Jnl Publ. Pol., **24**, 1, 127–144
DOI: 10.1017/S0143814X04000066

Trading Up in the Transatlantic Relationship[1]

SEBASTIAAN PRINCEN *Political Science, University of Utrecht*

ABSTRACT

This article analyses the conditions under which a race to the top or California effect is likely to take place. To that end, it examines two cases in which the EU restricted or threatened to restrict imports from the United States and Canada because of differences in regulatory standards. In one case, the European data protection directive, a California effect occurred. In the other case, the EU ban on hormone-treated beef, no California effect occurred. An analysis of these two cases leads to two additions to existing explanations of the California effect. The analysis also has a number of implications for the debate on the race to the bottom thesis.

Introduction: the race to the bottom and the race to the top

The debate on the consequences of internationalisation for domestic regulation focuses on two theses. According to the race to the bottom thesis, international competition for business and investment is likely to lead to a downward spiral, in which countries systematically relax regulatory burdens on firms. According to the race to the top thesis, internationalisation and free trade lead to the gradual strengthening of regulatory standards when large and rich countries make access to their markets contingent upon the adoption of their own (more stringent) regulatory standards.

The race to the bottom thesis relies on an argument that proceeds in a number of steps. To begin with, it assumes that more stringent standards lead to higher production costs for firms. Since firms want to minimise their production costs, they will produce in countries that have relatively lax regulatory standards. Because countries have an interest in retaining and attracting firms, they will relax their regulatory standards, or refrain from strengthening them. If all countries do this, a continuous relaxation will take place, which leads to the gradual spiralling down of regulatory standards: a race to the bottom.

The race to the top thesis describes a different kind of dynamic. The process starts when a country bans (or threatens to ban) the import of products from countries that do not conform to certain regulatory standards.

If, in reaction, those other countries raise their own regulatory standards in order to retain market access, trade has led to a strengthening of regulatory standards. This process may repeat itself if political actors in the country imposing the ban keep pushing for a further strengthening of regulatory standards, leading to a 'race to the top' (Vogel 1995: 6–8; Trumbull 2000).

David Vogel has called the 'race to the top' mechanism the California effect, after the American state that has often played a frontrunner's role in strengthening regulatory standards in the United States. According to Vogel (1995: 260–8), a California effect is more likely if three conditions are met. First, it is more likely if the imposition of more stringent standards that restrict trade is supported by a coalition of domestic producers, who are interested in imposing costs on their foreign competitors, and public interest groups, which see a strengthening of standards as a good in itself. Vogel calls these coalitions 'Baptist-bootlegger' coalitions, after the two groups that supported the prohibition in the US, albeit for different reasons.

Second, the country trying to impose its standards needs to have a large and rich market. If the country's market is sufficiently attractive for foreign exporters, those exporters may support the strengthening of standards in order to maintain market access. If the market is relatively small, foreign exporters will rather forego some exports than support the strengthening of standards in their own country.

Third, a California effect is more likely if there are strong international institutions that can harmonise regulatory standards across countries. The EU is the best example of such a strong institution, because it can adopt directives and regulations that are binding on all its member states. If a member state with relatively stringent regulatory standards succeeds in having its standards adopted as European standards, this will raise the level of standards in all member states.[2]

This article analyses two cases in which the EU[3] restricted or threatened to restrict imports from the US and Canada because of the way they were produced. In one case, the European data protection directive, a California effect occurred, although in different ways in the US and Canada. In the other case, the European ban on hormone-treated beef, neither country changed its regulatory standards. These cases offer an opportunity critically to examine the first two factors that David Vogel discerns: the role of Baptist-bootlegger coalitions, and the importance of trade effects.[4]

In so doing, the article seeks to modify and refine Vogel's explanation at two points. To begin with, I will argue that the occurrence of a California effect is not only dependent on the size of trade effects, but also on the extent to which the strengthening of the regulatory standards ties in with prevalent values and perceived problems in the country whose exports are affected. Moreover, I will show that a strong Baptist-bootlegger coalition may prevent the occurrence of a California effect, because it raises or reinforces the

perception that the regulatory standards which restrict trade have been imposed for protectionist reasons rather than to protect non-economic values.

Theoretical framework: the California effect as a shift in political balance

A California effect takes place if a country strengthens its regulatory standards as a result of another country's restrictions on trade. The crucial link in the California effect thesis is therefore between international trade flows and processes of domestic regulatory standard-setting. This link is usually thought to run through exporting firms, which have to make a trade-off between the strengthening of regulatory standards and continued export opportunities. Absent trade restrictions, they will favour relatively lax regulatory standards, because that will improve their competitive position vis-à-vis foreign competitors. This may change if exports are made contingent upon the adoption of certain regulatory standards. Faced with the choice between more stringent regulatory standards and continued export opportunities on the one hand, and less stringent regulatory standards and an export ban on the other, exporting firms may support the strengthening of regulatory standards in order to retain their export opportunities.

This argument relies heavily on the trade effects of an import ban and the consequent shift in material calculus underlying the position of exporting firms in the political process. This kind of economic interests is only one side of the coin in regulatory standard-setting processes, however. These processes exhibit a combination of interests and motives of which the material self-interest of producers is only one.

