



THE AUSTRALIAN NATIONAL UNIVERSITY

The WTO, Taiwan and ECFA

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WTO Concerns on Proliferation of PTAs

- As principal threat to the integrity of the global trade regime:
 - Leutwiler Report (1985)
 - Sutherland Report (2004)

Echoed by member economies

Origins of WTO Provisions

- Intended as Minor Exception to MFN Principle:
 - To accommodate proposed PTA between Canada and the United States
 - To accommodate preferential trade relations between colonial powers and their then colonies (“separate customs territories”)

But Today:

- Over 300 PTAs in force or under negotiation
- c. 70% World Trade occurs between economies that joined by preferential arrangements (but not necessarily on preferential terms)
- Only a handful of economies do not have some form of preferential access to the EU market (PTAs, GSP, “Everything but Arms”)

Problems with WTO Provisions (Art. XXIV)

Vagueness of wording has prevented effective scrutiny:

- Duties on non-beneficiaries “shall not on the whole be higher or more restrictive”
- Agreement to be implemented within “a reasonable period of time”
- Agreement must cover “substantially all the trade” between the parties

“Unfortunately, the lack of effective multilateral supervision to date simply serves to demonstrate that the terms and conditions as specified under Article XXIV of GATT 1994 and Article V of GATS are not clear enough. They have not been playing the supervisory role, because they are not strictly observed or adhered to by WTO Members.”

Taiwan submission to WTO, 2005

Provisions for Agreements only involving Developing Economies: Enabling Clause

preferential arrangements involving less developed economies shall not “raise barriers to or create undue difficulties for the trade of any other contracting parties” and shall not constitute an impediment to the reduction or elimination of tariffs and other barriers on a most-favoured-nation basis.

31 of 382 PTAs in Goods notified to WTO at 7/10

WTO Response

Have to Learn to Live with PTAs

- Give greater clarity/specificity to rules
- Promote Multilateralization

Attempts at Greater Specificity

“Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994”

- Reasonable Period: Ten Years other than in “exceptional cases”
- Provisions for Calculating whether Duties on non-members were “higher”
- No specificity on “substantially all the trade” except reference that “the contribution to the expansion of world trade that may be made by closer integration between the economies of the parties to such agreements ... [will be] diminished if any major sector of trade is excluded”

Efforts to Clarify “Substantially All the Trade”

- A quantitative approach that specifies, for example, that a certain percentage of trade between the parties (or of partners’ tariff lines) must benefit from the provisions of an agreement; and/or
- A qualitative approach that specifies that no sector [or no major sector] should be excluded from liberalization under the agreement.

Examples

- EU: Should cover 90% of trade between the parties and no major sector excluded
- Australian proposal in Doha Round negotiations:
 - Elimination within 10 years of duties on 95% of tariff lines at 6 digit level
 - All “highly traded” products (those constituting at least 2% of trade between parties) must be included

Multilateralization

Taiwan 2005 proposal:

parties to existing PTAs should

“be required to afford third parties, in good faith, adequate opportunity to negotiate individual terms of accession to the RTAs”

TAIWAN, PTAs and the WTO

Not Strong Record of Compliance with Letter and Spirit of
WTO Provisions

Partner	Signed	Implemented	Notified to WTO
Panama	21 August 2003	1 January 2004	28 July 2009
El Salvador & Honduras	7 May 2007	1 March 2008	6 April 2010
Nicaragua	16 June 2006	1 January 2008	9 July 2009
Guatemala		1 July 2006	Not Notified
ECFA	29 June 2010		Not Notified

Product Coverage

Substantial Exclusions especially of agricultural products

No Recourse to “Enabling Clause”

“The representative of Chinese Taipei stated that his government would not claim any right granted under WTO Agreements to developing country Members or to a Member in the process of transforming its economy from a centrally-planned into a market, free-enterprise economy”

([World Trade Organization, 2001: paragraph 6](#)).

ECFA

A Framework Agreement: Exact Coverage to be Determined

cf. China-ASEAN Agreement notified to WTO under
“Enabling Clause”

Like CAFTA, benefits skewed against China (cf. PTAs
involving large economies)

WTO Concerns

- Claim that it need not be submitted to WTO
- Incomplete Product Coverage

“The situation in which ‘over 90% of Mainland goods can be imported tariff-free within 10 years after the signing of the ECFA,’ as the opposition parties fear, also absolutely will not happen.” Moreover, the government of Taiwan has indicated that it will not make any concessions on agricultural products: “the government will not further open Taiwan up to Mainland agricultural imports. The government also will not further reduce tariffs on the 1,415 Mainland agricultural import items already admitted” (Mainland Affairs Council 2010 — “Remarks by Minister Lai on the Preparatory Consultations for the Economic Cooperation Framework

ECFA and the WTO (contd.)

No provision for Third Party Accession

ECFA and Multilateralization

- Domino Effect in Europe: Proliferation and then Multilateralization (Richard Baldwin)
- Not Occurred in Asia because (1) Often driven primarily by non-economic concerns; (2) Only involved relatively minor trading partners
- But new ECFA part of significant new developments: Korea-US; Korea-EU. Major Trading Partners now being linked >> PTAs with greater political and economic significance