# Identifying Regulations Affecting International Trade and Investment:

## Better Classification Could Improve Regulatory Cooperation

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Technological and political innovations continue to reduce barriers to international trade. As a result, trade accounts for increasingly larger portions of economic output. During the ten years from 2002 to 2012, U.S. exports and imports grew a total of $4.9 trillion – a change from 22.8% of U.S. gross domestic product (GDP) to 31.4% of GDP.[4] Within jurisdictions such as the European Union and the United States nearly a quarter of the goods and services that are available are the direct results of international trade.[5] Additionally, as the level of global market integration increases, markets are now characterized by increasingly complex supply chains[6] which expand the number of countries able to participate in international trade.[7] Although this unbundling and disaggregation of trade is largely responsible for increased competition and lower prices,[8] it also means that country-specific regulations affecting internationally traded goods have the potential to create significant costs, reducing the economic benefits generated through trade.

Innovations within financial markets are also responsible for sizeable gains in the efficient allocation of capital towards its most productive uses via foreign direct investment (FDI).[9] Although the United States Office of Management and Budget (OMB) points out that "…more attention has been paid to issues of international competitiveness and barriers to international

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[4] Government Accountability Office. (2013). *International Regulatory Cooperation: Agency Efforts Could Benefit from Increased Collaboration and Interagency Guidance*. (GAO Publication No. 13-588). Washington, D.C.: U.S. Government Printing Office

[5] Morrall, John., III. "Determining Compatible Regulatory Regimes between the U.S. and the EU" *U.S. Chamber of Commerce. Advancing Transatlantic Business* (2011): 4

[6] Government Accountability Office (2013)

[7] For a further discussion of the international trade landscape, including the prevalence of intra-industry trade and multinational firms see: Melitz, Marc J., and Daniel Trefler. 2012. "Gains from Trade When Firms Matter." *Journal of Economic Perspectives*, 26(2): 91-118.

[8] Bollyky, Thomas J. "Better Regulation for Freer Trade" *Council on Foreign Relations. Renewing America. Policy Innovation Memorandum No. 22.* June 2012. http://www.cfr.org/trade/better-regulation-freer-trade/p28508 : "… global production models now dominate international commerce, with intermediate products comprising 56% of global goods trade and 73% of global services trade."

[9] José Guimón "Government Strategies to Attract R&D-intensive FDI" *The Journal of Technology Transfer,* 34(4): 364-379.

create such an impact: those with a direct effect on international trade, rules concerning international investment, and rules pertaining to direct U.S. government subsidies likely to distort specific industries engaged in international trade.

Although the analysis initially counts regulations affecting areas such as domestic agricultural subsidies because these are likely to "be of significant interest to trading partners," it also presents results with these excluded, particularly when considering agency performance in flagging rules. The logic here is that foreign trading partners may well be affected by U.S. domestic subsidies but IRC is unlikely to improve due to public comment inputs by foreign trade partners in this area as the decision to pass legislation subsidizing a domestic sector of the economy is largely a political issue involving U.S. sovereignty.

## Limitations of the Data Collected

Although the analysis attempts to capture rules which are likely to have a *significant* impact on international trade and investment, it is worth noting that the parameters defining an "economically significant" rule and a "major" rule are similar but not identical.[48] This will affect the accuracy of any discussion of the total number of rules with a "significant international impact" issued by U.S. agencies since different search parameters must be used when identifying pertinent rules within the *Unified Agenda*. The data collected could also suffer from any omissions or inaccuracies in the databases of either OIRA or GAO. Furthermore, it is possible that this analysis actually understates the total number of rules that should have been flagged. This would be the case if rules were not correctly labeled as either "economically significant" or "major," even if *ex post* costs actually justified these designations.

Finally, although the criteria used to define which rules will likely have a "significant international impact" is derived from E.O. 13609, there is an inherently qualitative aspect to the selection that includes reading through the text of rules and making judgements regarding which regulated sectors of the domestic U.S. economy involve considerable FDI. It is noteworthy, however, that the validity of our selection methodology is implicitly bolstered due to the fact that rules we identified with an impact on international trade in goods also appear on the list of the World Trade Organization's (WTO) Technical Barriers to Trade (TBT) notifications submitted by the United States' National Institute of Standards and Technology (NIST). NIST is the U.S. agency responsible for sending notifications to the WTO of rules that are likely to have significant impacts on international trade, as required by the Agreement of Technical Barriers to Trade, which was negotiated at the end of the Uruguay Round in 1994.[49]

