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Rules and Treatment of Sensitive Sectors in RTAs/FTAs

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Traditional and New Approaches to PTAS

- **Traditional Approach'**
 - simple structure
 - product coverage and degree of liberalisation sometimes partial
 - no provisions on rules other than for goods
 - no dispute settlement
- **New approach (often called "closer economic partnerships")**
 - comprehensive approach to liberalisation: goods, services, investment (varying approaches to handling "sensitive" sectors)
 - strong emphasis on facilitation
 - disciplines in new areas: investment, intellectual property, government procurement, competition policy, sometimes labour and environment
 - strong focus on "behind-the-border" issues
 - dispute settlement

Variation and Innovation in "new" PTAs

- Treatment of "sensitive" sectors
- Treatment of TRQs
- Approaches to trade remedies
- Intellectual property
- Government procurement
- Competition policy
- Labour
- Environment

Approaches to "Sensitive" Sectors

- **Complete exclusion**
 - Sugar in US-Australia FTA, rice (and often other agricultural products in Japan's FTAs), "supply-managed" products in Canada's FTAs, "disguised exclusion" of sugar in US-Chile FTA
- **Avoid FTAs with partners whose exports threaten "sensitive" sectors**
 - helps to explain Singapore's popularity as FTA partner
- **Lengthy transition periods**
 - US-Australia (18 years for beef, 17 years for dairy), Thailand-Australia, Thailand-NZ (20 years for dairy)
- **TRQ Expansion**
 - sometimes apply only during the transition period, permanent in other cases

Approaches to "Sensitive" Sectors (2)

- **Special safeguards**
 - increasingly widely used for "sensitive" agricultural and textile and clothing products
 - invariably much easier to invoke than safeguards under WTO safeguard agreement
 - "test" required in some cases (price or quantity triggers)
 - discretionary in other cases
- **Restrictive rules of origin**
 - common for textiles and clothing eg in US and Canadian FTAs
 - sometimes mitigated by "tariff preference levels": rules of origin relaxed for specified quantities
- **Other innovative provisions (e.g. Sugar in US-CAFTA-DR)**

TRQs

- **Used for some agricultural and textile and clothing products in several agreements**
- **Various approaches**
 - TRQs apply during transition period, with full liberalisation at end of transition period
 - TRQs expand indefinitely (eventually become non-binding)
 - TRQs expand during the transition period but remain in place at end of period
- **Usually explicitly additional to any TRQs under WTO agreements**

Approaches to Trade Remedies (1)

- **Anti-Dumping**
 - excluded in some cases
 - ANZCERTA: replaced by competition policy provisions
 - Canada-Chile: replaced by safeguards
 - relaxation of WTO rules
 - *de minimis* dumping margin increased (NZ-Singapore)
 - “lower duty” rule (Australia-Singapore)
 - Shortening of period for review (NZ-Singapore)
 - many agreements have no provisions

Approaches to Trade Remedies (2)

- **Safeguards**
 - Not permitted under some agreements (ANZCERTA, NZ-Singapore, Australia-Singapore)
 - Bilateral safeguards in US FTAs
 - Available only during transition period
 - Requires investigation and payment of compensation
 - Duty limited to MFN rate
 - Bilateral safeguards also in some other FTAs
 - Special safeguards for agricultural and textile and clothing products in many agreements (US and Canadian FTAs, Thailand-Australia, Thailand-NZ, P4)
 - Exemption of FTA partners from WTO-based safeguard action controversial (e.g. US steel safeguard action)

Intellectual Property

- US FTAs contain TRIPs-Plus provisions
 - greater IPR protection (e.g. longer periods, stronger provisions against digital piracy,)
 - generics included under market and data exclusivity arrangements
 - no economic analysis of economic effects prior to signing
- Other approaches
 - Re-affirmation of TRIPs (Singapore-NZ, Singapore-Australia)
 - Agreement on enhanced cooperation (Singapore-Japan)
 - Many agreements lack specific provisions on IP
- Debates
 - FTA IP provisions may foreclose options in DDA
 - can stronger IPRs promote FDI and “high-tech” trade?
 - are TRIPs-plus measures appropriate for all developing countries?

Government Procurement (1)

- **ANZCERTA**
 - Single government procurement market
 - No preference for domestic suppliers (“value for money”)
 - NZ content treated as Australian content in preference arrangements operated by Australian states
- **US agreements (e.g. NAFTA, US-Chile)**
 - core principles of non-discrimination and national treatment
 - list of entities covered
 - monetary thresholds specified(similar provisions in Chile-Korea, Chile-EU, Mexico-EU)

Government Procurement (2)

- **Varying provisions in Singapore FTAs**
 - Singapore-NZ, Singapore-Australia
 - “single market” and/or national treatment for specified agencies or lists of commitments
 - Singapore-US
 - reciprocal, competitive government procurement opportunities based on transparency, non-discrimination, predictability
 - Negative list approach
 - Monetary thresholds
 - Singapore-Japan
 - Based on WTO GP agreement
- **Many FTAs lack provisions on government procurement**

Competition Policy (1)

- Varying coverage and degrees of depth
- **Harmonisation of certain elements of competition law**
 - ANZCERTA, to replace anti-dumping)
 - **Requirement to establish/maintain competition laws and enforcement agencies**
 - US-Singapore, US-Chile, Canada-Costa Rica)
 - **Cooperation (with or without own competition laws)**
 - NAFTA, Chile-Canada, Chile-Mexico, Singapore-New Zealand, Singapore-Australia, Singapore-Japan

Competition Policy (2)

- **Right to designate monopolies and/or state-trading enterprises**
 - NAFTA, Chile-US, Singapore-US, Chile-Canada, Chile-Mexico
- **Typically no recourse to dispute settlement**

Environmental and Labour Standards

- **Varying approaches:**
 - No provisions in many agreements
 - Side agreements without recourse to dispute settlement (NAFTA)
 - Side-agreement on environment with provision for monetary fines for violations (Canada-Chile)
 - Side agreement on environment with provision for cooperative actions only in case of violations (Canada-Costa Rica)
 - Chapters in the main agreement, with full application of dispute settlement (US-Chile, US-Singapore, US-CAFTA-DR)