The outcome of domestic regulatory standard-setting processes can be seen as the result of a political balance. This balance is made up of officials and interest groups that support and oppose the strengthening of standards. The position of actors in the political process can be understood as a combination of the preferences those actors have and the constraints they face. Trade measures may induce shifts in these positions through both channels: preferences and constraints. It is therefore useful to distinguish between the (economic) instruments used and the (economic and non-economic) bases on which the effects of these instruments rest (Baldwin 1985: 22–4).

The impact through constraints is the most conspicuous in the context of trade measures, since trade measures directly affect the export opportunities of firms in other countries. Before the trade restrictions were imposed, these firms may have opposed the adoption of more stringent standards. If, however, the firms face the choice between exporting with more stringent standards, or not exporting with less stringent standards, they may well

change their position and support a strengthening of standards, even if they would have preferred exporting with less stringent standards. This is the key mechanism that Vogel discerned as producing a California effect.

Trade restrictions are more likely to produce a change in exporting firms' position if two conditions are met, which translates into two hypotheses about the likelihood of a California effect. First, a change in position is more likely if the (potential) trade effects of the trade restrictions outweigh the costs of complying with the more stringent standards. This hypothesis combines two insights from the literature on issue linkage. The importance of trade effects is a central theme in the literature on the effects of trade dependence on power relations (Hirschman 1980 [1945]: 18; Keohane and Nye 1977: 10–11). The importance of the costs of complying with more stringent regulatory standards is derived from Wagner's (1988) point that asymmetric trade dependence is not sufficient to explain the success of issue linkages, since countries will only yield to trade pressure if the net benefits from trading under the imposed conditions are still positive.

As a second hypothesis, trade measures will only induce a change in the position of officials and exporting firms, if the imposition of the trade restrictions is credible. This ties in with classic arguments about the credibility of threats in international diplomacy (e.g. Schelling 1980 [1960]: 35 ff.). In the context of regulatory trade restrictions, credibility is largely dependent upon the domestic support for trade restrictions: if domestic support for the trade restrictions in the country imposing them is limited, the credibility of these trade restrictions is lower and they will have a smaller impact on the countries (potentially) affected by them (cf. Odell 1993: 237–43). Baptist-bootlegger coalitions strengthen the domestic support base for imposing trade restrictions and signal this support to actors in the other country, thereby making the trade restrictions more credible. Therefore, Baptist-bootlegger coalitions can be hypothesised to increase the likelihood of a California effect.

The impact of trade measures through preferences is less obvious when trade restrictions are primarily seen as economic measures. This, however, is too narrow a view. Trade restrictions that are based on differences in the stringency of regulatory standards are always accompanied by arguments why the other country should adopt more stringent standards, or at least why it is reasonable that imports are only welcome if they conform to certain standards. The arguments behind regulatory trade restrictions may or may not resonate with domestic actors in the country affected by the trade restrictions (Putnam 1988: 454–6); they may introduce regulatory options in the domestic political debate that were not considered before (Schoppa 1993: 372–3); and they may be considered as more or less 'genuine', in the sense that they are perceived to serve some non-economic value rather than protectionist interests.

These arguments are likely to make an important difference for the acceptability of adopting more stringent standards. Hence, two additional hypotheses can be formulated. First, a California effect will be more likely if the arguments for strengthening the regulatory standards tie in with prevalent values and perceived problems in the country affected by the trade restrictions. The arguments are less likely to have an impact on the underlying values of political actors (cf. Jenkins-Smith and Sabatier 1994: 181–2), but they may alter the valuation of specific policy options in the political debate. Second, a California effect will be more likely if the trade restrictions are perceived as driven by 'genuine' concerns rather than protectionism. This will raise the legitimacy of those trade restrictions and of the arguments on which they rest.

In the remainder of this paper, I will use these theoretical insights to analyse two cases in which the EU restricted or threatened to restrict the import of products from the US and Canada because of the way these products were produced. The case studies were conducted on the basis of three types of sources: official documents, secondary analyses of the cases, and 31 interviews with officials and interest group representatives in the EU, the US and Canada. The case studies are reported at length in Princen (2002), which also contains analyses of two other cases in the EU-North American relationship, which relate to genetically modified (GM) foods and leghold traps.

The European data protection directive

In 1995, the EU adopted a directive to harmonise member state laws for the protection of personal information, the so-called data protection directive (EU 1995). The directive was characterised by a comprehensive approach, which consisted of three key elements. First, the directive covered both the public and the private sector. Second, the directive contained a broad set of substantive data protection principles, including among other things a right of access for individuals to information on themselves, limitations on the purposes for which personal information can be used, and special safeguards for sensitive data, such as information on race or health. Third, the directive foresaw independent governmental oversight of data protection practices. To that end, each EU member state was required to set up an independent data protection commissioner.

Apart from harmonising data protection legislation within the EU, the directive also had an external dimension. In Article 25, it provided that data transfers to a third country were only allowed if that country had an 'adequate level of protection' of personal information. This provision was meant to prevent firms from circumventing the (relatively stringent) European regulatory standards by shifting data processing activities to countries with less stringent regulatory regimes. Data transfers to a third

country were allowed if the European Commission had issued an 'adequacy finding', which stated that the third country's data protection regime conformed to the directive's standards.