[48] For a concise analysis of this difference see: http://www.regblog.org/2011/09/27/measuring-regulatory-activity-what-can-we-learn-from-the-unified-regulatory-agenda/

[49] http://gsi.nist.gov/global/index.cfm/L1-4/L2-12/A-219

## How Many U.S. Regulations Affect International Trade and Investment?

Although the United States issues over 3,500 rules every year, many of these include routine matters such as posting the times when drawbridges may be operated.[50] Table 1 contains information on the number of rules that were published each year in the U.S. from 1997 through 2014, how many were "significant" and, therefore, reviewed by OIRA, how many of them were "economically significant" (executive branch agencies), "major" (independent agencies), and, among these, the total number of rules we identified as likely to have a significant international impact. The data indicate that over this period, according to our analysis, an average of 20% of the larger rules likely had a significant impact on international trade and investment.

### Table 1. Published Final Rules Classified by Category, from 1997 through 2014

| Year Published | Total Rules | Significant Rules | Economically Significant | Major | "ES/Major Total | International Impact (GW Analysis) |
|---|---|---|---|---|---|---|
| **2014** | 3,554 | 177 | 56 | 11 | 67 | 19 |
| **2013** | 3,659 | 191 | 57 | 23 | 80 | 11 |
| **2012** | 3,708 | 232 | 46 | 15 | 61 | 16 |
| **2011** | 3,807 | 293 | 53 | 22 | 75 | 17 |
| **2010** | 3,573 | 308 | 74 | 17 | 91 | 17 |
| **2009** | 3,503 | 260 | 56 | 16 | 72 | 17 |
| **2008** | 3,830 | 331 | 64 | 19 | 83 | 19 |
| **2007** | 3,595 | 285 | 44 | 11 | 55 | 13 |
| **2006** | 3,718 | 303 | 33 | 8 | 41 | 4 |
| **2005** | 3,943 | 285 | 42 | 8 | 50 | 9 |
| **2004** | 4,101 | 282 | 47 | 10 | 57 | 15 |
| **2003** | 4,148 | 369 | 43 | 11 | 54 | 12 |
| **2002** | 4,167 | 307 | 39 | 8 | 47 | 10 |
| **2001** | 4,132 | 298 | 56 | 10 | 66 | 8 |
| **2000** | 4,313 | 296 | 50 | 23 | 73 | 15 |
| **1999** | 4,684 | 271 | 36 | 13 | 49 | 8 |
| **1998** | 4,899 | 245 | 40 | 31 | 71 | 10 |
| **1997** | 4,584 | 229 | 36 | 26 | 62 | 10 |
| **Totals** | **71,918** | **4,962** | **872** | **282** | **1,154** | **230** |

[50] Dudley, Wegrich (2015)

## Conclusions

Our analysis estimates that an average of 20% of the economically important rules published every year by U.S. regulatory agencies are likely to have a significant effect on international trade and investment. However, our analysis of agency performance in flagging these rules indicates that neither OMB guidance in 2008 nor E.O. 13609 have been sufficient to create a robust system of "early notice" for international stakeholders. Consequently, there are still areas of opportunity for improving regulatory outcomes through earlier notice that could engage domestic and international parties during notice-and-comment periods on rules with potential international impacts.

Perhaps the most telling example of the limits of President Obama's 2012 requirement is that, even for rules that agencies have correctly flagged as likely to have an international impact, preambles include no mention of E.O. 13609. Agencies include sections within the text of their rules—e.g., "Regulatory Assessment Under Executive Order 12866"—that disclose and elaborate on their efforts to comply with certain requirements as they consider rulemaking. Although agencies could very well be thinking seriously about avoiding the creation of technical barriers to trade by, for example, considering existing regulatory approaches used by foreign trade partners, they are not explaining this in the context of E.O. 13609 within their preambles.

## Recommendations

Some agencies appear to be taking their responsibility to flag rules with significant international trade and investment effects more seriously than others. OIRA may need to provide some guidance to agencies for identifying relevant rules, and ensure that future *Unified Agenda* entries are accurately flagged.

Better identification of regulations that might have international trade and investment impacts could improve the quality of regulatory impact analysis and contribute to promoting GRP both domestically and internationally. In particular, an expansion of input from domestic and international stakeholders during notice-and-comment periods could aid agency efforts to better project costs, be more aware of additional international standards they might consider, and avoid duplicative or unnecessary regulations. Finally, better flagging could aid in efforts to improve the outcomes of IRC – where countries are focusing their efforts to eliminate unnecessary remaining barriers to international trade and investment flows.