for high price products. To put it in a larger context, the loss derived from technical barriers to trade is just as obvious and loud to the EU as it is painful and intensely-felt to China. Then why are they still so frequently employed? What can be done to relieve the current situation? The decrease of notifications in 2011, as explained by the RAPEX Annual Report due to budget cut in the EU, shows that **posing technical barriers** is not one the top priorities of the EU, but it **has a major influence on EU’s trade policy and other external policies**. A major motive to pass so many directives concerning regulations,

standards and conformity assessment is the enthusiasm and ambition of setting rules for international trade.

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Talks have been around for quite some time. *The Economist* was among the first to discover the discreet plan of the EU. In 2007, when American software empire Microsoft was fined 899 million euro by the European Commission for defying a 2004 order from Brussels to lower prices for software competition⁹⁸, this newspaper claimed “Brussels is becoming the world’s regulatory capital”.⁹⁹ As illustrated before, **even if a product is safe according to certain standards passed by international standardization bodies such as ISO, it still needs to be examined by the EU bodies for market access because the EU does not acknowledge international standards in many cases.** To solve this conundrum, there are two alternatives, either comply with the EU standards, or comply to your only national standards as long as they comply with the EU rules. These two things are exactly what China has been doing.¹⁰⁰

The political motive behind the seemingly economic and good-willed effort to regulate and standardize is hard to ignore. As argued in a paper, the “regulatory contest”, which was heatedly discussed through the last decade, “end(s) up with regulatory domains characterized by contested political discourses”.¹⁰¹ In a speech by **former Commissioner of Commerce, Lord Peter Mandelson put it straight and clear that “the EU is about using our continental strength to shape the world, using our collective weight to match that of other powers in the 21st century... It is the rules of the single market which give us the foundation to export our rules and standards around the world”.**¹⁰² To meet this end, various means are employed. These means, including the three major forms of technical barriers to trade, are all underpinned by the guiding “precautionary principle”.

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This principle enables the EU to take actions as long as it finds potential risk in consumer products even before any scientific evidences are soundly proved. It gives the EU the pre-emptive initiative to affect trade of certain goods. However, what’s at question is who is to decide whether these measures taken on the premise of “precautionary principle” are standing on solid scientific and economic ground? The answer is the EU. To put it in a simple way, the EU makes rules, the EU takes actions according to the rules it makes, and the EU cannot be held accountable since it takes such measure to “prevent potential risks” when these risks are not even considered as risks by third party regulatory and standardization

bodies. This subjective decision-making process is against market liberalization rules and EU democratic principles;103 however it stands on the basis that the EU gets to decide what is best for European customers.

103 See Kogan Lawrence, “EU Hides Behind 'Private' Standards in Effort to Secure Global Regulatory Control”, available at <http://www.itssd.org/GTCJ_03-offprints%20KOGAN%20-%20Discerning%20the%20Forest%20from%20the%20Trees.pdf>.

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