The possibility of blocking data transfers potentially affected both the US and Canada. Until the time that the directive was adopted, both countries had followed an approach to data protection that contrasted with each of the elements of the European approach discerned above (Bennett 1996: 480–1; Schwartz and Reidenberg 1996). First, although both countries had fairly comprehensive legislation in the public sector, the approach in the private sector relied largely on self-regulation and, in the US, narrowly targeted sectoral laws that protected personal information in specific industries. Second, most US and Canadian laws and self-regulatory codes contained a narrower set of data protection principles than the European directive. Third, neither country had an independent governmental institution to oversee data protection in the private sector. The US Federal Trade Commission (FTC) had the authority to enforce self-regulatory codes, but was not very active in this field.

At the same time, there were three important differences between the US and Canada. First, Canada had established a federal Privacy Commissioner, which was tasked with oversight of the public-sector Privacy Act. In the US, by contrast, oversight of data protection in the public sector was carried out by the Office of Management and Budget, which had a more limited mandate and did not give great priority to data protection issues (see Flaherty 1989: 248–9 and 325–7). As a result, Canada had gained considerable experience with independent and specialised governmental oversight in this area. Moreover, the Privacy Commissioner formed an institutional advocate for data protection legislation in the private sector.

Second, in 1993, the Canadian province of Quebec had adopted data protection legislation in the private sector, to complement its laws in the public sector. This in itself gave pressures to harmonise across Canada, but it also showed the viability of such a comprehensive legislative approach in the North American context (Bennett 1996: 482–3).

Third, and most importantly, Canadian firms, consumer groups and government officials had been working on voluntary data protection standards in the Canadian Standards Association (CSA). In 1995, consensus was reached on a comprehensive set of substantive data protection principles (CSA 1996). In the US, by contrast, no such consensus around a single set of principles existed. Most of the debate was centred on a set of four data protection principles that had originally been formulated in the 1970s (HEW 1973: 41; FTC 1997: 9–12). This set did not include elements, such as limitations on the purpose for which personal information could be processed, and special protection of sensitive data, that were an integral part of the European directive. And, even within the set of four principles, some

of these principles, such as the right of individual access, were still very controversial among most US business groups (Princen 2002: 294).

The potential trade effects of European restrictions on data transfers were great (Swire and Litan 1998). A wide range of business transactions relied on the exchange of personal information. Although the directive offered some exceptions to its requirements and provided for the use of contractual clauses to protect personal information in a given transfer, these options were not sufficient for many business transactions and would, moreover, cause a high level of uncertainty among business partners. Some sort of response by the US and Canadian governments was therefore required to prevent disruptions of trade. In combination with the differences in the domestic political situation, the two countries chose to respond in different ways.

Initially, the US response to the European directive was marked by a combination of distrust of the EU's possible protectionist motives, resentment about the EU's attitude toward US data protection policies, and scepticism over the EU's willingness and ability to block data transfers (Bennett and Raab 1997: 256). In the years after 1995, however, awareness increased that the European directive could have serious consequences for US firms doing business in Europe. At the same time, a series of visits by European data protection officials were meant to convince the US government and firms that the EU was serious about enforcing the provisions on third country data transfers, and that the intent of the directive was data protection, not protectionism.

As it became clear that the European Commission would not issue an adequacy finding for the US regulatory system as a whole or for specific industries, both parties started to look for a negotiated solution. The US government, led by the Department of Commerce, and the European Commission, led by DG Internal Market, started talks in late 1997 with a view to coming to an agreement that would allow US firms to subscribe to a set of data protection principles that satisfied the European directive's requirements. It would be up to each firm to decide whether it wanted to work under the agreement, but as soon as it chose to do so, it would be able to receive personal information from the EU. During 1998, this approach crystallised under the name of the 'Safe Harbour' approach, and further talks focused on the content of the agreement. During the talks, European data protection commissioners promised to take a favourable approach to data transfers to the US (Princen 2002: 296).

The talks proceeded in a number of rounds, each centred on new drafts of the agreement and a set of 'Frequently Asked Questions', plus answers, that would be an integral part of the agreement (Princen 2002: 299–307). Two issues were particularly contentious during these talks. First, the EU and the US differed over the precise substantive principles that should be included in the agreement. Much of this debate focused on the principle of

individual access to information, which was an important element in the EU's regulatory framework, but encountered strong opposition among US business groups. Second, the EU laid great stress on the enforcement of any agreement, and felt that the existing US system was too weak in this regard. In the end, this was solved when the FTC promised to give priority to claims arising under the Safe Harbour Agreement.

During the process, US and European consumer and privacy protection groups argued for a more stringent agreement, while both US and European firms and business groups called for a quick resolution that would not place too great a burden on transatlantic business activities. The final agreement was concluded in July 2000 (EU 2000).

