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## THE TRANSATLANTIC SHIFT IN HEALTH, SAFETY & ENVIRONMENTAL RISK REGULATION, 1960 TO 2010

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**Abstract:** An important discontinuity in health, safety, and environmental risk regulation has taken place in both Europe and the United States during the last five decades. Between 1960 to 1990, regulations adopted in the United States were typically more risk averse, comprehensive and innovative than those adopted in European countries or by the European Community/Union. The United States also played a leadership role in supporting more stringent global environmental regulation. Since around 1990, this pattern of relative transatlantic regulatory stringency has reversed: during the last two decades, the European Union has adopted a wide range of more stringent risk regulations than the United States. The EU has also replaced the United States as the primary initiator and supporter of new environmental treaties. **The expansion and strengthening of European risk regulations and the relative lack of new regulations adopted by the United State has been largely shaped by three factors: stronger public demands for more stringent regulations in Europe, more political support for regulations by policy-makers in the EU than in Washington, and different policy approaches to risk assessment. The later is associated with the growing influence of the precautionary principle in Europe and the increased reliance on regulatory impact assessment in the US.** The recent European approach to risk regulation represents a response to a series of false positive policy failures, while the slowdown in the rate of regulatory expansion in the US is in part attributable to politically influential false positive errors.

...Within political systems, there are important linkages among many health, safety, and environmental risk regulations. Their public issue life cycles overlap and they often follow parallel or convergent political trajectories.<sup>3</sup> This means that if a government is adopting more stringent regulations toward some consumer or environmental risks caused by business, then it is also more likely to do so for others. Alternatively, if it is not stringently regulating a specific health, safety, or environmental risk, then it is also less likely to adopt more risk-averse regulations for others. In short, risk regulations are both interdependent and shaped by similar political

developments. These can be stable for long periods of time, but the policy equilibriums that underlie them can also change significantly.

A noteworthy discontinuity in the politics of regulatory stringency took place on both sides of the Atlantic in about 1990. If a new risk regulation was enacted on either side of the Atlantic during the three decades prior to 1990, then it is more likely that the American standard was initially, and in some cases has remained, more risk averse. However, if it was adopted on either side of the Atlantic after 1990, then it is more likely that the regulation adopted by the European Union was initially, and has often remained, more risk averse.

### **...The Shifting Pattern of Transatlantic Trade Disputes**

The shift in transatlantic regulatory stringency is also evident in the changing pattern of European-American trade disputes.<sup>16</sup> The earlier wave of disputes over the use of protective regulations as non-tariff trade barriers (NTBs) between Europe and the United States primarily involved European challenges to, or complaints about, the barriers to transatlantic commerce created by more stringent American regulatory standards. The EU and/or various European governments filed formal complaints with the General Agreement on Tariffs and Trade (GATT) over the excise tax provisions of the 1986 Superfund reauthorization, the American secondary boycott of tuna imports from Spain and Italy (which was based on the Marine Mammal Protection Amendments of 1984 and 1988), and American corporate fuel economy standards (CAFE), which were adopted in 1975 and amended in 1980. European officials were also highly critical of the testing requirements for new chemicals adopted by the United States in 1976.

However, more recent transatlantic regulatory-related trade disputes have revolved primarily around American complaints about the trade barriers posed by more stringent European regulations. In 1996, the United States filed a formal complaint with the World Trade Organization (WTO) that challenged the legality of the EU's ban on the sale of beef from cattle to whom growth hormones had been administered, which was applied to American beef imports in 1989. In 2003, the United States filed a complaint with the WTO challenging the EU's procedures for the approval of genetically modified organisms (GMOs), as well as the unwillingness of some member states to permit GMO varieties approved by the European Commission. In 2009, the American government filed a complaint with the WTO over the EU's refusal to permit imports of processed poultry treated with anti-bacterial chemicals such as chlorine dioxide, a processing method that differed from the method required by the EU in 1997.

**American officials and firms have also complained to the EU about the obstacles to transatlantic commerce posed by a wide range of other European consumer and environmental regulations, including its ban on the milk hormone BST, its ban on human-use antibiotics as growth promoters in livestock feed, its electronic recycling requirements and bans on hazardous toxic substances in electronics, and the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), the EU's stricter and more comprehensive chemical approval and testing regulation adopted in 2006.<sup>17</sup> The latter statute was strongly opposed by American government officials and American-based chemical firms.** American-based airlines have also objected to the 2008 decision of the EU to regulate the greenhouse gas emissions of foreign airlines that take off and land in Europe.

**...<sup>17</sup> For an extensive list of American business criticisms of EU regulatory policies, their lack of scientific basis, and the harm they pose to American firms, see *Looking Behind the Curtain: The Growth of Trade Barriers that Ignore Sound Science* (Washington, DC: National Foreign Trade Council, 2003); Lawrence Kogan, 'Unscientific' Precaution:**

***Europe's Campaign to Erect New Foreign Trade Barriers* (Washington, DC: Washington Legal Foundation, 2003); *EU Regulation, Standardization and the Precautionary Principle: The Art of Crafting a Three-Dimensional Trade Strategy That Ignores Sound Science* (Washington, DC: National Foreign Trade Council, 2003); Lawrence Kogan, *Precautionary Preference: How Europe's New Regulatory Protectionism Imperils American Free Enterprise* (Princeton, NJ: Institute for Trade, Standards and Sustainable Development, 2005).**