The Canadian government took a very different approach. In 1996, the Departments of Justice and Industry Canada announced that the government would soon submit a proposal for comprehensive data protection legislation. This initiative was part of broader strategy to promote the use of the Internet and e-commerce in Canada. Yet, the European directive formed an important additional impetus for legislation and played an important role in the Canadian debates (Bennett 1996: 484; Bennett and Raab 1997: 259). The support for a legislative approach was considerably strengthened when the Canadian Direct Marketing Association (CDMA, later CMA) declared its support for legislation in this field, because it felt the CSA Model Code provided a good basis for legislation and it wanted to play a role in the legislative process (Princen 2002: 311–12).

Building on the substantive consensus reached in the CSA, the CSA Model Code was used as the basis for the new legislation. Basically, the new law would incorporate the Model Code, complemented by a number of specifications to the principles, and a set of enforcement provisions that granted a range of powers to the Privacy Commissioner of Canada. The subsequent debate focused mainly on the constitutional issue of whether the federal government had the authority to adopt legislation that would also cover provincially regulated industries. In addition, some business groups were sceptical about the extent of the powers granted to the Privacy Commissioner. In the end, both issues were settled without any fundamental changes to the proposed law, and the law was adopted as the Personal Information Protection and Electronic Documents Act (PIPEDA) in April 2000 (Canada 2000).

All along this process, officials of Industry Canada had been in close contact with their counterparts of DG Internal Market, with a view to ensuring the adequacy of the new legislation under the European directive. These discussions became gradually more specific as the Canadian legislative process proceeded (Princen 2002: 315–16). After a series of formal talks about the PIPEDA, the European Commission issued its adequacy finding in December 2001 (EU 2001).

Thus, the European directive led to a California effect in both the US and Canada, but in different ways. In the US, the Safe Harbour agreement meant a strengthening of regulatory standards for firms choosing to work under it. Moreover, it served to strengthen the position of the FTC as an enforcer of data protection practices in the private sector. At the same time, the effects of the agreement depend largely on the use that firms will make of it and future developments in enforcement. In Canada, data protection in the private sector was firmly embedded in legislation, as was the oversight by the Privacy Commissioner, leading to a clear strengthening of regulatory standards. The legislation was produced by a combination of domestic concerns (the rise of the Internet and e-commerce) and the European directive.

The European ban on growth-hormones in meat production

Following a series of food scares in Italy, the EU decided to ban the use of a number of growth hormones in meat production in 1981 (EU 1981). The hormones were deemed carcinogenic and had allegedly led to disorders in children that had eaten hormone-treated beef. Initially, the ban did not cover five particular growth hormones, but after increasing political pressure from the European Parliament and consumer groups, the ban was extended to all growth hormones in 1985 (EU 1985; re-adopted as EU 1988).

The ban covered not only the use of growth hormones, but also meat from animals treated with growth hormones. The ban on imported meat entered into force on 1 January 1989. The main countries to be affected by this ban were the US and Canada, where the use of the final five growth hormones to be banned was widespread and some had been in use since the 1950s. By using growth hormones, animals needed less food to reach weight, they grew fatter, and the meat was leaner (see e.g. Preston 1999). As growth hormones were predominantly used in cattle, the ban mainly affected beef exports, and this became known as the 'beef-hormone' issue.

In terms of foregone exports, the European ban was of little significance. The EU already had a very restrictive import regime for beef, with a set annual quota for US and Canadian beef. As a result, the import ban affected less than 1% of US and Canadian beef production (Vogel 1995: 167–9). Meat that was produced under a certified 'Hormone Free Cattle' (HFC) programme was exempted from the import ban, but exports under this programme remained limited.

Still, the ban was important in the context of broader debates on agricultural trade liberalisation (Princen 2002: 153–4). The EU, supported by a strong domestic agricultural lobby, had built up a Common Agricultural Policy, which relied on a restrictive import regime to protect its farmers from cheaper foreign products. For years, the US and Canadian governments had

tried to induce the EU to liberalise its agricultural policies. However, if the EU was allowed to erect regulatory barriers, such as the hormone ban, it could use similar regulatory measures to ban US and Canadian agricultural products from other parts of its market.

Substantively, the hormone ban raised two issues. First, some of the banned hormones were synthetic, while others also occurred in cattle naturally. For these natural hormones, the hormone levels in meat from hormone-treated animals normally lay within the natural range, so it was impossible to distinguish treated from non-treated beef. Second, the negative health effects of growth hormones in beef were disputed. There was little systematic evidence that all growth hormones were carcinogenic, as the EU claimed. Even the scientific committee set up by the European Commission in the early 1980s to study the health effects of the five hormones not covered by the initial ban concluded that they presented no health risks if administered properly (Lamming et al. 1987; see also the results reported in European Commission 1995). Proponents of the ban, however, justified a complete ban on the basis of the precautionary principle that it is better to be safe than sorry.

The European import ban has been the subject of several dispute settlement procedures under the WTO. In these procedures, the ban was declared incompatible with the WTO's Agreement on Sanitary and Phytosanitary Standards, mainly because it was not based on a scientific risk assessment (WTO 1998; see also Princen 2002: 159–66). The US and Canada were granted the right to retaliate in the amount of exports foregone because of the European ban, and they exercised these rights in 1999 (DFAIT 1999; USTR 1999).

In response to the WTO ruling, the European Commission announced that it would conduct additional risk assessments in order to provide a scientific basis for the import ban. Only after such studies were completed would the EU consider modifying its legislation. The US and Canada, on the other hand, argued for a prompt removal of the import ban.

In the meantime, the EU and the US tried to come to an agreement on compensatory measures that would benefit US beef exporters and reduce the amount of retaliatory sanctions imposed on imports from the EU. Compensation was mainly sought in the form of increased exports of non-treated beef under the HFC programme. Several developments made agreement more difficult, however.

On the European side, support for the hormone and import ban tightened after a series of food scares, of which BSE had the greatest impact. This made it more difficult for the European Commission to make concessions to the US and Canadian governments. Moreover, European farmers, represented by COPA/COGECA, stood firm in their demands for 'fair trade', which meant that they opposed foreign imports that were produced

under less stringent standards (see e.g. COPA/COGECA 1999). They combined forces with the European consumers association BEUC, and the two issued a joint statement in support of the import ban in 1999 (COPA/COGECA and BEUC 1999).

On the US side, officials and beef producers were suspicious of the EU's intentions. These suspicions were fuelled by the open support for the ban by European farmers, and the European Commission's announcement that it would consider the import ban to be justified after all if additional studies proved that hormones posed risks to human health. It was feared that the EU would try to undermine any agreement that would be reached or that it would withdraw any compensation after it had completed the additional risk assessments.

Mutual suspicions and sensitivities were reflected in a series of events regarding the HFC programme (Princen 2002: 178–81). Imports of certified non hormone-treated beef from the US were temporarily restricted after residues of forbidden (synthetic) hormones had been found in imported US beef during import inspections. This led to the establishment of a new Non-Hormone Treated Cattle (NHTC) programme in August 1999. In addition, officials of the EU's Food and Veterinary Office published a series of highly critical inspection reports between 1998 and 1999, and advised the EU to impose a complete ban on imports of US beef under the HFC and later NHTC programmes. Although, eventually, the restrictions on imports of non-treated beef from the US were lifted, these events were not very conducive for reaching an agreement based on mutual trust.

In the end, this dispute has led to a prolonged stalemate. The EU has not relaxed its hormone ban under pressure from the US and Canada or as a result of the WTO disputes, while in the US and Canada, there has been no move toward more stringent standards or banning the use of growth hormones. Rather, both countries have foregone the exports of beef to the EU, and beef exporters have not pushed for more stringent standards. Some exports of certified non-treated beef have taken place under separate agreements with the EU, but these exports have remained limited. The issue of growth hormones has not led to activism on the part of US and Canadian consumer groups. They have generally supported existing policies on this issue, particularly since growth hormones have been in use for such a long time already (Princen 2002: 182–3).

Explaining the California effect

The differential outcomes of the two cases can be discussed in terms of the hypotheses in the theoretical framework. To begin with, changes in constraints were important. The (potential) trade effects of the European data protection directive were much greater than the trade effects of the ban

on hormone-treated beef. The restrictions on data transfers were likely to affect a much wider range of products and services than the ban on beef imports. Moreover, the EU already had a restrictive import regime for US and Canadian beef. As a result, continued market access to the EU did not outweigh the costs of complying with a hormone ban.

Still, the trade effects do not explain all of the differences between the outcomes in these cases. In addition to the trade effects, the domestic political debates on these regulatory standards in the US and Canada were also important. In the beef-hormone case, the European standards did not tie in with prevalent values or perceived problems in either the US or Canada. Hormones had been used in both the US and Canada for several decades, and even consumer groups did not consider the European concerns to be valid. This provides at least an important additional explanation of why the US and Canada did not even consider strengthening their regulatory standards in regard to the use of growth-hormones in beef production.

In the beef-hormone case, the trade effects and the domestic political debate both point to a small likelihood of a California effect taking place. The data protection case offers a better opportunity to differentiate between the hypothesis on trade effects and the hypothesis on prevalent values and perceived problems. In the field of data protection, the debates in the US and Canada gradually diverged in the first half of the 1990s, and domestic political developments had set the stage for different responses to the European directive. This explains largely why Canada chose a legislative solution, while the US chose to negotiate a separate agreement with the EU.

It would be difficult to substantiate the claim that these differences are the result of differences in the trade effects of the European measure on the two countries. First, insofar as the trade effects can be measured, they did not differ significantly between the US and Canada in terms of the relative impact on exports. Second, it is difficult to maintain that the costs of complying with a legislative solution are systematically higher than those of complying with a plethora of self-regulatory codes. In the domestic debates in the US and Canada, the choice of political actors for one approach or the other was rather the outcome of a strategic decision, which relied more on ideas of what constituted 'appropriate' policy than on any objective cost-benefit calculus. It is illustrative in this regard that the US direct marketing industry has consistently opposed data protection legislation, while the Canadian Direct Marketing Association was the first business group in Canada to speak out in favour of comprehensive legislation.

As a first modification to David Vogel's explanatory factors, it can therefore be argued that a California effect is more likely if the strengthening of standards ties in with prevalent values and perceived problems. A California effect is more likely if the arguments for strengthening the regulatory standards that are behind the trade restrictions are taken up by

domestic actors in the other country. Then, these other actors can 'plead' the case of the country imposing trade restrictions within the other country's domestic political process. This way, they can form an important support for firms that support a strengthening of standards out of concern for their exports. If, by contrast, a strengthening of standards does not 'touch base' with any important political actor in the other country, a California effect can only occur out of an economic calculus, which is both weaker and less likely to be stable once the economic calculus changes.

Another important factor in these two cases was the suspicion of protectionism. In the beef-hormone case, the US and Canadian governments and beef producers have consistently argued that the European ban was no more than a protectionist measure, aimed at banning cheaper foreign beef from the European market. This allegation was closely linked to ongoing debates about agricultural trade liberalisation in the GATT and later the WTO, which pitted the US and Canada against the EU. As a result, giving in to the European demands could have set a dangerous precedent for the US and Canada: it would have given the EU more room to use similar regulatory standards to restrict other agricultural imports.

These concerns were exacerbated by the open support for the import ban from European farmers' associations. They argued for a concept of 'fair competition' whereby foreign producers would have to comply with similarly stringent regulatory standards as European farmers, if they were to have access to the European market. For the US and Canada, this argument summed up the whole point behind their opposition against European policies in the field of agriculture. The fact that the European farmers' association COPA/COGECA and consumer association BEUC issued a joint declaration in support of the import ban only reinforced these concerns.

In the data protection case, allegations of protectionism played a much less important role. Just after the European directive had been adopted, some officials in the US government claimed that the potential ban on data transfers had a protectionist intent, but these concerns faded away when EU data protection officials made it clear that they were serious about the directive, and willing to find a way out that would satisfy the requirements of the directive. Similarly, allegations of protectionism did not play a role in the Canadian debate over the European directive.

This was important because in the data protection case it gave US officials sufficient trust that a workable agreement could be negotiated, and that this would effectively ward off the risk of large-scale restrictions on data transfers. In the beef-hormone case, however, the suspicion of protectionism, which was fed by the EU's reaction to the WTO rulings, also raised suspicions among US and Canadian officials and farmers that the EU would try to find ways around any agreement. In the end, this was an important reason why no agreement could be reached.

A second modification to David Vogel's explanation therefore concerns the role of Baptist-bootlegger coalitions. Vogel argued that Baptist-bootlegger coalitions stimulate the occurrence of a California effect because they strengthen the domestic support for trade restrictions. Although this is true, there is also another side to these coalitions. As they raise or reinforce a suspicion of protectionism on the part of other countries, they simultaneously reduce the willingness of other countries to strengthen their regulatory standards, since it is less likely that this will guarantee market access in the future.

In terms of the theoretical framework that is outlined above, Baptist-bootlegger coalitions do not only have an effect on the credibility of trade restrictions, but they also affect the perception of the intentions behind those restrictions in other countries. The first mechanism leads to stronger support for trade restrictions in the country imposing them, which increases the likelihood of a California effect, whereas the latter mechanism leads to a reduced willingness to strengthen regulatory standards in the countries affected by the trade restrictions, which reduces the likelihood of a California effect. As a modification of the second theoretical hypothesis, it can therefore be argued that 'overt' or 'visible' Baptist-bootlegger coalitions (as opposed to 'covert' or 'hidden' ones) will reduce the likelihood of a California effect, in particular when concerns about protectionism already play an important role in the issue area concerned.

All in all, the likelihood of a California effect is determined by the combination of factors in the framework. At the same time, each of the factors seems to play a somewhat different role in the process. Three such roles can be discerned. First, the size of the trade effects is particularly important for inducing other countries to start a process of regulatory strengthening. However, second, the instruments and policy approach chosen in strengthening the regulatory standards are the result of domestic values and perceived problems in the regulatory standard-setting process. Third, perceptions of protectionism, which may be fuelled by overt Baptist-bootlegger coalitions, determine the level of trust between the country imposing more stringent regulatory standards and the countries affected by those standards. The level of trust affects both the likelihood of a regulatory response to the trade restrictions (rather than resorting to the WTO or engaging in a trade war) and the feasibility of a negotiated solution between the countries.

Implications for the race to the bottom debate

This analysis has several implications for the debate about the race to the bottom and the California effect. Although the case analyses do not allow for conclusions about the relative frequency with which a California effect

occurs, they do point to certain qualitative arguments that may be important in this debate.

To start with, domestic political processes are crucial for understanding the influence of international pressure, such as trade restrictions. Although trade effects are important in producing a California effect, they are only part of the story. Domestic political debates and the way the trade restrictions tie in with these debates are crucial for understanding why and how trade restrictions affect other countries' regulatory standards. The analysis in this article strongly opposes arguments based on 'trade determinism', in which economic or trade pressure alone determines political decisions on regulatory standards, be it in the form of a race to the bottom or a California effect. Consequently, a mechanistic account of either a race to the bottom or a California effect is likely to overstate the case for one or the other effect.

Furthermore, states are willing to incur costs to uphold certain regulatory standards, even if other states do not adopt similar standards. For instance, in the beef hormone case, the EU has maintained its ban, even though the US and Canada did not raise their own standards. Likewise, the EU adopted relatively stringent data protection standards, even if it was not certain if the US and Canada would do the same. This underlines the importance of domestic politics in understanding decisions on regulatory standards, and it qualifies the assumption underlying the race to the bottom thesis that governments are primarily interested in attracting business.

Of course, caution is needed if conclusions that are reached in the EU-US/Canadian relationship are to be translated to other trade relations. After all, the EU, the US and Canada share many potentially important characteristics as affluent, Western liberal democracies with free-market systems and active civil societies. It is important to assess whether the processes examined here are likely also to occur in other countries and trade relationships. In the end, this is an empirical question. Still, theoretically, some reasoned conjectures can be made about the limits of the conclusions reached in the transatlantic relationship.

On the one hand, it can be argued that many of the same processes will also be important in relations with non-Western countries. For instance, the hypothesis on prevalent values and perceived problems was largely based on the outcomes of a study of US pressure on Japan (Schoppa 1993). Also, even authoritarian regimes may consist of factions that respond differently to foreign economic pressure. The general argument about the importance of domestic politics may therefore have wider relevance than the relationship studied here.

On the other hand, trade effects may be relatively more important if trade restrictions are imposed against relatively less affluent countries. In addition, the cases analysed here show the importance of public interest groups in

gaining support for more stringent regulatory standards in another country, pointing at the importance of an active civil society (cf. Trumbull 2000). This kind of public interest group is more likely to be active in liberal democracies. As a result, a California effect will be relatively less likely in relations with states that are not liberal democracies, and if it occurs it is relatively more likely to be born of purely economic considerations.

All in all, however, based on the analysis in this article, there is little reason to fear a large-scale race to the bottom. These fears tend to underestimate the essentially political character of the processes that lead to the adoption or relaxation of regulatory standards, and the political resistance against relaxing regulatory standards in many countries. There is no such thing as trade determinism when it comes to setting regulatory standards, and the standard-setting process is to a great extent driven by domestic and by non-economic factors.

Whether a California effect is likely to take place on a large scale is yet another question. The analysis presented here suggests a number of conditions under which it is more likely to occur. First, even though trade is not all-determining, the trade effects of a measure need to be sufficiently large to provoke a response by political actors in another country. Second, the arguments for trade restrictions and a strengthening of standards, and the way they relate to domestic political debates in other countries, are also important. For a trade measure to affect another country's domestic political processes, a constant dialogue and search for consensus between the country imposing (or threatening to impose) a trade measure and the countries affected by that measure therefore seems to be the most likely to produce a California effect.

NOTES

1. The author would like to thank Paul 't Hart and an anonymous reviewer for their useful comments on earlier drafts of this article.

2. Genschel and Plümper (1997) have extended this model to harmonisation in international forums, highlighting the role of minimum coalitions of countries in the spread of regulatory standards. Genschel and Plümper's extension is not further discussed here, because I focus on bilateral trade relations between countries, rather than harmonisation among a large number of countries in international forums.
3. For the sake of consistency, I will refer to the EU in this article, even if formally it was the EC or, before 1993, the EEC that acted or took a decision.
4. The third factor, harmonisation in international organisations, cannot be analysed in these cases, since they show no useful variation on this factor. International standard-setting organisations, such as the Codex Alimentarious Commission and the OECD, played a role in both cases, but they could not adopt regulatory standards that were binding upon their members.

REFERENCES

Baldwin, D.A. (1985) *Economic Statecraft*. Princeton NJ, Princeton University Press.
Bennett, C.J. (1996) 'Rules of the Road and Level Playing-Fields: The Politics of Data Protection in Canada's Private Sector', *International Review of Administrative Sciences*, 62, 4, 479–91.

Bennett, C.J. and Raab, C.D. (1997) 'The Adequacy of Privacy: The European Union Data Protection Directive and the North American Response', *The Information Society*, 13, 3, 245–63.

Canada (2000) *Personal Information Protection and Electronic Documents Act*, Assented to on 13 April 2000.

COPA/COGECA (1999) *Remarks of COPA and COGECA on the Communication of the Commission on WTO Decisions Regarding the EU Hormones Ban*, Pr (99)25F1/P(99)27F1, 11 March 1999.

COPA/COGECA and BEUC (1999) *European Consumers and Farmers Unanimous on the EU Ban of Hormone Treated Beef*, Joint Statement of BEUC, EUROCOOP, COPA and COGECA, CdP(99)19–1, Press Release, 29 April 1999.

CSA (1996) *Model Code for the Protection of Personal Information. A National Standard of Canada*, CAN/CSA-Q830–96, March 1996.

DFAIT (1999) *Canada Retaliates against the EU*. Department of Foreign Affairs and International Trade, Press Release No. 174, 29 July 1999.

EU (1981) *Council Directive 81/602/EEC Concerning the Prohibition of certain Substances Having a Hormonal Action and of any Substances Having a Thyrostatic Action*, Adopted on 31 July 1981, OJ L 222, 7–8–1981, 32–33.

EU (1985) *Council Directive 85/649/EEC Prohibiting the Use in Livestock Farming of certain Substances Having a Hormonal Action*, Adopted on 31 December 1985, OJ L 382, 31–12–1985, 228–231.

EU (1988) *Council Directive 88/146/EEC Prohibiting the Use in Livestock Farming of certain Substances Having a Hormonal Action*, Adopted on 7 March 1988, OJ L 70, 16–3–1988, 16–18.

EU (1995) *Directive 95/46/EC of the European Parliament and of the Council on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of such Data*, Adopted on 24 October 1995, OJ L 281, 23–11–1995, 31–50.

EU (2000) *Commission Decision 2000/520/EC Pursuant to Directive 95/46/EC of the European Parliament and of the Council on the Adequacy of the Protection Provided by the Safe Harbour Privacy Principles and Related Frequently Asked Questions Issued by the US Department of Commerce*, Adopted on 26 July 2000, OJ L 215, 25–8–2000, 7–47.

EU (2001) *Commission Decision 2002/2/EC Pursuant to Directive 95/46/EC of the European Parliament and of the Council on the Adequate Protection of Personal Data Provided by the Canadian Personal Information Protection and Electronic Documents Act*, Adopted on 20 December 2001, OJ L 2, 4–1–2002, 13–16.

European Commission (ed.) (1995) *Scientific Conference on Growth Promotion in Meat Production. Proceedings*, Brussels, 29 November to 1 December 1995.

Flaherty, D.H. (1989) *Protecting Privacy in Surveillance Societies*, Chapel Hill and London: University of North Carolina Press.

FTC (1997) *Public Workshop on Consumer Privacy on the Global Information Infrastructure*, 6 January 1997.

Genschel, P. and Plümper, T. (1997) 'Regulatory Competition and International Cooperation', *Journal of European Public Policy*, 4, 4, 626–42.

HEW (1973) *Records, Computers and the Rights of Citizens*, Report of the Secretary's Advisory Committee on Automated Personal Data Systems, July 1973, Department of Health, Education and Welfare Publication No. (OS) 73–94.

Hirschman, A.O. (1980 [1945]) *National Power and the Structure of Foreign Trade*, Berkeley, University of California Press.

Jenkins-Smith, H.C. and Sabatier, P.A. (1994) 'Evaluating the Advocacy Coalition Framework', *Journal of Public Policy*, 14, 2, 175–203.

Keohane, R.O. and Nye, J.S. (1977) *Power and Interdependence. World Politics in Transition*, Boston and Toronto, Little, Brown and Company.

Lamming, G.E. et al. (1987) 'Scientific Report on Anabolic Agents in Animal Production', *The Veterinary Record*, 121, 389–92.

Odell, J.S. (1993) 'International Threats and Internal Politics. Brazil, the European Community, and the United States, 1985–1987', in P.B. Evans, H.K. Jacobson and R.D. Putnam (eds.) *Double-Edged Diplomacy. International Bargaining and Domestic Politics*, Berkeley, University of California Press.

Preston, R.L. (1999) 'Hormone Containing Growth Promoting Implants in Farmed Livestock', *Advanced Drug Delivery Reviews*, 38, 123–38.

Princen, S. (2002) *EU Regulation and Transatlantic Trade*, The Hague, Kluwer Law International.

Putnam, R.D. (1988) 'Diplomacy and Domestic Politics: the Logic of Two-Level Games', *International Organization*, 42, 3, 427–60.

Schelling, T.C. (1980 [1960]) *The Strategy of Conflict*, Cambridge MA, Harvard University Press.

Schoppa, L.J. (1993) 'Two-Level Games and Bargaining Outcomes: Why Gaiatsu Succeeds in Japan in Some Cases but not Others', *International Organization*, 47, 3, 353–86.

Schwartz, P.M. and Reidenberg, J.R. (1996) *Data Privacy Law. A Study of United States Data Protection*, Charlottesville VI, Michie Law Publishers.

Swire, P.P. and Litan, R.E. (1998) *None of your Business. World Data Flows, Electronic Commerce, and the European Privacy Directive*, Washington DC, Brookings Institute.
USTR (1999) *USTR Announces Final Product List in Beef Hormones Dispute*, United States Trade Representative, Press Release 99–60, 19 July 1999.
Trumbull, G. (2000) 'More Trade, Safer Products', *Swiss Political Science Review*, 6, 2, 89–93.
Vogel, D. (1995) *Trading Up. Consumer and Environmental Regulation in a Global Economy*, Cambridge MA, Harvard University Press.
Wagner, R.H. (1988) 'Economic Interdependence, Bargaining Power, and Political Influence', *International Organization*, 42, 3, 461–83.
WTO (1998) *EC Measures Concerning Meat and Meat Products (Hormones)*, Report of the Appellate Body, AB-1997–4, WT/DS26/AB/R and WT/DS48/AB/R, 16 January 1998.

SEBASTIAAN PRINCEN
School of Governance
University of Utrecht
Bijlhouwerstraat 6
3511ZC Utrecht
The Netherlands
email: S.Princen@usg.uu.nl